

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

MONDAY, MARCH 26, 2001

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 Charles Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Jan Iverson.

ROLL CALL -- Councilmembers present on roll call were: Bradley, McDermott, Brewster, McDanel, Iverson, Ohnstad, Johnson, Larson and Elison. Councilmember Kennedy was excused.

MINUTES – March 12th. APPROVED AS PRINTED.

COURTESIES – Fire Dept., Solid Waste Division.

- Fire Chief Marv Jochems recognized Gil Sommerville, retiring from the Billings Fire Dept after 33 years of service.
- Acting Public Works Director Brian Borgstadt introduced Barb Butler from the Solid Waste Division. Ms. Butler was recognized with the Mayor and Council Award for her work at the Legislature to defeat three bills that threatened the City's Solid Waste operations.
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PROCLAMATIONS – Mayor Tooley. Mayor Tooley proclaimed March 31st. as Faith and Family Day.

BOARD & COMMISSION REPORTS. None.

ADMINISTRATOR REPORTS – Dennis Taylor.

- Mr. Taylor said the community is honored to have President George W. Bush in town today. Mr. Taylor noted that a visit of this nature creates enormous demand on many of the City staff to insure a safe experience for the President.
- Mr. Taylor noted that SB213 regarding a local option sales tax was passed today in the House, but still faces some hurdles. He said the "Big Bill" -- HB124 also passed through the House last Friday.
- Mr. Taylor thanked the local delegation that testified on behalf of the legislation regarding right-of-way franchise fees.
- Airport Director Bruce Putnam noted they have been working with the Managed Growth Committee of the Chamber of Commerce regarding the air service and airfare issues.

The Mayor announced a 5-minute break at 7:45 p.m., since they were not able to take a short break between the Committee of the Whole meeting and the Regular Meeting this evening. The meeting was called back to order at 7:50 p.m.

CONSENT AGENDA:

1. A. Bid Awards:

(1) Competitive Procurement Offers for Transit Vehicle. (Opened 2/27/01). Delayed 3/12/01. Recommend Nova Bus Incorporated for the purchase of six (6) 35 ft. standard floor advance designed buses for MET Transit.

(2) SID 1350 Construction. (Opened 3/13/01). Recommend Empire Sand & Gravel, Inc. \$233,330.00 for Schedule I; Empire Sand & Gravel, Inc., \$217,577.50 for Schedule II.

(3) SID 1352 Construction. (Opened 3/13/01). Recommend AME, Inc., \$118,665.00 for Schedule I; Empire Sand & Gravel, Inc., \$120,909.40 for Schedule II.

(4) Billings Animal Shelter Space Alteration. (Opened 3/13/01). Recommend Markley Construction & Management for \$33,650.00.

B. Change Order #1, W.O. 95-08, Phase I: Shiloh/Grand Intersection, Eggart Engineering & Construction, \$6,400.00 and 0 days.

C. Right of Way Acquisition for W.O. 96-09: Lake Elmo Drive Improvements, Phase II, Main Street to Hansen Lane:

(1) PARCEL #17: Right of Way Agreement and Warranty Deed for a tract of land in Tract A, C/S 1917, containing 3960 sf, Popelka Enterprises, LLC, \$0.00.

(2) PARCEL #18: Right of Way Agreement and Warranty Deed for a tract of land in Tract 1, C/S 1862, containing 2640 sf, Richard Zimmerman Jr. and Laura L. Zimmerman, \$0.00.

(3) PARCEL #19: Right of Way Agreement and Warranty Deed for an unplatted tract of land in T1N-R26E-S27: NE4 containing 13,148 sf, Popelka Enterprises LLC, \$0.00.

(4) PARCEL #20: Right of Way Agreement and Warranty Deed for a tract of land in Tract C, C/S 195, containing 5280 sf, Popelka Enterprises, LLC, \$0.00.

D. 2001 Agreement with Cop Construction Co. for use of Lampman Park for construction materials and equipment storage, \$100.00/month.

E. Professional Services Agreement with CTA Architects and Engineers for architectural services for Airport replacement and remodel projects for a 5-year term.

F. 2001 Turnkey Agreement with Billings Softball Association for Stewart Park and Poly Vista Park.

G. Parking Lease Agreements:

(1) 2nd 5-year rate of Parking Lease Agreement between City of Billings and United Properties for 150 spaces in Park IV.

(2) 2nd 5-year rate of Parking Lease Agreement between City of Billings and Billings 401 Joint Venture for 350 spaces in Park IV.

H. Approval of modification of the Development Agreement between the City of Billings and Vic Reichenbach for the construction of the Probation/Parole Building on the 300 Block of South 27th Street.

I. Approval of the Master Plan for Uinta Park in Uinta Park Subdivision.

J. Roman Catholics for Life Parade, May 20, 2001, 12:30 p.m. to 2:00 p.m.

K. Approval of expenditure request by Downtown Exchange Club for Riverside Little League fencing project at Optimist Park, \$900.00.

L. Authorization for an additional subgrant application through the Montana Board of Crime Control for portable breath testers, \$5,000.

M. First reading ordinance extending the boundaries of Ward III to include recently annexed property in Annex #01-04: Lot 1, Block 1, Gabel Subdivision, 3rd filing and setting a public hearing date for 4/09/01.

N. Authorization to negotiate a 20-year Commercial Aviation Ground Lease with Cliff Edwards, the purchaser of Lynch Flying Service.

O. Final Bond Resolution 01-17682 relating to \$220,000 Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2001A, creating a Special Sidewalk, Curb, Gutter and Alley Approach Fund and prescribing covenants of the City for the security of the holders of the bonds.

P. Final Bond Resolution 01-17683 relating to \$2,471,000 Special Improvement District No. 1347 Bonds, filing the form and details and providing for the execution and delivery thereof and security therefore.

Q. Final plat of Hogan Homestead Subdivision, Lot 1A, Block 1.

R. Approval of extension of preliminary plat approval for Amended Rush Acres Tracts Subdivision until 2/10/02.

S. Bills and payroll.

(Action: approval or disapproval of Consent Agenda.)

There were no separations of the Consent Agenda. Councilmember McDermott moved for approval of the Consent Agenda, seconded by Councilmember Larson. On a voice vote, the Consent Agenda was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #674: a zone change from Residential 9,600 to Community Commercial on Lots 1-3, Block 1A of Lampman Subdivision Amended, located at the southeast corner of South 30th Street West and Henesta Drive. Dennis Massey, owner; Louie Kuchera, agent. Zoning Commission recommends approval. VALID PROTEST. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the north three lots (1-3) are currently zoned Residential 9600 and the lot immediately to the south (L4) is zoned Community Commercial. The surrounding zoning is Community Commercial, Controlled Industrial and Residential 9600 with existing single family dwellings to the north. Both the DRC and Zoning Commission felt that because this property was abutting Community Commercial that the Residential 9600 as it is currently zoned is probably not the most appropriate zone for the property. They felt that some type of multi-family zoning or commercial zoning would be more appropriate and more likely to develop than as existing single-family residential. The Zoning Commission recommended approval. Mr. Bollman said there is a valid protest, which necessitates a vote of 7 members of the council tonight to approve the zone change. He noted also that a Development Agreement has been prepared by the developer that addresses some of the concerns of the neighborhood.

The public hearing was opened. KURT THOMPSON OF ENGINEERING, INC., NO ADDRESS GIVEN, said that they assisted Mr. Kuchera in preparation of the Development Agreement and the landscape buffer. He noted that the revised copy of the Development Agreement was done after meeting with the neighbors and attempts to address some of their concerns. The landscape buffer on Lot 4 is an existing 15-ft buffer on the north side. If the zone change is approved, that buffer will continue to the north. Landscaping is proposed to consist of pine trees, shrubs and landscape rock with a 6-ft block wall to act both as a visual screen and a sound barrier. Mr. Thompson noted that the block wall would be constructed on a 3-4 foot berm, so it would be approximately 10 feet in height.

LOUIE KUCHERA OF 5220 PRIOR MOUNTAIN VIEW DRIVE said he is purchasing the lots from Mr. Massey. His overall objective is to combine the four lots into one with Community Commercial zoning. He requested that Lots 1-3 be rezoned because they are surrounded on three sides by commercial property. They have been for sale since 1992, with the exception of 1997-98 when they were turned back to the county for back taxes. The lots are approximately 140 feet off of King Avenue, which makes them undesirable for residential use. The requested zoning is consistent with the surrounding property. Mr. Kuchera said he would be using the property for a car lot, which would have

1-4 year old vehicles for sale. The improvements would consist of an attractive glass showroom, a service base and a screened storage yard with pleasing landscape. He estimated that the total cost of the proposed improvements would be over \$1 Million. He added that his project would be cleaning up an unsightly lot full of weeds and debris and creates approximately 10 new jobs, as well as adds to the tax base of the City. Mr. Kuchera said traffic is always an issue as the West End continues to grow.

HAROLD L. TOWLER OF 2951 HENESTA said he lives on Lot 4 in Block 2 at the corner of 30th Street West, noting that it faced the subject property. Mr. Towler said these three lots have always been a problem because they were not developed when they were able to be developed. He emphasized that these lots are the only buffers to their residential area that exists to the north. 29th Street West and 30th Street West are the only accesses into this residential area. He said he understood that progress is necessary, but the north side of King Avenue is predominantly residential at this time. Commercial uses start at about 32nd Street West. Mr. Towler said a car lot would not benefit the residential neighborhood. He concluded that he will look out his front window and will have a car lot sitting in front of his home. His home is elevated and he will be able to see the car lot whether or not they have a wall, until perhaps the trees get very tall.

RON FRASER OF 2920 ROSEBUD DRIVE said he is opposed to this proposal because it will increase traffic in the residential neighborhood and a car lot is not good for a residential neighborhood. He said he supports expansion on the West End but does not see the need for another car lot in that area.

GRANT OLSON OF 3006 ROSEBUD DRIVE said he does support the Zoning Commission recommendation, primarily because of the safety concern. He emphasized that Lampman Subdivision is a residential neighborhood with 300+ residential lots. The only commercial is on the far south and west corners. The houses are fairly reasonably priced for young families with children. He lives on the corner of Rosebud Drive and 30th Street West. Mr. Olson said the SID that is coming soon will make the neighborhood a better, nicer and cleaner place, but will also increase the traffic in the area. Mr. Olson said with the advent of a used car lot at 30th and King, there will be an increase in people not from the neighborhood funneled onto 29th and 30th Streets, test driving cars they are not familiar with, stepping on the gas to see what kind of "punch" it has, etc. He said they would be a hazard to kids playing on the street there.

TOM LAMMEN OF 2935 HENESTA DRIVE started by thanking Mr. Kuchera for his efforts in trying to keep the neighbors informed on his efforts to expand the property for a car lot. "Even with this, I feel we must oppose the cancer of an expanded car lot in our neighborhood," he said. He referred to the neighborhood's efforts as damage control. Mr. Lammen said the coming \$2.4 Million SID will build, improve and reinforce the integrity of their subdivision. "This is a great neighborhood we are trying to save. It has large lots, beautiful homes, two parks, well cared for lawns, etc. Other developers have taken the time to notice this as new homes are to be built in the near future on Rosebud Drive...," he said. "The bottom line comes into this. My neighbors and I bought our homes or built our homes with the knowledge these lots were residential. Mr. Massey bought these lots knowing they were residential. Residential on the west side of Billings are in short supply, while on the other hand, car lots are not," he stated.

DENNIS MASSEY OF 1841 AVENUE D said he currently owns Lots 1-3 and noted they are currently surrounded by commercial development. He noted he has not been able to sell or develop them because a street runs through them, there is no sewer in the area, water was brought to the lots about 5 years ago and the water SID added \$7500/lot to the lot costs. The current SID will improve the area greatly with paved streets and sewer service, but "it comes with a cost as well. The current SID will add \$16,000 to each of the lots ... before any development will occur. These costs far exceed the value generated from the residential zoning," he stated. Mr. Massey said he has worked with the Kucheras to develop a comprehensive plan to develop this property at this time. He noted the SID is currently underway and this is the time these lots should be developed. "If we wait until later, we may dig that very street up to tie into the sewer, not once but possibly three times. It doesn't seem logical to me to do that. We've put together a plan that will separate the property from the residential neighborhood with a decorative wall with landscaping that moves the boundary line to a logical division of property," he stated.

FRANK MOLODECKI OF 3006 MYRTLE DRIVE said he opposes the car lot primarily due to safety reasons has to do with quality of life. "I sit in the summer time and from where the Denny Menholt dealership is now, I can sit in my backyard or driveway, which is quite a ways away and in the evening, the lights are tremendously visible... In addition you can hear every time a salesman is paged... Having this lot a block and a half from his home is really going to interrupt our quality of life," he stated. He said he simply was not interested in living in 'Billings Auto Row' and that's what their neighborhood will become if this car lot is approved. He said there are other commercial uses (like dentists' offices) that are more acceptable to the neighborhood.

SUSAN KUCHERA OF 5220 PRYOR MOUNTAIN VIEW DRIVE said their goal is to be a good neighbor and good citizens. The entrances to their property would be on 29th and 30th Streets West and no entrance on Henesta. Ms. Kuchera noted that the DRC and Zoning Commission recommended approval of this request without a development agreement, but they went ahead and had one prepared to go beyond and reiterate that they really do want to do the right thing for the neighborhood. She noted that the revised agreement states there will be no loudspeakers; their sales people will be equipped with pagers. The lights are blocked lights that shine directly down. "We are trying to take the organizational fit and an individual fit and combine them so they can all work together. The neighbors have been really great and came to their meeting and tried to help us and gave us a lot of input... We also agreed to make an employee policy where salesman are not to take people out in the neighborhood for test drives; they are to get them out on King on test drives.

There were no other speakers. The public hearing was closed. Councilmember Iverson moved for denial of the Zoning Commission recommendation, seconded by Councilmember Bradley. Councilmember Iverson noted this is a neighborhood that is willing to invest in the neighborhood to make it better and added that the council needs to support them in that effort. "As I see it, it's really a tug-of-war here between the neighbors and commercial. Lots 1-3 can go either way. I do agree with the neighborhood that there ... could be better uses for that area, even in another zone change than what it is now," she stated. Councilmember McDermott said Neighborhood Commercial is supposed to

buffer residential from Community Commercial. She asked if used car lots are allowed in the NC zoning. Mr. Bollman replied they are not an allowed use. Councilmember McDermott said she checked some of the uses that would be allowed under Community Commercial and she said she was shocked. Some allowed uses included casinos, bowling alleys and auto repair. "If we make a permanent zoning change, those are the kinds of allowed uses for these particular lots. I'm not sure that's appropriate for an area that abuts a residential area," she stated. Councilmember Johnson said he supports infill development and will support the Zoning Commission recommendation. He said the vacant lots are an open, windy space currently cluttered with paper, litter and debris, noting that it needs to be cleaned up and developed. Councilmember Johnson made a substitute motion to approve the Zoning Commission recommendation, seconded by Councilmember Johnson.

Councilmember Elison said the one thing that bothers him about the zone change request is that, "we have a policy of trying to buffer residential neighborhoods and this removes the entire buffer. I don't think I've ever seen before a zone change to go from Residential 9600, which is the largest, most restrictive zone in the entire City, to Community Commercial, which is almost one of the most wide open. That seems to me like an enormous change in zoning. I put myself in the position of somebody who bought a lot, knowing that all the land around me was zoned R9600, the most restrictive zoning classification... To see that change to Community Commercial, the least restrictive, is really quite dramatic. These people had no warning ... that restrictive zoning was going to be let wide open," he stated. He noted that the DRC acknowledged that R9600 might not be the most appropriate zoning for this property and suggested that some type of multi-family zoning would be more appropriate. "Those three lots as R9600 are not buffered themselves from King Avenue. Those three lots should become the buffer from King Avenue," he emphasized. Making them Community Commercial removes any opportunity for a buffer between King Avenue and the residential area.

Councilmember Johnson urged the Council to also look east and west along King Avenue, not just north/south. He asked what else would one do for this land, other than what seems to be a good plan for it. Councilmember Elison suggested there must be something else that would work in this area – which is more agreeable to the neighbors. Councilmember Elison added that there seems to be a "disconnect" between the items addressed in the Development Agreement and what the neighbors have stated as concerns. Councilmember McDanel said he didn't detect any animosity between the residents and the developer in the testimony tonight. He said this is a good example of a developer working with a neighborhood, trying to accommodate the needs and wishes of that neighborhood that he can recall. With discussion complete, the Mayor called for a vote on the substitute motion. On a roll call vote, the motion FAILED 5-5. Councilmembers voting "yes" were: McDanel, Tooley, Ohnstad, Johnson and Larson. Councilmembers voting "no" were: Bradley, McDermott, Brewster, Iverson and Elison. Zone change request failed.

3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#675: a zone change from Residential Multi-Family to Residential Manufactured

Home on Lot 20 of the Amended Plat of Lot 11, Kuhlman Subdivision, located at 408 Kuhlman Drive. Howard and Lois Young, owners; Charles Lashley, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.).

Zoning Coordinator Jeff Bollman said the subject property is located in an area along Kuhlman Drive that is zoned Residential Multi-Family. Residential Manufactured zoning and uses are consistent with the surrounding area.

The public hearing was opened. CHARLES LASHLEY OF 2224 HIGHWAY 87 EAST IN LOCKWOOD said he is willing to purchase the property, clean it up, landscape and put his manufactured home on the site, making it his primary residence.

HOWARD YOUNG OF 2019 8TH AVENUE NORTH said he is the owner of the subject property and would like to see his grandson get the property for his home.

LOIS YOUNG OF 2019 8TH AVENUE NORTH said she feels the zone change would be beneficial to the area. There would be someone residing on the property to provide maintenance. The current zoning and the size of the property are not large enough for any kind of multi-family dwelling. She urged the Council to approve their request.

SALLY LASHLEY OF 1948 LAKE ELMO DRIVE said the lots need to be rezoned for manufactured homes or single-family homes. She noted that neighbors have indicated they were interested in this area, but wouldn't purchase lots because of the need for a zone change. She said it would be a better use for these lots if someone would purchase them and put a single family dwelling on it – manufactured or built.

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

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #676: a zone change from Residential Multi-Family and Residential 6,000 to Residential 7,000 on Tract 2A, C/S 2866 Amended and Tract 1, C/S 1972, generally located in the 1300 Block of Lake Elmo Road on the west side of Lake Elmo Road, south of Wicks Lane. Jesse and Helen Rehard and Mill Wright, owners; Engineering, Inc., agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the subject property is about 53 acres in size. The proposed zone change would substantially reduce the density that would be allowed in that subdivision. With the current R-6000 zone, there is a potential for 22 multiple family dwellings; with the proposed R-7000, that zoning would allow single-family or duplex development only. It would also make the subdivision more appropriate with the existing uses surrounding it. Councilmember McDanel asked if there is any exit from this subdivision onto Reda, Nash or Rice Lanes. Mr. Bollman replied there was not. Ingress/egress is provided primarily off of Lake Elmo with a potential access off Wicks in the future.

The public hearing was opened. WAYNE LARSEN OF 1101 WEST WILKE DRIVE IN LOGAN, UTAH said he represents Larsen Construction and is the developer for this

project. He said it will be a good addition to the area and urged the council to approve his request.

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

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #677: a zone change from Agricultural-Open Space (county) to Controlled Industrial on Lot 1, Block 1, Gabel Subdivision, 3rd filing, located at 1212 South 32nd Street West. Bottrell Family Investments LLP, owners, Engineering, Inc., agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.).

Zoning Coordinator Jeff Bollman said the subject property is surrounded on three sides entirely by Controlled Industrial zoning and has only a small parcel adjoining on the remaining side that is not Controlled Industrial. This property is proposed to be incorporated into the TransTech Development that is occurring to the south in Gabel Subdivision. The property was annexed by the Council on March 12th.

The public hearing was opened. BOB SANDERSON OF ENGINEERING INC, 1001 SOUTH 24TH STREET WEST said he represents the Bottrell Family. This 12-acre tract lies north of the TransTech Subdivision that Mr. Bottrell purchased last fall. The intent is to take what was Gabel Subdivision, 3rd filing (north of Gabel Road to the canal) and do a condominium office park that will be compatible with the TransTech Park to the south. The development will have restrictive covenants on it, utilizing the natural growth and waterways already existing in the area. He noted that it would greatly help with the improvement of 32nd Street West and Gabel Road to the east.

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

6. PUBLIC HEARING AND SECOND READING ORDINANCE 01-5146 extending the boundaries of Ward IV to include recently annexed property in Annex #01-03: Lots 9-15, Block 18, Lillis Heights Subdivision. Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Elison moved for approval of the ordinance on second reading, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION 01-17684 determining the eligibility of the Tax Incentive Application for remodeling, reconstruction or expansion of existing structures located at 1 South Broadway, Urban Frontier Development Venture, LP, applicant. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

The public hearing was opened. RANDY HAVER, NO ADDRESS GIVEN, said he

is the General Partner of Urban Frontier Development Venture. Mr. Hafer said this tax incentive program does provide some tax relief for projects that invest \$100,000 for improvements in properties. "One of the things that struck me with this program when I got involved with it was that it is very rarely used. In fact, so rarely used that the City didn't have any forms to fill out or know what to do. I appreciate the help I have gotten from the Building Dept. I think this is a program that should be promoted. I went to great efforts to ferret out every conceivable tax incentive, tax credit, and other programs I could find to apply to my project. These is a valuable program and I would encourage the City to continue to promote it," he stated.

There were no other speakers. The public hearing was closed. Councilmember Bradley moved for approval of the staff recommendation, seconded by Councilmember McDermott. Councilmember Elison commented that the Council has been looking for downtown housing for a long time. Councilmember Bradley said he likes the aspect of this project in that it preserves a historic building. On a voice vote, the motion was unanimously approved.

ADJOURN – With all business complete, the Mayor adjourned the meeting at 8:55 P.M.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE City Clerk