

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 10, 2006

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Ron Tussing called the meeting to order at 6:32 p.m. and served as the meeting's presiding officer. Mayor Tussing led the Pledge of Allegiance and gave the Invocation.

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

MINUTES – None

COURTESIES - Mayor Tussing received the "Key to the Highway" plaque from the H.O.G. Rally sponsors with their appreciation to the City for hosting them.

PROCLAMATIONS – None

ADMINISTRATOR REPORTS – Tina Volek

- Interim City Administrator Tina Volek reminded the Council of the memo in their Friday packet regarding the appointment of Marieanne Hanser to the Yellowstone Soil Conservation District Board – Item 1A.
- Ms. Volek also noted that the Public Comment Agenda Items should be changed from #1 and #8 to #1 and #7-10.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1, and #8 #7 - #10 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.) There were no speakers.

CONSENT AGENDA:

1. A. Mayor's Appointments:

	Name	Board/Commission	Term	
1.	Marieanne Hanser	Yellowstone Soil Conservation District	07/01/06	06/30/09

B. Bid Awards:

(1) W.O. 05-10: Stewart Park Trail – Billings, Federal Aid No. STPE 1099(40), MDT CN5290. (Opened 6/27/06). Recommend base bid, alternate #1 and alternate #2 to CMG Construction, Inc., \$179,436.00 and 45 calendar days, contingent on CTEP concurrence.

(2) Truck Cabs and Chassis for the Solid Waste Division. (Opened 6/27/06). Recommend Schedule I: Tri-State Truck & Equipment, \$113,708.00; Schedule II: Northwest Truck & Trailer, \$190,196.00; Schedule III: Northwest Truck & Trailer, \$285,294.00.

(3) Refuse Compactor Bodies for the Solid Waste Division. (Opened 6/27/06). Recommend Schedule I: Kois Brothers Equipment, \$92,989.00; Schedule II: Kois Brothers Equipment, \$62,946.00; Schedule III: Kois Brothers Equipment, \$182,011.00.

C. Change Order #5 (Final, Balancing), SID 1370: Interlachen Drive, Phase 1, H.L. Ostermiller Construction, Inc, \$27,117.26.

D. Amendment #11, Passenger Facility Charge (PFC) Project – Airfield Lighting Vault, engineering services, Morrison-Maierle, Inc., \$35,409.00.

E. Agreement approving the hourly rate for the second year of a three-year agreement with Guardian Security for security guard services at the Library.

F. Renewal of Commercial Aviation Ground Lease with Edwards Jet Center for use of Commercial Lot 2, term: 1 year, \$11,422.00.

G. Renewal of Lease for Edwards Jet Center's West End Fuel Farm, term: 5 years, \$3,637.00 for first year, adjusted annually by the CPI-U.

H. Easement with NorthWestern Energy for a strip of land in City Park, running from the east side of Blonco Circle to the west side of Gold Dust Circle, to provide electric service to Blonco Circle, \$0.00.

I. Acceptance of additional American Dream Downpayment Initiative Grant funding from the Montana Dept. of Commerce, \$11,516.00.

J. Acknowledging receipt of petition to annex #06-10: a 288-acre parcel described as: N2 of Section 20, T1N-R26E and C/S 1904, State of Montana Dept. of Natural Resources and Conservation (DNRC), petitioner, and setting a public hearing for 7/24/06.

K. Street Closures:

(1) Lewis and Clark Bicentennial Commission's *Clark on the Yellowstone* Bicentennial Signature Event, 2nd Ave. N between alley west of 27th St. N. and 29th St. N and N. Broadway between 1st Ave. N and 3rd Ave. N on July 21, 2006.

(2) Skyview High School's *Homecoming Parade*, Wicks Lane from Skyview Parking Lot to St. Bernard's Church, on September 8, 2006.

L. Second/final reading ordinance 06-5373 for Zone Change #779: A zone change from Residential Professional to Neighborhood Commercial on a 1.26-acre parcel described as: Lots 2B and 2C, Block 1 of Hancock Grand Subdivision, and located at: 3737 Grand Avenue. Darrell Kreitzberg, applicant. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria.

M. Second/final reading ordinance 06-5374 for Zone Change #781: A zone change from Community Commercial to Public on a 6.14-acre parcel described as: Tract 1-B-2 of C/S 2277 Amended, and located at: 3803 Central Avenue. Board of Regents of Higher Education, owner; Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria.

N. Second/final reading ordinance 06-5375 for Zone Change #782: A zone change from Agriculture Open-Space to Community Commercial on a 3.96-acre parcel described as: Tract B of C/S 1011 Amended, and located on the northeast corner of the intersection of Zimmerman Trail and Grand Ave. Rocky Mountain Community Church, applicant; Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria.

O. Final plat of Gunn Estates Subdivision.

P. Bills and payroll.

- (1) June 9, 2006
- (2) June 16, 2006

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brewster separated Item 1C. Councilmember Jones separated Item 1G.

Councilmember Ulledalen moved for approval of the Consent Agenda EXCEPT Items C and G, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of ITEM 1C, seconded by Councilmember Ruegamer. Councilmember Brewster asked why the items listed for the change order weren't caught by engineering prior to the project construction. Interim City Administrator, Tina Volek referred the question to Al Towlerton, Deputy Director of Public Works-Belknap. Mr. Towlerton said the driveways had to be graded so rain water would not drain into the driveways, but rather into the gutters. Councilmember Brewster said that was the original purpose of the project. Ms. Volek said she could research more information for Councilmember Brewster. Councilmember Clark asked who engineered the project. Mr. Towlerton said the City Staff handled the project, adding it was unfortunate a change order was required, but some items were overlooked. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of ITEM 1G, seconded by Councilmember Reugamer. Councilmember Jones asked Staff if the lease had been put out for other bids. Acting Director of Aviation, Tom Binford, said Edward's Jet Fuel is the owner of the fuel farm and the only user. Councilmember Jones asked if the equipment installed on City property becomes City property when the lease runs out. Mr. Binford said the fuel equipment is underground and the company just leases the parcel that it sits on. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 06-18451 FOR ANNEX. #06-07: annexing 57 acres in T1N-R26E-S23: N2NE4 Less C/S 515 and C/S 1335, but including C/S 999, generally located south of Wicks Lane between Hawthorne Lane and Bitterroot Drive, Felton Associates LLC, owner and petitioner. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

City/County Planner, Wyeth Friday said the property was agricultural, but is currently vacant. The applicant has not sought a zone change at this time.

The public hearing was opened. STAN MCINTIRE OF 1425 BITTERROOT DR. said he lives across the street from this property. Mr. McIntire's main concern was the weed control problem, noting there was a fire on the land in October 1990, that was fueled by the weeds. Mr. McIntire has talked with the Billings Fire Dept. about the fire hazard due to the dried weeds but they were unwilling to declare it a fire hazard. He requested the City Staff see that the weeds are properly controlled.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for conditional approval of Item 2, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION 06-18452 FOR ANNEX. #06-09: annexing 2.1371 acres in T1S-R25E-S23: NE4 described as C/S 2771, Tract 2, generally located on the south side of Hesper Road west of S. 32nd St. W, Rice

Wagon, LLC, petitioner, Brady Wagner and Carrie Orr-Wagner, owners. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

City Planner, Dave Green said this request is to build a daycare facility on the annexed property. The zoning is currently Controlled Industrial and will not need to be changed. Councilmember Gaghen asked if the whole facility would be used for daycare. Mr. Green said the whole building will be used for daycare with a possible future expansion for an "ill child" care center. Councilmember Gaghen asked how many children will be cared for at the center. Mr. Green said he had not been given a number of children. He added that there will be cameras in the daycare rooms that parents may monitor from a website.

The public hearing was opened. BRADY WAGNER, NO ADDRESS GIVEN, said he is the petitioner and owner and brought an architectural drawing of the proposed facility. He anticipates caring for about 200 children. Councilmember Gaghen asked the age of the children being cared for at the center. Mr. Wagner said they will care for children from six-weeks old to after-school daycare with summer camps available in the summer.

There were no other speakers. The public hearing was closed. Councilmember Veis moved for approval of the resolution with the conditions, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE amending the BMCC by revising Sections 23-304, 23-308 and 23-410, providing a procedure for review of subsequent minor subdivisions and providing updates to regulations on provisions of utility easements for subdivisions. Planning Board recommends approval of the amendments to Sections 23-304 and 23-308 and postponing amendments to Section 23-410 to an unspecified date. (Action: approval or disapproval of Planning Board recommendation.)

City Planner, Juliet Spalding said Section 23-304 refers to subsequent minor subdivisions which is five or few additional lots. The current Code requires a lengthy process which is unnecessary since the area had been included in the original process. The changes to the Code are changing "major" to "first minor". The changes to Section 23-308 would include the procedural requirements for the "first minor" subdivisions. Ms. Spalding said the Planning Board would like to postpone the changes to Section 23-410.

Ms. Volek said the City had already advertised Section 23-410 for a public hearing, so the public hearing must be opened for discussion on that section also. Councilmember Stevens asked what the rationale was for making the change from major to minor subdivision. Ms. Spalding said that in the County it makes sense to require the additional requirements, but not in the City. Councilmember Jones said the major subdivision title required notification of the adjacent property owners, and if this is changed how would the owners know about a proposed subdivision. Councilmember Jones said he would like the adjacent property owners to be notified before the action takes place.

Councilmember Veis asked when changes to Section 23-410 would take place. Ms. Spalding thought the changes should be ready to present the amendment to that section in the fall. Councilmember Veis asked if a specific date should be set for Section 23-410 to be presented. Ms. Volek suggested the first meeting in October to review Section 23-410.

Councilmember Brewster said he would prefer another public hearing on that matter by tabling the item tonight.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the revisions to Section 23-304 and 23-308 on first reading, seconded by Councilmember Veis. Councilmember Jones amended Section 23-308 – “subsequent minor,” to add notification of adjacent property owners no less than 15 days prior to public hearing, seconded by Councilmember Gaghen. On a voice vote, the amendment was approved. Councilmember Stevens voted “no”.

Ms. Volek said there is no provision under this amendment to hold a public hearing, so the Council would need to amend it to notify the public of the minor subdivision and hold a public hearing. Councilmember Brewster said he thought Councilmember Jones wanted the adjacent property owners notified in writing, seconded by Councilmember Gaghen. Councilmember Veis moved to amend Councilmember Jones’ motion to change from a public hearing to a comment period, there was no second. Mayor Tussing asked the City attorney if it was necessary to make it clear that the Council is not asking for a public hearing just notification to the adjacent land owners. Mr. Brooks said he would recommend notification of a specific period of public comment. Planning Director, Candi Beaudry said there is a review period of 35 days and letters could go to adjacent landowners prior to that time asking for comments. Councilmember Stevens asked who would research the adjacent landowners. Ms. Beaudry said landowners are listed on the preliminary plat. Councilmember Stevens asked what the expense to the City would be. Ms. Beaudry said for major subdivisions letters are sent by certified mail, which is required by law and costs about \$3.00 for each letter. The Council might want to specify if the letters are to be sent certified mail or first class.

Councilmember Veis amended the motion to read “the adjacent property owners would have two weeks to make comment,” seconded by Gaghen. Councilmember Brewster asked Staff to bring back on second reading clear wording for this ordinance. Councilmember Stevens said this is a land-use issue and the Council is almost dictating ex parte communication from the board. Mr. Brooks said the public comment should be directed to a specific decision-making body rather than just submitted to the City. Councilmember Jones said when it comes before the Council the adjacent property owners will have the opportunity to speak in a public forum. Councilmember Gaghen said it would be appropriate for comments to be directed to the Planning Department rather than to councilmembers because it is a department function rather than a ward function.

Councilmember Stevens said if a notice is sent, it should state a specific public hearing time and date when people could make a comment. Mr. Brooks said the City needs to advertise for a public hearing and with the first minor subdivision it was not intended to have a public hearing. Councilmember Ulledalen said the Council has complicated the issue that staff was trying to simplify. Councilmember Brewster said the intent is just to let people know and maybe a posted sign would meet the need.

Mayor Tussing amended the motion to ask Staff to give the Council options for the best way to notify the public of changes that might affect adjacent property owners. Councilmember Jones seconded the amendment.

Councilmember Jones made a substitute motion to delay Item #4 for two weeks to the next meeting, seconded by Councilmember Ruegamer. Councilmember Stevens

said the initial proposal with no notification is an acceptable option to bring back to the Council, adding this issue has become a "quagmire". Councilmember Veis said notification without opportunity to comment is not what the City wants. On a voice vote, the substitute motion was unanimously approved. The item was delayed to July 24th.

5. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently annexed properties in Annex #06-06, described as 5.651 acres in C/S 1011, Tr. B Amended, and adjoining rights-of-way in Grand Ave. and Zimmerman Trail, generally located east of 34th St. W and north of Grand Ave., Rocky Mountain Community Church, petitioner. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

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

6. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently annexed properties in Annex #06-08, described as two portions of C/S 1834, Tract 3-C-1, generally located north of Rimrock Rd. at 50th St. W, Aviara, Inc., petitioner. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

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

7. RESOLUTION 06-18453 temporarily suspending BMCC Section 24-411 to allow camping in the Shrine Auditorium parking lot for the 2006 Big Sky Polka Festival from August 31 through September 4, 2006. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Interim City Administrator, Tina Volek reminded the Council of the City Code allowing camping only in designated camp grounds. Recently, with the cooperation of the Chamber of Commerce, the City began passing out bags to campers at the 10-hour "rest stop" allowed in parking lots. This particular request applies to another section of the ordinance that allows camping two days before and after an event.

Councilmember Ronquillo moved to allow the Polka Festival a 48-hour stay at the Shrine Auditorium, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

8. 4TH AND BROADWAY REDEVELOPMENT – 2005 Update. (Delayed from 4/10/06). Ad Hoc Committee will report the status of negotiations and requests additional guidance from the City Council regarding development incentives and a time extension. (Action: direction to Ad Hoc Committee and Staff.)

Deputy City Administrator, Bruce McCandless reported the lack of activity on the redevelopment issue. The City has delayed negotiations due to the uncertainty of the use of reserves and the bonding capacity to finance the expansion of Park 2. There is some confusion with Stockman Bank over the price of the property and who funds the public and employee parking for that property. The Bank still wants the property and Staff will continue to work on the proposal to sell the property to them.

Mr. McCandless said the Sandstone Project developer was sent a letter letting him know what the committee was recommending to the Council in terms of incentives for that project. The committee requested a response from the developer by July 10th. The developer has responded back and asked for an extension to July 17th. Mr. McCandless said the committee is asking for any particular guidance from the Council and for time extensions for negotiations on both projects.

Councilmember Veis asked what confusion is going on with the Stockman Bank negotiations. Mr. McCandless said the original offer to the City was \$900,000 cash for the six lots, which is above market value. Stockman Bank has since responded that they anticipated some portion of the public and employee parking to be provided as part of its offer. Providing parking was not the committee's or Staff's understanding. Councilmember Clark asked if it was an advertised bid and was there any indication of the inclusion of parking. Mr. McCandless said it was an advertised bid and there was no mention of parking spaces. The proposal did have a deadline date that is well past, which is why Staff are continuing to negotiate.

Mayor Tussing asked if Stockman Bank was aware the market value was below its offer. Mr. McCandless said the appraisal was done subsequent to its offer, at the request of the committee. The Council authorized the committee to continue to work with Stockman Bank. However, the Council did not give consent to sell the property to Stockman Bank at that time.

Councilmember Gaghen asked if the \$900,000 was close to the amount paid to acquire the property. Mr. McCandless said it was. Councilmember Veis asked if Stockman Bank would move forward with its original offer. Mr. McCandless said he thought it would be hesitant. The next step would be to get the committee and Stockman Bank together to make everyone's wishes clear. Councilmember Clark asked if Stockman Bank had agreed to a moving date without any conditions. Mr. McCandless said the moving date was March or April.

Councilmember Jones asked for the appraised value. Mr. McCandless said he believed it was \$630,000, which included the adjacent property of six lots plus the right-of-way, former 5th Avenue. Councilmember Gaghen said part of the problem is the City's need to complete our plans for Park 2; "it's put everything in a 'state of limbo.'" Stockman has been good to work with the City and the committee; the Council needs to give the committee direction in order to proceed, she noted.

Councilmember Veis asked if these issues could be resolved in the next couple of weeks. Mr. McCandless said it would probably take no longer than 30 days. Councilmember Ulledalen asked if the Council could discuss the issue at the next work session. Ms. Volek said it could be added to the work session if the Council desired and the decision delayed to the July 24 meeting.

Mr. McCandless said that Mr. Fagg is requesting a delay to July 17th. He didn't know if the committee would be ready with a recommendation by the July 24th meeting. Mayor Tussing asked if the Sandstone project could proceed if the Stockman Bank offer falls through. Mr. McCandless said the two projects are not dependent on one another.

Councilmember Clark moved to postpone Item 8 to August 14th, seconded by Councilmember Gaghen. Councilmember Ulledalen said Mr. Fagg's request to delay to July 17th does not coincide with Council meeting; July 24th would be the earliest opportunity to respond.

Councilmember Veis made a substitute motion to delay Item 8 to the July 24th meeting, seconded by Councilmember Stevens. On a voice vote the motion was approved with Councilmembers Clark, Jones and Gaghen voting "no".

9. WASTEWATER SERVICE AGREEMENT with Lockwood Water and Sewer District, initial term: 15 years. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Deputy Director of Public Works-Belknap, Al Towlerton said the Council approved an agreement with Lockwood Water and Sewer District in September, 1999. That agreement with Lockwood Water and Sewer District was terminated when they were unable to fulfill the terms of the agreement. This agreement provides for treatment of wastewater that is to be delivered to the City through facilities built and financed by the Lockwood Water and Sewer District. The City would undertake a rate study to establish the rates to be charged for the service. The agreement also includes a minimum of a 15% rate of return to the City. The Public Utilities Board considered this item at its June meeting and has recommended approval of the agreement to the Council.

Councilmember Ruegamer asked who would pay for the rate study. Mr. Towlerton said this agreement does not specifically address who would pay for the study. Mayor Tussing said the Council needs to know who will pay for the rate study before approving the agreement. He said the citizens of Lockwood should pay for the rate study rather than Billings citizens. Mr. Towlerton said the Council could make that part of the agreement. He said this is a parallel agreement to the Billings Heights water agreement and the rate study is not included specifically in that agreement. Councilmember Brewster said the water study was a part of the overall rate study and this is a separate issue.

Councilmember Ulledalen asked why the City would want to give Lockwood the extra capacity in the City's wastewater system. What is the incentive to subsidize additional growth on the fringes of our community, he asked. Mr. Towlerton said Lockwood would pay its fair share for the service. Lockwood would have to build the facilities across the river to bring the wastewater to the City's facilities. This can be looked at as a community effort, a neighbor needing help, but benefiting the City as a business contract for service. Councilmember Brewster said the City would benefit from the rate of return and utilize the additional capacity that the City is not currently using. If the City needed the additional capacity, then Lockwood would have to make other arrangements. Mr. Towlerton said the agreement stipulates a notification period of eight years to terminate the agreement.

Councilmember Veis said the old contract states if 55% or more of the district is annexed, the district would be dissolved. He asked if there is a reason why this statement is not in the new agreement. Mr. Towlerton said the district asked to have that statement removed from the agreement because that statement became an issue in bond elections in the past. The intent was in case annexation took place, the district would be dissolved. Councilmember Veis said if they did become annexed then is the City saying that the district must continue. Mr. Towlerton said the only way a district can be dissolved is by a vote of the people in the district. Councilmember Veis said it would take a substantial effort to dissolve the district if Lockwood was annexed.

Councilmember Ulledalen said it appears that the City is giving Lockwood an incentive not to be annexed into the City. "We are extending the value that we've created in our City to them and that takes away the incentive to annex," he said. Mr. Towlerton said this agreement would solve Lockwood's current problem.

Ms. Volek said this request was made by the Lockwood Sewer District in preparation for its elections. The \$40,000 to \$50,000 rate study would be completed only if there is a successful election in Lockwood. At that point the City could undertake a separate agreement with Lockwood to have it pay for the rate study. Ms. Volek reminded the Council that the Council had requested Staff for an analysis to determine if the annexation of the Lockwood area is beneficial to the City. The analysis should be available in the fall.

Councilmember Veis asked if there are any provisions if Lockwood were to become an incorporated municipality. Mr. Towlerton said no provisions were provided for the possibility of incorporation. Councilmember Gaghen asked if there is some projection of income from this proposal. Mr. Towlerton said a projection has not been done; it cannot be compared to the Heights Water District because Lockwood would only be using the treatment of wastewater, no other services.

Councilmember Jones said City residents pay a System Development Fee when hooking up and asked how much of that fee is for the treatment facility. Mr. Towlerton said the fee would vary over a period of time. It is based on historical investment in the system. Councilmember Jones asked if the City gives the benefit to Lockwood of just adding the System Development Fee into its rates, why doesn't the City give that benefit to City residents. He added that it would be cheaper for Lockwood residents to hook-up, than it would be for City residents. Mr. Towlerton confirmed that was correct.

Councilmember Veis asked what kind of load this would add to the system. Mr. Towlerton said there were some estimated flow charts in the supporting documentation. He said the City has an average capacity of 26 Million gallons. Lockwood is anticipating 1 Million gallons in 2017, which is a small proportion. The issue is probably not the actual flow as some of the restrictions, the total maximum daily loads on the river, nitrogen and phosphorus. Ultimately, it will relate to service as the most significant issue.

Councilmember Veis said the City needs to put a provision in the agreement to dissolve the district if Lockwood is annexed. Mr. Towlerton said he would support that provision. Councilmember Ruegamer moved to approve Item 9 with the stipulation the rate study be paid by the Lockwood Sewer and Water District, seconded by Councilmember Gaghen.

Councilmember Veis amended the motion with the stipulation should Lockwood be annexed into the City, the Water and Sewer District would be dissolved, seconded by Councilmember Brewster. Councilmember Clark asked if that included the water along with the sewer. Councilmember Veis said that complicates the issue. Councilmember Brewster said this issue is a great point for not annexing Lockwood. Councilmember Veis said the annexation issue needs to be discussed and decided whether or not the City wants to annex Lockwood. Mayor Tussing said there are too many unanswered questions. Councilmember Brewster said the difficulty in talking with Lockwood is in knowing what political entity to talk to. The political entity that governs Lockwood is the County Commissioners and they are not interested in Lockwood being annexed because it is part of the County tax base.

Councilmember Ulledalen said he would like to hear from senior members on the Council regarding why the City should take on Lockwood's problems and fix them. Councilmember Brewster said many of the septic systems have failed and Lockwood is facing some catastrophic problems. Without the City being willing to support Lockwood for a period of time, it will not be able to build its own system. This action would help Lockwood reach its potential. Councilmember Ruegamer voiced his concern about the possible pollution of the river through too many septic systems failing. He added that the City should go ahead with this project because the system has the capacity and the City could make some money from the service.

Ms. Volek said that Lockwood's grant money may be in jeopardy if it doesn't get an agreement in place. Councilmember Veis said the grant was to place a sewer main under the river to connect with Billings. If the bond doesn't pass this time, the grant will run out and Lockwood will not have the opportunity to use the grant money.

Councilmember Jones said the Council has already turned down Golden West Estates when it requested City sewer and water because it was unable to pave the streets as requested by the Council. The City has had a policy to annex before extending sewer and water to any site. Councilmember Clark said the lots at Golden West Estates were so large in that subdivision that it couldn't afford to pay the fees.

Councilmember Jones said Lockwood won't have to pay the hookup fee. Councilmember Veis said the Council is tied by previous Council actions. Lockwood has moved forward with plans expecting this Council to accept the agreement. Councilmember Stevens pointed out that Lockwood will have to pay for the cost of transporting the wastewater to the treatment plant in addition to the rate paid to the City. Councilmember Ulledalen said the City is extending a subsidy to Lockwood while not knowing the full implication. He said he would support the agreement when Lockwood assumes the full cost of the project.

Councilmember Jones amended the motion to add "at the discretion of the City to dissolve the district", seconded by Councilmember Gaghen. On a voice vote, the motion was approved with Councilmembers Stevens, Clark, Brewster and Veis voting "no". On a voice vote, the motion as amended was unanimously approved.

Councilmember Veis made a substitute motion to delay Item 9 for a month to allow for more discussion, seconded by Clark. Ms. Volek said in order for Lockwood to get this on the ballot, it would have to submit a petition 75 days before the election, i.e. by August 23rd. Ms. Volek said the Council could invite Lockwood to a work session to

discuss the proposal. On a voice vote the substitute motion was approved. Councilmembers Gaghen and Brewster voted "no".

10. MPEA/Police Union 2006 – 2009 contract. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Deputy City Administrator Bruce McCandless said the current contract expired on June 30th and covered 108 officers below the rank of sergeant. The team used Interest Based Bargaining (IBB) techniques, starting in May with 26 issues, nine formal sessions and tentative agreement on 16 issues. Contract changes were focused on changes that benefit both the City and the officers.

Contract changes include: (1) grievance procedure – involving union leaders and HR manager sooner; (2) education – pay for degree attainment and tuition reimbursement; (3) hours of work and minimum staffing – 10 hour shifts vs. unknown and 8-9 beats equals number of officers; (4) shift differential and weekend pay – to entice senior officers; (5) certification pay – advanced training and continuing education; (6) COLA – CPI-U with cap and floor.

Councilmember Reugamer asked if the shift differential and weekend pay is for senior officers only and not for junior officers. Mr. McCandless said the incentive pay is for both senior and junior officers. Councilmember Reugamer said the incentive pay should go to the senior officers in order to get them to sign up for those shifts. Councilmember Veis asked if the union had given any assurances that the senior officers would sign-up for the weekend shifts. Mr. McCandless said there are no assurances, the incentive pay is an effort to get the senior officers to sign-up.

Councilmember Brewster asked about the portion of the contract regarding fitness which had been stricken from the new contract. Mr. McCandless said the fitness program is voluntary. The past fitness program rewarded those that participated with monetary rewards. It tended to reward those officers who were already staying fit and was difficult to administer. The officers must meet standardized tests and if they meet the requirement they are rewarded with additional time off.

Councilmember Veis asked how many officers do not have a degree. Mr. McCandless said there are 27 officers with bachelor degrees and 7 officers with associate degrees, out of 108 officers. Councilmember Veis asked how many officers with degrees had been hired within the last 5 years. Mr. McCandless said not many of the new officers had degrees, nor the senior officers; most of the degrees are with those in the middle. Councilmember Veis asked how a degree requirement would affect the hiring process. Chief of Police, Rich St. John said applicants do get additional points for having a degree. Officer Mark Cady said a degree doesn't help in the officers' ability to pass the reading comprehension test.

Councilmember Gaghen asked for tuition assistance clarification. Mr. McCandless said tuition reimbursement has always been a part of the contract. If an officer has a degree, they receive an additional amount of pay each month, \$25 for an associate degree and \$50 for a bachelor degree.

Councilmember Jones asked about the pay situation when an officer has been placed on administrative leave - does he/she continue to receive pay. Chief St. John said if someone was placed on administrative leave, they did continue to receive full benefits and sent home. They will now be re-assigned to a desk job within the department if they can continue to work.

Councilmember Veis asked which items specifically address the IECP report. Chief St. John said the staffing or shift scheduling, adjustment to 8 or 12 hour days, the IA process, and the grievance policy address IECP issues. Councilmember Jones asked for an example of an unknown grievance. Mr. McCandless cited the example of a work situation being changed and when the officer finds out about it, he then has 10 days to file a grievance.

Councilmember Veis said he did not think the weekend pay at \$.25 would be enough enticement to cause a senior officer to signup. Union representative, Officer Dave Cardillo, said "no" but they looked at the entire package and are trying to break up the stratification of senior officers on days and junior officers on nights and weekends. "It's not a fix-all but a shot to try and improve the situation," he said. Councilmember Veis said if it is not enough incentive had they thought of tying the incentive to the rate of pay. The senior officers bid for shifts before the junior officers. Ms. Volek said the issue is not if a junior officer will have to take the least desirable shift but how long they will have that shift. Officer Cardillo said officers could wait 10 years to get off night shifts. Councilmember Veis said the incentive pay goes to everyone working nights so it is not really an incentive. Officer Cardillo said they are a Union and to single out classes is counter-productive to their cause. They will look at the outcome in three years and see if the incentive pay is working. Councilmember Jones said if this incentive doesn't work we will just be paying out the extra money without realizing the benefit.

Councilmember Ruegamer said the education incentive is good, but he is disappointed that the physical requirement has been eliminated. He said he sees it as a health insurance issue. Officer Cardillo said they are looking at the issue and what mechanism is needed to reach the goal. The City has a "Fit for Duty" tool which is currently in use and works. The previous program was costly (\$75,000) and didn't get the desired results.

Councilmember Gaghen complimented the team that negotiated the agreement this time and which resulted in less contention. The City may not have reached the ideal but is moving in the right direction and needs to encourage that continuation. Mayor Tussing also credited the negotiation team for working well together through the process.

Councilmember Stevens said she is concerned that the incentive pay would be seen as an entitlement not as a mechanism to break up the stratification. Officer Cardillo said that every time it's time to renew the contract there are no entitlements, every contract is a new contract. Ms. Volek acknowledged Mr. McCandless' leadership in the negotiations this year and commended his efforts, as well as the others on the team.

Councilmember Clark moved for approval of the union contract, seconded by Councilmember Ruegamer. Councilmember Veis asked that the incentive pay be tracked to show if it was effective. Councilmember Ruegamer voiced his concern for the physical fitness aspect of the contract. Councilmember Stevens asked for a semi-annual report addressing the incentive pay, noting she doesn't want to wait three years for a report. Mr.

McCandless said the shift bids are made at year-end so Staff can't report until the end of the calendar year.

Councilmember Brewster made a substitute motion to delay this item for two weeks, seconded by Jones. Councilmember Stevens asked the reason for the delay. Councilmember Brewster said he wants to see a comparison with the previous contract of the percentage of increase. Councilmember Gaghen pointed out that COLA will have been affected by the interest rate increase. Councilmember Ruegamer said two-thirds of the amount was cost-of-living and it's a good contract. On a voice vote the substitute motion failed. Councilmembers Jones and Brewster voted "yes".

Councilmember Jones voiced concern for the shift incentive pay, also. He would like to re-negotiate if the City doesn't see the desired results. Councilmember Gaghen asked for the cost differential for the incentive pay. Mr. McCandless said it would be almost \$300,000 over three years and will be phased in.

Human Resource Manager, Karla Stanton gave the numbers for shift differential which is phased in: 2007 - \$38,000; 2008 – \$75,000; 2009 – \$119,000. Ms. Stanton said for the past six years she's seen mistrust in the City organization. She realized that the mistrust was developed at the bargaining table. Ms. Stanton said this contract negotiation was "give and take on both sides" and coming to an understanding of the issues and why they were important to both sides.

Councilmember Clark said the Council can't talk about what the Council wants until they come to the Council meeting and are asked to vote on the contract; there should be some way to change the process. Councilmember Brewster said with a public process, even to discuss the contract is a problem. If anyone is critical of any part of it, then they're seen as not approving of the police department. Mr. McCandless said in IBB only the issues are established and open, public discussions are allowed. Councilmember Clark said he would have liked to discuss the contract at an earlier point in the process. On a voice vote on the original motion, the motion was approved with Councilmember Jones voting "no".

**11. 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.)**

- KEVIN NELSON OF 4235 BRUCE AVE. spoke on the recent Board of Ethics meeting where one of the Board members, Paul Cox, was found in violation of the City Ethics Code. He asked why this issue was not on the Council Agenda this evening since all committees report to the City Council. Mr. Nelson asked that the variance in question be reviewed and a fair variance be established.

City Attorney, Brent Brooks said the Board of Ethics met on June 28th because of Mr. Nelson's complaint and thoroughly discussed the matter. Meeting minutes are being prepared. Dr. Dell is conferring with other members of the Board and will send a letter to Mr. Cox. The Board of Ethics decided to send a letter of warning to Mr. Cox. A copy of the letter and the minutes will be sent to the Council.

Councilmember Veis said the Board of Adjustment has already made the decision and it is a quasi-judicial entity so there is nothing the Council can do to overturn

their decision. Mr. Brooks said not at this point; there is a statutory procedure by which a body can appeal a Board of Adjustment decision. Councilmember Veis asked Mr. Brooks if there are action steps that the Council needs to take after it receives the letter. Mr. Brooks said the Council can take any action it deems necessary on how to handle future situations. Councilmember Veis asked if conflict-of-interest training needs to be extended to the various City boards and commissions. Mr. Brooks said they have had conflict-of-interest training, but can have more training if necessary.

Councilmember Stevens pointed out this is the same person that was on the ad hoc sign committee that was discussed at a previous meeting. This person had not disclosed that he worked for a sign company. She asked if he has been dismissed from that committee. Ms. Volek said he had been dismissed from that committee. Candi Beaudry said the Board of Adjustment has received training sessions on the materials provided by the legal department. She added the Zoning Commission has had two training sessions and ex parte communication was covered. Councilmember Veis asked if other boards and commissions have had the training. Ms. Volek said the boards and committees are being reviewed to see if they meet the City's needs. Staff will then proceed with the necessary training.

The public comment period was closed.

COUNCIL INITIATIVES

- COUNCILMEMBER RUEGAMER MOVED to have Staff contact Jani McCall asking for notification when the fireworks bill comes before the State legislature. (Councilmember Ruegamer volunteered to contact Ms. McCall), seconded by Councilmember Veis. On a voice vote the motion passed unanimously.
- COUNCILMEMBER VEIS MOVED that the FY07-08 budget be prepared with the General Fund receiving 74 mills and the Library Fund receiving 5 mills, noting that the City Charter states the Library Fund is to receive 5 mills, seconded by Councilmember Brewster. Councilmember Brewster asked for information on the issue first and then the Council could vote on the issue. He would like discussion on the budget, rather than a Council Initiative. On a voice vote the motion passed, Councilmember Gaghen voted "no".
- COUNCILMEMBER VEIS MOVED to allow the Montana Meth. Project to use City buildings for its "*Paint the State*" program, seconded by Councilmember Jones. Councilmember Clark said the deadline was today. Councilmember Stevens said when this was discussed earlier she thought it meant painting City buildings, but now she knows they mean hanging banners from the buildings. Councilmember Veis said he'd be fine with painting the buildings. He said it makes the City look bad by not participating in this project and the City should be willing to paint over any building that gets painted with a mural. Councilmember Gaghen said she doesn't know of a City-owned building that isn't brick and couldn't be painted. She said banners would be fine. Mayor Tussing said he was not in favor of letting anyone paint messages on City-owned buildings. Ms. Volek said the funds are limited and to have to re-paint and/or deal with "tagging" that may follow would be costly. Councilmember Jones amended the motion to allow banners but not paint. The motion died for lack of a second.

Mayor Tussing asked Ms. Volek if the City has been inconsistent among the departments. Ms. Volek said "yes" (evidently the Library has a "Paint the State" banner

hanging from its building). Mayor Tussing said it's unfortunate that the City has been inconsistent, but it's also unfortunate that the Library has to take down its banner. Councilmember Gaghen made a substitute motion to allow art that's not permanent to be displayed on City buildings, seconded by Councilmember Brewster. On a voice vote, the motion was approved. Councilmember Ruegamer voted "no".

- COUNCILMEMBER RUEGAMER asked Ms. Volek if the Councilmembers are receiving the information on the Montana League of Cities & Towns. Ms. Volek said she receives the newsletters, would follow-up, and get the information to Councilmembers.

- MAYOR TUSSING said his office is updating the list of committees and Councilmembers appointed to committees. Staff will then look at available seminars on specific applicable topics. Ms. Volek said she would put the subject on the Work Session schedule. It was also requested that Alec Hanson be invited to that Work Session.

- COUNCILMEMBER JONES asked for the status of the City Administrator search. Councilmember Veis said the position is closed and the number of applicants was not known when he last emailed Mr. (Jim) Mercer, the recruiting agent for the City Administrator position. Mr. McCandless will be in touch with Mr. Mercer and request the applications be made available to the Councilmembers by Friday, July 14. Mr. Mercer noted that throughout the process there were concerns regarding the Towe Initiative and some of the City turmoil.

ADJOURN - With all business complete, the meeting was adjourned at 10:22 p.m.

THE CITY OF BILLINGS:

By: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Tami Greeley, Deputy City Clerk