

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

## **May 22, 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 Jim Ronquillo.

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

**MINUTES** – May 8, 2006 -- Approved. May 11, 2006 -- Approved.

**COURTESIES** – None

### **PROCLAMATIONS**

- May 21-27: National Public Works Week
- May 22-27: "Click It or Ticket" Safety Belt Enforcement Week

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

- Interim City Administrator Tina Volek said Item Q needed to be separated and then deleted from consideration. The grant went to the Child Intervention Center instead of passing through the City.
- Ms. Volek noted there was a notebook at the back of the Council Chambers containing copies of *ex parte* communication to the Mayor and Council on Item #2 concerning Alternatives Inc.
- She noted that City Hall would be closed on Monday for Memorial Day. Ms. Volek reminded the Council of the meeting tomorrow -- Tuesday evening at 6:00 p.m. on the Third Floor of the Library in a special work session for the next set of budget presentations. An agenda review meeting would not be held prior to this meeting.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1, and #10 - #12 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.)* There were no speakers.

## **CONSENT AGENDA:**

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

	Name	Board/Commission	Term	
			Begins	Ends
1.	Timothy Smith	Homelessness Committee	05/22/06	12/31/08
2.	Lucy Brown	Homelessness Committee	05/22/06	12/31/10
3.	Gary Drake	Homelessness Committee	05/22/06	12/31/08
4.	Larry Gaalswyk	Homelessness Committee	05/22/06	12/31/08
5.	Wayne Smithberg	Homelessness Committee	05/22/06	12/31/10
6.	Judy Stewart	Homelessness Committee	05/22/06	12/31/08
7.	Laura Dimmler	Homelessness Committee	05/22/06	12/31/08
8.	Dustin Machler	Homelessness Committee	05/22/06	12/31/08
9.	Kathie Shandera	Homelessness Committee	05/22/06	12/31/10
10.	Bill Cochran	Homelessness Committee	05/22/06	12/31/10
11.	Joseph Chalupa	Homelessness Committee	05/22/06	12/31/08
12.	Mona Sumner	Homelessness Committee	05/22/06	12/31/10
13.	Gary Huffmaster	Homelessness Committee	05/22/06	12/31/10
14.	Adela Awner	Homelessness Committee	05/22/06	12/31/10
15.	Linda Price	Homelessness Committee	05/22/06	12/31/10
16.	Paul Chinberg	Homelessness Committee	05/22/06	12/31/08
17.	Jacquelyn Wagner	Homelessness Committee	05/22/06	12/31/10
18.	Clark Swan	Homelessness Committee	05/22/06	12/31/08
19.	Joseph McClure	Homelessness Committee	05/22/06	12/31/10
20.	Lisa Harmon	Homelessness Committee	05/22/06	12/31/08

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

#### **(1) W.O. 03-10: 6<sup>th</sup> & Central Traffic Signal.** (Opened 5/9/06).

Recommend rejecting all bids and authorizing Staff to restructure the project in an attempt to bring the construction costs within the budgeted funds available.

#### **(2) W.O. 05-07: Central Avenue & Shiloh Road Traffic Signal Installation.** (Opened 5/9/06). Recommend Ace Electric, \$55,467.79.

**(3) Wastewater Treatment Plant Electrical Transformers.** (Opened 5/9/06). Recommend delaying award to 6/12/06.

### **C. Change Order #5, W.O. 04-11: South Billings Boulevard, JTL Group, Inc., \$1,138.98.**

### **D. Amendment #1, Professional Services Contract, Landfill Master Plan Update, Great West Engineering, \$65,000.00.**

**E. Amendment #4, Professional Services Contract, W.O. 02-10: Bench Connector Project, Morrison-Maierle, Inc, \$48,303.00.**

**F. Amendment #12, Professional Services Contract, W.O. 05-14: Walter Pump Station, Morrison-Maierle, Inc., \$199,708.00.**

**G. Contract** with EFJohnson for 800 MHz Maintenance, \$426,258.00, term: 3 years.

**H. Contract** with Eide Bailly for Audit Services, \$165,300.00, term: 3 years.

**I. Compensation Agreement** for Private Contract #532: Lift Station Improvements for Vintage Estates Subdivision, Rick Dorn, Developer, \$198,196.00.

**J. Reimbursement Agreement** for Private Contract #560: Falcon Ridge Estates Subdivision, First Filing, Phase I, Falcon Ridge, LLC (Dennis Buscher), Developer, \$16,715.60.

**K. Development Agreement** for C/S 566, Tract 1C, Jeff Essmann, owner.

**L. Agreement** for the transfer of the operation of certain rural special improvement districts (RSIDs): #535L, #548L, #558L, #560L, #562L, #569L, and #579L from Yellowstone County to the City of Billings and including them in the annual light district assessments.

**M. Professional Services Contract** with CTA Architects and team for the Downtown Transit Operations Center, \$571,913.25. (Delayed from 5/8/06).

**N. Memorandum of Understanding** with BikeNet for St. Vincent Healthcare Mission Fund Grant Application for Ponderosa School Trail, \$200,000.00.

**O. Memorandum of Understanding** with BikeNet for PPL Montana Community Fund Grant Application for Big Ditch Trail, Phase 2, \$10,000.00.

**P. Recreational Trails Program Grant Application** for Lampman Strip Park, \$35,000.00.

**Q. Acceptance of Economic Development Initiative Grant Funds** from the U.S. Dept. of Housing and Urban Development for Garfield School Renovation, #B-06-SP-MT-0550, \$99,000.00.

**R. Acceptance of Bikenet Donations:**

(1) \$21,000.00 for a portion of the CTEP required matching funds for the Big Ditch Trail, Phase 1.

**(2)** \$25,000.00 for a portion of the CTEP required matching funds for the Bannister Drain Trail.

**S. Acceptance of Donations:**

**(1)** Proceeds from the June 2, 2006 fundraiser by Mission Ridge Independent Living to the Billings Fire Dept.

**(2)** Animal Shelter Landscape Project Donations from: Olsen Nursery (\$3,000 value), Tvetene Turf, Inc., (\$400 - \$600 value), Frontier Fencing (\$2200 value).

**(3)** Donations from three anonymous donors to send one School Resource Officer to the National Conference in Palm Springs/LaQuinta, CA in July, \$900.00.

**T. Confirmation of Police Officer:** Brian Heinze.

**U. Street Closure** for Memorial Day Parade on May 29, 2006, United Veterans Council, sponsor, assembly at Albertson's parking lot on the corner of Central and 24<sup>th</sup> St. W, down Central Ave to Mountview Cemetery.

**V. Resolution 06-18420** supporting the federal application by the Downtown Billings Partnership to designate the City of Billings a *Preserve America Community*.

**W. Resolution 06-18421** allowing non-profit organizations holding valid Park Use Permits at City ballfields (i.e. Athletic Field) to display sponsor signage as a means of raising funds, setting a fee to be charged by the City for such advertising displays and establishing an effective date.

**X. Resolution 06-18422** relating to \$851,000 Pooled Special Improvement District Bonds, Series 2006 (SIDs 1368, 1370 and 1373), authorizing the issuance and calling for the public sale thereof on 6/12/06.

**Y. Second/final reading ordinance 06-5368** expanding the boundaries of Ward II to include recently annexed property in Annex #06-04, the contiguous City-owned land known as Tract 2B of Amended Tract 2, C/S 727, located on Alkali Creek Rd.

**Z. Second/final reading ordinance 06-5369** expanding the boundaries of Ward I to include recently annexed property in Annex #06-05, the remaining tract of corrected C/S 3223, Amended Tract 1, McCall Development Inc., petitioners.

**AA. Preliminary Plat** of Josephine Crossing Subdivision, generally located east off of Mullowney Lane, directly south of Elysian Road, north of the Yellowstone

river (south of the West Billings I-90 Interchange); conditional approval of the plat, approval of the variances and adoption of the Findings of Fact.

**BB. Preliminary Plat** of Lake Hills Subdivision, 13<sup>th</sup> Filing Amended, generally located on Annandale Road, between Greenbriar Road and Cherry Hill Road; conditional approval of the plat and adopting of the Findings of Fact.

**CC. Final Plat** of Ironwood Estates Subdivision, 4<sup>th</sup> Filing.

**DD. Final Plat** of Kingston Place Subdivision.

**EE. Final Plat** of St. Thomas Subdivision.

**FF. Bills and payroll.**

- (1) April 21, 2006
- (2) April 28, 2006
- (3) May 8, 2006

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

Councilmember Veis separated Items Q and W. Councilmember Boyer separated Item V. Councilmember Gaghen separated Item S3. Councilmember Stevens separated Item F. Councilmember Clark separated Item H.

Councilmember Veis moved for approval of the Consent Agenda except Items F, H, Q, S3, V and W, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

Councilmember Veis moved for approval of ITEM F, seconded by Councilmember Ruegamer. Councilmember Stevens said she had some concerns about the rates of HDR Engineering and Morrison & Maierle in Section 5: Payment, asking how the stated rates could be justified, since it appears these rates are approximately double what other engineering firms charge the City. Public Works Director Dave Mumford said the work HDR does is specialty work and they are a "sub" on this project. Mr. Mumford said Morrison & Maierle has brought in HDR because of its expertise in the specialty areas; there are no other firms in the state that do this type of engineering. He added that the rates of HKM are similar to those of HDR and other firms in town. Councilmember Stevens noted Item D with Great West Engineering and the rates in this contract. She said these project manager rates are \$100 – \$105/hour, while HDR's project manager rates are \$160/hour. Mr. Mumford noted that Morrison & Maierle's project manager rates are \$130/hour and HDR's are \$160/hour – which is not double that of other firms. Great Western is doing a master plan of the landfill, not designing a major water pump station, a significant difference in the type of work. Mr. Mumford said the difference lies in the technical expertise and the quality of the engineering work being requested.

Councilmember Stevens amended the motion to delay action to June 12<sup>th</sup> so that Staff can review the rate structure and provide additional information to the Council, seconded by Councilmember Gaghen. On a voice vote on the amendment, the motion was unanimously approved. On a voice vote on the motion as amended, the motion was unanimously approved.

Councilmember Veis moved for approval of ITEM H, seconded by Councilmember Ruegamer. Councilmember Clark said he heard some comments that some firms that were large enough to bid on this contract didn't even know that it was up for bid. Interim City Administrator Tina Volek said the contract was legally advertised in the Billings Times – the City's legal advertising paper of record. Two firms responded to the request for proposals; one was chosen by the committee. She noted in the past letters were sent to local accounting firms regarding the proposal; that was not done this time. Councilmember Ulledalen noted that Financial Services Manager Pat Weber did follow up and called some of the other firms after the proposal deadline. Apparently there was not a strong interest on the part of these other firms. Councilmember Boyer said that a wider range of people should be contacted the next time the City does this RFP. On a voice vote, the motion was unanimously approved.

Councilmember Veis moved to table indefinitely ITEM Q, seconded by Councilmember Boyer. On a voice vote the motion was unanimously approved.

Councilmember Veis moved to approve ITEM S3, seconded by Councilmember Gaghen. Councilmember Gaghen asked how the school resource officers are selected – are they the officers with the greatest length of service in that capacity, or is it someone designated by the entity providing the donations or some other method. Sgt. Mark Cady of the Police Dept. said the department is developing a selection process at this time. Members of the school district and members of the Police Dept will be included on the selection team. Currently the intent of attendance at this conference is to get a school resource officer certified as an instructor to instruct future SROs in-house.

Councilmember Ulledalen said he "continues to have a little bit of heartburn over anonymous donors to the Police Dept. and the Police Dept. Foundation. The question I have is 'do the donors have any input into who goes or where they would be assigned'?" Sgt. Cady said the donor does not have a say in these matters. The department is trying to "build a base" for this program, not specify specific individuals. Councilmember Stevens said donations to the City are anonymous until someone asks because it is a donation to a public entity and the public has the right to know that. She asked if donors want to make anonymous donations, is the City telling them that the information is anonymous until someone asks. City Attorney Brent Brooks said it would be difficult to say there is a right of privacy in a donation to a public entity. Montana has one of the most open public records statutes in the country and it would be difficult to defend the right of privacy of an anonymous donor upon inquiry from the public. Councilmember Boyer asked if there is there is a donations form used by the City and does this form have a disclaimer as to the right of privacy. Mr. Brooks said he did not think the donation form currently contained such a disclaimer. On a voice vote, the motion was unanimously approved.

Councilmember Veis moved for approval of ITEM V, seconded by Councilmember Ruegamer. Councilmember Boyer said since the City is applying for this designation as a community, she wanted to make sure that the Moss Mansion is not forgotten in the City's history. She said if the City is going to apply for grants and this designation, the Council should not forget the Moss Mansion, of which the City owns a part. Mayor Tussing added that the Governor's Council on Cultural Preservation has identified the City as an example for the rest of the state in what it has done in preserving historic buildings and renovating areas that previously were distressed. On a voice vote, the motion was unanimously approved.

Councilmember Veis moved for approval of ITEM W, seconded by Councilmember Ruegamer. Councilmember Veis said the Council has previously discussed amendments to this resolution to allow periodic review. Councilmember Ulledalen noted that he brought this forward initially as a Council Initiative to change the license amount from \$500 to \$100. He said he did not see a problem with reviewing it in a year because a revenue-sharing arrangement could be possible in the future. Councilmember Ulledalen amended the motion to review this resolution in one year, seconded by Councilmember Stevens. On a voice vote on the amendment, the motion was unanimously approved. On a voice vote on the motion as amended, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND SPECIAL REVIEW #813: A special review to operate a 50-bed private correctional facility (SIC #8744) in the South 27<sup>th</sup> Street Corridor zoning district on a 4.266-acre parcel of land described as: Lot 1, Vernwood Subdivision and located at: 1001 South 27<sup>th</sup> Street. Corner Construction Company, owner; P. Bruce Harper, (Alternatives, Inc.), agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Councilmember Ronquillo said it is appropriate that he recuse himself from taking part in the discussion and vote on this issue. His reason was that his research on the question of whether the program should be located on the south side has resulted in his reaching an irrevocable position on that issue prior to tonight's discussion and vote. Mayor Tussing asked if Councilmember Ronquillo could still ask questions of staff or testify at the public hearing. City Attorney Brent Brooks replied that the Council's rules and Robert's Rules of Order would prohibit any further participation once a person has withdrawn from the proceedings. Councilmember Ronquillo could testify at the public hearing as a "private citizen" however.

Councilmember Boyer said she would also recuse herself from the discussion and vote because her husband has a relationship with Alternatives, Inc.

Nicole Cromwell of the Planning Dept. said this special review is for the operation of a 50-bed Billings Assessment & Sanction Center (BASC) for Women that is currently operated out of the Montana Women's Prison. This review would allow the move of the

BASC facility from the prison to the Howard Johnson facility and to also increase its size. This does not include the entire use of the building clarified Ms. Cromwell, only the proposed second floor of the existing Howard Johnson facility.

Ms. Cromwell said the facility is only on Lot 1, Block 1 of Vernwood Sub., the current location of the Howard Johnson facility. North of this site is the new Smith's Chapel/Funeral Home; further north is the Billings' Main Post Office and the Montana Women's Prison. On the west side of S. 28<sup>th</sup> St. there is R-6000 and Residential Multi-Family zoning. Further south Highway Commercial zoning can be found.

She noted the site plan submitted with the special review application. It depicts the existing building, a small proposed addition on the south side of the building for an enclosed sally port to bring people to the facility, and two areas on the east side of the building for recreation for different populations in the building. The first floor of the building will be the existing women's pre-release center, which is for women that have been released from corrections to go out into the community, but have safe, secure and sober housing while they are in that probationary period. There is also some staff office space on the first floor. The third floor is for Alternatives' drug rehabilitation program. This would be a secure facility for "active" treatment of women. The second floor would be the 50-bed women's assessment center. Originally the third floor was going to be the women's methamphetamine treatment unit. Alternatives did not receive the state grant for that treatment program. Subsequently, Alternatives has set up the third floor as the chemical dependency rehab center, which will treat all types of dependency problems.

Ms. Cromwell said that nothing on the front of the building will change with the exception of the addition of the sally port on the east side. The face of the sign in the front of the building will change, but the sign structure will not.

The Planning Dept. recommended denial of the special review, based on the fact that the City Council's adopted zoning scheme for these types of facilities was to disperse them between three different zoning districts, not to have them congregated or in close proximity to each other on the east side of S. 27<sup>th</sup> St. The Zoning Commission held its public hearing and took testimony at its meeting. The Zoning Commission recommended approval, based on its belief this is a compatible use for this location on S. 27<sup>th</sup> St. The three criteria the Zoning Commission reviewed are: (1) does the application comply with all requirements of Article (27-1500). *This application does comply with the requirements of the zoning regulations.* (2) Is the application consistent with the objectives and purposes of Chapter 27 and the Growth Policy. *This application is generally consistent with the purposes of Chapter 27, the 2003 Growth Policy.* (3) Is the use compatible with surrounding land uses or is it otherwise screened and separated from adjacent land in such a way as to minimize adverse effects. *The proposed use is compatible with the adjoining land uses and no conditions are necessary to ensure compatibility.*

Ms. Cromwell noted the written testimony received today from State Senator Lynda Moss asking that a decision be delayed so the South Side neighborhood could have an opportunity to meet with the applicant to work through any remaining issues. Additionally, a memorandum from Assistant City Attorney Bonnie Sutherland regarding whether this particular use requires a special review was provided to the Council. This

memo was in response to a legal memo from the Dept. of Corrections stating that the BASC facility is more of a nature of a pre-release center and should not require special review approval by the City Council. Ms. Sutherland's response was that the City stands by its decision to require the special review.

Councilmember Ruegamer asked for clarification regarding Alternatives' use of the first and third floors – i.e. Alternatives can do anything with those floors. Ms. Cromwell said that was true. Councilmember Ruegamer asked if the only consideration before the Council this evening was moving the 22 beds from the Women's Prison to the 2<sup>nd</sup> floor of the Howard Johnson facility and expanding the program to 50 beds. Ms. Cromwell confirmed that was correct.

Councilmember Clark asked about the recreation yards on the east and north sides of the building. Both yards will be fenced and are for different populations of women. Ms. Cromwell noted that fencing is not required however. She added that if the fencing is done, it will need to be material other than chain link fencing, which is not allowed in the S. 27<sup>th</sup>. Street Corridor zone.

The public hearing was opened. DAVE ARMSTRONG OF 3109 1<sup>ST</sup> AVENUE N, said he is the administrator of Alternatives, Inc. Mr. Armstrong said Alternatives appeared before the Council previously regarding the methamphetamine treatment program proposal. Since Alternatives did not receive the grant from the state, it is now proposing to use the Howard Johnson (HoJo) facility for (1) a 65 bed pre-release facility on the first floor of the facility – an allowed use under the zoning code and (2) a 40-bed chemical dependency unit on the third floor – also an allowed use. The issue this evening is the use proposed for the second floor. Mr. Armstrong said there seems to be a lot of concern and questions about "lockdown" for that facility. Lockdown does not mean concertina wire, armed guards, perimeter security, big steel doors, etc. Mr. Armstrong said that is not the nature of this facility. "What we meant by 'lockdown' is that the people stay in the program during their entire stay. The people on the second floor average 49 days in their length of stay. They do not leave the facility during that period of time. Then they are dispersed back to the communities they came from ... and will go into other treatment programs. What you are really talking about is a correctional use of the Howard Johnson that will go through and whether it makes sense to keep intact the unit that is currently only two blocks to the north and already operated by Alternatives," he stated.

Mr. Armstrong emphasized that there is a great need for these types of beds. There are women who sit in jail with no programming or assessment because there is not space at the BASC unit. BASC is by nature a prison-diversion program; the idea is not to put these women in prison. The BASC unit is currently in the prison facility only because there is no other space for it. The intent is to move it out of the prison.

Councilmember Veis asked for explanation of what occurs when someone goes through the BASC unit. Mr. Armstrong said it is for female offenders. He said currently many female offenders sit in jail for quite some time prior to sentencing. Upon sentencing to the Dept. of Corrections, the dept. has the ability to place that offender anywhere in the community. But there may not be a placement available, so that offender languishes in jail, taking up premium space. With the addition of the BASC

beds, this offender would be moved from jail to the BASC unit so the offender can begin the process of assessment and treatment. Mr. Armstrong noted that 126 people have gone through the current BASC unit since September, with only 6% being returned to prison.

Councilmember Ruegamer asked how many meetings were held with neighbors. Mr. Armstrong replied that three meetings were held with the neighborhood. Councilmember Ruegamer asked if Alternatives "planned" before going to the neighbors or went to the neighbors before, then "planned". Mr. Armstrong said they planned first, and then went to the neighbors, noting the planning revolved around preparing a response to the state RFP for the methamphetamine treatment program. Councilmember Ruegamer asked what would happen in the requested use for the second floor is not approved by the Council this evening. Mr. Armstrong replied that the alternatives included: the right to place a male pre-release center on the site, the ability to go back to the Dept. of Corrections and identify another correctional group that does not require a review.

Councilmember Gaghen asked Mr. Armstrong if prior to going to the South Side Task Force, Alternatives already had a buy/sell agreement on the HoJo facility, not contingent on the methamphetamine program, though hoping it would be selected for the program. Mr. Armstrong confirmed that Alternatives had a buy/sell agreement on the facility before any public meetings were held. He added it was normal business practice in this case, since it concerned a going hotel. Mr. Armstrong said, "You cannot announce that you will buy something until they have had a chance to verify that you are a legitimate buyer." He said Alternatives moved quickly with the meetings after it was no longer held by the confidentiality of the buy/sell agreement.

Councilmember Stevens asked if there are other BASC units in the state. Mr. Armstrong said there are other units in the state, but not for women, thus presenting a parity issue. There are no other BASC units for women in the state. Councilmember Stevens also asked about the concerns expressed in a letter by Marion Dozier, stating that Alternatives did not follow state rules for siting a pre-release center in the south side neighborhood, claiming a violation of ARM 20.7.503. She asked Mr. Armstrong to address this concern. Mr. Armstrong said Diana Koch, an attorney for the Dept. of Corrections would address that matter. He assured the Council that Alternatives follows all rules of the state and the Dept. of Corrections.

Councilmember Veis asked about the BASC proposal had Alternatives been successful in its bid for the methamphetamine program – would the BASC unit be relocated. Mr. Armstrong said the BASC unit was always part of Alternatives' proposal. The original proposal was for pre-release on first floor, BASC on second floor and the methamphetamine treatment on the third floor. Since Alternatives was not successful in being awarded the methamphetamine treatment unit, it has been replaced with a chemical dependency treatment unit on the third floor, an allowed use in this district.

Councilmember Clark asked if Alternatives will cease to pay taxes on the HoJo facility when it takes over the property. Mr. Armstrong confirmed that they are a non-profit organization and exempt from property taxes, noting that there are approximately \$58,000 in taxes Alternatives will not be paying. Councilmember Clark said other

taxpayers will need to absorb that cost as a result. Mr. Armstrong said that was correct, however the City would also have \$1.6 Million in payroll (i.e. new jobs) and \$4 Million in spending added to the community.

Councilmember Gaghen asked if Alternatives will need to remodel the HoJo facility to meet its needs and will federal monies be utilized for this purpose. Mr. Armstrong said the HoJo facility is not posh; it is an express inn – i.e. a room with a bathroom. He noted there is no kitchen, which will need to be added; there is not a great deal of facilities with that building. The front portion of the building facing S. 27<sup>th</sup> Street is office space and the back wing is bed space. The funds for this project will be borrowed from the state and paid back over time.

Councilmember Veis noted that the Dept. of Corrections indicated that a special review was not required. He asked why Alternatives chose to do the review. Mr. Armstrong said they chose to do the review when Alternatives began discussing the “locked down” facility. He said he believed the misconception that “locked down” meant concertina wire, armed guards, etc. created a perception different than what the actual facility will be like. Mr. Armstrong said Alternatives chose to proceed with the special review to make sure it was doing the right thing and to make this discussion public.

JIM RENO, 1141 TOOLE COURT, said he serves as a Yellowstone County Commissioner. He said he was part of the citizen’s task force that advocated relocation of the women’s prison from the Deer Lodge valley to Billings. Mr. Reno noted this community asked that the women’s prison be moved because the state was “warehousing” women. He said this community has done what it said it would do if the prison came to the Billings – i.e. provide opportunity for rehabilitation. Mr. Reno said the prison works with these women on child-rearing skills, budgeting, etc. with three volunteers for each inmate. He said tonight’s discussion concerns what role Alternatives, Inc. should play in the rehabilitation of these women. Mr. Reno said that after discussion this evening, the Council needed to remember why the prison was moved to Billings. Councilmember Ruegamer asked if Mr. Reno was for or against the special review. Mr. Reno said he supported the special review, noting the county has an overpopulated county jail and opportunities are needed to place nonviolent offenders in treatment and get them out of the jails.

JO ACKMAN, NO ADDRESS GIVEN, said she is the warden at the Women’s Prison. She stated when the new facility was opened, 165 open beds were available. Ms. Ackman acknowledged that a “parity” issue does exist with the number of facilities available for women versus the number available for men. The female inmate population used to be a small population, but it is not small any longer. She currently has 320 inmates for which she is responsible. Many of these women are waiting for placements in the community where they can get support and pay back their restitution, while waiting in a prison setting. The opportunity to move them to the BASC, a setting that is more conducive to what the judges and screening committee wanted is a positive one. Ms. Ackman said the prison has the ability to share resources with Alternatives and the BASC program because of the close proximity. Councilmember Ulledalen asked about the rates of recidivism. Ms. Ackman said the recidivism rate depends on the type of offense. About 7 – 12% is the average rate for those women that cannot succeed in the

community – i.e. they cannot meet their probation requirements; they are not coming back in for new criminal activity. Some are coming back in for methamphetamine use, which is very addicting. She noted that the recidivism rate for females is not as high as that for males.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she has no financial interest in Alternatives, Inc. and is a member of the South Side Task Force and its secretary at present, and is speaking for herself. She also asked that City Attorney Brent Brooks disclose his connection with Alternative Inc. Ms. Westwood said she believed he is on the board of that organization, as is his father. She said other disclosures should have been made at the Zoning Commission as well. She said her major concerns about the special review are: (1) this is a special review for four acres. If Alternatives only needs the second floor, that should be what the special review is for. (2) if people are not permitted to leave the facility (on both the second and third floors), the City needs to take a closer look at what is proposed. Ms. Westwood said she has no disagreement that Alternatives may be a great organization, but that is not the point of the special review. The point is whether this use is appropriate for the neighborhood. She quoted the following facts from the Dept. of Corrections: about 12,000 people are under supervision in the state – with 3,000 having contact with this one neighborhood. Ms. Westwood said that is simply too many and the City needs to take a closer look at this request. The public will be financing this project – i.e. guaranteed by the public. Councilmember Stevens said the BASC unit is currently located only a couple blocks to the north and two floors are already going to be occupied by some sort of correctional facility. She asked if it is better knowing that the BASC unit will be in a facility with similar uses, rather than wondering where this unit will be moved instead. Ms. Westwood said what will happen is that when the BASC unit moves out of the women's prison, those beds will be filled with women that need incarceration. While she had no concern with Alternatives doing a program for women and it being separate; she said she is concerned because Alternatives has also purchased some adjacent land and she is concerned that eventually Alternatives will move the men to an expanded facility. Councilmember Stevens asked what steps Alternatives would need to follow in the event it chose future expansion. Ms. Cromwell said residential care (Ex: drug rehabilitation, pre-release centers) is generally allowed in commercial and industrial zoning districts. If some other hybrid use or permutation of prison or pre-release is proposed, these uses would need to be considered on a case-by-case basis. Ms. Cromwell noted that any expansion onto the featured property would at a minimum require a building permit and depending on the use, likely would require an additional special review. She noted that the review application is for Lot 1, Block 1. The existing building sits on 4.226 acres; Lot 2 is additional area not included in the 4.226 acres.

GLADYS STAHL OF 423 ORCHARD LANE said she is president of the South Park Senior Center. She said they are not opposed to the facility, but are opposed to its being located on the south side. "We already have three incarceration-related facilities on the south side; we don't need any more," she stated. Ms. Stahl said the center serves 700 people/month for lunches and 160 people/day for Meals on Wheels. Residents

average age 75 and above. She said she did not want her clients to be afraid to come to the center. She asked the Council to vote no on the review.

YSABEL (LIZ) ROMO OF 714 S. 31<sup>ST</sup> ST. said the residents on the south side have been "beaten down, put down, knocked down to the point that a lot of us don't even care. We've always been considered 'low class, on the other side of the tracks, on the bad part of town'. Some of us have had to fight to survive and we have survived." Ms. Romo said they oppose another correctional facility in their neighborhood. She asked the Council to do what is right, rather than what is politically correct. Ms. Romo said it is not the program they are opposed to; they simply do not want any more correctional facilities in their neighborhood. She urged the Council to deny the special review request.

ROD BOETTCHER OF 1523 BURLINGTON, said he is manager of Expert Tire, a neighbor of the current Alternatives' men's facility. He said he hopes to put to rest the safety concern of the south side residents by informing them that in the nine years as manager, he has never had a single instance of problems with Alternatives Inc.; Alternatives has been a good neighbor. Mr. Boettcher also said there seems to be a misconception that Alternatives is not good for small business. This is false; the staff does business with his establishment and he has a good relationship with them.

DAVID DICKBERND, NO ADDRESS GIVEN, said he is pastor of Pilgrim Congregational United Church of Christ, which is located on the south side. He noted that he is speaking as a private citizen however. "I would personally be proud to have the BASC unit of Alternatives, Inc. located in our part of the city... It is my impression that Alternatives runs a very tight ship and in my opinion, the BASC unit on the south side would provide absolutely no threat to the security and safety of the citizens of the south side of Billings," he stated. He urged the Council to approve the special review.

MANDY SHANAHAN, 210 NALL AVE -- #17 said she is employed by Alternatives, but is speaking as a resident of the south side. She said she grew up above 5 – 6 blocks from Alternatives' present location and as a child rode past the facility, rollerbladed back and forth and never had a clue what the facility was. She said she was never bothered by a single inmate in the facility. "Now living down on the south side in that area, I'm very excited to be getting these correctional facilities down there; knowing there will be eyes and ears out there watching for the crime, notifying people when crimes happen," she stated.

MINDY BROOKSHIRE OF 119 LEWIS AVE. said she is an employee at Alternatives and a contract therapist at the Women's Prison. She said she sees women in the BASC program, emphasizing these women should be out in the community, not in a prison setting. Moving the BASC facility will not alter the outside appearance of the HoJo building; it will not look different from the street. The women in the BASC program are women that have made mistakes and are ready to move on.

CHRISTINA SKARKA OF 3709 1<sup>ST</sup> AVE. N said she is a 24-year old single woman who lives three blocks from the current Alternatives location. She said she feels entirely safe in the area. She has never been harassed once and walks to a lot of places. Ms. Skarka read a letter from her landlord – Roberta Swenson that stated her support for the new BASC Center and what Alternatives is trying to do for the people of this community. Councilmember Stevens noted Ms. Skarka lives in the neighborhood and

works for Alternatives and asked her to describe the perception toward Alternatives of the neighbors that don't want this facility versus the reality as she sees its. Ms. Skarka said, "From my perspective, the people who live in my neighborhood right now – many of them do not even know who Alternatives is... I think for people that say this is a dangerous facility and people could be hurt is very far from reality."

JOE WHITE OF 926 N. 36<sup>TH</sup> ST. said the area does not have sufficient air supply for the 50 inmates proposed to be housed there. Mr. White noted however that the downtown facility of Alternatives, Inc. appears to be very safe; he has never had a problem when he has walked by that facility. He suggested approving the special review on a short-term basis (5 – 6 years) to allow them time to find another facility. Mr. White said a small farm or a special dormitory at Rocky Mountain College might be appropriate.

FRANCIS HARRIS OF THE TERRACE said she found the comment that this facility will go forward regardless of how the Council votes to be "heavy handed". She said the south side neighborhood should be supported and the women in need of this program should be supported. "The American people have lost their freedoms – inch by inch... I would like to remind everybody that we are a democracy in a republic, that means the U.S. Supreme Court shall not make any decision violating the Constitution," she stated. She closed by stating that there is too much of this attitude – "heavy-handed; we're going to do it whether you like it or not, and I think that is wrong." Ms. Harris also noted that since Alternatives is a business, it should be taxed.

MARION DOZIER OF 3923 3<sup>RD</sup> AVE. S distributed a letter from Arlene Becker. She said she is speaking against the special review and noted the letter she sent the Council identifying her concerns. Ms. Dozier said she wanted to talk about the future of the south side and the future of downtown. "Mr. Armstrong is turning a fine hotel into a 165 bed pre-release center. Taxpayers will now support felons in luxury. When the 50-bed assessment center is taken out of the women's prison, it will open more beds at the women's prison; the same for Alternatives – we will see more felons in our city from these other two facilities. They will fill beds with more male offenders once the women have been moved to the new facility," she stated. Ms. Dozier noted a recent article on homeless people and panhandling, which are causing problems for downtown businesses. This facility adds 165 pre-release beds along with the 2900 supervised, jailed, registered or incarcerated offenders in the area from Alternatives to the Yellowstone County Detention Center. She questioned whether this was the type of business the Council wanted to surround the downtown area. Councilmember Stevens asked about the violation of the state administrative rules. Ms. Dozier said the state law requires a clearly stated process to site a pre-release center. She said this process was not followed by Alternatives. Ms. Dozier concluded with a cautionary comment that if the Council approves this special review tonight, Alternatives will be back for an expansion of its facilities in this area later.

BLAINE POPPLER OF 5403 KING AVE. W said he was not sure what the fuss was about, when the first thing you see when one comes to S. 27<sup>th</sup> St. is the Sugar Beet Factory – a rusty and aromatic facility. Mr. Poppler said this is an appropriate location for Alternatives. The Zoning Commission recommended approval on a 5-0 vote, with no valid protest. He said the HoJo was built in 1995 when S. 27<sup>th</sup> had a very different

"flavor" and S. 27<sup>th</sup> Street was expected to be a major entrance to the City. It was an overbuilt property with only a 40% occupancy rate, compared to 60% elsewhere. Mr. Poppler said there will be no noticeable difference to the neighborhood between what happens on the second floor of this property and what happens on the first and third floors. The property has been for sale for seven years – with no "takers". It has been marketed locally, regionally, nationally and internationally and has been looked at by several major hotel operators, none of which were interested.

Councilmember Clark asked if Mr. Poppler was involved in the sale of this property. Mr. Poppler said he is an agent of Coldwell Bankers – Commercial, who does have the listing on the property, but he was not the listing agent. Mr. Poppler said the property is priced at 70% of replacement value with an average price/hotel room at \$48,000. This property is priced at approximately \$27,000/room and is well maintained. It is not over priced when looking at cost replacement or comparable sales. The only method of appraisal that could generate an overpricing is an economic analysis. Mr. Poppler noted that this property does not perform economically however.

JAKE ROMERO OF 3223 5<sup>TH</sup>. AVE. S said he belongs to two task forces on the south side. "You people have been elected to oversee and do what is best for the neighborhoods that you oversee and protect. I hope you are listening to us now," he stated. Mr. Romero said they do not need another incarceration facility in their neighborhood. "If we tried to put this facility in your neighborhood, you would be outraged and you would fight us and you would win," he stated. He noted that one of the south side's elected representatives cannot speak or vote on this item this evening (note: referring to Councilmember Ronquillo who recused himself earlier.) Mr. Romero said they are getting the short end of the stick and are tired of it. He added that it is his belief that the buy/sell agreement is contingent on the Council's approval of this special review this evening.

MIKE FERRITER OF 1539 11<sup>TH</sup> AVE., HELENA, MT said he works for the Dept. of Corrections. Mr. Ferriter said a majority of offenders in the correctional system are in communities – over 10,000 offenders. His job is to protect the safety of children and citizens and to help them feel safe, while creating opportunities for offenders to be successful in their rehabilitation. He oversees probation and parole, pre-release, boot camp, etc., all the correctional programs that occur outside of prison. "I think it is important for the community of Billings and the whole state to realize that without treatment programs, without proper assessment, without managing offenders in the community, we are not safe. It's important that we place people in the community that are appropriately treated and structured, or we do not have public safety," he stated. Mr. Ferriter said Montana is unique in the country in that only here can a District Court Judge place an offender under the direct authority of the Dept. of Corrections and the dept. decides where that offender should reside. This promotes the desire to move more offenders into the community and is a step toward the governor's goal of placing 80% of the offenders back in the community, reserving prison beds for high security offenders.

Councilmember Veis asked what percentage of people that go through the assessment facility at the HoJo site will be incarcerated at the prison. Mr. Ferriter replied that statistically the dept. is seeing about 6% of the offenders assessed via BASC return

to prison. He noted the BASC concept was established in 2002. Mr. Ferriter said it is important for the Council to realize that all of these offenders are placed by the district court judge under the discretion of the Dept. of Corrections and that judge either feels the offender is appropriate for the community or the offender could be sent to prison. He said it is their goal to assess the offenders and prepare them for a long-term community placement. He added that many of the women that are sent to prison have medical issues, pregnancy issues, and mental health issues. One of the main foundations of pre-release is that an offender must be able to work in the community. Women struggling with other issues are often sent to prison to get the care they require.

DIANA KOCH OF 1539 11<sup>TH</sup> AVE., HELENA, MT said she is Chief Legal Counsel for the Montana Dept. of Corrections. Ms. Koch said the BASC program stands for Billings Assessment and Sanction Center. In Montana, the judge has three options upon sentencing: (1) probation – the person goes to the community with a probation officer; (2) prison; and (3) the Dept. of Corrections commitment – when the judge is not sure the offender deserves to go into the community and is not sure the person deserves incarceration either. The BASC facility is moving from the prison facility to the Alternatives facility because it did not make much sense to have a facility that is geared to keep women out of prison actually located in a prison. Ms. Koch urged the Council to approve the special use for the same reasons the Zoning Commission decided to approve the use. The drug and pre-release uses that will be in the HoJo building are compatible uses. The BASC center will not change the character of this facility.

Ms. Koch described two types of women in the correctional system. The first is a woman whose attorney gets a pre-release placement before sentencing. The attorney does the leg work and gets their client approved for pre-release placement, and right after sentencing this woman goes to the pre-release center. On the other hand for the second type of women, the attorney did not take the offender's pre-release packet and get them accepted into pre-release before sentencing. This offender must go to the BASC center for assessment before she can be accepted at a pre-release center. Ms. Koch said basically the nature of these two types of women is a "distinction without a difference".

Councilmember Stevens asked Ms. Koch to address the administrative rules concerning siting of a pre-release center and how Alternatives complied with these rules. Ms. Koch said it was her legal opinion to Mr. Armstrong that this was an "expansion of an existing pre-release center" rather than a pre-release center that needed to be sited. The reason is that the first three substantive rules of the A.R.M. revolve around a city, county or town that does not have an existing pre-release center. Ms. Koch said these rules did not apply and hence she deemed it only an expansion of an existing pre-release center. Councilmember Veis asked why she thought there was no need for a special review. Ms. Koch referred again to the "distinction without a difference" and the nature of the facility. She said it is difficult to characterize the BASC center as a private prison, adding that her opinion and that of Assistant City Attorney Bonnie Sutherland differed in this regard. Ms. Koch noted that they accepted that and Mr. Armstrong therefore applied for the special review, wanting to proceed correctly. Ms. Koch said looking at the differences in allowed zoning uses – one section said a pre-release center

was okay and half-way house and drug rehabilitation was okay, but in the other category a private prison was not allowed. She said it was a matter of deciding where the BASC center fell in the continuum between these uses. Ms. Sutherland decided it went into the category of private prison, while Ms. Koch felt it fit better in the category of pre-release and drug rehabilitation.

Councilmember Stevens asked if the ARM is impacted assuming Ms. Sutherland's interpretation is correct. Ms. Koch said the ARM is not impacted; the A.R.M. is only concerned with the procedures to follow to site a new pre-release center or to expand an existing center. There is one rule for expanding an existing pre-release center. Councilmember Stevens asked City Attorney Brent Brooks if he has had a chance to read the A.R.M. and did Alternatives comply. Mr. Brooks said this raises an issue for him in that he is on the board of Alternatives Inc. He said, "eight weeks ago I made it very clear that Staff would not have any input from me and the innuendo from anybody that I am involved in this at all is flat out incorrect. Therefore I don't believe that I can offer an opinion," he stated. Mr. Brooks said Ms. Sutherland could render an opinion on this question tomorrow. He went on to state, "I have withdrawn from any advice whatsoever, nor have I talked to anybody on any side concerning this matter. I have withdrawn just like Councilmembers Boyer and Ronquillo have, so it would be inappropriate for me to be inconsistent with that to tell you something now."

Mayor Tussing noted that the Dept. of Corrections is equating the BASC with a pre-release center and asked if that has a legal basis, since not all of the offenders are released. Ms. Koch said the only thing she could relate it to was that some people in pre-release go out to work and some of these people have passes. People in the BASC facility will not have passes and will not go out to work, which is the same for the drug rehabilitation facility. "I see enough similarities in the pre-release area that I do with the BASC facility and there are similarities with the drug rehabilitation too. It's just a matter of which side will you come down on in the zoning area," she stated. Mayor Tussing asked if there are other statutes or rules that apply. Ms. Koch said there are no specific rules for siting something like the BASC; there are rules for siting a pre-release facility, which she believed applied since a majority of that facility will be for pre-release. Councilmember Stevens said the A.R.M. pertaining to an expansion of an existing center require the dept. to conduct a public hearing in the neighborhood in which the center is situated and asked if that has been done. Ms. Koch said it has not, but it will be done. Mr. Armstrong said the meeting is scheduled for tomorrow -- May 23<sup>rd</sup> at Noon at 3109 1<sup>st</sup> Ave N at Alternatives, Inc. It was announced two weeks ago with ads in the Billings Gazette.

Mayor Tussing called a recess at 8:50 p.m. He called the meeting back to order at 9:00 p.m.

BILL KELLY OF 518 S. 33<sup>RD</sup> ST. said he is representing the South Side Task Force. He summarized what he had heard so far: (1) Alternatives is going to locate in the HoJo building no matter what – with an assessment center; (2) if the BASC is not approved tonight, Alternatives will fill the second floor with another program; and (3) there is a lawyer with a conflict of interest. He questioned whether the proceeding this evening was legal. Mr. Kelly requested that the neighborhood be notified in advance of

things proposed for their neighborhood. "It seems like a lot of 'back door' things going on here as far as Alternatives, the people on boards, the Zoning Commission and stuff like that," he stated. He urged the Council to deny this request.

JAN BEGGER OF 2203 INTERLACHEN DR. said she is a licensed addiction counselor and 18-year employee of Alternatives, Inc. She has been working with women in the BASC unit to assess them and determine the appropriate level of care they need. Ms. Begger said she has 21 offenders in the BASC program, 16 have been assessed and accepted into various treatment programs, including pre-release, etc. These women in the BASC unit are simply waiting for an opening to occur. There are 39 female offenders in jail waiting to come into the BASC program to be assessed. Of the 21 offenders, there are 2 pregnant offenders and 1 elderly woman with early stages of dementia. These offenders are not appropriately placed in prison. Women's needs in corrections differ from those of men. The BASC unit presents an unbelievable opportunity for women in that their needs will be assessed and they will be placed in appropriate programs to meet all their needs. She urged the Council to approve the request. Councilmember Stevens asked if these women are incarcerated for felonies. Ms. Begger replied that all the offenders are there because of felonies, most of which are drug-related or technical violations of their probations – usually related to drug or alcohol use.

JOSH SAYER OF 2802 8<sup>TH</sup> AVE. S said he opposed the special review. He said 27<sup>th</sup> St. is the main arterial providing access to the downtown shopping district, the hospital corridor, MSU-Billings and the airport. This important street should be friendly to pedestrians and welcoming to businesses. "I feel this project would make this area even less attractive to desperately needed businesses on the south side," he stated. He urged the Council to make planning decisions that enhance the south side and 27<sup>th</sup> St. Corridor for both residents and visitors to the city. He did not believe the Alternatives project would be beneficial to the neighborhood.

JOHN CRIST OF 1046 N. 32<sup>ND</sup> ST. said he is the attorney for Alternatives Inc. Mr. Crist said there are no laws or regulations that require a siting process for a BASC unit – that is what the Council is being asked to decide tonight. There is a process for a pre-release center, but that is the responsibility of the Dept. of Corrections. That pre-release center is an authorized use under existing City zoning requirements. The Dept. of Corrections is complying with the public process for the pre-release center. Mr. Crist said Alternatives was under a confidentiality agreement with the seller of this property and respected that agreement until a buy/sell was signed. Alternatives immediately obtained the seller's permission to go out to the community with the news. He said the first place Mr. Armstrong stopped was the South Side Task Force to explain what they had in mind and what was involved in the process. Mr. Crist noted that the entire process was explained again at the public hearing before the Council on the methamphetamine project. Alternatives has talked to adjoining business owners and obtained multiple letters of support from them. Information sheets were left at the Friendship House, the Senior Center and the Hope Center on the south side. Alternatives also scheduled two public meetings – one at Pilgrim Congregational Church and the other at the old Garfield School. The meetings were advertised and over 1700

invitations were sent to citizens on the south side. About 20-25 residents of the south side attended those meetings. He concluded by stating that Alternatives has tried to be very sensitive to the needs of the neighborhood.

BARB MULLEN OF 718 S. 31<sup>ST</sup> ST. said she loves her residential neighborhood, which is only four blocks from where Alternatives will locate. She prefers this area to stay a residential area and was offended by the reference at the last meeting to the south side as the "corrections corridor".

FRAN BALL OF 815 S. 28<sup>TH</sup> ST. agreed with all of the previous speakers from the south side. She opposed the request by Alternatives Inc.

PAM BUNKE OF 4103 MURPHY said she is a resident of the south side and is the regional administrator for the Dept. of Corrections Probation and Parole. She said that there has been a "cloud about corrections and that we are a 'bad' thing. I'm in my 21<sup>st</sup> year and my officers and corrections staff work hard to keep the communities in Montana safe – that's what we are about – holding offenders accountable, with the assistance of law enforcement." Ms. Bunke said probation and parole does not "house" offenders, only supervises about 1400 – 1500 felony offenders. She said something needs to be done with the female offenders since the jail is overcrowded. "There is not a week that goes by that she doesn't receive a call to let someone out to move someone else so they will have space in the jail. We are holding female offenders in the Yellowstone County Detention Facility before they get to BASC. We need that space. More importantly, these women are our grandmas, moms, aunts and nieces. They are citizens of the State of Montana and deserve to be treated with respect and dignity and placed in such a place," she stated. She added that she has never received a complaint from the South Side Task Force about the offenders they supervise. She noted they have tried to be good neighbors and to work with the south side.

CONNIE KULBECK OF 3527 BRIARWOOD BLVD. said she is in favor of the special review. She serves on the board of Alternatives for 19+ years and believes in its programs and how its services are organized. Ms. Kulbeck spoke to the efforts that Alternatives staff made to talk to the residents and neighborhood about its programs and services. She stated it was disappointing to see the poor attendance at the meeting at Garfield School. Of the 1700 people invited, few attended. Ms. Kulbeck said it is difficult to determine what people's concerns and fears are and problem solve when you cannot talk directly to these people. She said Alternatives has heard indirectly about the need for a home for a community policing location on the south side. Ms. Kulbeck said that Alternatives could consider that in its building. There will be no fence in front of the building. She also noted that Alternatives would also be willing to work on a MET bus stop in front of their facility and help build it.

STEVEN PECK OF 2811 VERMILLION DR. said he has worked at Alternatives for 13 years and works in discipline and screening. Mr. Peck said Alternatives has a zero tolerance for bad behavior – such as drinking a beer, using drugs, stealing from a convenience store, etc. Safety is its primary concern. Mr. Peck said South Park has never been allowed as a pass location for any of Alternatives' people. He reminded the Council that the BASC unit is moving two blocks down from its current location. "The irony is that if you deny the special review and we have more pre-release people, you

will actually have more people in the community going to work and out on pass than if you allow the BASC unit," he stated.

TOM HANEL OF 1723 IRIS LANE said he is a board member of Alternatives, Inc. and a real estate broker that brought this case before the Council. Alternatives began its search for an expansion location approximately a year ago. The search was for vacant land in the business triangle so that it could be close to all the necessary services. After an extensive search for vacant land, that search was exhausted and the search for an existing structure began. Mr. Hanel said several structures were considered: the Gibson's building on Broadwater (66,000 sf – 1/3 of what HoJo has at a cost of \$2.5 Million), the Pay N Pak building on Grand Ave (far less sf than needed), the Kmart building in the Heights, the Lazy Boy Furniture building on Broadwater and an inquiry about the War Bonnet Inn, which was not for sale. He said they went back to the HoJo, which met all codes. The cost of purchasing that building calculates to \$65/sf – far less than \$135/sf to replace it, not including all the fixtures, bedding, etc. that is included in the transaction. Mr. Hanel said this represents a 50% savings to purchase this building at the current cost than to build a new one, not including the land. The HoJo is an express hotel and he believes this is the highest and best use for that building.

CHARLES BROOKS OF 2226 FAIRVIEW PLACE said he has been a community volunteer for a number of projects in the city. Mr. Brooks also said he is a volunteer on Alternatives' advisory board. He said the Council needed to look at some of the other factors of the project on S. 27<sup>th</sup>. Mr. Brooks said he has seen a lot of improvements on the South Side and much credit goes to the South Side Task Force. He encouraged them to continue to work on improvements in that area. Mr. Brooks said Alternatives is in the business of improving lives, but this project is also an economic improvement for S. 27t St. The budget for this operation (over and above Alternatives' current operations) is \$4 Million. He said this will have a \$10 Million economic impact on the community, including the south side. Of that \$4 Million, \$1.5 Million is payroll. 40 new jobs will be added with this project. Currently the HoJo has approximately 30+ employees with an annual payroll of \$436,000. Mr. Brooks added that the HoJo currently pays \$58,000 in taxes. He emphasized that 40 new employees means most of them will be homeowners. If each pays an average of \$1500 in property taxes, that more than offsets the \$58,000 that will be lost from the HoJo facility.

DONNA BEUTLER OF 4769 RIMROCK RD. said she has worked for Alternatives for over 20 years. She canvassed the business neighbors around the HoJo to survey the opinions of the Alternatives' project. Ms. Beutler said there has been a lot of support – some as evidenced from the letters handed out this evening as well as letters from employers that employ Alternatives' residents and neighbors of Alternatives' current facility. She said Alternatives wants to have good neighbors and be a good neighbor. Ms. Beutler said Alternatives already does business with many of the businesses on the south side that will be it's new neighbors.

ELSIE ARNTSON, NO ADDRESS GIVEN, said she represents the South Side residents in the House Legislature. Ms. Arntson said she has listened to the people at the South Side Task Force about their concerns. She said this project is an opportunity for the city, but "it is also a huge challenge... You will be setting a precedent when you

take a vote on it, not because of just the emotional content that the neighborhood has to say, but also the opportunity the business sector could have as well." She cautioned the Council to listen carefully to the neighbors since they have lived in their neighborhood for quite some time and change is difficult.

CONNIE WARDELL OF 1302 24<sup>TH</sup> ST. W said there has been conflicting testimony given tonight, i.e. Alternatives said 6% of the residents go to prison, but she had information from the website that states 19% of them go to prison. Ms. Wardell said the Council found out that Alternatives should have had a noticed public hearing, one that no one knew anything about and that will now be held tomorrow. She said it would make sense for the Council to postpone action as the Chamber and Lynda Moss have suggested. Ms. Wardell said the government affairs committee at the Chamber has never had a chance to discuss this. She said the opportunity that is lost is one of a good hotel that will be lost with the Alternatives' project. She added that a lot of tax dollars were spent in relocating the Smith Funeral Home to this area. "It's not just the south side that is getting screwed here. It's the taxpayers of the City of Billings. Our tax dollars went toward Smith Funeral Home with the anticipation that the next big project of Billings could be the Howard Johnson. We never had the opportunity for that to happen. Now they are proposing to take it off the tax rolls," she stated. Ms. Wardell noted that if the Council chooses to approve this item this evening, it should be with the condition (as on the homeWORD project) that they would reimburse on an annual basis for twenty years the \$58,000 plus a CPI each year, plus bed tax on 165 beds. She concluded with a suggestion that the Council create an initiative to review the zoning on S. 27<sup>th</sup> St.

KEMP WILSON, NO ADDRESS GIVEN, said he is the County Attorney in Carbon County. Mr. Wilson said there were a lot of red herrings paraded before the Council tonight. He noted that an email sent today from the Chamber (to Interim City Administrator Tina Volek) stated the Chamber Board had not revoked its existing letter of support; it is simply requesting more information from the South Side Task Force and Alternatives Inc. in order to consider changing its position. Mr. Wilson said Montana is on the cutting edge of penal practices and its correction system. Alternatives Inc. is a part of the community corrections system. It is a home-grown corporation that has grown to a business with over a \$1 Million budget every year. He said it has created jobs for the community and does a wonderful job with its programs. Mr. Wilson confirmed that things have changed and referenced the change that has also occurred in the medical corridor – with once residential properties changing to medical buildings. "But is that bad," he asked. "No! Billings has a tremendous reputation for the medical community it has developed. It's done the same thing in the corrections area," he stated. He urged the Council to support the project and not impede Alternatives' progress.

KEVIN NELSON OF 4235 BRUCE AVE. asked how many of "these places" do we have to keep going. He said he felt it was wrong to legitimize medical marijuana. "I would think we have people in corrections that say it is a gateway drug and it leads to other drugs, harder drugs, to Alternatives, to pre-release centers," he said. Mr. Nelson said continuing down that road will only require building more pre-release centers.

Councilmember Veis said if any of the Councilmembers are considering delaying action tonight, it should be done before the public hearing is closed. There were no other speakers. The public hearing was closed.

Mayor Tussing moved to approve the special review with the following conditions: (1) Alternatives be required to submit \$40,000/year payment-in-lieu of taxes (PILT) for the life of the facility, that would go to improvements on the south side of Billings, as approved by the Council; (2) Alternatives should request a member of the South Side Task Force to be an ex-officio member of its board so that the concerns of the citizens are heard on a regular basis, seconded by Councilmember Ruegamer.

Mayor Tussing said he wished the facility could remain a hotel; it doesn't look like that is possible however. "It appears that we are really talking about an addition of 28 beds on the second floor – 22 of which will free up beds at the Women's Prison for others. We are still only talking about an additional 50 people that would not be there otherwise if we don't approve this. The possibility still exists that some other use that does not require a special review might still be happening at the Howard Johnson location," he stated. He said he was sympathetic to the South Side's concerns and noted that if this was a typical residential area or Alternatives were building a new facility, he would be voting against the project.

Councilmember Stevens said the Council has heard that the BASC unit is a good facility and is needed. She agreed with Mayor Tussing's comments, noting that adding this unit to the second floor would not be that onerous to the property. Councilmember Stevens expressed concern over the fact that a procedural issue may exist. "Tomorrow's meeting on the pre-release center concerns the first floor only. We are here tonight talking about the second floor – the floor that requires a special review. Ms. Sutherland in her opinion discussed zoning – which zoning category does this facility fall under and does it need a special review. The whole issue of the Administrative Rules of Montana was brought up – which does not concern zoning," she stated. She added that if the proposed unit is an expansion of an existing pre-release center, than the ARM required a public hearing and was concerned that it was not held prior to tonight.

Councilmember Ruegamer said the testimony this evening did not clarify the questions surrounding this project, only clouded the issues. He expected to hear how hard Alternatives worked with the neighborhood to come to a compromise, to come to an agreement. He said now the Council will be forced to develop a compromise. Councilmember Ruegamer noted the south side residents had two primary concerns: (1) could men be housed in this facility and (2) could the facility be expanded. He asked if the Council could place conditions on the special review to prevent these two things. Interim City Administrator Tina Volek noted that conditions could be placed on the special review as part of the Council's deliberations this evening. Prohibiting men may open the City up to litigation on equality grounds, she cautioned.

Councilmember Stevens amended the motion to restrict the use to the requested special review use (BASC) only, seconded by Councilmember Ruegamer. Ms. Cromwell said if the use were restricted to the 50-unit BASC unit, no expansion would be allowed. She noted it would be difficult for the Planning Dept. to enforce the PILT, but the

department will ensure that it is collected. On a voice vote, the motion was unanimously approved, with Councilmembers Ronquillo and Boyer abstaining.

Councilmember Veis amended the motion to add a condition that fencing be required as reflected in the site plan, seconded by Councilmember Ruegamer. Mayor Tussing asked if Alternatives had any objection to the motion. Mr. Armstrong said they welcomed having a member of the South Side Task Force to their board. "Taxing non-profits could be argued all night ... You will raise costs by taxing the non-profit, but if that is what it takes to get it done, I guess that's what it takes to get it done," he stated. On a voice vote, the motion was approved with Councilmembers Ronquillo and Boyer abstaining.

On a voice vote on the main motion as amended, the motion was unanimously approved as twice amended with Councilmembers Ronquillo and Boyer abstaining.

**3. PUBLIC HEARING AND RESOLUTION 06-18423 vacating portions of S. 22<sup>nd</sup> Street, 2<sup>nd</sup> Ave. S., 3<sup>rd</sup> Ave. S, and the alley between S. 22<sup>nd</sup> Street and S. 23<sup>rd</sup> St. ConocoPhillips, petitioner. Staff recommends approval of the vacation and acceptance of an easement for public utilities running through the vacated streets. (Action: approval or disapproval of Staff recommendation.)**

There was no report from the Staff. The public hearing was opened. J.D. ADKINS OF 1980 GREENBRIAR RD. said he is a representative of ConocoPhillips. Mr. Adkins had only one comment – that the City proceeds from this vacation be utilized for the Gateway Triangle SID. He said the vacation will allow ConocoPhillips to consolidate some of its properties and better facilitate its current properties.

CONNIE WARDELL OF 1302 24<sup>TH</sup> ST. W also asked that the money from this vacation be utilized for the Gateway Triangle SID. She said this project has been discussed at length and at each meeting for the past four years, the condition of the streets in this area comes up. Ms. Wardell said this is the number one priority for the people on the south side – to get the streets fixed in the triangle area. It is cost prohibitive for property owners alone to bear the cost of the street rehabilitation. Interim City Administrator Tina Volek asked for clarification on the language of the request. She noted she was also in attendance at the meeting where this was discussed. It was her understanding that the money not be dedicated to the specific proposed SID, but applied to the entire project. Due to the size of the project, Staff has proposed to do the work in segments. Ms. Wardell confirmed that it was to apply to the overall project. Public Works Director Dave Mumford reminded the Council that money from right-of-way purchasing generally goes directly to the General Fund, not the Public Works budget. "Unless the Council specifies where it wants the money, it will go to the General Fund," he stated.

Councilmember Boyer asked how this money would impact the budget for the Gateway Triangle project. Mr. Mumford said originally \$1.2 Million was budgeted for this project. However, it appears now that the project will be closer to \$7 Million, the reason the project will be phased over a 5 – 7 year period. Most of this money will come from Gas Tax, which is approximately \$1 Million/year. Ms. Volek said this money is not "booked" at the present time for FY2007. What the Council can therefore do is if the

money is paid in the 2007 budget, the Council could make a budget allocation to place that money into the project in this area. She noted it would have to be expended in 2007 as well. Councilmember Gaghen asked if Public Works was ready with the project to expend the money in 2007. Mr. Mumford said it would be encumbered before July of next year and noted he anticipated having the first phase under construction next spring.

MARY WESTWOOD OF 2808 MONTANA AVE. said she supports this vacation on the east side of 27<sup>th</sup> St., noting that it is long overdue. It is a project that will benefit the citizens and the businesses in that area. She said ConocoPhillips has been a good neighbor.

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

**4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**

**#776: A zone change request from Public to Planned Development on a 60.27 acre parcel of land described as: the NE4NW4NW4, S2NW4NW4 & Lots 3-4 LESS C/S 3223 in Section 20, Township 1S, Range 26 East (a/k/a the proposed Josephine Crossing Subdivision). McCall Development, owner; 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.)**

There was no Staff report. Nicole Cromwell of the Planning Dept. said she was available to answer questions from the Council. She noted the Zoning Commission voted 5-0 for approval of the zone change.

The public hearing was opened. BRAD MCCALL OF 2538 SOUTHRIDGE DR., OF MCCALL DEVELOPMENT said he was available to answer questions. Councilmember Ronquillo thanked Mr. McCall for this development, which is in his ward. There were no other questions or comments from the Council or the audience. The public hearing was closed.

Councilmember Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**

**#777: A zone change request from R-6,000 to Residential Multi-Family on a .92 acre parcel described as: Lots 1-10, Block 1 of Green Acres Subdivision and Lot 1, Block 14 of Suncrest Acres Subdivision 3<sup>rd</sup> Filing. Azalea Co., owner, Matt Brosovich, 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.)**

There was no Staff report. The public hearing was opened. MATT BROSOVICH, 845 AVENUE F, said he was available to answer questions. Councilmember Ulledalen asked where the garages face in this project. Mr. Brosovich said the garages face forward. They tried to work with the Housing Authority on a

reciprocal easement but were unable to obtain one. As a result, they had to have the garages face Avenue F, not ideally what they would like. He said he hoped they have demonstrated so far that the quality of the project is positive.

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.

**6. PUBLIC HEARING AND SPECIAL REVIEW #810: A special review to allow an all-beverage license with gaming in a Controlled Industrial zone on a 1.82-acre parcel of land described as Unit 12A, Block 1, Transtech Center Subdivision and located at: 3429 Transtech Way. Bottrell Family Investments, LP, owner; James Bennett, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell of the Planning Dept. said this site was previously approved in 2004 for a certain size building. She said the owners are coming back with a new request because the increase in the building size was over 10% of what was approved in 2004. This will be the new location of the Windmill Supper Club.

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

**7. PUBLIC HEARING AND SPECIAL REVIEW #811: A special review to locate a Church in a Residential-9,600 zone on a 5.595-acre parcel of land described as: Lot 2A, Missions United Subdivision and located at: 2425 Shiloh Road. St. John's Lutheran Ministries - Kent Burgess, owner; CTA Architects & Engineers - Jim Shepard, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no Staff report. The public hearing was opened. KEN BURGESS, NO ADDRESS GIVEN, said he is the president and CEO of St. John's Lutheran Ministries. He noted they are asking for special review approval of two items – this one and the next facility listed in Item 8. Mr. Burgess said two prototype cottages were built under previous special review. He said they are asking permission tonight to build five more cottages that will help them develop a replacement facility for their current nursing home. Mr. Burgess said the church in question came to St. John's as a gift from Bert Lillis, who asked them to build a church in memory of his daughter. He added that with that, they plan to develop an office complex and an education center that will serve as the chapel and church.

Councilmember Boyer asked what will happen to the existing establishment to the south. Mr. Burgess said some of the wings serve as semi-private nursing home wings for long-term care residents. The building is a three-story building. With this addition, the bottom story will be vacated. He said they currently offer an after-school program at Arrowhead, Boulder and Poly Schools. This program grew so large that it was moved to the Lutheran Church of the Good Shepherd. Mr. Burgess said they plan

to move this program back to the lower level of Wing 7. "These are the perfect age of children to interact with our residents," he stated. The remaining building will turn into private rooms. "Our goal by the end of 2007 is to provide a private room to every long-term care resident regardless of their payment source," he stated.

CONNIE WARDELL OF 1302 24<sup>TH</sup> ST. W said she is very familiar with this facility. She also commented on the age of the people presenting these new developments, including the previous items. "This is the future of Billings and they are right in tune with the community," she added. She urged the Council to approve this request.

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

**8. PUBLIC HEARING AND SPECIAL REVIEW #812: A special review to locate five (5) Community Residential Facilities (assisted living facilities) for more than eight (8) persons in a Residential-9,600 zone on a 4.761-acre parcel of land described as: Lot 1, Missions United Subdivision and located at: 2511 Shiloh Road. St. John's Lutheran Ministries - Kent Burgess, owner; CTA Architects & Engineers - Jim Shepard, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no Staff report. The public hearing was opened. There were no speakers. (Note: See comments with Item #7 above.) The public hearing was closed. Councilmember Ulledalen moved for approval of the Zoning Commission recommendation, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND VARIANCE #CC06-01: a variance from the Site Development Ordinance Sections 6-1203(u) re: concrete driveways and curb and gutter on Lot 1, Block 1, Bitterroot Subdivision. Susan J. Zurbuchen, owner. Staff recommends denial of the variance and requiring the owner to sign the Waiver of Right to Protest creation of an SID before issuance of a building permit. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said the petitioner is proposing to add a garage to this property, which triggers the site development ordinance under building review. The subject property is located at the corner of Durand and Wicks Lane. Staff has reviewed the site and feels that improvement on Wicks Lane would be premature at this time. Under the site development ordinance, the City Engineer has the right to extend the timeframe to install the improvements, but the petitioner would have to sign a waiver of protest for future SIDs. Mr. Mumford said the City has not requested improvements on Durand – in accordance with the City's recently approved SID policy that does not require SIDs on non-address sides of property. He emphasized that this standard for waivers has been in place for years.

Councilmember Stevens asked what the practical effect of allowing owners to protest future improvements. Mr. Mumford said what happens is that someone would now be required to install the improvements and in the future would be able to say they do not want to install the improvements. If they are part of the 51% that could protest the improvements, the improvements would never be made. "The whole idea of the protest waiver was to say 'it doesn't appear feasible today to put improvements in, but you are required to do so by City ordinance. You need to put them in in the future.' It extends that out to the future," explained Mr. Mumford, but still requires them to make the improvements at some point.

The public hearing was opened. TOM ZURBUCHEN OF 1747 WICKS LANE said he and his wife own the subject property. They purchased the property in 1977 when the property was in the County. There were no sidewalks on the property at that time and there is no need for sidewalk, curb and gutter there now. Mr. Zurbuchen said that Durand Rd. has not been excluded from the curb, gutter and sidewalk improvements. "Mr. Mumford went so far as to say they were going to re-write the waiver of protest to make sure we were onto Durand Road and get it though Legal real quick for us to sign. I told him 'don't bother; we're not interested in signing.' Durand Rd. has never been done, never been built," stated Mr. Zurbuchen. Mr. Zurbuchen discussed other houses along the street that have made additions and other improvements in recent years, none of which have waivers of protest or sidewalks or streetlights. He said they are only asking to be treated fairly, not differently than the neighbors. "We do not have a need for sidewalks; we do not want sidewalks," he emphasized. He reminded the Council that the waiver of protest means a waiver on all SIDs, not merely curb, gutter and sidewalk.

Councilmember Veis asked if all the other properties Mr. Zurbuchen referenced obtained building permits to do the improvements. Mr. Zurbuchen replied that he was told they had obtained permits. Councilmember Boyer asked if these properties were still in the County when the improvements were made. Mr. Zurbuchen said the properties have been in the City since 1984 and the ordinance has been in effect since 1987.

Councilmember Veis asked if the Public Works Dept. has reviewed the properties Mr. Zurbuchen referenced and did the properties have waivers of protest. Mr. Mumford said he does not know what his predecessors did and why someone may have been treated differently in the past. "We are treating Mr. Zurbuchen exactly like we treat everyone for at least the last five years that I've been here. We did not try to run something through legal; we are just trying to follow the site development rules," he stated.

Councilmember Ruegamer asked if the Council waives these improvements, will the problem just continue. Mr. Mumford confirmed that is exactly what would happen. Councilmember Clark asked if Mr. Zurbuchen was correct in that the waiver would waive the right of protest for any kind of SID. Mr. Mumford said the site development ordinance states that the City Engineer is authorized to waive the "time" required of Section 6-1203 for installation of curb, gutter and sidewalk, upon receipt of a property application. "If we build a road, the SID covers eleven feet of asphalt, storm drainage,

etc. If we were doing the whole road, it would be an SID for that and so Mr. Zurbuchen would be correct in that there are other things besides what is covered in the ordinance for street construction," clarified Mr. Mumford.

Councilmember Stevens said there seems to be some inconsistency between the SID policy and the site development ordinance. Mr. Mumford said this occurs with areas of the City that were annexed where streets are not actually built. This was written with subdivider in mind, where a subdivider builds a subdivision and builds the streets with normally only the sidewalks remaining to be built. There is therefore some inconsistency between the SID policy and the ordinance.

Councilmember Boyer asked if not requiring the improvements or the waivers would create a Pandora's Box. Mr. Mumford said he would be very concerned if the Council started waiving these requirements because everyone that comes in and gets a site plan and says, "I can only afford to build my house; I can only afford to build my garage; I can't afford to put the sidewalk in; I can't afford to put the curb and gutter in. At some point all of these need to be done in subdivisions and the City will end up paying for all of this at some point in the future...," he stated.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Stevens said she is concerned about two things (1) that the ordinance and the waiver of protest language are not consistent – the ordinance limits it to curb, gutter and sidewalk and the waiver is more expansive; and (2) she wants to know if some of the disparate treatment has been occurring the last five years.

Councilmember Stevens made a substitute motion to postpone action to 6/12/06 for more information on whether the disparate treatment has been occurring and the consistency between the ordinance and waiver of protest, seconded by Councilmember Veis. On a voice vote, the motion was approved. Councilmember Ruegamer voted "no".

**10. DISPOSITION of the Naval Reserve Center. Staff recommends rejection of the Navy's offer to repair the buildings and abate the environmental hazards identified in its 4/24/06 letter and report and request that the Navy remove all environmentally hazardous material and an outbuilding from the premises and repair the damaged areas. (Action: approval or disapproval of Staff recommendation.)**

Deputy City Administrator Bruce McCandless said the Naval Reserve Center is located in North Park and was built in 1946. The Navy has built a new reserve center and moved all of its equipment and personnel to the new location late last year. The US Navy is under no legal obligation to remediate any of the problems identified in the building. This is one of the few exclusions to environmental laws that apply to everyone else. When property is given to state or local government, the US military is not responsible for the remediation of environmental hazards. Mr. McCandless noted that extensive asbestos has been identified in the building and at some point it will need to be removed – whether the structure is demolished or whether it is reoccupied. Some mold was also identified in the building. The Navy has offered to fix all "visible"

problems, but not any of the hazards that are suspected to be in the walls, ceilings, etc. Mr. McCandless noted the Navy is under no obligation to do that, but there is some value in it. Mr. McCandless said the small outbuilding that contains the mold is recommended for demolition.

Councilmember Clark asked if the lease required the Navy to restore the land. Mr. McCandless said the original 1946 lease required it, but later lease amendments in the 1970s removed that requirement. Councilmember Boyer asked what the reality was for the Navy to adhere to the Staff recommendation. Mr. McCandless said the Navy is eager to conclude this matter and would be able to move quickly with it if the Council accepts its offer. If the City continues to require the full remediation, the Navy has indicated it is not interested in doing that. Councilmember Gaghen said since there is no time "push" for this from the Council's standpoint, she would like to see the City deal with the Navy to see if perhaps a better offer from them can be obtained.

Interim City Administrator Tina Volek said the City is now on notice that asbestos exists in the building, so a liability exists. She noted that the City may want to do an RFP to abate the asbestos. The building has the same issue as the Battin Building -- i.e. federal courthouse. Mr. McCandless also noted that the building required extensive remodeling and currently has no air conditioning. No estimates have been developed at this time for asbestos abatement, which will have to be done whether the building is renovated or demolished. Councilmember Ruegamer asked how much the Navy paid each year to lease the building. Mr. McCandless replied it was \$3,000 - \$4,000/year.

Councilmember Clark asked if there was any way to hold the Navy to the original lease. City Attorney Brent Brooks said the City could ask the Navy, but the Navy could decline to do so since amendments were made to the lease. Councilmember Ulledalen asked if the assistance of the congressional delegation could be obtained in this matter. Councilmember Gaghen moved to contact the congressional delegation to put pressure on the Navy to abate all the asbestos in the old reserve center and return the building and land to a usable state, seconded by Councilmember Ulledalen. Councilmember Gaghen withdrew her motion; Councilmember Ulledalen, the maker of the second concurred. Councilmember Stevens moved to require the Navy to return the building to the City in an abated state and involve the congressional delegation if necessary, seconded by Councilmember Ruegamer.

Councilmember Veis suggested the City compromise – have the Navy remove the asbestos and the City would demolish the building. "I think there are a lot things we do as a Council that puts a burden on future Councils. I think this is one thing that we could do and make a hard decision and tear this building down, that would unburden future Councils when they have to deal with the problems that result from a 65-year old building into the future," stated Councilmember Veis. On a voice vote, the motion was unanimously approved.

**11. APPROVAL of Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) FY2006 Annual Action Plan. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Manager Candi Beaudry said the Council approved the CDBG and HOME allocations at the previous meeting. The approval of Year 2 of the Action Plan was also needed, but was inadvertently omitted from the motion at the last meeting. The action plan sets out the strategies for the expenditure of the allocations of CDBG and HOME funds. She asked the Council to take action on the second year of the action plan. Councilmember Gaghen moved to approval the annual Action Plan for FY2006, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**12. DISCUSSION of City Administrator Salary. (Action: direction to Staff.)**

Councilmember Veis moved to set the salary range for a new city administrator at \$105,000 to \$135,000, seconded by Councilmember Boyer. He noted also that he spoke with Mr. Mercer and told him that Mr. McCandless had forwarded the most updated brochure to the Council. Councilmember Veis said he felt the position was now open and applications would now be accepted. He asked that the brochure be posted to both Mr. Mercer's website and the City's website. Councilmember Veis noted that the application deadline is set for June 30<sup>th</sup>.

Mayor Tussing said the range provides some latitude for the Council. He noted that it is 40% higher than the highest paid dept. heads earn – i.e. those that have met the maximum of their range. Mayor Tussing reminded the Council that this position supervises ten people and “before I would vote to pay anyone close to \$125,000, I would like to see that person walk across Lake Elmo.” On a voice vote, the motion was approved. Mayor Tussing voted “no”. Councilmember Ulledalen noted that salary range is now above the highest range of the upper echelon of the Fire Dept.

**13. 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.)**

LISA HARMON, DIRECTOR OF DOWNTOWN BILLINGS IMPROVEMENT DISTRICT asked the Council to consider a revision to the City's panhandling ordinance. She said last fall the BID and DBA facilitated meetings with representation from AMR, the Police Dept, state leaders, outreach agencies, merchants and property owners. A subcommittee was formed to discuss panhandling and aggressive solicitation in the city. The action decided upon by this committee was to amend the current panhandling ordinance. It is a challenging issue for all cities of any size. It is also a very sensitive issue. Ms. Harmon said there are enough resources in the community so that no one needs to go hungry, be cold or be abandoned. Panhandling is often used as a tool of deception and intimidation and as such, there must be laws in place to prevent such behavior and restore order in public places. She said while panhandling is not new to the community, it is one that needs attention and regulation. Ms. Harmon noted that the BID has created resource cards and informational flyers on the topic. These are distributed to and by merchants, property owners and faith leaders downtown that communicate to their clients, tenants and parishioners that too often spare change only feeds a panhandler's

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addiction. Councilmember Gaghen moved to add the amended ordinance to the 6/12/06 agenda, seconded by Councilmember Ruegamer.

Interim City Administrator Tina Volek said Ms. Harmon met with her and a number of the police dept. staff about this ordinance amendment. Ms. Volek noted that Police Chief Rich St. John would like this amendment to be scheduled for Council discussion at a work session before taking any action on it. She noted there is a panhandling ordinance in effect, but it was revised substantially from what Staff originally recommended.

Councilmember Clark made a substitute motion to direct Staff to schedule this item for a future work session for Council discussion, seconded by Councilmember Boyer. Lieutenant Mark Cady of the Police Dept. said Capt. Tim O'Connell has been working closely with Ms. Harmon on this ordinance and would like to participate in that discussion. On a voice vote, the substitute motion was unanimously approved. The work session date will be determined at a later date.

## **COUNCIL INITIATIVES**

- COUNCILMEMBER VEIS: asked the Police Dept to set up speeding signs on 5<sup>th</sup> & Lewis Ave. – from Division to 17<sup>th</sup> St and 5<sup>th</sup> from Virginia to Montana.
- COUNCILMEMBER BOYER: MOVED to direct staff to add a disclaimer to the City's donation forms that says the City cannot guarantee the anonymity of donors if the City receives a request for the information, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.
- COUNCILMEMBER BOYER: asked Staff to establish a committee to review language on architectural and engineering contracts.
- MAYOR TUSSING: asked the Council about the Kyoto Accord, whether the City should participate and suggested doing some form of environmental protection/conservation programs locally instead.

## **ADJOURN – 11:35 p.m.**

THE CITY OF BILLINGS:

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

ATTEST:

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