

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

September 10, 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 F. 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 Mayor Tooley.

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

MINUTES – August 27th. APPROVED AS PRINTED.

COURTESIES – Police Dept. – NONE.

PROCLAMATIONS – Mayor Tooley. NONE.

BOARD & COMMISSION REPORTS. NONE.

ADMINISTRATOR REPORTS – Dennis Taylor.

1. Mr. Taylor reminded the Council and audience of the Capital Improvement Program meetings beginning this week. He added that all information is on the website as well. He urged anyone interested in offering comments is invited to do so.

LATE ADDITION:

Mayor Tooley noted the request to add an item to the Consent Agenda this evening. Councilmember Ohnstad moved to ADD the Final Plat of Wyndham West Estates Subdivision to the Consent Agenda, seconded by Councilmember Larson. On a voice vote, the motion to add the item to the Consent Agenda was unanimously approved. The item was added as Item U.

CONSENT AGENDA:

A. Mayor's Appointment:

- (1) Rescind appointment of Shoots Veis to the Board of Adjustment.

B. Bid Awards:

- (1) Water Treatment Plant Improvements, Pretreatment, Contract XIII – Phase II (Equipment Procurement). (Opened 8/21/01). Recommend the following:

Bid Item No. 1, Patterson Pump Co., \$324,495.00

Bid Item No. 2, Morris Pumps, \$39,600.00
Bid Item No. 3, Fairbanks Morse, \$134,734.00
Bid Item No. 4, Henry Pratt Co., \$18,248.00
Bid Item No. 5, Henry Pratt Co., \$4,747.00
Bid Item No. 6, Henry Pratt Co., \$12,472.00
Bid Item No. 7, Northwest Pipe Fittings, \$42,812.00
Bid Item No. 8, Northwest Pipe Fittings, \$6,586.25
Bid Item No. 9, Crescent Electric Supply, \$50,818.00.

(2) \$280,000 Pooled Special Improvement District Bonds, Series 2001C. (SIDs 1351 and 1355). (Opened 9/10/01). ~~Recommendation to be made at meeting.~~ Recommend Dain Rauscher @ 4.629%.

(3) \$815,000 Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2001B. (2001 Miscellaneous/Developer-Related Improvements and Broadwater Subdivision Improvements, Phase III). Sale Cancelled. Bond issue will be re-advertised.

C. C. O. #3, Billings Depot Parking Lot Improvements, Eggart Engineering and Construction, +\$5,376.17 and 0 days.

D. C. O. #1, W.O. 95-13, 1999 School Route Improvements, JTL Group, Inc., +\$22,858.38 and 0 days.

E. Contract with the Housing Authority of Billings to provide one officer in a community policing role at the 274 units of the Housing Authority's complexes, \$63,122.00 for salary/benefits and up to \$1200/month for cell phone costs for the officer. Term: 9/01/01 to 8/30/02.

F. Development Agreement with International Church of the Foursquare Gospel and Douglas W. McGregor and Barbara G. McGregor for right-of-way purchases by the City along Shiloh Road, in Tract 1, C/S 2797 and Tracts 1-2, C/S 2686, \$50,649.12.

G. Easement with Yellowstone Valley Electric Cooperative for a transient easement for installation of an underground phone line across City property in Tract 6A of C/S 1435.

H. Acceptance of Non-Binding Recommendation from the Local Law Enforcement Block Grant Advisory Board for expenditure of 2001 Local Law Enforcement Block Grant funds, \$100,986.00.

I. Confirmation of Police Officer: Rhonda Fox.

J. Preliminary approval of Resolutions levying and assessing the 2001 Annual Assessments:

- (1) **RES 01-17735:** Park Maintenance
- (2) **RES 01-17736:** Fire Hydrant Maintenance (i.e. Property Safety Water

Supply)

- (3) **RES 01-17737:** Demolition of Dangerous Buildings
- (4) **RES 01-17738:** Encroachments, Encumbrances, etc.
- (5) **RES 01-17739:** Light Maintenance Districts
- (6) **RES 01-17740:** Storm Sewer Maintenance
- (7) **RES 01-17741:** Street Maintenance
- (8) **RES 01-17742:** Weed Cutting and Removal

And setting a public hearing date for 9/24/01.

K. Preliminary approval of Resolution 01-17743 levying and assessing Tree Removal #3002 and setting a public hearing date for 9/24/01.

L. Resolution 01-17744 setting the annual mill levies for Transit, Library, Public Safety and General Obligation Debt Service for FY 2001-02.

M. Resolution 01-17745 relating to \$815,000 Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2001D, authorizing issuance and calling for the public sale thereof on 10/8/01.

N. Preliminary approval of Resolutions re-levying and re-assessing assessments for various Special Improvement Districts and setting a public hearing date for 9/24/01:

- (1) **RES 01-17746:** SID #5259
- (2) **RES 01-17747:** SID #9905
- (3) **RES 01-17748:** SID #9598 for WO 94-02 #2
- (4) **RES 01-17749:** SID #9807
- (5) **RES 01-17750:** SID #1334
- (6) **RES 01-17751:** SID #1340
- (7) **RES 01-17752:** SID #1341

O. Preliminary approval of Resolutions levying and assessing initial assessments on various Special Improvement Districts and setting a public hearing date for 9/24/01:

- (1) **RES 01-17753:** SID #1344
- (2) **RES 01-17754:** SID #1345
- (3) **RES 01-17755:** SID # 1346
- (4) **RES 01-17756:** SID #1347
- (5) **RES 01-17757:** SID #1348
- (6) **RES 01-17758:** SID #1350
- (7) **RES 01-17759:** SID #1352

P. Preliminary approval of Resolutions levying and assessing initial Sidewalk Curb & Gutter assessments and setting a public hearing date for 9/24/01:

- (1) **RES 01-17760:** #2101 for WO 00-02,Contract #01, (2000 Developer-Related/Miscellaneous Programs)

- (2) **RES 01-17761:** #2102 for WO 99-02 #1, (1999 Developer-Related Program)
- (3) **RES 01-17762:** #2103 for WO 99-02 #2, (Broadwater Sub, Phase II)
- (4) **RES 01-17763:** #2104 for WO 95-13, (1999 School Route Improvements)

Q. 2002 Unified Planning Work Program for the Billings Metropolitan Planning Organization for review and recommendation to the Billings Policy Coordinating Committee (PCC).

R. "McMullan Hall Parade", October 13, 2001, 10:00 a.m. to 10:45 a.m., MSU-Billings, Sponsor.

S. Final plat of Stark Subdivision Amended, amending Lot 6, Block 1.

T. Bills and payroll.

LATE ADDITION:

U. Final plat of Wyndham West Estates Subdivision.

(Action: approval or disapproval of Consent Agenda.)

There were no separations of the Consent Agenda. The addition of Item U was noted. Councilmember Ohnstad 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 RESOLUTION 01-17764 creating SID 1359: water, sewer and street improvements to East and West Skokie Drives. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Building Official Kim Palmieri noted there were no protests received on the district. He introduced Woody Woods from Morrison Maierle, the consulting engineer for the project. Mr. Woods gave a brief presentation showing the proposed district boundaries and the improvements being proposed for the area. He offered to answer any questions the Council may have. There were no questions.

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

3. PUBLIC HEARING AND RESOLUTION 01-17765 creating SILMD 276: lighting and maintenance district on all lots and parcels abutting on Grand Avenue from

12th Street West to 16th Street West. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

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

4. PUBLIC HEARING AND SECOND READING ORDINANCE 01-5172 extending the boundaries of Ward I to include recently annexed property: A portion of Tract 1, C/S 2373, (#01-12), Leonard and June Hobby, petitioners. Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)

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

5. PUBLIC HEARING AND SECOND READING ORDINANCE 01-5173 extending the boundaries of Ward II to include recently annexed property: a portion of T1N-R26E-S27: S2N2SW4NE4NE4; (#01-13), Bill Dunlap, owner/petitioner. Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)

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

6. PUBLIC HEARING AND SECOND READING ORDINANCE 01-5174 FOR ZONE CHANGE #683: a zone change from Residential-15,000 and Community Commercial to Residential-9,600 on a portion of Tract 1, C/S 2373, located at 550 Garden Avenue. Leonard and June Hobby, owners; Howard Sumner, agent. DRC recommends approval; Zoning Commission concurs with approval. (Action: approval or disapproval of ordinance on second reading.)

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

7. PUBLIC HEARING AND SPECIAL REVIEW #706: a special review to allow the location of a beer and wine license without gaming in the Central Business District on the west 50' of the south 10' of Lot 20 and the west 50' of Lots 21-24, Block 90, O.T., located at 2525 First Avenue North. Ponderosa Inn, Unit I, owner; Moulton, Bellingham, Longo and Mather, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Candi Beaudry of the Planning Dept said in order to approve this special review, the Council will be required to waive the 600 ft separation distance between the establishment that sells alcohol and any school, playground, public park, public recreation area and public building. The Zoning Commission held a special meeting for this special review – at the request of the applicant. There was no opposition expressed at that meeting. The Zoning Commission recommended conditional approval, with the only condition being that the 600-ft separation requirement from any school, playground, public park, public recreation area, church or other public building be waived.

Ms. Beaudry said the establishment is located at The Timbers restaurant which is an existing, moderately high-end restaurant associated with the Ponderosa Inn. It will continue to serve the Ponderosa Inn as well as the surrounding businesses. One of the public structures within the 600-ft radius area is the City parking garage. She noted that there are several other establishments in the downtown area that sell alcohol that are in the same proximity as the City parking garage and the other public buildings within the 600 ft radius area. Ms. Beaudry pointed out that the Zoning Commission said to deny this special review would be unfair because of the existence of similar situations in the area.

The public hearing was opened. JOHN JONES, NO ADDRESS GIVEN, said he represents Barbara and Kenneth Hickle, two of the partners in Unit I Partnership, the owners of Ponderosa Inn. He noted that they have been long time supporters of the downtown businesses. Mr. Jones said the cabaret license that is proposed for this location is fairly new, but is tailor made for what the Hickles have – a high end restaurant that they have spent considerable monies on in remodeling and retrofitting after Cattins went bankrupt and left the building in gross disrepair. He said he felt the Central Business District is where these cabaret licenses belong, noting it should help draw people downtown.

BARBARA HICKLE, NO ADDRESS GIVEN, said she never thought she would be spending her retirement money going into the restaurant business, “but it needed to be done”. She said she is exhausted, but excited about their new restaurant and thrilled for its future and hoped it would do its part in bringing people to the downtown. Ms. Hickle said she and her husband chose Billings 50 years ago when they were first married and put all their money into this property and they are still there. She asked the Council for their support of the special review.

There were no other speakers. The public hearing was closed. Councilmember McDanel moved for approval of the special review, seconded by Councilmember Larson. Councilmember McDanel said, “while I wish to commend the Zoning Commission for their work, I would like to remind staff and the Zoning Commission that its important that we make recommendations based on what is good for the community, what’s in the best interest of the neighborhood, what is within our strategic plans for growth and how we develop our community and our downtown, and not what is fair. Fair is not always based on what we have done in the past anyway. Sometimes we make mistakes. We

should be given the opportunity to learn from those mistakes and move forward in the future. So again, I would like to remind the Zoning Commission that we need to make decisions based on what's good for the community and not always necessarily what is fair." On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND RESOLUTION annexing an unplatte 27 acres in T1N-R25E-S23: SE1/4, NW1/4,(Annex #01-14), Zella Yegen Trust B and Zella Yegen Trust C, owners. Staff recommends approval of the public services report and conditional approval of the annexation. Applicant requested delay in action to Sept 24. (Action: approval or disapproval of applicant request for delay.).

Bruce McCandless of the Planning Dept said the staff recommendation is to conditionally approve the annexation with the following conditions: (1) that a Subdivision Improvements Agreement or Development Agreement be executed before any building permits would be issued. He noted that because this property is also involved in the subdivision process, he was fairly sure an SIA would be forthcoming. The second condition is to annex all of Hawthorne Lane adjacent to the subject property.

He noted that the subject property is located on the west side of Hawthorne Lane about 1/4 mile south of Wicks Lane and comprises approximately 27 acres of unplatte land, wholly surrounded by the City. He reminded the Council that the draft annexation policy they are presently considering encourages this kind of annexation – that of wholly surrounded islands. It is presently used as pasture and there is a farmstead on the property. It is owned by the Zella Yegen Trusts and the proposed purchaser is j & e Construction. Present zoning is R7000, which permits single-family and two-family dwellings. The maximum density would encompass 20 acres with 124 single-family units or 181 two-family units. Surrounding property is also R7000. He noted there is a concurrent application for a new subdivision – which proposes 131 dwelling units (93 single family and 38 duplex units or 19 duplex buildings.) Mr. McCandless said the subdivision public hearing will be held by the Planning Board on September 18th and it is anticipated that the Council will act on the subdivision on September 24th. Mr. McCandless said there was a public comment period at the Planning Board meeting on August 28th.

He noted that general city services would be immediately available to the property. They won't be needed until the property is developed. Mr. McCandless summarized the street and storm drain improvements that would occur with the subdivision development. Park land dedication is currently being negotiated between the Parks Department and the developer to determine if there will be a land dedication or a cash-in-lieu payment. There are no developed parks in the immediate area. School children in the proposed subdivision would attend Bitterroot School, which is about 1 mile from the subject property and easily accessed. Older children would attend Castle Rock Middle School and Skyview High School, just as all children in the Heights do. Mr. McCandless noted that wildlife in the area will be impacted, particularly whitetail deer. A traffic accessibility study has been completed and impacts would be mitigated through traffic control and street improvements. No environmental

assessment was required because the Planning Board exempted this property from an EAS because it was in the jurisdictional area of the Comprehensive Plan.

Mr. McCandless noted that some concern was expressed about the development lowering property values in the area. He illustrated existing development in the area with a number of photographs, depicting both older homes built in the 1960s and 1970s and new construction. He said the proposed development would be very similar to what the new Audubon development currently offers. Mr. McCandless concluded his presentation noting that the applicant has requested that action on the annexation request be postponed to the September 24th meeting, so that action on the annexation will coincide with council approval of the subdivision plat. The current owners of the property – the Yegens, have no interest in annexing the property unless it can be sold and developed by j & e Construction.

The public hearing was opened. DENNIS RANDALL OF ENGINEERING, INC. said they represent j & e Construction. He added that Miles Eagan, the agent for j & e construction was also in the audience to address questions. Mr. Randall said the proposed development accomplishes 2 goals: it constitutes infill development and it holds the line on entry-line housing. He said it is the intent of j & e Construction to move the Audubon development, which is nearly built out in its entirety, south onto the subject property.

There were no other speakers. The public hearing was closed. Councilmember Kennedy moved to delay action to the September 24th meeting, seconded by Councilmember Iverson. Councilmember Larson said in light of the proposed annexation policy, this property is “ripe for annexation” – “it’s infill and virtually surrounded by the community and we should be aggressively pushing forward to annex every piece of ground just like it. Now we have an applicant that wants to place conditions on the annexation. I’m prepared to vote for annexation tonight. I’ll respect their request, but there is a part of that that troubles me in terms of past conversations. I would not want this property to develop under standards different than the standards described tonight,” he stated. Councilmember Johnson added that he continues to be concerned about the Police Dept comments that indicate that the City is spreading resources too thin – as the City adds area to its corporate boundaries. With discussion complete, Mayor Tooley called for a voice vote. The motion was unanimously approved. Action was delayed to September 24th.

ADJOURN – With all business completed, Mayor Tooley adjourned the meeting at 8:10 p.m.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley Mayor

MINUTES: 9/10/2001

ATTEST:

BY: _____
Marita Herold, CMC/AAE City Clerk