

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 14, 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 6:30 p.m. and served as the meeting's presiding officer. Mayor Tussing led the Pledge of Allegiance and Councilmember Nancy Boyer gave the Invocation.

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

MINUTES -- July 24, 2006. Approved as printed.

COURTESIES

- Councilmember Veis congratulated the Billings Scarletts on the State Championship in AA baseball. The Scarletts won in Great Falls and participated in the Regional Tournament in Casper.
- Mayor Tussing congratulated Councilmember Boyer on the birth of her new grandson.

PROCLAMATIONS – None

ADMINISTRATOR REPORTS – Tina Volek

- Interim City Administrator Tina Volek noted that the Council had been provided with a revision of Item #10 regarding the Park II financing.
- She pointed out that the Council had also received a revised resolution on the Mayor's Committee on Energy and Conservation via email and as a handout.
- Ms. Volek said there was a comment on Item #9 – the Big Ditch Trail Project in the ex parte notebook found at the back of the Council Chambers.
- She reminded the Council of the Agenda Review meeting on Tuesday, August 15th at 5:30 p.m. in the City Hall conference room.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #9 through #13 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.)

- TOM ZURBUCHEN OF 1747 WICKS LN. spoke on Item #11. He said this reminded him of the Billings Heights Water District. Mr. Zurbuchen said the Heights Water District was set up so the City could take it over. He has never heard the Council discuss that possibility and has never seen a Councilmember at

the Heights Water District meetings. He urged the Council not to get into this agreement as it would encumber future City councils.

- KIM PRILL OF 4440 RIDGEWOOD LN. S. spoke in support of the Big Ditch Trails project. She said the Shiloh tunnel is a critical trail for children to get to school. She said a lot of the residents of St. Johns and many of the neighborhood residents use and enjoy the trail.
- NANCY BELK OF 1744 ROBIN said she is on the Lockwood Water/Sewer Board. She asked the Council to vote in favor of the agreement.
- VERN BASS OF 2012 VIRGINIA LN. spoke on Special Agenda Item #2, regarding the baseball field. Mr. Bass said the Council and committee are "thinking too small". The City needs to look at the horizon and work on projects that take 20-30 years. He said sinking \$12.5 Million into the baseball field at this time is not a good idea.
- CARLOTTA HECKER OF 3325 DOVE LN. said she is in favor of the Lockwood Water/Sewer contract. Ms. Hecker said Lockwood needs a sewer because issues continue to arise.
- MERRILL WALKER OF 1035 PALOMINO PL. said he appreciates the Council considering the Lockwood Water/Sewer agreement. The agreement would benefit Lockwood and also benefit Billings in the long-run.
- ROB HUNTER OF 2215 24TH ST. W. said he is President of BikeNet. He said BikeNet is a resource available to the City. He commended the delay of the Council decision at the last meeting in order to obtain more information before approving a project. He said his organization is available to help the Council make decisions on the various bike trails.
- MIKE CRUZAN 1045 JT LANE urged the Council to pass the Lockwood Water/Sewer agreement. He said most of the Lockwood residents work and shop in Billings. Mr. Cruzan said the agreement would show Billings as a "good neighbor to Lockwood".
- PAUL SMITH OF 3908 BLUEBIRD said the Lockwood Water/Sewer agreement would not be good for Lockwood. Mr. Smith said the people of Lockwood do not want to be annexed. He urged the Council to consider the people instead of "big" business.
- CARL PETERS OF 1548 ROSEBUD LN. urged the Council to ratify the latest contract for Lockwood's wastewater treatment. He said they currently have only a temporary solution with septic tanks -- those septic tanks are pumped by Billings' disposal services and then taken to the Billings treatment plant for disposal.
- TIM CRAMER OF 245 SUBURBAN DR. said he appreciates the Council's time in looking over the Lockwood Water/Sewer agreement and encouraged the Council to vote in favor of the agreement. He said many people in Lockwood are in favor of the agreement.
- STEVE NAVÉ OF 1735 CANARY said he's not sure if he's in favor of the Lockwood Water/Sewer agreement. Mr. Nave said there are other options available and Lockwood does not want to be annexed.

CONSENT AGENDA:

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

(1) **Human Relations Commission**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Gwendolyn Kircher	Human Relations Commission	08/14/06	12/31/09

1. Unexpired term of Rev. David Jernigan

B. **Bid Awards:**

(1) **W.O. 06-03, Contact #2: 2006 Street Maintenance.** (Opened 7/25/06). Recommend JTL Group, Inc., \$518,848.89.

C. **Change Order #3, W.O. 05-01A: Michigan Street**, JEM Contracting, Inc., \$2,300.00.

D. **Contract for Library Services**, Golden Valley County, term: 7/1/06 – 6/30/07, \$4,962.30.

E. **Funding Agreement** with Yellowstone County Council on Aging (YCCOA), \$21,000.00.

F. **Assignment and Transfer** of West End Hangar Ground Lease from Brian Bross to Bonnie Daniels.

G. **Contract Extension** with Montana Dept. of Public Health and Human Services – Developmental Disabilities Division to 6/30/07.

H. **Agreement** with Montana Supreme Court and acceptance of the donation of up to \$1500 for youth scholarships for low income families to register for PRPL summer youth programs.

I. **Approval** of purchase of thirteen (13) police vehicles from Bison Motor Company as determined per State bid, \$284,804.00.

J. **Purchase Of An IBM i5 Server**

(1) Approval of purchase of an IBM i5 Server through the State of Montana WSCA agreement, \$96,185.12.

(2) Authorization to apply for an INTERCAP loan for \$125,000.00 through the Montana Board of Investments to pay for a new i5 (AS400) and associated costs plus four integrated x series servers.

K. **Acceptance** of FAA Airport Improvement Program (AIP) #31 grant, \$1,204,742.00.

L. Affordable Housing Development Agreement with Menola Land, Sage Tower LLC for a \$175,000.00 loan at 1% and amortized over 20 years.

M. Acceptance of a \$500.00 memorial gift donation from Linda Bell (and friends) in memory of Michael Bell, for trees to be planted at Heritage Park.

N. Approval of Domestic Violence Unit Grant (\$52,000.00) and Victim Witness Program Grant (\$38,000.00).

O. Acknowledging receipt of petition #06-12 to annex a 14.077-acre parcel described as Tract 1, C/S 1648 and including adjoining road tracts, generally located near the southwest intersection of Central Ave. and Shiloh Rd., Bell Family Trust, owners, and setting a public hearing for 8/28/06.

P. Resolutions of Intent to create:

- (1) **Res 06-18459** re: SILMD 290: S. 32nd Street West
- (2) **Res 06-18460** re: SILMD 299: Vintage Estates Sub.
- (3) **Res 06-18461** re: SILMD 300: Bellville Sub.

and setting a public hearing for 9/11/06.

Q. Street Closures:

- (1) Black Otter Hill Climb: intersection of Airport Road and Swords Bypass Road to the top of the trail, August 19 – 20, 2006.
- (2) Western Wheel Bar Customer Appreciation Celebration: Minnesota Ave. between S. 27th and S. 28th Streets, August 26, 2006.
- (3) Billings Association of Realtors 2 and 5-Mile Run: Masterson Circle on Hwy 3, down Airport Rd., right on 27th St; right on Rimrock Rd; left on Virginia Ln; through Pioneer Park from Zimmerman Center to the SE corner of the park, left on 3rd St. W., right on Parkhill; right on 32nd St., disbanding at the corner of 6th Ave. N. and 32nd St. in the Transwestern parking lot, August 26, 2006.
- (4) Billings Clinic's Classic Street Party: N. Broadway between 3rd Ave. N. and 4th Ave. N.; as well as the alley that runs between 3rd Ave. N. and 4th Ave. N. August 24-27, 2006.

R. Second/Final reading ordinance 06-5378 for Zone Change #778: A text amendment to BMCC Section 27-310(i), changing the size, height, and bulk for detached accessory structures within all residential zoning districts within the Billings city limits. Yellowstone County Board of Planning initiated the amendment on May 9, 2006.

S. Second/Final reading ordinance 06-5379 for Zone Change #783: A zone change from Controlled Industrial to Residential-6,000 on Lots 17 & 18 of Block 32 of Highland Addition, and located at 109 South 39th Street. Dave Hagstrom, owner.

T. Second/Final reading ordinance 06-5380 amending the BMCC by revising Sections 23-304 and 23-308, providing a procedure for review of subsequent minor subdivisions.

U. Second/final reading ordinance 06-5381 expanding the boundaries of Ward II to included the recently annexed property in annexation #06-07: 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.

V. Second/final reading ordinance 06-5382 expanding the boundaries of Ward III to included the recently annexed property in annexation #06-09: 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.

W. Preliminary Plat of Gunn Estates Subdivision, 2nd Filing, generally located on the north side of Lux Ave. between Calhoun Lane and Orchard Lane, conditional approval of the plat and adoption of the findings of fact.

X. Preliminary Plat of Amended Lot 3, Block 1, Yellowstone Ridge Sub., generally located north of Rimrock Rd. at the intersection of 54th St. W. and Rocky Mountain Blvd., conditional approval of the plat, approval of the variance and adoption of the findings of fact.

Y. Final Plat of Lake Hills Subdivision, 13th Filing Amended.

Z. Bills and payroll.

- (1) July 14, 2006
- (2) July 21, 2006

(Action: approval or disapproval of Consent Agenda.)

Councilmember Veis separated Item I. Councilmember Veis moved to approve the Consent Agenda with the exception of Item I, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Veis moved for the approval of Item I, seconded by Councilmember Ruegamer. Councilmember Veis asked Interim City Administrator Tina Volek if Staff could wait to purchase the two new cars until the outcome of the Public Safety levy is known. Ms. Volek said Staff could wait until after the election to purchase the two new cars. Financial Services Manager Pat Weber said the City would put the purchase of the two cars "on hold" until the results of the election are known.

Councilmember Ruegamer asked why the local Ford dealership had not bid on the cars. Mr. Weber said the purchase of these cars is through the State bid on patrol cars. Councilmember Ruegamer moved to amend Item I to include the purchase of 11

new police vehicles, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 06-18462 annexing a 36-acre parcel described as Tract 1, C/S 3273, generally located on the west side of 46th St. W., south of Rimrock Rd., Jim Boyer and Paul Bromenshenk, petitioners. (#06-11). Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)

City Planner Juliet Spalding said the new subdivision would be known as River Rock Estates. Ms. Spalding said the closest Fire station is #5 at 604 S. 24th St. W.; the new proposed station would be closer at 54th & Grand. She noted that the Police Dept. is concerned over the limited access to the property.

The public hearing was opened. JOE WHITE OF 926 N. 30TH ST. said he opposes annexation that changes zoning from agricultural to residential. Mr. White recommended postponing this decision until the new City Administrator is hired.

KIM PRILL OF 4440 RIDGEWOOD LN. S. said she is a resident of Rimrock West. She said her primary concern is the 200 duplex units proposed in River Rock Estates. Ms. Prill said the only access for the new subdivision is through 46th Street and Rangeview Drive. She said Rangeview Drive was not meant as a thoroughfare and suggested that Poly Drive is more appropriate as a boulevard. Poly Drive would be a "straight shot", while Rangeview Drive winds through the neighborhood. Interim City Administrator Tina Volek reminded the Council that the original zoning request has been withdrawn and is being re-examined by the applicant at this time.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Stevens. Councilmember Ruegamer said perhaps this is not the time to be annexing any property until the Public Safety levy is approved by the voters. Councilmember Veis said if the Public Safety levy does not pass there are a lot of places in the City that will be in worse shape than this particular property. Councilmember Ruegamer said this property is currently outside of the City limits and if the City annexes the property, it is then responsible to provide fire protection. Councilmember Jones said this area is already included in the BUFS (Billings Urban Fire Service Area) so it is already being provided with fire service.

Mayor Tussing said another way to look at this annexation is the more people paying into the Public Safety levy, the amount of taxes each person has to pay is lessened. Councilmember Gaghen said if the Public Safety levy does not pass there will still be the opportunity to make restrictions at a later date. On a voice vote, the motion was approved with Councilmember Ruegamer voting "no".

3. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property in 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. Staff

recommends conditional 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 Stevens moved for approval of the Staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND VARIANCE #OP06-01: a variance from the Site Development Ordinance, Section 6-1203(j) regarding parking spaces on Lots 1-5, Block 1, Cellan Acre Sub., Tract S, generally located at the northeast corner of Grand Avenue and 11th St. W, between Grand Ave. and Ave. B. Rich Hageman (Dairy Queen), applicant. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff presentation. The public hearing was opened. RICHARD HAGEMAN OF 1212 ROMELDA LN. said he is the owner of the Dairy Queen. He urged the Council to pass the variance because "it is needed". Councilmember Ruegamer asked when construction would begin. Mr. Hageman said the proposed target date was June 15, but demolition was started just last week.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved to approve the Staff recommendation, seconded by Councilmember Stevens. Councilmember Stevens said this is a situation that Council created. She urged the other councilmembers to approve this request. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTIONS 06-18463, 06-18464 and 06-18465 vacating portions of Zimmerman Trail abutting Lots 1, 2, and 4, Scott Subdivision, Lot 1 parcel: \$2,669.10; Lot 2 parcel: \$2,618.26; and Lot 4 parcel: \$3,017.60. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff presentation. Councilmember Veis asked if the three resolutions need to be separated. Assistant City Attorney Bonnie Sutherland said there is no reason to separate the three parcels of land. Councilmember Stevens asked what happened to Lot 3. Councilmember Ulledalen said all the adjacent landowners were given the opportunity to purchase the land, but some of the landowners chose not to make the purchase.

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

6. PUBLIC HEARING AND RESOLUTION 06-18466 adopting the Gateway Business Park Plan. Planning Board recommends approval of the plan with Alternative #2 as the preferred implementation strategy. (Action: approval or disapproval of Planning Board recommendation.)

Interim Planning Director Candi Beaudry noted this plan was created in 2003, but was not brought forward until now, for a variety of reasons. This area is also known as the "Gateway Triangle" and consists of 84 acres, containing 740 lots owned by 89 different entities. There were three alternative plans: (1) Alternative #1 – do nothing, (2) Alternative #2 – encourage transition from residential/light industrial to a light industrial business park,

(3) Alternative #3 – build on the Gateway Business Park alternative, but allow for larger, more extensive development projects. The preferred plan is Alternative #2.

Councilmember Ruegamer asked if the City is responsible for relocating residents when making a zone change. Ms. Beaudry said rezoning does not require anyone to relocate. Current residents would be “grandfathered in”. She said if residents did need to relocate, the City would help them find funding.

Councilmember Stevens asked if there was discussion to declare this a “blighted area”. Ms. Beaudry said “it has been declared a blighted area.” She also noted that Beartooth RC&D has tested the groundwater in the area and will continue to monitor the groundwater.

Councilmember Ulledalen asked why traditional infrastructure costs are \$.75 - \$1.25 per/square foot, while in this project the costs are \$2.50 per/square foot. What is the reason for the additional cost? Public Works Director Dave Mumford said the difference is caused by the need to tear up existing infrastructure vs. new construction. Councilmember Ulledalen asked why Alternative #3 was rejected. Ms. Beaudry said that Alternative #3 would allow vacation of many of the streets creating mega blocks. The current business owners in the area like all the streets because the streets provide multiple points of access for the businesses.

Councilmember Boyer asked what the City’s portion - 70% of the cost, would cost. Ms. Beaudry replied it would cost approximately \$9 Million. Mr. Mumford said the cost would come out of the gas tax. He said the City gets somewhere between \$1.4 – 1.5 Million in gas tax, and \$500,000 is set aside for the road PAVER Program. Councilmember Boyer asked if all other projects would be “put on hold” for nine years. Mr. Mumford said the Council would have to determine the priorities. He said, “it would be very difficult to be building in other areas of the City.” Councilmember Ulledalen said Alternative #3 looks like it would give “more bang for the buck”. Ms. Beaudry said the current owners do not want the street grid to change. She added an analysis that compared the alternative plans to determine which would bring in the most money was not conducted. Councilmember Brewster asked what percentage of residents are in favor of this plan. Ms. Beaudry said most of the residents were renters, but “easily half” of the business owners were in favor of this plan.

Councilmember Ronquillo said some of the businesses allowed on S. 27th St. are non-profit and pay no taxes. “The people of south Billings receive very little help from the City,” he stated. Councilmember Ronquillo said the Gateway Triangle is a step in the right direction and he encouraged the Council to support this business plan.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ronquillo moved to approve the Staff recommendation for Alternative #2, seconded by Councilmember Gaghen. Councilmember Gaghen said this area has been “under-served”. She said Conoco has been very cooperative and helpful in this process. Councilmember Brewster said he’d like to know what contributions Conoco makes to this project. He also said that he knew some business owners in the area that “are not nuts about” this plan. On a voice vote, the motion was unanimously approved.

The Mayor called for a brief recess at 7:40 p.m. The meeting was called back to order at 7:48 p.m.

7. PUBLIC HEARING AND RESOLUTON 06-18467 approving tax benefits for Golden Recycling and Salvage, Inc. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)

Deputy City Administrator Bruce McCandless said this is the first application received by the City since the three tax-incentive programs were approved in 2005. This application is for industrial expansion. He said 50% of the new taxable value of the improvement to the property is exempt from City and school levies for the first 5 years and then 10% of the value is added back until the 10th year is reached. Mr. McCandless said Golden Recycling and Salvage, Inc. plans to add over \$1 Million of new equipment. The conditions requested by the City are: (1) completion of the project within one year; (2) the project must be completed according to the plan submitted and (3) the applicant must complete the required paperwork.

President of Golden Recycling and Salvage Jim Gallup said with the new equipment his company should recycle the "pile" faster. He said the new equipment will increase capacity by 35%. Mr. Gallup noted that any materials recycled are diverted from the landfill.

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

8. PUBLIC HEARING CONTINUED AND FIRST READING ORDINANCE FOR ZONE CHANGE #784: A zone change from Residential-9,600 to Residential-6,000- Restricted on Lot 1, Block 1 and Lot 1, Block 2 of Arlene Subdivision, and located at 3410 and 3416 Poly Drive. City of Billings' Public Works Department, owner; David Mumford, agent. (Delayed from 7/24/06). Zoning Commission makes no recommendation. (Action: approval or disapproval of Zoning Commission recommendation.)

Interim Planning Director Candi Beaudry said the Planning Dept. received a petition protesting the zone change on July 24, 2006, the day of the last Council meeting. Ms. Beaudry said her dept. has determined that it was a valid protest petition. Because of the validity of the petition a two-thirds majority vote of the Council is required in order to approve this zone change.

Councilmember Boyer asked what R6000 meant. Ms. Beaudry said R6,000 means single-family dwellings are allowed on a lot of 6,000 square feet minimum. Councilmember Stevens said she had requested from the Planning Dept. drawings showing the difference between R9,600 and R6,000 on the property in question. Ms. Beaudry said she did not have those drawings.

Councilmember Ulledalen asked about road access to the property. Public Works Director Dave Mumford said access would be much more difficult with the R9,600 than with the R6,000. Councilmember Boyer asked if the surrounding property is zoned R9,600. Ms. Beaudry replied that the majority of the surrounding property is R9,600. Mr. Mumford said just looking at the shape of the property one can see the difficulty of using the larger lots. He said higher density along an arterial road would work well as a buffer zone.

Councilmember Veis asked if the City were to sell the property without the zone change, would the new owner have to wait a year to request a zone change. Mr. Mumford replied "yes" they would have to wait a year. Councilmember Veis asked if it would be

more beneficial for the City to withdraw the application, sell the property and then the new owner could then make an application for re-zoning. Ms. Beaudry said the Council could choose to make that decision.

Interim City Administrator Tina Volek said the revenue from this property has been built into the plan for this year. She noted that if the property is not sold this year, then some other project will not be funded. Councilmember Veis suggested withdrawing this application, selling the land to a developer as R9,600 and letting the developer make the application and present a plan to the adjacent landowners to meet the wishes of all involved. Mr. Mumford said the profit from the sale of the land would be greatly reduced by selling it before rezoning the property. He said the monetary difference between R9,600 vs. R6,000 would be about \$300,000 - \$450,000 for the property.

Councilmember Stevens asked if there was any consideration of mapping out the area in order to show the neighbors the plan for the area. Mr. Mumford said it is very rare for a developer to lay out the property prior to the zone change. Usually the entire lay out comes after the zone change. He said the dept. could do a map with the Councils' direction.

The public hearing was opened. KATHRYN MC KINNEY OF 2324 GREEN VALLEY DR. said she is against the zone change because of the problems with access, the narrow lots, the lack of parking and the surrounding property being devalued.

KIM WALLINDAR-MOFFET OF 2214 GREEN VALLEY DR. said this is very poor planning on the City's part. She said the City is asking residents to give up the character of the neighborhood. Ms. Wallindar-Moffet said a traffic study needs be done; traffic from this area has to be diverted onto Poly Dr.

JIM QUASS OF 2311 GREEN VALLEY DR. said lots that border this property are between 10,000-15,000 square feet compared to the proposed 6,000 square foot lot with the R6,000 zoning. He said he is concerned about the impact on schools, increased traffic and property values. Mr. Quass said there needs to be more planning before making a zone change.

TOM MC KINNEY OF 2324 GREEN VALLEY DR. said he has been in his home for 28 years. He noted that 31% of the neighborhood is against rezoning this property. Mr. McKinney said the density issues brought up "hold no water" because Block 2 is uninhabitable and there will be no access to that property. He said rezoning this area will cause congestion on both Poly Drive and Zimmerman Trail.

There were no other speakers. The public hearing was closed. Councilmember Jones moved to withdraw zone change #784 and direct the Staff to sell the property as is, seconded by Councilmember Boyer. Councilmember Jones said there were a lot of issues when the corridor was installed. He said this is a Council responsibility rather than a Staff responsibility. Councilmember Veis said there are costs involved in mapping the area and the plan brought forward by the Planning Dept. will work. Councilmember Brewster said there are other dense, single-family subdivisions surrounding R9,600 zones that are very nicely done. Councilmember Jones said he agrees, but a developer should take the initiative on a zone change.

Councilmember Boyer said the Council needs to listen to the valid protest that has been submitted by the neighbors. Councilmember Stevens said the City does need to maximize the dollar. She said the R6,000 would work better for the property.

Mayor Tussing asked Assistant City Attorney Bonnie Sutherland if a two-thirds majority would be required on this motion. Ms. Sutherland said this is a completely different motion and a two-thirds majority would not be required because the protest would not apply to it. Councilmember Ruegamer reminded the Council that there are a lot of dollars involved in this decision. On a roll call vote, the motion was disapproved. Councilmembers voting "no" were: Ronquillo, Stevens, Brewster, Veis, Ruegamer, and Clark. Councilmembers voting "yes" were: Gaghen, Ulledalen, Boyer, Jones and Mayor Tussing.

Councilmember Veis moved for approval of the Staff recommendation, seconded by Councilmember Brewster. On a roll call vote, the motion was approved. Councilmembers voting "yes" were: Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Jones and Clark. Councilmembers voting "no" were: Ulledalen, Boyer and Mayor Tussing. The two-thirds majority of the Council required to approve the rezoning with a valid protest petition was met.

9. BID AWARD: W.O. 05-12: Big Ditch Trail – Billings, Federal Aid No. STPE 1099(49), MDT CN5908. (Opened 7/11/06; delayed from 7/24/06). Staff recommends CMG Construction, Inc., Base bid and Bid Alternate #2, \$105,730.00 and 30 calendar days, contingent on CTEP concurrence. (Action: approval or disapproval of Staff recommendation.)

Interim Planning Director Candi Beaudry reminded the Council that this work order had been delayed by Councilmember Ulledalen's request in order to prepare a "plan" for the connecting trails. There will be four phases to the plan. Phase I will construct the trail as far west as the dept. can go with the CTEP funding. Phase II will continue the trail from where it ended in Phase I and continue west. Phase III is for connecting trails from subdivisions to the Big Ditch Trail. The funds for Phase III have not been secured at this time. Phase IV is a crossing at 43rd Street and is tied to the funding for Rush Park.

Councilmember Ulledalen said the residents of Chandelier Circle held a public meeting in February asking about the connection to the Big Ditch Trail. He said he brought it up to Staff in March asking why the connections were not included in the bids at that time. Ms. Beaudry said the connections were not part of the original CTEP grant. The project specific agreement between the City and Montana Dept. of Transportation (MDT) was signed last year which identified what work will be done in the project. She said the City cannot just add connections without renegotiating the agreement. Councilmember Boyer asked why the connections were not included in the original agreement. Ms. Beaudry said the main objective was to get the main trail finished.

Councilmember Stevens asked why the cost of construction is so high. She said the cost is working out to over \$500,000 per mile. Ms. Beaudry said the cost reflects materials and engineering fees. Councilmember Ulledalen noted the Council had received the cost breakdown and voted on the cost in the past. Councilmember Veis said the costs may seem high, but building a trail is similar to building a road and all the costs involved. Mr. Mumford said the cost also includes inspections and construction management during the construction process.

Councilmember Ulledalen read a memo from Ms. Beaudry dated June 15th which stated the Chandelier Circle connection would be completed in 2007. He asked

what caused the change for the Chandelier Circle to be connected in 2008 instead of 2007. Ms. Beaudry said the priority is to complete the main trail. All the connections will be financed through a single grant. Councilmember Ulledalen said connections have been made to undeveloped subdivisions, while leaving adjourning completely-developed subdivisions without trail connections.

Councilmember Ronquillo asked who would maintain the trail connections once they are completed. Ms. Beaudry said the City will maintain the trails and connecting trails through its Parks Dept. Councilmember Ulledalen said he has told people that it is the Parks Dept. responsibility, but the funding is not available.

Councilmember Jones said the concrete paths are being installed because the maintenance is less with concrete than with asphalt. Councilmember Ronquillo asked why asphalt was installed on the trails along S. Billings Blvd. Mr. Mumford said that area is along the boulevard right-of-way and asphalt is less expensive and can be maintained easily when adjacent to a road. The trails along the parkway do not allow for the equipment necessary for asphalt repair.

Councilmember Ulledalen said the trail is on the north side of the ditch and Chandelier Circle is south of the ditch. He said he is concerned about the safety issue of the trail leading up to the ditch with no way to cross over the ditch. Ms. Beaudry said this is a safety issue and the Planning Dept. is looking for private funding for the bridge. If that funding was provided, the dept. would make it a priority connection. Mayor Tussing asked Ms. Beaudry if BikeNet has already committed its funds for this year. He said there is no way to get on the trail from the south side. Ms. Beaudry said she does not know if BikeNet has committed its funds for this year. She added that Phase I funds are being matched through a BikeNet grant, however. Interim City Administrator Tina Volek said the path in Chandelier Circle could be blocked by a fence to address the safety issue.

Councilmember Veis asked if the trail connections would be the top CTEP priority at that time. Ms. Beaudry said the application for the trail connections was submitted to CTEP at the end of July. She added that six other applications were also submitted. Ms. Beaudry said all the applications have to go through City Council, the County Commissioners, TAC (Technical Advisory Committee) and PCC (Policy Coordinating Committee) for approval. The PCC must choose from the many applications. Therefore, the funding is not guaranteed noted Ms. Beaudry.

Mayor Tussing said at the last PCC meeting there were \$1,590,000 worth of requests and only \$560,000 CTEP funds available. Councilmember Brewster said the Council does not get any say on these issues until the PCC has already made the decisions. He would like the councilmembers to be informed earlier in the process. Mayor Tussing asked if the Council had approved the request before it was submitted to CTEP. Ms. Beaudry said "no"; the Council did not specifically approve the requests before going to CTEP, but did approve the Heritage Trail System and this is an implementation of that plan. Mayor Tussing asked if Staff could come to the Council before the plan goes to CTEP for approval. Ms. Beaudry said the Planning Dept. will be presenting all of the CTEP applications at a future work session. She said the dept. could distribute the applications to Council earlier in the process and then bring the presentation to the Council. Councilmember Clark asked if the Council could approve

which applications are sent to CTEP. He said the Heritage Trail plan is just a plan and not specific. Ms. Beaudry said the Council can direct Staff as to its wishes.

Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember Ulledalen said he is frustrated because the Staff does not have plans for the connections. He wants a "game plan" for when the connections will be made so the residents can be informed. The City has "one mess" already and he does not want any more. Councilmember Boyer said many people in the community consider those trails "imperative" for the quality of life in the City. She said the trails attract people to the City and added that the trails are a means for children to travel to school.

Councilmember Stevens said she has a feeling that these issues are going before the PCC before coming to the Council and then the PCC just expects the Council to "rubber stamp" them. Ms. Beaudry said Staff does take the Heritage Trail as the guide to go forth with trail implementation. She said the Council's representation on the PCC is the Mayor. Ms. Beaudry said there is room for improvement as far as the CTEP process and getting Council input prior to submitting applications, adding that CTEP is the main source of funding for the trail system.

Ms. Volek said the City has received a bid for this work and in order to award the bid the Council needs to approve the work order. On a voice vote, the motion was unanimously approved.

10. RESOLUTION 06-18470 regarding a proposal from Koch Financial Corporation to finance the Park II Expansion at a rate of 5.48%. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Staff did not have a presentation. Councilmember Boyer moved to approve the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Veis asked if an INTERCAP loan had been investigated. Financial Services Manager Pat Weber said he did not check into an Innercap loan because he had been directed to sell bonds for the financing. Because of the short timeframe there was not the 60-90 days required for an INTERCAP loan. Councilmember Ulledalen said this is a better option than tying up INTERCAP loan funding with this large of a loan. On a voice vote, the motion was unanimously approved.

11. WASTEWATER SERVICE AGREEMENT with Lockwood Water and Sewer District, initial term: 15 years. (Delayed from 7/10/06). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff presentation. Interim City Administrator Tina Volek reminded the Council of the work session where this item was discussed extensively. Councilmember Boyer said the annexation issue comes up on any discussion of the agreement. She wanted to confirm to the public that the Council is not even considering annexation of Lockwood at this time. Ms. Volek noted it was the topic of was a Council initiative sometime ago. Staff is working on a cost-benefit analysis of the cost of a long-range plan to annex Lockwood. The report will be available around the end of October. Councilmember Gaghen said she wanted to reassure Lockwood residents that the Council does not have long-range plans to annex that area.

Councilmember Ruegamer moved to approve the Staff recommendation for approval of the agreement, seconded by Councilmember Veis. Councilmember Brewster said he had discussed this issue with people in the Heights when it was annexed. The Heights was required to be annexed in order to obtain sewer system rights. He said he has talked with business owners in Lockwood that would like to be a part of Billings. He suggested that the citizens of Lockwood petition for annexation in order to receive City services.

Councilmember Stevens said she is concerned about the environmental issues in Lockwood. She said the Lockwood residents are "trying to get the best of both worlds." Councilmember Stevens said they want a sewer system without paying City taxes. She said this is not advantageous for the City.

Councilmember Boyer said the City should sign the agreement for health-related reasons. She said if the Council wants more money for the service, then the City should charge Lockwood more. Councilmember Stevens said the City did not create the problem, so is not responsible for the solution. Lockwood residents do have other options.

Councilmember Ulledalen said people buy in Lockwood because the property is cheaper. He said the City is subsidizing Lockwood by extending a service to Lockwood residents and they are not paying for the whole service. Councilmember Ulledalen said the Council had recently approved the Shiloh Overlay, which raises the cost of development in the corridor as opposed to a business owner building in Lockwood without the requirements and/or taxes. Councilmember Jones said he is concerned that the Council is giving Lockwood an advantage over City builders and this agreement encourages "sprawl".

Councilmember Veis said if the City signs this agreement, it needs to make a long-term agreement because of the investment Lockwood would have to make to connect to the City sewer system. He noted that the City would not stop "sprawl" by signing this agreement. Councilmember Boyer said if this is not taken care of at this time, there may be a "greater mess" at a later date. Councilmember Veis said the agreement does set a boundary for service. He noted that a rate study would be done and paid for by Lockwood. The City could do another rate study in the future before extending the boundary. Councilmember Ulledalen said this Council should not pass on to future council's the problems that may be incurred through this agreement.

Councilmember Boyer said she is concerned that the State might mandate that the City take care of Lockwood's sewer problems. Councilmember Stevens said concerns about the State mandating the City to take care of Lockwood's sewage needs in the future might just as easily be a mandate from the State for Lockwood to build its own system. Councilmember Gaghen asked Public Works Director Dave Mumford if the State would be likely to mandate such a request. Mr. Mumford said it would be more likely that the State would mandate "regional" sewer disposal State wide, rather than just a Lockwood/Billings scenario. Mr. Mumford said there are other sewer systems that the State could require of Lockwood because of septic tank failures that are more probable than the State mandating Billings to take Lockwood's sewage.

Councilmember Clark stated he has property in Lockwood and it could be a conflict of interest, so he will recuse himself from voting. On a roll call vote, the motion was disapproved. Councilmembers voting "no" were: Ronquillo, Stevens, Brewster, Ulledalen,

Jones and Mayor Tussing. Councilmembers voting "yes" were: Gaghen, Veis, Ruegamer, and Boyer. Councilmember Clark abstained from voting.

12. RESOLUTION 06-18468 creating the *Energy & Conservation Commission*, defining the duties and making appointments. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Interim City Administrator Tina Volek said she would like to add Alan Lohof to the list of employees serving as ex officio members. Fire Chief Marv Jochems concurred with this appointment. She said a list had been distributed to the councilmembers that evening.

Councilmember Veis moved to approve the Staff recommendation, seconded by Councilmember Jones. Councilmember Brewster said he works for a utility company and had asked Staff earlier if that constituted a conflict of interest. He was told that it did not. Mr. Brewster suggested councilmembers use the candidate's number in order to add or subtract individuals from the list. Councilmember Gaghen said the Mayor had requested input from the councilmembers regarding the appointments. Mayor Tussing said he only received input from three of the councilmembers.

Councilmember Brewster amended the motion to remove #7 (Robert Lubbers) from the appointees, seconded by Councilmember Veis. Councilmember Jones asked why Councilmember Brewster wished to remove this particular individual. Councilmember Brewster said in his "bio" the organization affiliations listed by this individual are "unreasonable" organizations. Councilmember Boyer said there are other individuals on the list that belong to the same organization to maintain a "balance". Councilmember Stevens said this commission should be made up of individuals with the technical knowledge required rather than an advocacy group. Mayor Tussing said he received a number of applicants that are affiliated with this particular organization. He said he tried to balance the commission appointees with different viewpoints.

Councilmember Ulledalen said "some of the alternative fuels that are being pushed sound good on balance," but there is a 25-30% drop in efficiency with the use of those fuels, which would not be advantageous to the City. On a voice vote, the amended motion was approved. Mayor Tussing and Councilmember Gaghen voted "no".

Councilmember Ruegamer moved to add Alan Lohof as an ex officio Staff member to the committee, seconded by Veis. On a voice vote, the amended motion was unanimously approved.

Councilmember Stevens amended the motion to remove #10 (Ron Fenex) from the appointees, seconded by Councilmember Ulledalen. On a voice vote, the amended motion was approved. Councilmembers voting "no" were: Gaghen, Ronquillo, Ruegamer and Mayor Tussing.

Councilmember Stevens amended the motion to add Richard McComish and Chris Allard to the commission appointees, seconded by Councilmember Ulledalen. Councilmember Boyer asked for these individual's qualifications. Councilmember Stevens said Mr. McComish has an extensive background in electrical engineering and no one else on the commission has an electrical engineering background. She said Mr. Allard has a background in controls design for heating and air conditioning, which is applicable to the purpose of this commission. On a voice vote, the amended motion was approved. Councilmember Gaghen and Mayor Tussing voted "no".

Councilmember Veis asked if this would be an ad hoc committee or an ongoing commission. Mayor Tussing said he did not envision this commission to be an ongoing commission. Councilmember Ulledalen said committees need specific goals and deadlines in order to be more efficient. He added that this commission may complete its objectives and should be able to disband when the objectives are met. Mayor Tussing said it is hard to place a time limit on a commission. He said his objective in creating this commission was to help Staff and citizens throughout the City with conservation measures. Ms. Volek noted the committees make presentations to the Council at work sessions.

Councilmember Brewster amended the motion to end the commission on December 31, 2010, seconded by Councilmember Ruegamer. Councilmember Brewster said if at that time the commission had valid objectives still to be met, then the time limit could be extended at that time. Councilmember Ulledalen said key objectives should be defined at the start of the commission and when those objectives are met the commission should disband.

Councilmember Brewster called for the question, seconded by Councilmember Ruegamer. On a voice vote the motion was unanimously approved. On a voice vote, the amended motion was unanimously approved.

Councilmember Jones amended the motion to make all appointments for four years, seconded by Councilmember Ulledalen. Councilmember Ruegamer said after two years the committee needs some "new blood". On a voice vote, the amended motion was approved. Councilmembers voting "no" were: Brewster, Ruegamer and Mayor Tussing.

Councilmember Gaghen said she finds it inappropriate for the Council to remove candidates during the Council session. Councilmember Brewster said the Council has been criticized in the past for doing business "under the table", adding that the Council has an obligation to do business in the open. Councilmember Veis said this meeting was the most open that the Council has ever been. He said he appreciated receiving the list of appointees prior to the meeting. Councilmember Gaghen said appointee choices should be made by email or phone. Councilmember Stevens said if the Council does communicate by phone or email, it would be accused of a "serial meeting", which violates the public meeting laws. Councilmember Jones said he finds this openness within the Council encouraging. He said the Council was very discreet about calling the candidates by number rather than by name. Mayor Tussing said it was a "tough call" for him because of the many applicants. Councilmember Boyer said this discussion has been good; sharing concepts within the Council are beneficial. On a voice vote on the original motion as amended, the motion was unanimously approved.

13. RESOLUTION 06-18469 awarding the sale of \$380,000.00 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2006. (Opened 8/14/06. Recommendation to be made at meeting. Northland Securities at 4.7083% true interest rate. (Action: approval or disapproval of Staff recommendation.)

Interim City Administrator Tina Volek said a revised Item 13 memo was placed on each councilmember's desk. The bids were opened at 2:00 p.m. today. Councilmember Brewster moved to approve the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

14. 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.) There were no speakers.

COUNCIL INITIATIVES

- COUNCILMEMBER CLARK MOVED to direct Staff to allow the Council a vote on CTEP funding issues before going to the PCC, seconded by Councilmember Stevens. Councilmember Brewster said the Council is not given time to make comments on the different applications. Mayor Tussing said it would be easier for him to vote at the PCC meeting if he knew the Council's wishes before attending the meetings. Councilmember Boyer asked for PCC meeting times and dates. Interim City Administrator Tina Volek said Staff would notify the Council of times and dates. On a voice vote, the motion was unanimously approved.
- COUNCILMEMBER STEVENS MOVED to re-zone property adjacent to the Airport that was overlooked in the re-zoning from Agriculture-Open Space to Public at the time of annexation, seconded by Councilmember Clark. Councilmember Jones asked the purpose of this motion. Councilmember Stevens said the City does not have an "Agricultural-Open Space" zone. This is an effort to bring it into compliance with other property in the area. Councilmember Boyer called for the question, seconded by Councilmember Ulledalen. The call for the question motion was approved with Councilmember Jones voting "no". On a voice vote, the original motion was unanimously approved.
- COUNCILMEMBER STEVENS MOVED to re-zone two lots previously part of Lake Hills Golf Course, which were also overlooked by the City in 1993 when the subdivision was established. She said two lots need to be re-zoned from Public to Residential in order for one of the homeowners to make an addition to his home. The motion was seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.
- COUNCILMEMBER RONQUILLO asked Staff to find out who is driving across the bike path on Charlene Street. The area is posted to restrict motor vehicles. He also asked Staff why the bike path in front of Newman School is blacktopped. The students are tracking the blacktop material into the school. Public Works Director Dave Mumford said the asphalt in question is brand new, once it "cures" there will not be any more tracking problems.
- COUNCILMEMBER GAGHEN asked the Council to "celebrate" the birth of Councilmember Boyer's new grandson. She also congratulated Bruce and Cheryl McCandless on their 30th wedding anniversary today.
- COUNCILMEMBER VEIS asked for the status of the strategic planning schedule. Interim City Administrator Tina Volek said she was waiting to schedule the strategic planning session after the City Administrator candidate interviews. Since the interview dates have now been set, she will call Mr. Sipes and set a date for the strategic planning sessions. Ms. Volek added that the Council had paid around \$11,000 for the strategic planning process. She said another twelve-hour session is a comparative fee to the original fee.

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ADJOURN - With all business complete, the Mayor adjourned the meeting at 10:23 p.m.

THE CITY OF BILLINGS:

By: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Tami Greeley, Deputy City Clerk