

# City Council Work Session

November 20, 2006  
5:30 PM  
Community Center

## ATTENDANCE:

Mayor/Council (please check)  Tussing,  Ronquillo,  Gaghen,  Stevens,  Brewster,  Veis,  Ruegamer,  Ulledalen,  Boyer,  Jones,  Clark.

## ADJOURN TIME: 7:35 P.M.

## Agenda

<b>TOPIC #1</b>	<b><i>Public Comment</i></b>
<b>PRESENTER</b>	
<b>NOTES/OUTCOME</b>	

- There were no speakers.

<b>TOPIC #2</b>	<b><i>Board &amp; Commission Reports – Board of Adjustments</i></b>
<b>PRESENTER</b>	Leon Pattyn, Chair
<b>NOTES/OUTCOME</b>	

- The Board of Adjustment members present at the work session meeting were: Chairman Leon Pattyn, Troy Boucher and Barbara Walbourn. Chairman Pattyn reported that last year the Board received 25 applications: 21 variances; 1 administrative appeal and 3 land uses contrary to zoning. Two (2) committees were formed to update bylaws and to develop a policies and procedures manual. The Committee also recommended updating the website to provide the public with information packets it is better informed when attending the meetings. Mr. Pattyn also reported that this quasi-judicial board hears appeals. Applicants look at the quasi-judicial board as adversaries and often call councilmembers in ex-parte communications. Councilmembers may be required to annually sign a conflict disclosure statement. It was also learned that the Board may need to hire outside counsel in order to avoid conflicts of interest.
- Mr. Pattyn noted also that the 1000<sup>th</sup> appeal will be heard next month.
- He stated that there is no resources/budget for training and some members have expressed interest in training. Councilmember Brewster suggested Mr. Pattyn make his request through the Staff and the Council will consider the request for the next budget.

<b>TOPIC #3</b>	<b>ZONING TEXT AMENDMENTS AND MINIMUM STANDARDS ORDINANCE</b>
<b>PRESENTER</b>	Candi Beaudry
<b>NOTES/OUTCOME</b>	

- Acting Planning Director Candi Beaudry stated there were concerns expressed by the Council and complaints received from the public regarding sections of the zoning code. She requested Council guidance in how to proceed to initiate change in three categories:
  1. Sign regulations within the CBD with reference to address issues that come through as variances and the ability to identify large buildings.
  2. Projecting signs such as on Montana Avenue.
  3. Need to clarify the citywide code with simpler tables. She said they are not proposing to change any regulations, only how these regulations will be displayed in the code. The regulations will also be reviewed with sign companies before coming back to the Zoning Commission and City Council.
- Deputy Mayor Boyer asked if projecting signs would be allowed. Ms. Beaudry replied “yes” projecting signs would still be allowed. Councilmember Ronquillo asked about the requirements for canopy signs. Ms. Beaudry replied that the canopy signs would extend up to 2/3 of the width of a sidewalk. The sign height will be “self-regulated” to a 9-foot minimum. She also explained that she had met with the property owners’ association and various other interested parties.
- Councilmember Veis asked if there were any changes to the RV parking ordinance. He stated he has received complaints from constituents about enforcement. Ms. Beaudry said there are no plans to revise the RV parking regulations that were addressed in 1999. She also explained that the zone change application process proposal requires pre-approval from the majority of the surrounding owners before formal application is submitted to the Planning Department. Ms. Beaudry stated this could possibly reduce conflicts. Councilmember Brewster asked who would do the survey. She said the applicant would be responsible for the survey. The Planning department prepares the map and the list of geocodes. The property owner must obtain the owner list. Councilmember Ronquillo said neighbors should be allowed to protest. The process also requires a pre-application meeting, but not approval. Ms. Beaudry explained that this meeting is mandated by state law. “Proof” that a meeting was held is also required.
- Councilmember Stevens replied that at the last strategic planning meeting a discussion was held on matching zoning to existing uses. Ms. Beaudry explained that zoning is supposed to set “future” land use and shape the community, not be retrospective.
- Councilmember Brewster agreed that zoning should be a planning tool. For example, Bench Blvd. should possibly be zoned commercial in the future. He said it should not be changed to residential zoning just because that is today’s land use. City Administrator Tina Volek stated that this approach would be too time consuming to rezone many parcels to match existing land use. Ms. Beaudry stated that it would also raise regulatory-taking issues.

- Ms. Beaudry explained that presently beer and wine licenses are always special review uses. This allows restaurants with alcohol service without gaming and outside the 600 foot separation area to be allowed without special review. Councilmember Ruegamer asked, “Why exclude gambling and/or legal problems?” Ms. Beaudry replied, “Gaming is more controversial.” City Attorney Brent Brooks replied that statutes say the City can control location, but not existence. He said perhaps the City needs to review the pre-application meeting requirement. Councilmember Clark asked, “How many applications are received per year?” Mr. Brooks replied, “Not many and they are not a problem for the City Council.” Ms. Beaudry also added that 11 applications were received in 2 years for alcohol with gaming, but she didn’t know about those without gaming. She suggested that with reference to the casino regulations perhaps the City should look at how other cities deal with casinos. For example, Bozeman doesn’t allow vehicle fuel sales with casinos. A special review is required.
- An option would be creating an overlay zone which can be shaped and put on any commercial zone. This would allow the Council to control placement and density by a distance separation requirement. Casinos have to be treated the same in any zone that allows them. Ms. Beaudry noted that Whitefish has a casino zone and casinos are allowed only in that zone. Some cities use the dispersal method. This method would allow casinos in many zones but the Council could set separation requirements – from each other and from residential uses. Ms. Beaudry said the Staff recommends the overlay method.
- Councilmember Gaghen asked if the City could set its own separation distance. Ms. Beaudry replied, “Yes, the minimum standards regulation in state law doesn’t allow the building code to enforce minimum building standards; it must be kept in the zoning code. This would allow the City to regulate exterior appearance – paint, siding, roofing, windows, drainage, etc. Councilmember Boyer stated that she had many neighborhood complaints about buildings being left boarded up. While not dangerous, they are unsightly and a blight on the neighborhood. Ms. Beaudry said that they would use the complaint process through Code Enforcement to address these instances.
- Councilmember Brewster asked, “If the natural drainage goes onto the adjoining property, is that allowed and if the street is used for the drainage way, who is responsible when one person receives drainage from many properties?” Ms. Beaudry explained this will need to be researched. Usually the owner has to contain runoff that originates on his property, but he is not responsible for drainage from other properties.
- Councilmember Gaghen asked about the pattern of minimum standards in relation to neighbors’ complaints, i.e. how is the problem remedied? Ms. Beaudry explained that some owners do resolve it voluntarily, or the owner can be cited and the judge decides the remedy. Zoning Coordinator Nicole Cromwell stated that minor home repair grants are available from the Community Development division and some of these owners could utilize this resource. Ms. Beaudry explained this would only apply on a complaint basis and would not deal with all problems. Ms. Beaudry also noted that regulations must be uniform across similar zoning districts; the City cannot “condition” a zone change because that property would be treated differently than other uses in the same zone. The only conditional controls are through special reviews.

- Ms. Beaudry spoke on wind turbines as this is a trend the department is starting to see. The situation was brought up by residential owners and by the county commissioners regarding a problem on S. Broadway between 3<sup>rd</sup> and 4<sup>th</sup> Avenues as to whether or not this code would deal with this. Deputy Mayor Boyer asked about alternative energy. Ms. Beaudry gave examples of 100kw (commercial use), 5kw and 6kw turbines that would fit residential areas, noting that the double helix design reduces turbine speed. This is commonly used in Europe. This type would probably also regulate noise, flicker (sun reflection and shadow pattern), height and setback. She said an extra unit would be allowed only if the principal unit is owner-occupied.
- Ms. Beaudry reported that neighborhood convenience service allows small retail/commercial use that serves the neighborhood needs for groceries, etc. Ms. Cromwell added that this is only a conditional use; it is not allowed by right. Councilmember Ulledalen expressed a concern about allowing this use in existing neighborhoods because of delivery problems, parking, etc. He noted when such a use is discontinued for a year, the conditional use expires. Ms. Beaudry said this use does allow residents to walk to markets however.
- Councilmember Ulledalen asked for information on cell phone towers. Ms. Beaudry reported that the department already regulates cell phone towers. The regulations for “on government land” have different standards than on private lands. Since 2002, the Planning Department has only received two (2) regulation-controlled applications. Ms. Volek reported that speculative building has slowed down because of declining demand as technology improves.

#### **PUBLIC COMMENT LATE EDITION:**

- Deputy Mayor Boyer stated some people missed public comment and suggested taking comment.
- ANYA FIECHTL, 512 AVENUE C, of the Yellowstone Valley Citizen Council spoke on the new biodiesel initiative. She said a recent editorial prompted them to assemble more information she and wanted to present it to the Council.

A brief recess was taken at this time. Deputy Mayor Boyer called the meeting back to order.

<b>TOPIC #4</b>	<b>1<sup>ST</sup> QUARTER FY07 BUDGET REPORT</b>
<b>PRESENTER</b>	Bruce McCandless
<b>NOTES/OUTCOME</b>	

- Councilmember Veis asked about the airport operating fund and when the old airport tower would come down. City Administrator Tina Volek stated it is coming down now-the cab is removed and the superstructure will be removed in the spring.
- Deputy City Administrator Bruce McCandless reported on the 1<sup>ST</sup> Quarter FY07 Budget Report for the six major funds. The report on the minor expense funds was not available for this meeting. This report will be available to councilmembers soon.
- Mr. McCandless pointed out a few items under the General Fund with reference to the public safety levy campaign and the timing for the receipt of taxes. He said there is less

than \$800,000 out of almost a \$1,000,000 of anticipated revenue and taxes. This is simply because taxes are not due until November 30<sup>th</sup> and will not be distributed to the City until about mid December. The interfund transfers in revenue are much higher than they were a couple years ago because the Billings Operation Center (BOC) debt is transferred into the General Fund and then paid back out of the General Fund.

Operations & Maintenance (O&M) expense is higher than anticipated at this point of the year because most of the City's property and liability insurance payments are due at the beginning of the fiscal year and that payment has been made. Mr. McCandless pointed out the Council Contingency account shows 31% has been expended, but it is not actually 31% expended because \$33,000 was encumbered from year 2006. He noted the Council has not yet spent any of the Council Contingency for this fiscal year. City Administrator Tina Volek interjected that this expense was for the new microphones in Council Chambers.

- Mr. McCandless spoke next on the Public Safety Fund. O&M reflects a large expenditure at this time of the fiscal year, again because the City's property and liability insurance payments are paid out of Public Safety and transferred into the General Fund, which shows as a revenue. The interfund transfers are primarily due to the transfer to the equipment replacement fund, which is set up at the beginning of each year. The Police Department also has an interfund transfer to make payments on debt service for the Operations Center and the Animal Shelter.
- He stated that the Water Operating Fund shows capital expenses of \$10.4 million via encumbrances for the filter building. There have also been significant "real time" expenditures. The Public Works – Wastewater Operating Fund had nothing significant to report at this time.
- Mr. McCandless said the Public Works-Solid Waste Operating Fund charge-for-services is only 7% of the anticipated revenue. Most of these charges are received through property taxes and will not be credited until the middle of December. With reference to other expenditures, capital is 48% expended, primarily due to several of the replacement vehicles that have been ordered but have not yet been paid.
- Finally, Mr. McCandless pointed out the Airport Operating Fund has a large capital budget because it has federal grant projects as well as the local passenger facility charge expenses. These charges occur primarily from the boarding ramp.

<b>TOPIC#5</b>	<b>COUNCIL INITIATIVE REVIEW</b>
<b>PRESENTER</b>	Tina Volek
<b>NOTES/OUTCOME</b>	

- City Administrator Tina Volek highlighted changes in the Council Initiative Report: (1) the East end TIF is completed; (2) the electronic sign committee is now meeting, (3) in regard to the no-kill shelter, a meeting was held on October 4<sup>th</sup>. Another meeting will be held on December 20, 2006. (4) the initial part of the Lockwood annexation report is partially finished and will be completed in December 2006. (5) the Architects and

Engineers committee meetings are completed and a report will be set for a future work session.

- Councilmember Ruegamer asked for the requirements to sell 4<sup>th</sup> and Broadway property. City Attorney Brent Brooks replied that it would require a Council resolution, public hearing, and notification of surrounding owners. The normal property transfer procedures would apply.
- Ms. Volek reported that the invoice for the spay-neuter clinic was received and paid.
- Ms. Volek said that she is speaking to DPARB on Wednesday about building and planning to suggest that DPARB conduct a thorough review of building functions. Deputy Mayor Boyer asked when this would be concluded. Ms. Volek replied it would be completed in about nine months.
- Councilmember Jones asked about counter permits. Ms. Volek stated this is not a building function; it is a function of the fire department. She will address this issue with Fire Chief Marv Jochems.
- Ms. Volek also noted that Chandelier Circle will be on the December 11<sup>th</sup> agenda. The casino location ordinance change will be underway after tonight's presentation. The continuance of the Cobb Field Steering Committee was added to the November 27<sup>th</sup> agenda. The Events Committee resolution will be on the December 11<sup>th</sup> agenda. She noted that the initiatives from previous years that have been deleted when completed.
- Ms. Volek reported she is meeting on November 30th with the Legislators at a luncheon that day. The luncheon will be at the MSU-B downtown facilities.
- Councilmember Stevens spoke on the request to change Council meeting procedures. She noted the last ordinance specified public comment would be taken at the end of the meeting. Ms. Volek said City Attorney Brent Brooks is working on collating the requested changes and will be bringing an ordinance to the Council in the future.
- Councilmember Ruegamer stated that the BSEDA board serves for 5 years. He said he thinks councilmembers should serve for 2 - year terms. Mr. Ruegamer said he will raise this issue under Council initiatives on November 27<sup>th</sup>
- With discussion completed the meeting was adjourned at 7:35 p.m.

Respectfully submitted,  
Marita Herold, City Clerk