

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

## **June 12, 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 Larry Brewster.

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

**MINUTES** – May 22, 2006. Approved as printed.

### **COURTESIES**

- Mayor Tussing said he had the opportunity to tour the Community Crisis Center and congratulated them on the new facility.
- The mayor announced that Elaine Boyer is seeking homes for foreign exchange students (ages 15-18) for the summer. Interested parties should contact Ms. Boyer.

### **PROCLAMATIONS**

- June 18-24: Juneteenth Week

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

- Interim City Administrator Tina Volek announced that the item authorizing the use of Council Contingency funds for fireworks-related overtime is not on this evening's agenda. It is scheduled for the June 26<sup>th</sup> agenda and recruitment at the police dept. has begun for the overtime on July 1 – 4. An advertised public hearing is required for the use of Council Contingency, hence the delay to June 26<sup>th</sup>, to allow time for the advertising.
- Ms. Volek said there is a request to move Item 14 on the regular agenda up on the agenda to Item #7 instead so that Finance Manager Pat Weber can leave the meeting.
- She noted an ex parte contact from Mary Westwood was received late this afternoon regarding a request for reconsideration of the special review for Alternatives Inc. Ms. Volek said if the Council wishes to reconsider that item, the motion to reconsider must be brought forward by a Councilmember voting on the prevailing side. A copy of that email is contained in the binder on the table at the back of the Council Chambers this evening.
- Ms. Volek said a revised ordinance for Item 10 was sent to the Council in the Friday packet. Additionally, tonight the Council has revisions to Items 12 and 14 on their desks.

**AMENDMENT:** Councilmember Ruegamer MOVED to move Item 14 to Item #7 on the agenda, seconded by Councilmember Clark. The motion was unanimously approved.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, and #12 through #14 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.)*

- JOE WHITE, 926 N. 26<sup>TH</sup> ST. spoke on Item G regarding the landfill contracts. He said the population is growing and more waste is going to the landfill. Mr. White said a study is needed on a centralized landfill because it is stressing the available air supply.
- TOM ZURBUCHEN, 1747 WICKS LANE, spoke on Item #13. He said he was dismayed by Public Works Director Dave Mumford's comments regarding the variance. Mr. Zurbuchen said this process is nothing short of “strong arm” tactics on the City's behalf.
- SANDRA MERWIN, 1228 BABCOCK BLVD., spoke on fireworks enforcement as it related to the two budget items. Mayor Tussing noted that both items are public hearings on the agenda this evening and testimony should be reserved for that time. Ms. Merwin said she would present her comments at that time.
- FRANCIS HARRIS OF THE TERRACE, spoke on Item #12 – eminent domain. She said eminent domain is unconstitutional. She added that she does not support strong arm tactics. Ms. Harris noted also that 50 cents/hour is too much for on-street parking, referring to another item on tonight's agenda.

## **CONSENT AGENDA:**

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

**(1) Wastewater Treatment Plant Electrical Transformers.** (Opened 5/9/06). Recommend rejecting all bids.

**(2) Airfield Concrete Ramp Joint Repair.** (Opened 5/23/06). Recommend rejecting sole bid received as non-responsive.

**(3) Supply Carpet Tile for the Terminal Concourse for Billings Logan International Airport.** (Opened 5/23/06). Recommend Commercial Marketing Associates, \$76,230.00.

**(4) Restriping Airfield Markings (Runways and Taxiways) for Three (3) Years.** (Opened 5/23/06). Recommend United Rentals, \$103,166.60.

**(5) Water Treatment Plant Electrical Distribution Modifications.** (Opened 5/23/06). Recommend Ace Electric, \$255,100.00.

**(6) W.O. 05-04: Terrace Estates Subdivision, 3<sup>rd</sup> Filing, Drainage Improvements.** (Opened 5/23/06). Recommend Donnes, Inc., \$47,800.00.

**(7) W.O. 04-18: Expansion and Repairs of Park II.** (Opened 5/23/06). Recommend delaying award to 6/26/06.

**(8) Purchase of Eighteen (18) Passenger Shelters for Billings METropolitan Transit.** (Opened 5/23/06). Recommend Brasco International, Inc., \$60,822.00.

**(9) Mileage Tire Leasing Program.** (Opened 5/23/06). Recommend Bridgestone/Firestone, term: 5 years.

**(10) 2006 Billings Water Service Replacement Project.** (Opened 6/06/06). Recommend delaying to 6/26/06.

**B. Amendment #12, Professional Services Contract, W.O. 05-14: Walter Pump Station,** Morrison-Maierle, Inc., \$199,708.00. (Delayed from 5/22/06).

**C. Professional Services Contract** for architectural and engineering services for Fire Station #7, CTA Architects and Engineers, \$106,510.00 and not to exceed an additional \$10,619.00 for potential reimbursable fees.

**D. Contract** for Billings Adult Misdemeanor Drug Court services, Community Solutions, Inc., term: date of execution to 4/30/07.

**E. Agreement** with Billings Housing Authority to fund one Police Officer, \$36,151.00, term: 7/1/06 to 12/31/06.

**F. Vehicle Lease Agreement** with Underriner Motors for City/County Special Investigations Unit (CCSIU), 6 vehicles for \$25,200.00, term: 7/1/06 to 6/30/07.

**G. FY 2006/2007 Landfill Use Agreements:**

- (1) Bighorn County – 1 year
- (2) Town of Bridger – 1 year
- (3) Carbon County – 1 year
- (4) Town of Columbus – 1 year
- (5) Town of Fromberg – 1 year
- (6) Town of Hysham – 1 year
- (7) Town of Joliet – 1 year
- (8) City of Laurel – 1 year
- (9) Musselshell County – 1 year
- (10) City of Red Lodge – 1 year
- (11) Stillwater County – 1 year
- (12) Treasure County – 1 year
- (13) Yellowstone County – 3 years

**H. Memorandums of Understanding for SROs:**

- (1) MOU between city of Billings and Billings Public Schools for three (3) High School Resource Officers (SROs), \$60,000.00, term: 7/1/06 to 6/30/07.
- (2) MOU between city of Billings and Billings Public Schools for two (2) Middle School Resource Officers (SROs), \$50,000.00, term: 7/1/06 to 6/30/07.

**I. CTEP Project Specific Agreements:**

- (1) Bannister Drain Trail, \$384,328.00
- (2) Big Ditch Trail II, \$170,500.00.
- (3) Milton Lane School Route, \$525,000.00

**J. Revolving Fund Loan** to Yellowstone Community Cooperative; increase from \$140,000.00 to \$167,000.00.

**K. Street Closures:**

- (1) Yellowstone Art Museum *Arts and Crafts Summerfair*: north lane of 6<sup>th</sup> Ave N from 19<sup>th</sup> St. to 22<sup>nd</sup> St., July 7-9, 2006.
- (2) Downtown Billings Association *Movie Nights*: 2<sup>nd</sup> Ave N. from N. 29<sup>th</sup> to N. 28<sup>th</sup> (traffic diverted left only onto N. 29<sup>th</sup>) on June 24, July 22, August 26 and Sept. 23, 2006
- (3) Billings Area Chamber of Commerce *Harley Owners' Group (H.O.G) Parade*, July 1, 2006, route: from Al Bedoo Temple/Shrine Auditorium to Metra Park.
- (4) Billings Area Chamber of Commerce *Harley Owners' Group (H.O.G) Rally*, July 1, 2006, downtown area – under Skypoint.

**L. Cancellation** of outstanding checks and warrants, \$9,730.38 and bad debts, \$13,139.39.

**M. Acknowledging receipt of petition to annex #06-06:** C/S 1011, Tr. B Amended, located east of 34<sup>th</sup> St. W and north of Grand Ave., Rocky Mountain Community Church, petitioner, and setting a public hearing for 6/26/06.

**N. Acknowledging receipt of petition to annex #06-08:** two portions of C/S 1834, Second Amended, located north of Rimrock Road at 50<sup>th</sup> St. W, Aviara, Inc., petitioner, and setting a public hearing for 6/26/06.

**O. Acknowledging receipt of petition to vacate** a portion of Kyhl Lane across the north portion of Brewington Park and through a portion of C/S 485, Tract A, Steve Kerns, petitioner, and setting a public hearing for 6/26/06.

**P. Resolution 06-18424** assessing residential/commercial collection, disposal and landfill fees for FY2007.

**Q. Resolution 06-18425** increasing the amount of the Inter-Fund Loan from the General Fund to the Property/Liability Insurance Fund, \$133,500.00 increase, with repayment in August 2006.

**R. Resolution 06-18426 closing** Special Improvement/Sidewalk Bond Debt Funds to the SID Revolving Fund, \$43,681.97.

**S. Resolution** creating the Electronic Signs Ad Hoc Committee.

**T. SECOND/FINAL READING ORDINANCE 06-5370 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 & LOT 3-4 LESS C/S 3223 in Section 20, Township 1S, Range 26 East (a/k/a the proposed Josephine Crossing Subdivision). McCall Development, Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria.

**U. SECOND/FINAL READING ORDINANCE 06-5371 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.

**V. Preliminary plat** of Bergquist Subdivision, Amended Lots 2 & 3, Block 1, generally located at 531 and 561 Pemberton Lane; conditional approval of the plat and adoption of the findings of fact.

**W. Final plat** of Gunn Subdivision.

**X. Final plat** of Amended Lot 15, and the east half of Lot 16, Block 3, Rolle Subdivision.

**Y. Bills and payroll.**

- (1) May 12, 2006
- (2) May 19, 2006
- (3) May 26, 2006
- (4) April 1 – 30, 2006 (Municipal Court)

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

Councilmember Veis separated Items A7 and I2. Councilmember Stevens separated Items B and K4. Councilmember Boyer separated Item S. Councilmember Ruegamer separated Item U.

Councilmember Jones moved for approval of the Consent Agenda, except Items A7, B, I2, K4, S and U, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of ITEM A7, seconded by Councilmember Ruegamer. Councilmember Veis noted the Park II bids are quite high again and asked if there is something the City can do to reduce the cost. Deputy City Administrator Bruce McCandless said Staff is reviewing a number of different options. Design/bid is one of those options. He noted the design has been completed so that this option may not provide any economy in costs. Mr. McCandless said the City may also be able to contact the State Administrative Services Dept. and ask them for any additional suggestions or guidance, since that dept. is tasked with building all the state-

owned buildings. He said the estimates and bids have been reviewed with the architectural company under contract, as well as another architectural firm to try to determine why the bids are so high and other options that might be available.

Councilmember Veis asked what happens to the parking reserve fund if the Council chooses to award this project. Mr. McCandless said the reserve will be reduced. He noted the bid amount is a significant increase over the estimate; hence reserves would be reduced further than hoped for initially. Councilmember Stevens said the memo states that the City has sufficient funds in the parking fund reserves and by issuing debt to construct the parking structure at the bid price. Councilmember Stevens noted that a parking fee increase is needed to build that structure. She said there seems to be some inconsistency in the staff report. Mr. McCandless said the City does have sufficient funds with additional revenue coming into the parking fund. These additional revenues are related to the rates increases.

Councilmember Boyer said she understood that this project would deplete the parking reserves for any other project. Mr. McCandless said the numbers will be refined as the Staff explores other alternatives and makes a final recommendation on June 26<sup>th</sup>. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of ITEM B, seconded by Councilmember Ruegamer. Councilmember Stevens noted that she asked for delay on this item at the last meeting to get additional information. Public Works Director Dave Mumford said this contract is for the reconstruction and improvement at the Walter Pump Station in the Heights. Staff reviewed the rates of HDR and Morrison and Maierle, as well as rates of other firms. Mr. Mumford said rates are reviewed on an hourly basis and as a proportion of project cost. He said this project is a little higher than normal on a percentage basis, but it is also a retrofit of an existing structure – which tends to be higher than new construction. The higher rates are generally charged by the firm's chief executive officers, who look at the final set of plans before they go out, making sure there is not something on the plans that would get the firm in trouble. On HDR, that amount is less than 1% of the project work. The bulk of the work will be done by design engineers that are charged at \$77 - \$85/hour and project managers at \$130 - \$160. Rebidding the contract would not lower the rates. The overall cost is in line with the local market, noted Mr. Mumford. On a voice vote, the motion was approved.

Councilmember Jones moved for approval of ITEM I2, seconded by Councilmember Ruegamer. Councilmember Veis asked if the Big Ditch Trail will include connections into the neighborhood that will be constructed. Interim Planning Director Candi Beaudry said this project is only for the alignment shown on the map – from the trail being built this season to Larchwood. She noted staff is working on getting a culvert placed that would connect the subdivision to the south through a walkway across the ditch to the trail being constructed. That is however not part of this project. The individual pathways between lots are not planned at this time; the focus at this time is on the main trail. The individual connections and pathways will need to be programmed for funding at a later time.

Councilmember Brewster asked who is responsible for the maintenance of these areas. Ms. Beaudry said the trail area is currently City right-of-way and not park land. She said it may be possible to extend the park maintenance district. In essence, the

maintenance along those pathways will need to be figured out. The City would be responsible for the maintenance at the present time.

Councilmember Ulledalen asked if it was possible to apply money from Phase II to Phase I. Ms. Beaudry noted the agreement is a project-specific agreement. She did not think the City could reduce the length of the trail that has been approved to add on these additional pathways. Councilmember Ulledalen said some of the neighbors are upset about the situation. Interim City Administrator Tina Volek added that Staff is aware of the Shiloh Point situation and is having some discussions on it to try to find some solutions. Councilmember Veis asked if these connections from the subdivision be eligible for CTEP funding in the future. Ms. Beaudry confirmed these connections would be eligible – either as school route pathways or multi-use pathways. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of ITEM K4, seconded by Councilmember Ruegamer. Councilmember Stevens said there seems to be some confusion among downtown business owners about this item. The closure is stated as from 10:00 a.m. to 11:00 p.m. She noted that Interim City Administrator Tina Volek informed her it would be a “rolling closure”.

Ms. Volek said the event sponsor is the Chamber of Commerce. Members of the organization are in the audience this evening and can address the Council’s questions. John Brewer, Executive Director of the Chamber of Commerce, said the Chamber bid on the H.O.G. event over a year ago. He said they took on the downtown party as a commitment to welcome the attendees, but to allow the community an opportunity to participate in this event. The *Paint the Town Chrome Party* quickly became a fundraiser for the Chamber and the Yellowstone County Lodging Association to help pay for the \$65,000 commitment it took to bring this group here. This group is expected to directly spend \$6 Million in the community. Mr. Brewer said the street closure is a rolling closure that begins at 10:00 a.m. with a small section of downtown around Sky Point. At about 2:00 p.m. a larger street closure will begin so that by 4:00 p.m. all streets in the downtown area will be closed for this party. The streets that will be closed entirely by 4:00 p.m. are: the area from 6<sup>th</sup> Ave. N to Montana Ave., and from N. 28<sup>th</sup> St. to 32<sup>nd</sup> St.

Councilmember Clark asked how cars will be handled that are parked in the closed area. Ms. Volek said part of the process included bagging meters. Cama Humphrey of the Chamber said they have contracted with the DBA to bag meters in the morning to let parkers know that the streets will be closed. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of ITEM S, seconded by Councilmember Ruegamer. Councilmember Boyer said she was concerned that the membership consisted of six representatives of the sign industry and only two community representatives. She asked if more community representation could be added. Councilmember Brewster said it would be possible to delay this item. He asked that volunteers be interested in what the committee will be addressing, not some broader issue so that it takes forever to accomplish something. He emphasized the committee is not dealing with getting rid of signs and not dealing with where signs are allowed. The committee is only reviewing the regulation of signs that are allowed in a zone.

Councilmember Stevens said Paul Cox works for a sign company and is listed as one of the community representatives. Councilmember Brewster suggested the Council provide names of potential volunteers. Councilmember Boyer moved to delay the appointment of the ad hoc committee until June 26<sup>th</sup>, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of ITEM U, seconded by Councilmember Clark. Councilmember Ruegamer said he advocated for this item at the Board of Adjustment and thus will recuse himself from discussion and voting at this time. On a voice vote, the motion was unanimously approved with one abstention by Councilmember Ruegamer.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND RESOLUTION 06-18427 approving and adopting budget amendments for FY 2005/2006. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

The public hearing was opened. SANDRA MERWIN, 1228 BABCOCK BLVD asked the Council to allocate funds to the police dept. to enforce the fireworks ban in the city. Fireworks are a serious subject. While most people think fireworks is only loud, children's toys that celebrate being American, in reality, fireworks is Chinese, and not toys but explosives. She said it is the number one consumer product that injures children. Ms. Merwin said she will continue to advocate for enforcement of the ban and has already contacted the county commissioners and legislators.

BETTY LOENDORF OF 2479 TRASK CIRCLE, also asked the Council to support the ban on fireworks and the funding for the police to enforce the ban. She said she has worked as a vet tech for 40 years and has seen the horrible results to animals from fireworks.

DAVE BROWN OF 544 WIGWAM TRAIL asked what the total budget is for FY05 and FY06 and the increase over last year's budget. Interim City Administrator Tina Volek said she would have the information to Mr. Brown tomorrow.

There were no other speakers. The public hearing was closed. Councilmember Ulledalen moved for approval, seconded by Councilmember Ruegamer. Councilmember Veis asked about the \$150,000 amendment for the public defender's office. Deputy City Administrator Bruce McCandless said there was a significant increase in this year's budget for the public defender's office, primarily because of investigations and "conflict" attorneys. Conflict attorneys take cases when the City's on-staff public defenders have a conflict. In February, the chief public defender resigned. The position has not been filled. The deputy public defender has been taking a number of additional cases, but the overload is referred to private attorneys that are assigned by the court to represent indigent defendants in Municipal Court.

Councilmember Veis said the public defender for FY06 is \$300,000 and asked if it was exceeded by 50%. Mr. McCandless said the original budget was closer to \$250,000, but there has been a large over run. The City's public defender's office handled over 1800 cases in 2005. Councilmember Veis asked if one person resigning for a portion of the year really results in a 50% increase in the budget. Mr. McCandless said the resignation

covered nearly  $\frac{1}{2}$  a year. Public defenders are assigned by the Municipal Court and the City is mandated to provide public defense for indigent defendants; it is a legal obligation. Councilmember Clark asked who determines the pay. Mr. McCandless said an internal fee schedule is utilized.

Councilmember Jones said he thought the legislature changed the public defender laws and how does that affect what is going on with this item. Mr. McCandless said the 2005 Legislature did adopt a state-wide public defender system. They gave the State a year to get the system up and running. Effective 7/1/06 public defense will no longer be a City responsibility. There is no such budget in the FY07 budget. The State is paying for that service in a number of different ways. For cities, it is withholding a dollar amount from the city's entitlement payment that was part of HB124 – the Big Bill. The City's withholding will be approximately \$170,000 in the first year. These are subject to biennial review by the Legislature.

Councilmember Veis asked what would happen if the Council did not approve the \$150,000 budget amendment for the public defender's office. Mr. McCandless said the City will exceed the budget and have an audit finding. Finance Manager Pat Weber said if the Council does not approve the amendment, the City will be in violation of State law – i.e. a City cannot have "negative" budget authority. Ms. Volek said one result of the state adopting its plan was that the City could not recruit a public defender replacement, which forced the City back into the "retained" attorney position. These attorneys charge a rate that is more significant than a staff public defender would have been paid. She noted that no one wanted the job for the six-month period until the state took over the operation.

Councilmember Veis said \$150,000 seems outrageous and asked for further explanation beyond not being able to hire someone. Councilmember Veis amended the motion to separate the public defender amendment from the other amendments, seconded by Councilmember Brewster. Councilmember Boyer asked Councilmember Veis what he was hoping to accomplish when the public defender operation was taken over by the state, the City could not hire someone for the remaining six months and the City is required to provide this defense. Councilmember Veis said it was difficult to believe that because the City could not hire an attorney for six months, it would cost the City an additional \$150,000, which is 50% over the original budget. Councilmember Brewster said the bigger question is why the City is budgeting inadequately and waiting until the end of the year to approve a large amendment, rather than granting some budget authority six months ago. Councilmember Veis said he has no doubt there's some need in the public defender operation, but questioned the 50% increase in the budget. Ms. Volek said Staff would look at the numbers again and provide additional information. She agreed that it is a shocking number, but it is difficult to predict public defense cases because the City has no control over the clients that walk in the door – whoever is arrested is eligible for public defender and is assigned a public defender. She noted also that the City only had a two-year history on case load.

Mayor Tussing said he leaned toward "sucking it up" this year because the City won't be dealing with this again. Councilmember Veis noted that the State will cut the City's entitlement by \$163,000 to pay for this service. "I think they will find out quickly that that is not enough money and they will come back to the cities and say 'we want more of your entitlement'. When we add on another \$150,000, they are going to say, 'gee in FY06 you paid \$450,000' and there goes another \$300,000 from our entitlement because 'that's

what you paid before we did the entitlement, so we'll come and take that money from you back.' If we add this on there, it gives fuel to the fire to the state legislature to say 'well you guys are paying that already; we're just going to take that from you.'" On a voice vote, the amended motion was approved. Councilmember Veis moved to delay the public defender amendment to 6/26/06, seconded by Councilmember Brewster. On a voice vote, the motion was approved. Councilmembers Ulledalen, Boyer, Gaghen and Mayor Tussing voted "no".

Mayor Tussing asked why the fire dept was the only dept. that was asking for a budget amendment to deal with contract raises, increases in natural gas and fuel, etc. when all depts. experienced these increases. Mr. McCandless said the City does not budget for what is eventually achieved through contract negotiations for the different union groups. The original budget did not include a contract settlement amount for the Fire Dept.; the FY07 budget does not include a settlement amount in the police budget because the cost is not yet known. Mr. Weber said other depts. were generally able to absorb the increases into their budgets by making cuts in other areas. He noted that one of the Fire Dept.'s increases was for replacing an engine for a pumper, a \$25,000 expense. Councilmember Brewster noted that salaries cannot be budgeted until after union negotiations or the City could be at risk for an unfair labor practice (ULP). On a voice vote on the main motion as amended, the motion was unanimously approved.

### **3. PUBLIC HEARING AND RESOLUTION 06-18428 approving and adopting the budget for FY2007. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Interim City Administrator Tina Volek said this is the seventh evening that Staff has met with the Council to prepare the FY07 budget. Her presentation summarized the highlights of information presented to the Council in their budget sessions. The budget is based on two kinds of accounting – for governmental fund types, modified accrual basis accounting is used. This allows for the documentation of revenue when it is awarded, not when it is received. For proprietary fund types, modified accrual is used for the budget and full accrual accounting is used for external financial reporting – which explains why the CAFR and budget do not "match".

Additionally, several budget policies govern the development of the budget: the capitalization policy, the investment policy, capital replacement policy (CRP, ERP and TRP) and the growth policy. Several budget practices are also incorporated: recommended reserve levels, a balanced budget, five-year projections for the General and Public Safety Funds, and vacancy savings. The reserve requirements have several sources: legal requirement for bond reserves, state-required reserves, state caps on some reserves, and internal reserve recommendations.

Ms. Volek said revenues are projected to be \$191,784,156, with the primary source being charges for service – 37% of the budget. The next largest revenue source is intergovernmental funds, followed by taxes and interfund transfers (12% each) and debt proceeds and special assessments (10% each). The largest expenditure is personal services (31%); capital expenditures are the next largest expenditure, followed by operations and maintenance (25%), interfund transfers (12%) and debt service (6%).

She pointed out some changes to the personal services budget, including increases in non-bargaining, fire and Teamster salaries. These are predictable because

the figures for the fire and Teamsters have already been negotiated. The figures for the non-bargaining employees are based on what has been negotiated with the other units. She reminded the Council that this budget does not include increases for the police union, since negotiations are currently underway.

Ms. Volek said the operations and maintenance budget is approximately \$50 Million. Fuel and gas increases affected the City as much as the private driver. Utilities were significantly higher -- \$666,000 higher than expected. She noted also that insurance costs have increased, the result of the City's experience, the reduced number of companies available to provide insurance (post 9-11), and a change in the investment market. Councilmember Veis asked how much of the increase is due to MMIA increases and how much due to increases outside of MMIA. Ms. Volek said liability through MMIA was approximately \$400,000 and the driver of the increases was claims.

Interfund transfers are \$23 Million among all funds. These represent the transfers between depts. and represent various "accounting" items. Several major CIP projects are scheduled for 2007 – the new fire station at the corner of Grand and 54<sup>th</sup> St. W, a new water reservoir in Zone 4, a water pump station, the sanitary sewer to Briarwood, the PAVER program that provides for resurfacing roads in the community, the Gateway Triangle project, and the widening of Grand Avenue from 8<sup>th</sup> St. W to 12<sup>th</sup> St. W.

Ms. Volek said the budget also includes equipment replacement projects. Depts. have contributed revenues over time to offset the costs of replacing these pieces of equipment. This gradually allows the City to accumulate the money to make a large equipment purchase like a new fire truck. The equipment replacement program (ERP) also considers salvage or trade value and useful life in its recommendations. In conjunction with this, the City has a similar program for technology replacement, the TRP. This program tracks and monitors the need for replacing information technology. She noted that copiers are being replaced this year, as are IT servers and MDT equipment is being added to the transit units.

She noted also that several service improvements are included in the FY07 budget. The forestry division will move from the Parks & Rec. Dept. to the Street Dept. This will allow for better service in maintaining trees on streets and in alleys. Pipe slip-lining is included and will be a better way to replace pipe already in the ground. Additional staff will be hired and equipment added for this purpose. Additionally, some tax and fee changes are proposed for next year, including: (1) water and wastewater rate increases in their second year; (2) the fire hydrant maintenance charge will increase 39%, (3) individual PMD rates will change, and (4) individual SILD rates will change.

Ms. Volek noted that some positions were added this year, two of which are in the General Fund – (1) a new attorney in the City Attorney's office, which will be funded by the Airport and Public Works Dept., and (2) a half position in the Human Resources Dept., changing a current half-time position to a full-time position. Various other positions have been added in other depts. that are being paid for from other sources. Six firefighters and two police officers are being added and will be paid for from the public safety mill levy.

She noted that reserves are again being tapped in the FY07 budget, as has been done in previous years. Last year approximately \$2 Million in reserves was used for the current budget, about \$1 Million for the previous budget year and about \$1 Million for this coming budget year. Ms. Volek noted that the revenue line is beginning to increase,

meaning that by FY08 the City should have to cease using reserves for supplemental money for the General Fund and going forward on the basis of earned revenues.

General Fund revenues are projected at \$28.6 Million. The major source is taxes (property and personal only, not including motor vehicle taxes) at 39%; the next highest in intergovernmental transfers; followed by intra-government transfers, licenses, permits, charges for services, etc. She noted one of the issues the City has that makes revenues difficult to predict is that the state reappraises the City on a six-year cycle. The next reappraisal will be in 2009. General Fund expenditures are approximately \$29 Million and are concentrated in inter-fund transfers (a good share to the public safety fund), personal services (24%) and operations and maintenance (13%).

The public safety fund receives 59% of its income as a transfer from the General Fund. In 2007, that transfer will total \$17,444,000. The two public safety levies will contribute another 25%. Transfers have continued to increase much more than other revenue sources in this fund. Ms. Volek said the transfer from the General Fund to the public safety fund was \$16 Million in 2004, in 2005 it was \$16.9 Million, in 2006 it is \$16.3 Million and is proposed to be \$17.4 in 2007. Personal services make up about 80% of the expenditures in this fund.

Ms. Volek noted there were several items Staff is asking the Council for guidance on tonight:

- the sale to Conoco of right-of-way – where does the Council want these proceeds placed in the FY07 budget. She added that it could go into the Gateway Triangle project to offset some of the costs there or it could go to offset the \$900,000 being taken from General Fund reserves.
- Lampman, Lampman Strip and Descro Strip Parks -- \$15,000 from the Park acquisition and development fund
- Terra West PMD -- \$35,000 from a PMD that will be created
- Adding one FTE to the new PMD – from the General Fund
- Agenda Automation Software -- \$40,000
- Overtime request to provide a second police dispatcher in the 9-1-1 Dispatch Center
- Community Center roof repairs and new HVAC equipment
- Sound system for Council Chambers

Councilmember Veis asked why the right of way sale money would go into the Gas Tax Fund. Finance Manager said it goes to the General Fund but is transferred to the Gas Tax Fund for use in the Gateway Triangle project. Councilmember Veis asked about the effects on the public safety fund of moving the new fire station up on the schedule. Mr. Weber said it had no impact on the public safety fund, only the General Fund. He said the station construction would cause the General Fund to dip and require the use of reserves to advance the station. Mr. Weber said instead of building up the money in the General Fund, the City has opted to go out and obtain a loan from the Solid Waste Fund, which will be repaid over five years. He said the original levy was set up to get to the new station construction by 2010. By moving up the construction to 2008, the only way to do that was to borrow money so that staff could be hired and equipment purchased in time for opening the new station. Mr. Weber said this choice essentially moved up the station by two years.

Councilmember Veis noted that intergovernmental funds are down this year by approximately \$6.2 Million and asked for a reason. Mr. Weber said the lesser amount is due to grants for airport projects. Councilmember Veis asked if there will be a line item in the FY07 budget for tracking the public defender expense. Mr. Weber said there will not be a line item; the cost will be reflected in the entitlement reduction. Councilmember Boyer said the Council should be able to keep track of what the state is taking each quarter for the City's costs. Councilmember Veis noted that the DOJ court grant is running out. Ms. Volek said the grant goes through the upcoming budget year. The Court is looking at other revenue sources for that, talking to the state for supplemental funding and other grant funding. Councilmember Veis asked if any of the insurance cost increase was due to health insurance. Mr. Weber said it was from property and liability insurance. Health insurance increases have been under 10%.

The public hearing was opened. DAVE BROWN OF 544 WIGWAM TRAIL said he saw City Attorney Brent Brooks stand up and take issue with the "black hole" we call the public defender at a meeting in Helena with the AG there. He congratulated Mr. Brooks on his testimony at that time.

KEVIN NELSON OF 4325 BRUCE AVE. spoke on Section 17-111 regarding enforcement personnel for the noise ordinance. He said the ordinance states the City Administrator shall assign duties of enforcement to personnel trained in noise control techniques, procedures and equipment with sound level meters of standard design. Mr. Nelson said if this person is employed with the City, "he should be fired! The last time I checked, there is a fair amount of noise in town," he stated. Mr. Nelson stated that noise is well defined, the codes are well documented and within the City's jurisdiction and no additional laws are needed. All that is needed is enforcement. He urged the Council to budget money for noise enforcement.

CLAYTON FISCUS OF 1111 MAIN ST. asked how much unrestricted reserves the City has at the end of this fiscal year. Mr. Weber explained that this fiscal year is not yet over; the year ends June 30<sup>th</sup> and books have not yet been closed. Mr. Weber further explained that the page Mr. Fiscus referenced comes from the CAFR and refers to net assets, which are not all cash. Net assets include land, etc. The City has 150 funds, each with rules on how money can be spent and the levels of reserves. Councilmember Stevens asked how the reserve recommendations were arrived at. Mr. Weber said he, the previous finance director and his accountants went back 10 years on all funds and analyzed the cash flow needs. A recommendation was made based on that determination. Mr. Weber said those funds that rely solely or heavily on tax receipts require a larger reserve since the large tax receipts are transferred in December and June of each year. Councilmember Gaghen said in simple terms, the City needs the reserves to do business on a daily basis. Councilmember Boyer said she has seen over the years where the City has been criticized for having reserves, but "no good person would try to operate their business without keeping some kind of reserves. If they had an unfortunate expenditure or health insurance went up, it would be a disaster. We can't run our City like that, not having reserves ready for those kinds of budgetary issues," she stated.

There were no other speakers. The public hearing was closed. Councilmember Boyer moved to place the Conoco right-of-way sale monies in the Gas Tax Fund, seconded by Councilmember Ruegamer. Councilmember Brewster said if the Council

places these proceeds in the Gas Tax Fund, it is available when the Conoco Triangle project budget is developed. If the money goes into the General Fund instead, it would be available for either the Gateway Triangle or the General Fund uses. Councilmember Gaghen moved to amend the motion to earmark the \$220,000 from the Gas Tax Funds to supplement the Gateway Triangle, seconded by Councilmember Ronquillo. Councilmember Ronquillo said the money came from property in the triangle area and it should be spent on improvements in that area. Public Works Director Dave Mumford said it was Conoco's desire that the money be used for the triangle project. He said the triangle project is a significant project so any money allocated to the project would offset the City's contribution. Mr. Mumford noted that the entire gas tax for the City will need to be dedicated to this area for the next five to six years to do this project, similar to the Broadwater project previously. On a voice vote on the amendment, the motion was approved. Councilmembers Brewster and Jones voted "no". On a voice vote on the motion as amended, the motion was unanimously approved.

Councilmember Boyer moved to authorize the six additional expenditures (except the sound system which will be purchased from this year's Council Contingency) to be included in the FY07 budget, seconded by Councilmember Gaghen. On a voice vote, the motion was approved. Councilmember Jones voted "no".

Councilmember Boyer moved to accept the FY07 budget as amended, seconded by Councilmember Ruegamer. Councilmember Brewster moved to amend the budget to move the new fire station construction back to the original schedule, seconded by Councilmember Veis. Councilmember Brewster said it was his recollection that the fire chief was comfortable with the original schedule for the new station, as was a majority of the Council. Yet last year, the fire station had been moved up on the schedule. He said it adds about \$3 Million to the budget and he wasn't sure much was gained by accelerating the project. Councilmember Boyer said she thought the City was "too far down the track" on this project, "especially communicating to the community. Those people who have not had adequate fire protection would now be delayed two years down the road."

Mr. Weber informed the Council that 12 firefighters have already been hired with the shortened construction date in mind. It would be costly to go back. "At this stage of the game, the City is into this for quite a bit of money," he explained. Councilmember Jones asked if it was possible to keep the firefighters, but man the new station only  $\frac{3}{4}$  time. Assistant Fire Chief Paul Gerber suggested keeping the six firefighters now and authorizing the remaining six, opening up another pumper and running it 75% of the time, staffed with three firefighters. He said it was his understanding that the Council's desire was to get another rig out on the streets and reduce response times. Mr. Gerber said the dept. can do that if they can put these firefighters on another pumper. This will take care of some of the load of responding to fires and present a compromise if the Council desires to move the construction of the new fire station back a couple of years.

Councilmember Jones said he did not realize the impact of this station and the deficit it would create. Councilmember Ulledalen reminded the Council that there is a significant part of the tax base in this community that is not covered by adequate fire protection. Ms. Volek said if the Council desires to look at these numbers, she suggested the Council postpone action to the next meeting, which would allow Staff time to do recalculations, adding this is a "major" change to the budget and the allocation of

the public safety mill levy allocation. Councilmember Boyer said the Council needs to move forward with the station. Councilmember Ruegamer said the station will not get any less expensive and it needs to be done now.

Councilmember Gaghen asked if insurance rates would be affected by the underserved areas. Mr. Gerber said this is a concern when ISO comes the next time. He said the dept. is attempting to maintain the Class 3 rating the City has. He reminded the Council that the community paid good money for a fire station relocation staffing study, which said the City needs a fire station in that area of town. Mr. Gerber said it is a 10-15 minute response time to that area and a station is badly needed in that area, especially in light of all the new construction occurring in that area. Councilmember Veis said the cost of moving up the construction of the fire station is not in the capital cost, but in the hiring of the firefighters. He asked if these firefighters have already been hired. Mr. Gerber said six firefighters were hired so far this fiscal year and six have not yet been hired. He said these firefighters can be assigned to other pumbers, but this community wants another station staffed with these firefighters rather than beefing up existing stations with more firefighters.

On a voice vote on amendment #2, the amendment failed. On a voice vote on the motion to adopt the FY07 budget as amended, the motion was approved. Councilmembers Jones and Brewster voted "no".

Mayor Tussing called a brief recess at 8:40 p.m. The meeting was called back to order at 8:50 p.m.

#### **4. PUBLIC HEARING AND RESOLUTIONS setting annual assessments for FY2007 for:**

- (A) **Res. 06-18429:** Park Maintenance Districts
- (B) **Res. 06-18430:** Light Maintenance Districts
- (C) **Res. 06-18431:** Property Safety Water Supply (i.e. Fire Hydrant maintenance)
- (D) **Res. 06-18432:** Street Maintenance
- (E) **Res. 06-18433:** Storm Sewers

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

There was no Staff presentation. The public hearing was opened. KEVIN NELSON OF 4735 BRUCE AVE. spoke on an article from the Billings Gazette dated May 21, 2006. The article thanks the citizen's advisory council, which included Councilmember Ronquillo and Planning Director Candi Beaudry. He said one cannot be on an advisory council and promote a project at the same time – it is a conflict of interest. Mr. Nelson said Mr. Ronquillo is sitting here influencing the Council as a member of the citizens' advisory board. Mayor Tussing asked for clarification as to which item Mr. Nelson was speaking to. Mr. Nelson said all he was requesting was that all of the councilmembers disclose their conflicts of interest when discussing any issue so that the public knows up front.

Councilmember Stevens noted she attended a state-sponsored ethics course last week. She said she asked what happens when you have councilmembers that serve on ad hoc committees or things that the council asked them to serve on – can they turn around and come back and vote on these issues. Councilmember Stevens said the answer was "yes, those are considered to be an extension of the arm of the Council and

does not constitute conflict of interest. Conflict of interest would arise more if they were sitting on a board of a non-profit and then voting on an issue dealing with that non-profit." Councilmember Gaghen asked what council Mr. Nelson was referring to. Mr. Nelson replied that it was the Conoco Citizens Advisory Council that he was referring to and created by that entity, which is not an extension of the City Council. Councilmember Gaghen said that council was created for neighborhood input and added that Councilmember Ronquillo participated because of his position on the task force at the time.

BRUCE SIMON OF 217 CLARK AVE. spoke on the downtown lighting district charges, noting 2/3 of the cost includes the rent of the poles which have been there forty years. He said this is not just a downtown problem, but a city-wide problem wherever there are Northwestern Energy owned districts.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember Veis. Councilmember Veis noted there is an increase in the fire hydrant maintenance rates and asked for an explanation. Public Works Director Dave Mumford said the fire hydrant maintenance fee is to insure that the hydrants and fire-flow pumps are maintained. The fee has not been increased since the early 1980s. Councilmember Brewster asked if the fee is charged by hookup or house. Mr. Mumford said it is charged per property. Revenues have increased because of the increase in the number of hookups, but the rates have not increased.

Councilmember Jones asked if the City is looking at all of the light maintenance districts and evaluating them. Mr. Mumford said each district is evaluated every year in terms of what is needed for maintenance, how old the system is and how much power is needed. The issue Mr. Simon mentioned involves a Northwestern Energy district. For these districts, the City is charged for energy costs and makes sure it has the correct amount to pay the assessment they charge the City for energy. Northwestern's rates are set by the Public Service Commission because they are a utility. This has created the issue that Mr. Simon identified.

Councilmember Brewster noted that he works for Northwestern Energy and stated that none of the rates on the agenda have anything to do with Northwestern Energy. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION 06-18434 setting the annual Arterial Construction Fee Assessment Rates for FY2007. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Veis moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Jones noted a later item on the agenda that refers to this assessment and Ziggy Ziegler protesting the amount of his assessment. He asked if the assessment structure has been addressed.

Public Works Director Dave Mumford said Mr. Ziegler's concern goes back to the first year of the assessment and concerns Planned Developments (PD). With Council's direction, Staff has evaluated all 4000+ parcels zoned as PD and all have been

reassessed based on the underlying zoning instead of the PD. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION 06-18435 setting the annual All-Purpose Mill Levy and Mill Levies for Library Operating, Transit Operating, and Public Safety Funds for FY2007. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff presentation. Mayor Tussing asked about the 20 mills listed on page two of the resolution: was it the 1998 levy that is continuous or the levy passed in 2004 that is supposed to be a dollar amount. Interim City Administrator Tina Volek said those mills refer to the 1998 levy. Deputy City Administrator Bruce McCandless said the 2004 levy is handled when the state informs the City what the taxable value is for the city. The 2004 levy was set at dollars, rather than a certain number of mills. The City does not know the exact number of mills until the property valuation is determined and reported by the state, which will occur some time in August.

Councilmember Veis noted that the Library Operating Fund mill levy is set at 9.5 mills; the charter says the City can set it at 5 mills. He asked why it is set at 9.5 mills. Mr. McCandless said the 1976 charter was adopted with 74 all purpose mills. Prior to adoption of the charter in 1975, the Interlocal agreement first executed between the City and County for the operation of the City/County Library specified that the City would levy no more than 4.5 mills of property tax for support of the library and the County would levy no more than 3.0 mills for support of the library. At the time the charter was adopted, while it said 74 (all purpose) mills, the practice has been to divide those 74 mills – 4.5 mills for the library and 69.5 mills for the all-purpose use. In 1994, an additional levy for 5 mills for the library was voted and approved inside the City. This is the levy referred to in the charter. When you add the historic 4.5 mills from the Interlocal agreement and the 5 mills from the charter, 9.5 total mills for the library is what is reflected in the resolution.

Councilmember Veis asked how the Council can approve a resolution that violates the charter. Mr. McCandless said he did not believe this violated the charter. The City is levying no more than 74 total mills for all purposes. Councilmember Veis asked why the 69.5 general all-purpose mills are not being reduced to reflect what is being transferred to the public safety fund, noting the treatment appears to be inconsistent. Mr. McCandless said the Library has never been part of the General Fund, while Police and Fire were part of the General Fund in the past, hence the need to separate the mills when they were earmarked for public safety.

Councilmember Brewster asked if the Council had the ability to allocate the mills in the charter any way it wanted. City Attorney Brent Brooks said that any mills specified for a particular purpose could only be used for that purpose, but the general all-purpose mills could be allocated as the Council directed. Ms. Volek added that new state statutes require ballot language to be expressed in dollar amounts rather than mills.

The public hearing was opened. DAVE BOVEE OF 424 LEWIS AVE. said there is a drug dealer living in his neighborhood, operating out of the front door of the home and totally unrestricted, unregulated and untouched. Public safety needs to take care of drug dealers. Now that the City has this new public safety money, it should find some way to take care of drug dealers in the community.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Veis made a substitute motion to delay the item for two weeks, seconded by Councilmember Brewster. Interim City Administrator Tina Volek asked the Council what additional information they would like on this item. Councilmember Veis said it appears the City is inconsistently applying levy assessments. He said the best answer that he heard tonight was because that is the way "it's always been done" and he didn't think that was a good enough answer. Councilmember Boyer suggested doing that as a council initiative instead of delaying the item. On a voice vote on the substitute motion, the motion failed. Councilmembers Ronquillo, Veis and Jones voted "yes".

Councilmember Veis made a substitute motion to change the all purpose mills to 74 mills and the Library Operating mills to 5, seconded by Councilmember Jones. Councilmember Brewster asked if a budget amendment would be required. Councilmember Boyer asked what this change would do to the Library. On a voice vote on the substitute motion, the motion failed. Councilmembers Ronquillo, Stevens, Brewster, Veis and Jones voted "yes". On a voice vote on the original motion, the motion was approved. Councilmembers Ronquillo, Brewster, Veis and Jones voted "no".

**7. RESOLUTION 06-18436 relating to \$851,000.00 Pooled Special Improvement District Bonds, Series 2006 (SIDs 1368, 1370, and 1373); awarding the sale thereof and approving certain matters with respect thereto. Staff recommendation to be made at meeting recommends RBC Capital Markets at 4.51% interest. (Action: approval or disapproval of Staff recommendation.)**

Planning Manager Pat Weber said two bids were received this afternoon for this bond issue. RBC Capital Markets' bid was 85 basis points better than the other bid received from D.A. Davidson. He noted this was a smaller issue so the City did not have it rated. Councilmember Stevens moved for approval of the RBC bid, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**7.8. PUBLIC HEARING AND VARIANCE #CC05-03: a variance from the site development ordinance, Section 6-1208(h)(3) re: driveway width and Section 6-1203(j)(2) re: curb cuts on Lots 7-12, Block 91, O.T., generally located between N. 27<sup>th</sup> St. and N. 26<sup>th</sup> St. and 1<sup>st</sup> Ave. N and 2<sup>nd</sup> Ave N., City of Billings, owner. Staff recommends delaying to 6/26/06. (Action: approval or disapproval of Staff recommendation.)**

Interim City Administrator Tina Volek noted this item has been advertised as a public hearing. Staff is recommending that the public hearing be opened and continued to June 26<sup>th</sup>. The variance pertains to driveway width and curb cut variances related to the Park II project, which is also scheduled to be heard on June 26<sup>th</sup>.

The public hearing was opened. There were no speakers. The public hearing was not closed. Councilmember Veis moved to continue the public hearing and action to June 26<sup>th</sup>, seconded by Councilmember Stevens. On a voice vote on the motion, the motion was unanimously approved.

**8. 9. PUBLIC HEARING AND VARIANCE #CC06-03: a variance from the site development ordinance, Section 6-1208(i)(11) re: curb cut regulations on Lot 2, Block 4, Monty's Place Sub., 2<sup>nd</sup> filing, Gerard Zimny, owner. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the variance, seconded by Councilmember Stevens. Councilmember Ulledalen said he used to live in the subdivision and this lot is a difficult one on which to build. Councilmember Stevens said it looks like the owner poured some concrete before applying for the variance. She asked if the "cart got before the horse" on this property.

Public Works Director Dave Mumford said there is no procedure that specifies when the variance application should be made. He noted however that the property owner took a gamble that the Council would grant the variance after doing the work. On a voice vote, the motion was unanimously approved.

**9. 10. PUBLIC HEARING AND RESOLUTION amending Res. 01-17659: a resolution setting fees and rates for City-owned parking garages and meters. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Deputy City Administrator Bruce McCandless introduced Brenda Burkhartsmeier, the Parking Advisory Board Chairman, Chris Mallow, the new Parking Supervisor, and Liz Kampa-Weatherwax, the former Parking Supervisor and new Purchasing Agent. He said the parking rate proposal has been a work in progress for over a year to get to this point and recommendation concerning changing the parking fees and rates. The last rate increase went into effect in 2001. At that time the meter rates were increased and garage hourly rates were reduced. Garage monthly rates were increased and a volume discount program was started which would allow for a discount if a large number of spaces were rented at one time.

Mr. McCandless said on-street parking is one of the City's most valuable commodities. The staff always tries to make sure the on-street parking is the most convenient for customers. It needs to be priced to encourage turnover, i.e. it is not desirable for people to park at a meter and "plug" it all day long. He also noted that the City also implemented a system that is designed to discourage meter plugging. There are also 10-hour meters on the periphery of downtown; the main purpose of which is to provide some long-term parking for employees or others that need long-term parking during the work day. Park IV near First Interstate Bank is the only garage that is not full with a waiting list. Mr. McCandless also said the Park II expansion project that is pending is somewhat reliant on the financing that would be available through the parking rate increases.

He noted the Park II expansion is the first time the City is talking about having to supply the "capital" means or debt from the operating funds. The four garages the City operates today were all financed by the Tax Increment District, so the parking rates pay only for the O&M of these garages as well as long-term upkeep. These structures are concrete and steel and require periodic upkeep to make sure the steel stays in good condition and the driving surface is relatively waterproof so it does not allow moisture to penetrate to the steel and cause deterioration of the structure. Mr. McCandless said the

Parking Fund has also accumulated reserves over a long period of time and now propose to use a majority of those reserves for the Park II expansion construction.

Mr. McCandless asked the Council to think of downtown parking as a "system" – i.e. it all has to work together. If a change is made to the pricing of one component, it will have an effect on the other components of the system. He noted it is sometimes difficult to predict these effects.

The current proposal is a combination of efforts by the Staff and the Parking Advisory Board. Meters are proposed to increase from 25 cents/hour to 50 cents/hour. The 10-hour meter rates would remain unchanged. The green meters would remain unchanged. Parking lot meters would also increase from 25 cents/hour to 50 cents/hour. The garage rates would change as follows: the hourly rate would remain at 25 cents/hour for the first two hours, and then go to \$1.00 per hour with a maximum of \$5.00/day. The roof spaces would increase to \$25.00/month and the covered spaces would increase to \$50.00/month. The assigned or reserved spaces (over a period of five years) would increase from \$50.00/month to \$100.00/month in the fifth year. Mr. McCandless noted also that the Parking Advisory Board indicated that it wanted to review these rates more frequently than in the past. The proposed rate increases would generate about \$360,000/year. He added that if rates are not increased at this time, revenues will be approximately \$1.5 Million. Ongoing operating expenses are estimated at \$1.4 Million. Debt service was estimated to include Park II debt at \$6 Million, paid over 20 years at about 5%/year. Annual debt service would be about \$490,000 under this scenario. Mr. McCandless noted this would create a deficit each year. If Park II were built, revenue would be generated from it. This revenue plus the additional revenue generated from the parking rate increases would put the parking fund back into a positive situation of about \$120,000/year. That annual net income is critical to the future emphasized Mr. McCandless because it is the only source of revenue for ongoing remedial work that needs to be done to the garages and parking lots. It's the only source of money that will accumulate over a period of years for use on additional capital parking projects.

Mr. McCandless said Staff is not yet certain of how much reserves will remain after the contribution to the Park II project because the debt coverage and reserve requirements have not yet been calculated. Typically, along with the bond issue, the City would need to keep approximately one year's worth of debt service in hand as reserves and generate income of about 125% of operating expenses. Therefore, the City does need to generate some surplus or net income from the parking operation and the rate changes will provide some of this income.

He added that the proposal does continue the group discount, but it would be changed slightly. Currently, the discount is a dollar amount at the different break points. The recommendation is to change that to a percentage discount.

Councilmember Ulledalen asked if the proposed numbers reflect additional revenue from the Park II expansion. Mr. McCandless confirmed that the figures do include revenue from the Park II addition. Councilmember Boyer asked if the City had enough money to pay for Park II without changing the parking rates. Mr. McCandless replied the City did not have enough money to pay for the Park II project without rate changes. There is slightly more than \$2 Million in parking reserves in hand and the project is a \$6.6 Million project. The only way to close the gap is to issue revenue bonds or debt. The only way to pay back that debt is with an annual debt service payment, which is nearly \$500,000/year. Mr.

McCandless emphasized that revenues must be increased in parking operations in some way if the City wants to proceed with a project the size of Park II.

Councilmember Veis noted that the increase from 25 cents/hour to 50 cents/hour for on-street meters was designed to keep employees and business owners from parking on the street. He asked if that focus has now switched to being a source of revenue. Mr. McCandless said the focus has not changed, but the increase would provide additional revenue. Councilmember Boyer asked about people that are caught abusing parking meters. Mr. McCandless said there is an escalating fine schedule for repeat violations. The present booting policy also needs to be reviewed and updated to better address the persistent violators. The “tickets” issue is separate from the parking fee issue however.

Councilmember Ulledalen commented that parking garages are full with a waiting list, so it appears that the City is not charging enough. He also asked if the proposed rates are focused on “driving people out of the metered spaces, where do we expect them to park if the garages are full?” Mr. McCandless said the 10-hour meters are not being utilized and there are surface lots with available spaces. Additionally, Park IV does have spaces available. At least 240 spaces will be added with the Park II expansion. Councilmember Stevens asked if the on-street problem is plugging the same meter or moving to another meter. Mr. McCandless said typically the parker is space hopping – i.e. moving to another metered space. Councilmember Stevens noted that would appear to create open spaces, yet we are trying to create more open spaces. Mr. McCandless said there are areas of the downtown where parking is readily available and there are areas that it is not readily available in the core of the downtown. Councilmember Stevens said she has a problem with “approaching a small problem with a shotgun approach”, noting there should be other ways to deal with this problem rather than raising rates across the board. Mr. McCandless reiterated that the purpose of the rate increases is two-fold: (1) to reduce the space hopping and move employees off the streets and make sure the on-street parking is available for customers, and (2) generate additional income for the proposed capital improvement on Park II.

Councilmember Stevens asked what happens when customers stop coming downtown because the meters have increased. Mr. McCandless said the downtown offerings include exclusive shops and nice restaurants and there is ample evidence to show that 50 cents/hour parking will not drive customers off the street. Councilmember Gaghen asked about the contract with the Sheraton and how the rate increase will apply to it. Mr. McCandless said the Sheraton has a long-term parking easement and agreement for the City that guarantees 275 spaces. Presently the Sheraton utilizes about 170 of those spaces. Councilmember Stevens asked if the contract contains a provision to raise the rates. Mr. McCandless said they are paying market rates at this time and there is a provision for periodic negotiation of rates.

Councilmember Veis asked how many meter pluggers there are. Liz Kampa-Weatherwax said there are a few offenders/block with approximately 150 – 200 offenders in the downtown. Ms. Kampa-Weatherwax said the ordinance on booting needs to be rewritten. She said every community around the country has similar problems. The current booting policy allows for ten or more tickets for \$100 or more, they have to be 30 days old and the offender has to have received final notice. The City waits until 14 days after final notice before booting. She noted that the fine structure has been revamped twice in her tenure and added that the entire parking system is a constant “process”.

Additionally, there are always those that will find a way around the current system and those that will never be happy with the current system.

Councilmember Stevens noted that the parking revenue fund transfers 17% of all revenues received to the General Fund. She asked if that could be placed back in the parking fund and applied to the money that is needed for the parking project. Mr. McCandless said the parking operation was in the General Fund at one time and always contributed net income to it. In 1998, parking operations were split out from the General Fund and in order not to harm the General Fund, it was necessary to allow for "some" transfer of parking revenues back into the General Fund. He noted it was the Council's discretion to change or eliminate that transfer, but cautioned that it would have a negative effect on the General Fund, which would mean more expenses would need to be covered by reserves or simply eliminated from the General Fund. Mr. McCandless said the current transfer is approximately \$250,000 - \$300,000/year. With the new rate structure, it is estimated the transfer would increase by \$50,000 - \$60,000/year.

Councilmember Stevens asked if garage automation would generate additional revenue. Mr. McCandless said it would be a large capital expense to get that done. There would be some operating cost savings as well. The potential would exist for additional revenue because revenue would be accepted 24/7 versus operating 10 – 12 hours/day. Councilmember Ulledalen asked why there is such a variance in cost of automating the garages. Mr. McCandless replied the variance occurs because each garage differs with the number of entrances and exits, the age of the structure, etc. It depends on the current status of the garage as to what the automation costs would be.

Councilmember Boyer asked how critical the Park II project is. Mr. McCandless said there is a waiting list for spots in Park II. He said it is projected that approximately 300 spaces in a Park II expansion could be filled almost immediately. Overall, there are enough parking spaces downtown, but this is a high demand parking area that needs additional spaces. If one goes a few blocks in either direction, there is more supply than demand for parking spaces. The Park II expansion is intended to meet the demand in the core area of downtown. Councilmember Ulledalen said he didn't think the City knows what the sensitivity of the market is regarding the different rate increases. He asked if the City was trading off a successful downtown for increased parking revenues.

The public hearing was opened. BRUCE SIMON OF 217 CLARK AVE. handed out a copy of a letter signed by 40 people that object to the on-street meters increasing to 50 cents/hour. He said it's been difficult to address this matter because there have been four sets of numbers presented and they keep changing. Mr. Simon said there are always empty parking places on the street. He said he was concerned about the "mom and pop" businesses downtown and how the increase will affect them. He asked that the Council not raise the on-street rates and suggested a new plan could be developed that meets the needs for revenue and the needs of the city. He offered to help work on such a plan.

PEGGY GARGARO OF 730 N. 30<sup>TH</sup> ST. said she and her husband own Rock Creek Coffee Roasters. She said they are a downtown employer and live downtown and love downtown. Ms. Gargaro said she does not allow her employees to park on the street; they are required to park in Park I or Park III. "If I catch them parking on the street, they no longer have a job with me," she stated. She said she is one of the few employers downtown that have a strict policy about parking. Ms. Gargaro said she made a recommendation to the Parking Advisory Board to make the 10-hour meters strictly

employer/employee parking because they are currently underutilized. "If you allow the employers a designated place to park, you'll solve part of the on-street parking problem. I feel that an increase to 50 cents for parking meters is detrimental to downtown right now," she stated. She stated that the downtown is no longer filled as it was in 2004 and is not the same downtown as a result. She urged the Council to take this into consideration as well.

BRENDA BURKHARTSMEIER OF 430 GRANDVIEW BLVD. said she is presently the chair of the Parking Advisory Board. Ms. Burkhartsmeier said she has been on the board for nine years and seen a lot of changes in that time. She noted that many of the board members are downtown business owners and property owners. The proposal has been endorsed by the Parking Advisory Board and the Downtown Billings Partnership. She said parking is a dirty, nasty word downtown. Everyone wants it to be good and everyone has an opinion on it. She said the board has been talking about this issue for four years and has held twelve public meetings on the matter. Councilmember Ulledalen asked about the rate proposed for the garages, noting he didn't think the City was charging enough. Ms. Burkhartsmeier agreed, adding that the new proposal allows for changes each year if necessary. She said they didn't feel that quadrupling the rates in the garages was a good idea when there are no other spaces for these parkers to go. Councilmember Jones asked if the board discussed increasing the rates of the new space in Park II to like \$65. Ms. Burkhartsmeier said the board had discussed that, but the board was divided on that issue. She said they wanted to keep the rates consistent downtown and not penalize successful businesses, yet still recognize the "fringe" area where more diagonal parking can be added and more long-term 10-hour parking can be added.

DAVE BOVEE OF 424 LEWIS said he opposes the proposal because "first of all, I don't trust you with my money. Second, because the City is who benefits, especially with the parking garages thing. The downtown business owners benefit from the construction of parking garages. I will almost never get to use the parking garage... You have money to complete the construction of Park II; you can find it. You have tax money intended just for downtown Billings and it's available. It's now our fault you put it in the hands of some uncontrolled parasitic group that won't give it to you unless you are going to hand it over to one of their members..." He said nothing will be solved with this increase, adding that many people think the City is trying to accumulate the money to give to Harrison Fagg for his "Sandstone scheme".

ERVIN HANKS OF 3404 2<sup>ND</sup> AVE. N. said he opposed the 100% increase in the meter rates, stating that it will drive more business out of the downtown. He said he was not complaining about the parking structure fees, only the parking meter fees. Mr. Hanks said the Council needs to consider what it is trying to do with this proposal. He said he hoped the Council was trying to have a "friendly city". Billings, Montana should not be basing things on what is happening elsewhere, "that is not Billings, Montana," he stated.

JOEL GARGARO OF 710 N. 30<sup>TH</sup> ST. said he and his wife own Rock Creek Coffee Roasters downtown. Since September 2005, within one block of their shop, 17 businesses have left or are in the process of leaving downtown. He said increasing the parking meter rates will hurt the remaining businesses. Retail customers will be paying 50% of the increase. Mr. Gargaro said parking enforcement needs to be given some "teeth" to make it effective. "Until there is teeth in the enforcement, there will continue to be abuses," he stated. The way the plan is structured, a majority of the cost will fall on

downtown business owners, not the second and third floor folks, but the first floor retail businesses.

MARY WESTWOOD OF 2808 MONTANA AVE. said she is in favor of changing the parking rates. "I recognize the difficulties downtown. In fact, I think I've been hearing about parking downtown since practically the day I was born and am expecting to hear about parking downtown until the day I die because it is a difficult issue," she stated. She characterized it as a special tax that the downtown pays for being prosperous. It is a part of doing business downtown. Ms. Westwood said what is really needed is to get people to park in the garages, since they were paid for with tax dollars and they should be used. She urged the Council to go with the "solutions" presented.

There were no other speakers. The public hearing was closed. Councilmember Ronquillo moved for approval of the staff recommendation for the on-street and garage rates, seconded by Councilmember Gaghen. Councilmember Brewster made a substitute motion to separate the rate issues, seconded by Councilmember Jones. On a voice vote, the substitute motion failed. Councilmembers Stevens, Brewster and Jones voted "yes".

Councilmember Stevens said she has several concerns about the proposal and acknowledged the hard work of the Parking Advisory Board. She stated she did not think the proposal was comprehensive enough. "The 10 minute parking is an issue, the booting is an issue; they've come back and said the ordinances really don't allow us to do enough enforcement, but didn't give any recommendations on changing the ordinances. I think it needs to be more comprehensive," she stated. Councilmember Stevens said there are other things that could be done to raise revenue. Even though Park II needs to move forward, that is not the right reason to vote for the proposal as presented.

Councilmember Boyer reminded the Council that the Park II project will impact the MET transit transfer center and Wells Fargo. Councilmember Ruegamer said if there is a problem with people plugging meters, the law needs to be enforced or change it so that this does not happen. He acknowledged that Park II is important and the Council needs to get going with it and not keep putting it off, because it is holding up quite a bit of downtown development.

Mayor Tussing said he has had five people urge the Council not to raise the meter rates. He noted that a 100% increase does seem like a large increase. "The fact that we need the money isn't a good reason to do it.... That should not be the City's goal – to raise money. I understand that we have issues, but I agree with Ms. Stevens that we are being held hostage by Park II," stated the Mayor. On a voice vote on the main motion to approve the Staff recommendation, the motion failed. Councilmembers voting "no" were: Clark, Jones, Ulledalen, Tussing, Veis, Brewster, and Stevens.

Mayor Tussing called a brief recess at 11:07 p.m. The meeting was called back to order at 11:20 p.m.

**10.11. PUBLIC HEARING AND FIRST READING ORDINANCE re: fair ballot language. Staff recommends taking no further action at this time. (Action: approval or disapproval of Staff recommendation.)**

Interim City Administrator Tina Volek reminded the Council that in November 2005 the Council was presented with what appeared to be language for a charter amendment that would have required a list of items to be included on the ballot. This included whether

a levy be permanent or have a sunset duration; whether it be cumulative or not cumulative; whether the dollar amounts and mills for each year and the total mills and dollars after the last year should be listed; the ballot would have to have ordinance language and any PowerPoint presentations would display the ballot. She said legal staff found a section of state law that provides, "the charter shall not contain provisions establishing election, initiative and referendum procedures". She said it is therefore Staff's opinion that the Council could not create a charter amendment with this language.

Ms. Volek said an ordinance has been prepared for the Council's review that would amend the City Code (rather than the charter) to include these items. She noted however that Staff is recommending the Council not take action on this item at this time for several reasons: (1) the Councilmembers could require this or any additional language that complies with state law on future mill levy issues without the ordinance. If the code amendment is approved by the Council, it could be rescinded by future Councils. (2) the limited number of words in the ballot issue and statement of intent can make it very difficult to include such additional instructions, and (3) putting technological language – i.e. "PowerPoint presentation" that was not available ten years ago and likely will be outdated ten years hence will require the code to be edited periodically.

Councilmember Jones reminded the Council that a charter amendment required a vote of the citizens; a code amendment does not require a public vote. Ms. Volek said the information presented in November actually had language for a "vote" for or against and it was Staff's understanding that it was intended to be a Council-created addition to the charter. She clarified that the ordinance in front of the Council tonight is an amendment to the code, which the Council can vote on via the ordinance process and does not require a vote of the citizens.

Councilmember Brewster said he did not think it was the intent of the Council initiative to adopt the language presented by Clayton Fiscus and Dave Brown. "I think what was suggested at the time was that Staff come up with some language in an ordinance that would direct Staff to provide that information before any ballot language was brought to the Council. It would be a guideline for Staff and any others who propose ballot language to make sure those particular items were included," he stated. Ms. Volek noted that the language in the ordinance almost "parrots" exactly the language in the initiative, which directed Staff to include specific information on mill levies that would be required on future ballot initiatives.

Councilmember Stevens asked what state statute specifically covered the language that was required to be on the ballot. City Attorney Brent Brooks said M.C.A. 15-10-425 requires that dollar amounts of mill levies and their effect on \$100,000 and \$200,000 homes, rather than just stating the number of mills. Councilmember Stevens asked about the permanent and cumulative requirements. Mr. Brooks said the statute says, "the duration if any." He noted also that there are two statutes and two sections that pertain to any initiative or referendum. Each must be succinctly but clearly express what it is the people are being asked to vote on. One is called the implication of vote and the other is known as the ballot statement. By statute each of these provisions has word limits of 25 and 100 words respectively. Mr. Brooks said this word limit often makes wording the ballot language difficult.

The public hearing was opened. DAVE BROWN OF 544 WIGWAM TRAIL addressed a question to Mr. Brooks. "Brent, I've been told that in early drafting of the

public safety mill levy you draft ‘cumulative and permanent’ language into not only the ordinance, but also the resolution of ballot language. If that’s true, I would applaud you. Is that true?” Mr. Brooks replied that they did make some preliminary recommendations to the former city administrator that words “cumulative” and “permanent” be considered to be included. He added that he did not believe that was put in writing however. Mr. Brown asked who changed that. Mr. Brooks replied he did not know. Mr. Brown said that state law requires that clear language be on the ballot. “I beg to differ with the AG; I don’t think it was clear language,” he stated.

CAROL TASSETT OF 231 TERRY AVE. said she is responding to Dave Brown’s question. She brought a copy of the resolution, the ordinance and the ballot language for the public safety mill levy. Ordinance 04-5288 states the charter will be amended to include a new section 1.05.1. The legal wording is within quotation marks. The dollar amounts and levies are listed for the years 2005 through 2010. There was one additional sentence, a key legal phrase that said, “the foregoing mill levies are cumulative, permanent and in addition to any other mill levies authorized by charter”. She said this is what the Council voted on. “Had that additional sentence not been included, then the dates would have been durational limits,” she stated. Ms. Tassett said the resolution has the word “permanent” in the first sentence and further states that the ordinance must be submitted to vote by the people. “What the people voted on was not Section 1.05.1. It did have the dollar amounts, but it had the durational limits. That key legal phrase had been omitted,” she stated. She said it should not be necessary to have an ordinance for “honest ballot language”, but the situation was that the public did not vote on the ordinance, but an amended ordinance.

GEORGE GRAHAM OF 3608 KYOWA TRAIL (outside of the City), said he sat at the June 6<sup>th</sup> polls to collect signatures on a ballot initiative to get the public safety mill levy back on the ballot. He said 7 out of 10 people signed their initiative. “Every one of those people that signed the initiative said they are not against police or firemen, but what they are against is deceptive ballot language and they are very angry. They are angry at the City and at the people that are not addressing this problem,” he stated. He said if the Council will not correct this situation, it will lose all credibility with the taxpayers. It has already lost a lot of credibility, but has an opportunity to get it back.

TOM ZURBUCHEN OF 1747 WICKS LANE said Staff says ‘take no further action’, yet state law says the ballot language must be clear. The ballot language clearly said a specific dollar amount was going to increase your taxes every year for five years. State law says the “effect of passing the measure”. In the third year, the effect of the measure passed is not this \$20 some increase from the year before. The effect of the measure is three times that. That is clear. There are two ways of looking at what was printed on that ballot – one says you’re going to pay \$20 each year. The other says its \$20, \$40, \$60,” he stated. Mr. Zurbuchen said the Council must take action to make sure next time there is clear language on the ballot.

CLAYTON FISCUS OF 1111 MAIN ST. said his group feels there needs to be an honest ballot ordinance. The ballot has to say whether it’s permanent, cumulative, if it sunsets and every dollar amount for each year and at the end of those years, the total dollar amount if it is cumulative. State law says the ballot must state the amounts for two different values of a home. “But when it is cumulative, the voters need to know when it is cumulative,” he said. He emphasized that they should not have to go out and get 9,425

signatures to get an honest and accurate ballot. The Council needs to close the loopholes created by state law. It is not offensive to state when a levy is permanent and/or cumulative he stated. Mr. Fiscus cautioned the Council about the Cobb Field vote, stating it will be "roast duck" if the Council does not give some credibility to the ballot box. Councilmember Clark asked Mr. Fiscus if he wanted the charter to be changed to include this language. Mr. Fiscus replied that it was his initial intent, but former Councilmember Shirley McDermott said she could not support it as a charter change because it was too complicated, and suggested it be a code amendment instead. "All of you that were on the Council at that time said 'ok', let's put it in an ordinance change to make it simple. It would not have to be placed on the ballot," he stated. Mr. Fiscus also noted that former Councilmember Dave Brown made the motion to change the code to include this language. The Council vote at that time was 100% in favor of that motion; there was no discussion about putting it in the charter.

ERVIN HANKS OF 3404 2<sup>ND</sup> AVE. N. said he believes the City needs honest ballot language or the Council will lose credibility and other bond issues will fail. "You can't be feeding people a fairy tale," he stated, adding that the people want it or they don't want it. He urged the Council to do whatever it takes to get honest ballot language, adding that this is a step in the right direction.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the ordinance, seconded by Councilmember Jones. Councilmember Stevens said before the meeting this evening, she looked up the minutes from June 17, 2004 or July 17, 2004 when the Council voted to put this levy on the ballot. She said the information on agenda items X1 and X2 does state that the levies are cumulative and permanent. The ordinance says cumulative and permanent. The resolution just says permanent and does not say anything about cumulative. The actual ballot language is silent on both, noting it may just have been sloppiness. Councilmember Stevens said it shows the levy was cumulative and permanent in one spot, but it didn't end up on the ballot, adding she had a concern about that. She said it is important that these measures be "clear on its face. An example I use is if we have a soldier in Iraq who receives an absentee ballot, they are not going to be attending meetings, they are not going to be reading the Gazette, and they may not see the ordinance. All they are going to see is what is on their ballot. I think it is very important that it be 'clear on its face'."

Councilmember Stevens made a substitute motion to amend the ordinance to: (1) remove item "3" regarding the dollar amount and mills for each year since that is already in state law, and (2) on item "5" remove the word "PowerPoint" and add "display the ballot as it pertains to the levy", seconded by Councilmember Brewster. Councilmember Ruegamer said he will not support any of these changes because the people that presented these items are not experts in ballot language. "We had an expert, probably the most expert person (i.e. the attorney general) in the state tell us the ballot language was OK and these folks dismissed him because he didn't agree with them," stated Councilmember Ruegamer. He emphasized the facts that that the AG told the Council the ballot language was OK and the people voted for the levy; the rest is merely opinion.

Councilmember Stevens clarified that the issue is not the previous ballot language, but what the Council is going to do next time on the next ballot language so that this issue does not come up again. Mayor Tussing said he was not sure that putting regulations n presentations into a "law" was a good thing. Councilmember Stevens amended the

substitute motion to remove Item “5” entirely, seconded by Councilmember Brewster. Councilmember Gaghen said it was not the intent of the Council or Staff to “dupe” voters or be less than honest about the levy. She said she sat through five presentations and did not find that there was any dilution of the fact that the levy was intended to be cumulative and permanent.

Councilmember Ulledalen asked Mr. Brown if questioned the ballot language as being deceptive when he was on the Council at the time. Mr. Brown said, “the Council did not see the ballot language without the cumulative and permanent on it; the Council believed it was cumulative and permanent. The Council did not present it to the voters as “not” cumulative and permanent; the Staff did.” Councilmember Stevens commented that Attachment B that she pulled from the supporting information for that time period did have the form of the ballot on it. She said it did not say cumulative and permanent, but the Council did have the actual ballot language in its packet for that day. Councilmember Jones said, “let’s get realistic here; we look through a stack of paper every time. We get so involved in these things... I can remember the first time your opponent started making that claim and I was mad. I was going ‘what are you talking about? This thing is clear in my mind because we’d gone over it so many times; I knew exactly what that meant. But then I started reading it and comparing it to somebody who had never gone through the whole process and it was not clear. I went ‘wow’; he’s actually got a point... We get so caught up in reading this stuff over and over again ... and this went right by us and we didn’t realize how it would actually read on the ballot to somebody that was not familiar with it. It’s a great learning lesson and I don’t think it will happen for at least another ten years – as long as anyone on this Council is on there,” he stated. Councilmember Jones said this is a great direction to Staff and it is appropriate to include this language.

Councilmember Veis referred to the proposed ordinance language that currently reads as follows:

**“Section 11-103. Ballot Language.**

The procedure for the nomination and election of all City officials shall be as prescribed by state law for non-partisan elections.

A. The following will be specified on the face of a ballot for any mill levy election: (1) If the levy is permanent, or has a sunset duration date; (2) If the levy is cumulative or not cumulative; (3) The dollar amounts and mills for each year, and the total mills and dollars after the last increase; (4) The ballot will have the ordinance language in its title; and (5) Billings PowerPoint presentations will display the ballot.

and clarified that #1 is in, #2 is in, and #3 is out. Councilmember Stevens said she left #3 in even though it is superfluous. Councilmember Veis continued by stating that #4 is in and #5 is out. Councilmember Boyer amended the substitute to delete Item #4, seconded by Councilmember Ulledalen. On a voice vote to delete #4 from the proposed language, the motion was approved. Councilmember Ruegamer voted “no”.

Mayor Tussing said the Council is now considering the amended substitute motion which he restated as: for ballot language that specifies on the face of a ballot (1) If the levy is permanent, or has a sunset duration date; (2) If the levy is cumulative or not cumulative; and (3) The dollar amounts and mills for each year, and the total mills and dollars after the last increase. On a voice vote on the amended substitute motion, the motion was approved. Councilmembers Veis and Ruegamer voted “no”.

**11.12. PUBLIC HEARING AND RESOLUTION on the appeal of the assessment of the arterial construction fee, James A. (Ziggy) Ziegler, applicant. Staff recommends approval of a resolution denying the request. (Action: approval or disapproval of Staff recommendation.)**

Mayor Tussing announced that he would open the public hearing, but then move to continue this item to the next meeting. He noted he received several frantic calls from Mr. Ziegler today as he was taking his wife to various doctors and hospitals. They both wanted to be here tonight, but they were not going to be able to attend.

The public hearing was opened. There were no speakers. Councilmember Brewster moved to continue the public hearing and delay action to June 26, 2006, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**12.13. RESOLUTION 06-18437 authorizing condemnation of five properties on Grand Avenue. (Delayed from 5/08/06). Staff recommends approval of the resolution authorizing condemnation of five (5) properties on Grand Ave. from 8<sup>th</sup> St. W to 12<sup>th</sup> St. W. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford noted a revised resolution was presented to Councilmembers on their desks this evening. It reflects a May 26<sup>th</sup> court decision involving condemnation. Mr. Mumford said in January Staff asked for Council approval to pursue condemnation of six properties on Grand Ave. between 8<sup>th</sup> and 12<sup>th</sup> Sts. Offers had been made to the property owners, but Staff and the owners had not been able to arrive at mutually acceptable prices. At that time, Council directed Staff to go back and do a market value of the six properties to assure that the offer made was still a valid offer. Mr. Mumford said the dept. hired a firm to do the market evaluation. The firm based the appraisals on three valuation methods: the income approach, a cost approach and a market value approach.

Mr. Mumford said Staff then went back to each of the six property owners and using the highest of the new valuation or the previous appraisal, a final offer was made to each owner. One of the six property owners accepted the offer; the remaining five owners did not accept the new offer. He said Staff is asking the Council to (1) approve the market value on each of the properties, which will allow Staff to make one last offer to them of market value plus 5%, and (2) if the owners refuse once again, direct Staff to proceed with condemnation. He emphasized that none of the property owners refuted the need for the widening project, just disagreed over the value of the property and the price being offered by the City.

Councilmember Ruegamer asked if there was any way to gauge what the court might do in this case. Mr. Mumford said the first thing Staff will do is to ask for right of entry so the project can proceed. The judge would approve that and agree that the issue is a cost issue. Both sides will present their information. The judge will review all the information and make a determination. Mr. Mumford said the City's risk is that the judge's figure will exceed the City's offer, in which case the City must also pay the attorney fees for the other party.

Councilmember Jones moved for approval of the resolution with market values and to authorize staff to offer an additional 10%, seconded by Councilmember

Ronquillo. Mr. Mumford cautioned the Council that the present ordinance allowed 5% over market, and approving 10% would likely be setting a precedent. Councilmember Boyer asked why the City is jumping up to 10% when it hasn't offered the 5% yet. Councilmember Veis made a substitute motion to approve the resolution with market value plus 5%, seconded by Councilmember Boyer. Councilmember Ruegamer said offering the highest market value is fair; adding a premium is unnecessary. Councilmember Jones noted however that in the private sector, condemnation is not an option. He said the City should go out of its way a little bit because it is taking private property. City Attorney Brent Brooks noted that the resolution should state that Council also authorizes Staff to offer 5% above the fair market values. Mayor Tussing noted that the motion authorizes the 5% premium. On a voice vote, the substitute motion was unanimously approved.

**13.14. 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. (PH held on 5/22/06 and closed. Action delayed from 5/22/06). 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 at the last meeting Mr. Zurbuchen raised issues as to whether Public Works was enforcing the site development ordinance and the request for a waiver of protest equally and officially across the system. Mr. Mumford said Staff has looked into the points he identified. He confirmed that the time has been over 45 days. There appeared to be a discrepancy between the site development ordinance and its enforcement versus the new SID policy that refers to side yards. Mr. Mumford said Staff researched this discrepancy and agreed with Mr. Zurbuchen that these two sections of code were not consistent with each other. He said Mr. Zurbuchen was told that the City would not be enforcing the site development ordinance on Durand, which is the side street, because under the SID policy an owner is not required to develop the side yard only the front yard, or address side.

Mr. Mumford said the question of equal enforcement was also investigated. Mr. Zurbuchen brought in several properties that he said had done site development and were not required to do sidewalks, etc. The permits were pulled for these properties and the process studied. The site development ordinance is not enforced if an owner is not building a garage or changing access. If a furnace installation, a roof, a small addition, etc. would not trigger the site development. One of the permits was for a 285 sf addition, one property already had sidewalk in front of it, another property built a garage to the alley and already had curb, gutter and sidewalk in front of the house and the alley was already improved as a gravel alley. In these cases, no waivers were required.

To ensure that something had not slipped through this process, he had staff looked at 120 properties in this neighborhood to see what has occurred over the years with each building permit. Except for one property in 1993 that had a building permit that Staff was not sure what improvement was done, every property either was not required to sign a waiver because of the type of development or a waiver was signed.

Mr. Mumford said the dept. is not enforcing this requirement any differently than with other properties. He asked the Council to approve the Staff recommendation.

Councilmember Brewster said he did not see the south end of Wicks Lane being developed further than it is today. Mr. Mumford said he could not say it will never be built – that's why Staff is not asking Mr. Zurbuchen to do the improvements today. The waiver would be for the future. Councilmember Stevens said variances are for when land does not permit following the code, not because an owner does not want to follow the code. She asked if there is something with this lot (other than a large ditch in front of the house) that is sufficient to require a variance from the site development ordinance, i.e. the lot configuration simply prohibits compliance. Mr. Mumford said there is nothing about this lot that prevents compliance. At least curb, gutter and the street part can be done; sidewalk may need some adjustment, he stated.

Councilmember Ulledalen moved to approve the Staff recommendation and deny the variance, seconded by Councilmember Boyer. Councilmember Brewster said he felt the ditch was enough of an obstruction to warrant the variance and did not expect development to proceed in the future. Councilmember Boyer said signing the waiver merely says that if development occurs in the future, an owner cannot protest it at that time. Councilmember Stevens said the Council does not have a crystal ball. If it comes to fifty years in the future and it does develop at that point, the waiver runs with the land and the owners at that time can contribute. On a voice vote, the motion was approved. Councilmember Brewster voted "no".

**14. RESOLUTION relating to \$851,000.00 Pooled Special Improvement District Bonds, Series 2006 (SIDs 1368, 1370, and 1373); awarding the sale thereof and approving certain matters with respect thereto. Staff recommendation to be made at meeting. (Action: approval or disapproval of Staff recommendation.)** This item was moved ahead on the agenda to Item #7.

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

- TOM ZURBUCHEN, 1747 WICKS LANE, asked for a clarification on Item #14. He said he just heard Mr. Mumford say that if physical drive access was not being changed, he could have a building permit. Public Works Director Dave Mumford said that is not what he stated earlier, noting that he said if a garage was being built; a building permit would be required.

## **COUNCIL INITIATIVES**

- COUNCILMEMBER RUEGAMER MOVED to direct Parks, Recreation & Public Lands to review the low income fee reduction policy and recommend a revised policy that deals with under 17-year old children, but seniors 65 and older and physically impaired persons on low income, as part of the review of all fees charged by that dept. and a recommendation brought back to the Council at a work session before December 2006. In the interim period, the PRPL dept. would be authorized to apply the existing fee reduction policy to low income

seniors and disabled on a case-by-case basis through the swimming season.  
**WITHDRAWN.**

- COUNCILMEMBER VEIS noted that the Transportation Committee would be meeting in Red Lodge on June 29<sup>th</sup> after touring the City's transportation projects on Shiloh Rd., Airport Rd., and Bench Blvd. He urged the Council to meet with them.
- COUNCILMEMBER BOYER reminded the Council that they needed to meet in their small groups in preparation for the strategic planning session on June 21<sup>st</sup> with Mr. Sipes.
- MAYOR TUSSING asked the Council to consider giving Staff direction on other alternatives to the parking rate changes. He asked the Council to consider a comprehensive look at the parking rates which included a change in the ordinance to make it more enforceable, raising the parking fines for the 4<sup>th</sup> and subsequent offenses, and smaller than a 100% increase in the parking meter rates.
- COUNCILMEMBER VEIS suggested 35 cents/hour on the meters, increasing parking garage rates, a tiered system, and charging a premium on premium spots.
- COUNCILMEMBER ULLEDALEN MOVED to direct Staff to prepare a spreadsheet with the following rates: \$30 for roof parking, \$70 for reserved garage parking, \$80 for assigned parking in garages and 35 cents/hour for meters and to bring a revised proposal to the 6/26/06 meeting. APPROVED
- MAYOR TUSSING asked that local option taxes be scheduled for a future work session and Big Sky Economic Development Authority (BSEDA), the Chamber of Commerce and City Lobbyist Jani McCall be invited to the meeting. Interim City Administrator Tina Volek noted this item is scheduled for the June 19<sup>th</sup> work session.
- MS. VOLEK reminded the Council of the agenda review meeting tomorrow evening at 5:30 p.m. in the City Hall Conference Room, the farewell dinner for retiring Airport Director Bruce Putnam at the Elks on Thursday evening, and the strategic planning meeting with Jim Sipes on June 21<sup>st</sup>.

**ADJOURN** – With all business complete, the meeting was adjourned at 1:00 a.m.

THE CITY OF BILLINGS:

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

ATTEST:

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