

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **September 24, 2001**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> 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 Councilmember Michael Larson.

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

**MINUTES – September 10th**. Approved as printed.

**COURTESIES** -- None.

**PROCLAMATIONS** – Mayor Tooley.

- Mayor Tooley proclaimed the Week of October 7 –13 as Fire Prevention Week.

**BOARD & COMMISSION REPORTS**.

- Councilmember Kennedy recognized former Mayor Jim Van Arsdale in the audience.
- Mayor Tooley noted that the Western Heritage Center became an affiliate of the Smithsonian Institute this past weekend.
- Mayor Tooley noted this is the first council meeting since the tragic events in New York City. He thanked Councilmember Larson for his inspiring Invocation and urged everyone to support the President of the United States in his efforts to stop the terrorism. He also thanked the citizens of Billings for their outpouring of support via blood donations and T-shirts, etc.
- Mayor Tooley also noted that City Administrator Dennis Taylor is in Salt Lake City attending the International City Manager Association conference. Fire Chief Marv Jochems is acting in his absence.

**ADMINISTRATOR REPORTS – Dennis Taylor**.

- Fire Chief Marv Jochems reported that all City staff is positively and productively working through the events of the past week.

**CONSENT AGENDA:**

**1. A. Bid Awards:**

**(1) Elevator Maintenance.** (Opened 9/11/01). Recommend Kone, Inc., \$80,976.00 for 3-year contract.

**(2) PUD Chemicals: PHI-2341 Polyaluminum Hydroxychloride Blend.** (Opened 9/11/01). Recommend Pristine Hydrochemical, Inc., 12-month contract with option to renew for additional 12-months.

**(3) MET Re-roof.** (Opened 9/18/01). Recommend delaying award to 9/11/01.

**(4) One New Current Model 2002, 4-Wheel Mechanical Broom High Dump Sweeper.** (Opened 9/18/01). Recommend delaying award to 9/11/01.

**B. C.O. #1, W.O. 96-06: Grand Avenue Widening, 12<sup>th</sup> St. West to 17<sup>th</sup> St. West,** Empire Sand & Gravel Co., Inc., \$152,029.91 and 9 calendar days.

**C. C. O. #1 & 2, Terry Park Spraypool Project,** Fisher Construction. Change Order #1, \$1,106.00 and 5 days; Change Order #2, \$234.00 and 3 days.

**D. Contract** with Marvin & Associates to provide design and construction services for the conversion of parallel parking spaces to diagonal parking spaces in the Central Business District, \$43,200.00.

**E. Space Lease** with Aircraft Service International Group (ASIG) for airport terminal office space, \$3,994.56/year, 1-year term.

**F. Contract** with Engineering, Inc. for extension of water and sanitary sewer in Grand Avenue, \$538,550.00.

**G. Subrecipient Agreement** with Deaconess Billings Clinic to administer a \$1.5 Million Special Purpose Grant through HUD for the construction of a new research facility to house clinical and basic research programs.

**H. Resolution 01-17766** providing for the receiving of bids and the letting of a contract for the construction of improvements in SID 1356 and setting a bid opening for 10/9/01 and a bid award for 10/22/01.

**I. Resolution 01-17767** providing for the receiving of bids and the letting of a contract for the construction of improvements in SID 1359 and setting a bid opening for 10/9/01 and a bid award for 10/22/01.

**J. Resolution 01-17768** relating to \$280,000 Pooled Special Improvement District bonds, Series 2001C (SID 1351 and 1355); fixing the form and details and providing for the execution and delivery thereof and security therefor.

**K. Resolution 01-17769** recognizing the Big Sky Economic Development Authority (BSEDA) as the lead organization for economic development throughout Yellowstone County.

**L. Preliminary Major Plat** of Cambridge Way Subdivision generally located on the northwest corner of King Avenue East and Jackson Street.

**M. Preliminary Minor Plat** of Four Pines Subdivision generally located on the south side of Lampman Drive, East of S. 18<sup>th</sup> Street West.

**N. Final Plat** of Terra West Subdivision, 4<sup>th</sup> Filing.

**O. Bills and payroll.**

**(Action:** approval or disapproval of Consent Agenda.)

Councilmember Bradley separated Item F. Councilmember Iverson moved for approval of the Consent Agenda EXCEPT Item F, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Iverson moved to approve Item F, seconded by Councilmember Larson. Councilmember Bradley asked for more details on the extent of the contract. Public Utilities Director Carl Christensen said the contract would extend water and sewer to 58<sup>th</sup> Street West on Grand Avenue and from 58<sup>th</sup> Street West up to Rimrock Road. He said currently the water and sewer lines are on the other side of Shiloh Road on Grand Avenue, at approximately 43<sup>rd</sup> Street West. Councilmember McDermott asked if the City would get its investment back on this project – when and how. Mr. Christensen said they anticipate that there will be a large area of land served with this extension. One of the reasons they are moving forward with the design is so that some of the construction can begin this winter, when the groundwater table is low. He said also that they are anticipating that areas around Yellowstone Country Club will be requesting annexation, as well as a number of property owners along Grand Avenue who desire city services at this time. Councilmember Bradley asked about estimated costs. Mr. Christensen replied the sewer line is anticipated to cost approximately \$2 Million and the waterline approximately \$1.2 Million. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND VARIANCE #CC-01-02 from Section 6-1208(i)(5) of the Site Development Ordinance for proposed driveway on Lot 8, Block 4, Burnstead Subdivision, 2<sup>nd</sup> filing; D. K. Van Arsdale, applicant. Staff recommends denial. (Action: approval or disapproval of staff recommendation.)**

Acting Public Works Director Brian Borgstadt said the subject property is on Vuecrest Drive. The driveway is for a house presently under construction. The garage is set pretty high off the street. The driveway is about 20 feet long causing a severe slope to the driveway. Mr. Borgstadt said there is sidewalk on this side of the street on adjacent properties. This would complete the sidewalk system on that side of the street. Staff is routinely wary of these variances because when the driveways run directly to the curb without providing for sidewalk, we have a very steep incline across the sidewalk. The normal sidewalk rises about 1-1/4 inches from one side to the other. This driveway would

vary more than 12 inches from one side to the other. He noted this is not a desirable situation. Staff also felt that this was not a hardship in that the garage could be set low enough to accommodate the driveway. Councilmember Larson asked what percentage of homes in this area has sidewalks. Mr. Borgstadt said he has not been to the site, but staff has indicated sidewalk exists on both sides of the street in this area. Councilmember Larson asked if this was a school route. Mr. Borgstadt replied that it is not a school route.

The public hearing was opened. DUANE VAN ARSDALE OF 4729 JERICHO ROAD said he is requesting the City to eliminate the sidewalk requirement for this property to lay out the driveway to the house on Vuecrest from the garage to the curb. The sole purpose of the request is due to the fact that the house is built on an elevated slope, which makes the driveway very steep. Having a sidewalk on this property with a driveway due to the steepness will cause cars to bottom out causing damage to the car, sidewalk, and driveway. "I chose to built this those at this particular location because the lot was reasonably priced; the house built on this lot is affordable for first-time homebuyers and the price of the house qualifies for Montana Board of Housing financing. However, City code requires 20 feet setback, which brought the house one-foot below grade on the north side, which contributed to the problem of the slope. The lack of the sidewalk on this lot will not create problems for pedestrians for the following reasons: across the street on the south side, there is a sidewalk; there is no development on the east of this house and the house borders the Big Ditch so there will be no building to the north. Since there is another sidewalk and there is no other pedestrian traffic, it seemed reasonable that this side of the street does not need a sidewalk. In addition, there is a handicapped gentleman who does not even use existing sidewalk on the south side. He drives his electric wheelchair in the middle of the street," he said. Councilmember Larson asked if he had done cost estimates on the alternatives proposed by staff. Mr. Van Arsdale said he had not investigated the costs of the alternatives, but assured the Council that they would elevate the price of the home to where it would be out of reach to Montana Board of Housing applicants -- \$108,500.

There were no other speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the staff recommendation (i.e. denial), seconded by Councilmember McDanel. Councilmember Ohnstad said he has trouble with driveways that come to the Council that have a 20% or more grades, noting they are steep and dangerous. Councilmember Larson said he felt in most circumstances the staff recommendation would be appropriate. "However this is an area that is not on a school route, the sidewalk policy debated by the council would more than likely not ask this neighborhood to add sidewalks. I find it somewhat compelling that we are looking at the issue of affordable housing as well. More and more I think people are finding it difficult to add affordable housing. For those reasons I would go against my normal instinct and vote to approve the request for a variance," he stated.

Councilmember Kennedy noted that this is infill development and an attempt to build affordable housing on affordable lots. Councilmember McDanel asked is there were other developed lots in this development without sidewalks. Mr. Borgstadt replied that all existing homes in the area had sidewalks; only vacant lots had no sidewalks. Councilmember Brewster said there does not appear to be development within 4-5 blocks of this property on either side. He asked if the variance were granted, would it lead the

staff not to require sidewalks for the others. Mr. Borgstadt said that would not be the case; their recommendation is based on the sidewalk policy. Councilmember Iverson asked if there were no sidewalk required, would the City still deny this grade of slope? Mr. Borgstadt replied they would not; if sidewalk would not be required, there would not be a concern about the grade. On a roll call vote on the motion to approve the staff recommendation of denial, the motion failed 5-5. Councilmembers voting "yes" were: Bradley, McDanel, Tooley, Ohnstad and Johnson. Councilmembers voting "no" were: McDermott, Brewster, Kennedy, Iverson and Larson.

Councilmember Larson moved to approve the variance, seconded by Councilmember Brewster. On a voice vote, the motion was approved. Councilmembers Ohnstad and McDanel voted "no".

**3. PUBLIC HEARING AND RESOLUTION 01-17770 adopting the public defender services budget adjustment for \$213,477.00. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Controller Pat Weber of the Finance Dept said the public defender services were done on a contract basis in the past. This budget adjustment would establish a division in the City and employ a public defender and a secretary for that division. When the contract was put out for bid this last time, the proposals received were \$115,000 more than bid the year before. This would have increased the City's cost/case for public defender service from \$90 to \$175/case. It was determined that it would be more economical to hire a public defender and legal secretary and put them on staff, than to contract out this service. The proposed budget for this service would be \$213,477.00 compared to \$138,000.00. The first year costs entail some one-time set up costs – such as desks, computers, etc. The net budget adjustment is \$75,177.00. Councilmember Bradley asked about the conflict of interest for this position. Mr. Weber explained that this position cannot report to the City Attorney or the City Administrator for that reason and would therefore report to the Director of Finance and Administrative Services.

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.

**4. PUBLIC HEARING for public input on the FY2000 Comprehensive Annual Performance and Evaluation Report (CAPER) for the City's CDBG and HOME Investment Partnership Programs. (Action: public hearing only.)**

Community Development Director John Walsh said tonight's public hearing is part of the 15-day public comment period. Comments received tonight will be incorporated into the final document and filed with the federal government at the end of this week. The report details the City's progress in accomplishing their goals and objectives in the five-year Consolidated Plan.

The public hearing was opened. There were no speakers. The public hearing was closed. No action was required.

**5. PUBLIC HEARING AND RESOLUTION 01- 17771 creating SID 1357 for sanitary sewer main on Rimrock Road from High Park Drive to Rimpoint Drive, adjacent to Lillis Heights. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

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

**6. PUBLIC HEARING AND SPECIAL REVIEW #707: a special review to allow the location of a beer and wine license without gaming in a Highway Commercial zone on Lot 13A, Block 2 of Wanigan Subdivision, 2<sup>nd</sup> filing amended, located at 875 Main Street. Felix and Isabel Mattern, owners; Scot Schermerhorn, agent. (Elmer's Pancake and Steak House site). Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said the subject property is located at the northeast corner of Main Street and Radford Square. It currently contains Elmer's Pancake House and is proposed to be converted into a Fuddruckers. Two uses require a waiver of the 600 ft separation requirement: the Billings Heights Park which is located east of the subject property along Bench Boulevard and the other is Bench Elementary School, which is located across Main Street from the subject property. The existing building footprint would remain the same. The applicant is proposing some upgrades as far as additional landscaping on the site. He noted that Radford Square is a platted street but currently does not go past the ditch that runs along the east side of this property. Mr. Bollman said the conditions recommended by the Zoning Commission are: (1) the new parking lot landscaping will be installed in the areas shown on the submitted site plan. In addition, the newly landscaped areas, as well as the existing landscaped areas shall contain a minimum of 75% living landscape material, e.g. turf, ground cover, shrubs, etc. (2) a continuous sight-obscuring six-foot high hedgerow (4-ft minimum height at the time of planting) shall be installed on the eastern portion of the property, and (3) the 600-ft separation requirement from any school, playground, public park, public recreation area, church or other public building be waived.

Councilmember Kennedy asked if this special review would be necessary if the separation requirement were changed to 300 feet instead of 600 feet. Mr. Bollman said a special review is required because there is no liquor license approved for this location at this time. If the separation were only 300 feet, Mr. Bollman said there would be no waiver required. Councilmember McDermott asked if Billings Heights Park is primarily a neighborhood children's park. Mr. Bollman said there are ball diamonds there. Councilmember Brewster confirmed that it is mainly used for Little League games. Councilmember Bradley asked if there are plans for an outdoor patio. Mr. Bollman said the DRC asked that question and the applicant replied they had no plans for an outdoor patio at this time. It would require an additional special review for the outdoor patio. Councilmember McDanel said the Council has talked about revising the 600-ft separation ordinance for quite some time. "Some of the discussion we've had recently

about measuring from building to building would also exempt the waiver for the school in this case. Also, we talked about the possibility of granting a blanket type waiver for the new beer/wine licenses – cabaret style licenses. Again, that would eliminate this property from having to have this portion of the special review... I'm very excited by the growth in business along Main Street and it seems to be continuing ... I want to see that growth continue. I look forward to Fuddruckers being part of that community. Because we are finally beginning to move on an ordinance for the 600 ft separation and look at the wording and try to find something that is more clear, that can be applied more uniformly by this body," he stated.

The public hearing was opened. SCOT SCHERMERHORN OF 310 GRAND AVENUE said he represents Felix and Isabel Mattern, the present owners of the property, as well as Dave Diehl, a partner in this project. He noted he would also be involved in the project. Mr. Schermerhorn said Godfather's Pizza is three lots to the north and also sells beer at this time. Also, he thought there had been a recently approved casino with a beer/wine license to the east of this property. Main Street is four lanes of fairly heavy traffic buffering the property to the east and the ditch also buffering the property. He emphasized that it is a cabaret/restaurant beer/wine license. This means alcohol can only be sold from 11 AM to 11 PM. Alcohol sales can only be 35% of your gross sales. Traditionally, Fuddruckers nationwide, the highest percentage of gross sales that are alcohol sales is 5%. He stated that food also has to be ordered before a customer can get an alcoholic beverage. He emphasized there is no bar; alcohol is served from a separate area. "The cabaret license in and of itself offers a lot of protection in terms of minors, or the schools or parks being involved in that area," he stated. He noted also they will do a lot of improvements to the property – a new roof, exterior awnings and a lot of landscaping, as well as upgrading the interior. He said it should enhance the area. Councilmember Brewster said the pancake house has served as a defacto community center in the Heights, because they had been kind enough to host community meetings on a regular basis. He noted a lot of service clubs have used that as a resource, because there is no community center in the Heights and no meeting place other than in schools. He asked if the new owners would be willing to provide that same kind of service. Mr. Schermerhorn said there would be new owners. The present owners have asked the new owners if they wish to take that role on and the new owners said they would be more than happy to accommodate them and will set up a separate meeting place for those groups.

There were no other speakers. The public hearing was closed. Councilmember Bradley moved for approval of the Zoning Commission recommendation, seconded by Councilmember Kennedy. On a voice vote, the motion was approved. Councilmember McDermott voted "no".

7. **PUBLIC HEARING AND SPECIAL REVIEW #708: a special review to allow the location of townhouses in a Residential 6,000 zone on Lots 6-8, Block 4 of State Realty Addition, located at 34 and 38 Washington Street. Mid Yellowstone Valley Habitat for Humanity, owners; Teresa Newcomer, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Bruce McCandless of the Planning Dept said the property is located about  $\frac{1}{2}$  block south of State Avenue on the west side of Washington Street and is presently vacant property. The property was recently re-subdivided from three 25-ft wide lots to two lots instead. The lot line would separate the two townhouses that would be built on the property. This property is surrounded on three sides by Residential 6000 zoning and single family homes. The fourth side – across Washington Street has commercial and manufactured home zoning and land uses. The R6000 zone permits one and two family residences by right and allows tri-plexes through ten-plexes through special review. The townhouses require a special review in any residential zone. The property is owned by Habitat for Humanity that plans to build a single-story, two-unit townhome on the property and sell each unit to a partnering family. The Zoning Commission hearing was held on Sept 4<sup>th</sup>, with one objection raised. The objector had a previous bad experience with the City on developing a portion of his property and he felt this lot was too small for a duplex. The Zoning Commission voted unanimously to recommend approval without any conditions.

The public hearing was opened. JONATHAN PEARE, NO ADDRESS GIVEN, said he is the Executor Director of Habitat for Humanity. He also introduced Theresa Newcomer, the Chair of their building committee. Mr. Peare said they are looking to use this lot to house two Habitat families. Land is becoming more expensive all the time and this project will allow them to maximize the land that they have and to provide services and decent housing for two more families. He noted they have a house in the Parade of Homes – quite a contrast from the other homes in the Parade. This was the house they built at MetraPark during Montana Fair this year.

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

**8. PUBLIC HEARING AND SPECIAL REVIEW #709: a special review to allow the location of a 230' high cellular communications tower in a Community Commercial zone on Tract 1B-1 of C/S 1435 Amended, located at 210 Black Otter Trail. Black Otter Ventures LLC, owner; Brian Kurth, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said the subject property is located on the south side of Airport Road adjacent to Swords Park. The surrounding land uses are: to the south is Swords Park; south and west are a Montana Power substation; and the property to the east is vacant. The area where the proposed cell tower is to be located is in the southeast corner of the property. One of the items that the DRC reviewed was the location of this tower in relation to other existing cell towers. The proposed tower would be near another tower and did not have the 1-mile separation from the tower approved at 2111 4<sup>th</sup> Avenue North. This tower was approved as a 180-ft tower. In speaking with Mesa Communications, the owner of that tower, they felt they could accommodate at least four users and up to eight users, depending on the load each user required. Mr. Bollman pointed out there was a previous special review before the Council for a 250 ft tower. The Council denied this review in June this year. The special review that has been resubmitted

is for a tower that is 20 feet lower. Mr. Bollman noted that after the previous special review was denied by the Council, the owner did get conditional approval from the FAA for a 230-ft tower. Some of the concerns the DRC had included: the visual clutter in this area with the existing substation and its larger power poles. Adding another 230-ft tower will not enhance the area. They were also concerned with the fact that it does not meet the 1-mile separation requirement. They have consistently recommended denial of towers that do not meet the separation requirements, especially when there is no supporting documentation to show there is a need for a tower in a specific location or why other towers in the area with co-location ability would not accommodate the proposer. The Zoning Commission unanimously recommended denial of this special review.

The public hearing was opened. BRIAN KURTH OF 2618 LONGFELLOW PLACE said he is the applicant and owner of the subject property. He noted that he asked the Council for approval of a 250-ft tower on June 25<sup>th</sup> and was denied. Five days after that, the FAA issued a notice of non-hazard to air traffic – their okay as far as the location. He noted that he has been communicating with several other carriers and found that the topography of this property has a 400-ft difference in elevation from the valley floor. This elevation difference inhibits the transmission of those radio transmissions – even with the 1-mile separation between them. Mr. Kurth noted that his co-locator left his site and moved to another site when he was originally denied. Qwest moved to a pole on the Swords Park property. Voice Stream has indicated they are interested in his site. Mr. Kurth said this site would provide coverage for the airport, the Metra and downtown. The 4<sup>th</sup> Avenue site doesn't cover the downtown when you get around the cliff. He emphasized that his tower is in a good location and is only 50 ft higher than the City's tower in Swords Park. Councilmember Brewster asked if any of the vendors have offered him any technical information to demonstrate this area cannot be served from the other towers. Mr. Kurth said he has a study from Qwest, but they have already moved to another tower, noting that tower is not the optimum height for them either at this time. He said Voice Stream has done a propagation model, but he didn't have the information from them. He asked the Council to postpone a decision on this item for 30 days so that he could get additional information for the Council.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved to delay the decision to October 22, seconded by Councilmember Kennedy. Councilmember Brewster said he would like to see additional information on the coverage issue as well as information that would justify the height of the tower and whether a tower of 140 or 180 ft could still accommodate an equal number of users. On a voice vote, the motion was unanimously approved. The item was postponed to October 22, 2001.

**9. PUBLIC HEARING AND FINAL APPROVAL OF RESOLUTIONS levying and assessing initial assessments on various Special Improvement Districts:**

- (A) RESOLUTION 01-17753 for SID #1344
- (B) RESOLUTION 01-17754 for SID #1345
- (C) RESOLUTION 01-17755 for SID # 1346
- (D) RESOLUTION 01-17756 for SID #1347
- (E) RESOLUTION 01-17757 for SID #1348

- (F) RESOLUTION 01-17758 for SID #1350
- (G) RESOLUTION 01-17759 for SID #1352

Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember McDanel moved for final approval of the resolutions, seconded by Councilmember Brewster. On a voice vote the motion was unanimously approved.

**10. PUBLIC HEARING AND FINAL APPROVAL OF RESOLUTIONS levying and assessing initial assessments on various Special Improvement Districts:**

- (A) RESOLUTION 01-17760 for #2101 for WO 00-02, Contract #01, (2000 Developer-Related/Miscellaneous Programs)
- (B) RESOLUTION 01-17761 for #2102 for WO 99-02 #1, (1999 Developer-Related Program)
- (C) RESOLUTION 01-17762 for #2103 for WO 99-02 #2, (Broadwater Sub, Phase II)
- (D) RESOLUTION 01-17763 for #2104 for WO 95-13, (1999 School Route Improvements)

Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

The public hearing was opened. ALBERT HESLER OF 409 EVERETT DRIVE said the improvements on his property are the sloppiest concrete work he's ever seen. Everett Drive has four or five houses on each side of the street and the new curb they just put in is already cracked in two places. "They come out with a bucket of water and put a little cement in it and a paintbrush and call that fixing the crack. Well, in two days it's open again. Now, down the line, ... they are going to say, 'hey your curb is cracked' and we're going to have to pay for it. When they sawed the sidewalk and chipped out the existing sidewalk they were going to replace, they chipped the existing sidewalk. They came back with a bucket of grout and patched the patch. I also speak for my son who has property at 1221 Terry. He said he paid for new sidewalk ... because he didn't have any. When they broke out a corner of it, they came out and patched it. Well, he didn't pay for a patched sidewalk. If they don't come out and replace it, we will be paying under protest," he stated.

HAZEL TANNER OF 1039 CUSTER said she has lived with this whole situation for three years. She didn't have to have curb and gutter changes until they came in and tried to put a curb cut in the property on the corner. "They broke mine and had to fix mine. We didn't have a street to use for almost six months this year. I just wanted to say 'be careful when you accept these bids.'"

MR. HESLER RETURNED and mentioned on 12<sup>th</sup> Street West and Custer, they have a sign between Broadwater and Custer that says, "dip". "Well, it isn't a dip. The new road is already gouged and trucks and cars are bottoming out. You don't have to be an engineer to see that if they had lowered the manhole six inches, they could have dropped the whole street of Custer and they wouldn't have that deep dip," he stated.

There were no other speakers. The public hearing was closed. Mayor Tooley asked staff to respond to some of the concerns before the Council puts the item on the floor for action. Acting Public Works Director Brian Borgstadt said he has not been out to look at the locations mentioned this evening. He will check with the staff to see if anyone has called on these problems. Councilmember Kennedy asked if the City has some type of guarantee on this work. Mr. Borgstadt said the contractor is always responsible for workmanship. If there is a failure in the project, there is a one-year warranty for the work, one year from the contract closure date. Councilmember McDermott asked that an inspector be sent out to look at these problems and that a followup report be provided to the Council. She asked that staff contact Mr. Hesler and Ms. Tanner to look at their locations, instead of just having an inspector go out to look at the sites. Mayor Tooley noted that the Council wants some assurance that the work was done properly and that these concerns are addressed properly.

Councilmember Iverson moved for approval of the resolutions and followup on sub-item C, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

**11. PUBLIC HEARING AND FINAL APPROVAL OF RESOLUTIONS re-levying and re-assessing assessments on various Special Improvement Districts:**

- (A) RESOLUTION 01-17746 for SID #5259
- (B) RESOLUTION 01-17747 for SID #9905
- (C) RESOLUTION 01-17748 for SID #9598 for WO 94-02 #2
- (D) RESOLUTION 01-17749 for SID #9807
- (E) RESOLUTION 01-17750 for SID #1334
- (E) RESOLUTION 01-17751 for SID #1340
- (G) RESOLUTION 01-17752 for SID #1341

Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Kennedy moved for final approval of the resolutions, seconded by Councilmember Bradley. On a voice vote, the motion was unanimously approved.

**12. PUBLIC HEARING AND FINAL APPROVAL OF RESOLUTIONS levying and assessing the 2001 Annual Assessments:**

- (A) RESOLUTION 01-17735 for Park Maintenance
- (B) RESOLUTION 01-17736 for Fire Hydrant Maintenance (i.e. Property Safety Water Supply)
- (C) RESOLUTION 01-17737 for Demolition of Dangerous Buildings
- (D) RESOLUTION 01-17738 for Encroachments, Encumbrances, etc.
- (E) RESOLUTION 01-17739 for Light Maintenance Districts
- (F) RESOLUTION 01-17740 for Storm Sewer Maintenance
- (G) RESOLUTION 01-17741 for Street Maintenance
- (H) RESOLUTION 01-17742 for Weed Cutting and Removal
- (I) RESOLUTION 01-17743 for #3002 Tree Removal

Staff recommends approval. (Action: approval or disapproval of staff recommendation).

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

**13. RESOLUTION annexing an unplatted 27 acres in T1N-R25E-S23: SE1/4, NW1/4, (Annex #01-14), Zella Yegen Trust B and Zella Yegen Trust C, owners.  
Action delayed from 9/10/01. Staff recommends tabling action until 1/14/02.**

**(Action: approval or disapproval of staff recommendation.)**

Councilmember McDanel asked why this item is being tabled to January 14<sup>th</sup>. Bruce McCandless from the Planning Dept said the applicant has requested additional time to negotiate cost shares on storm sewer and street improvements that are required on the property. Councilmember McDanel reminded the Council that, "as we look developing property and doing infill, this piece of property meets our objectives very clearly and very precisely. While we continue to delay this for the purpose of postponing development until we are sure that development will take place prior to annexation ... we need to remind ourselves that if we are going to annex property, this is a wholly surrounded piece of property that is prime for development within the City and we should be considering annexing it." Councilmember Kennedy said he did not disagree, but realized this has been a difficult process for the developer, noting he has lost the entire building season this year. This is affordable housing and the developer is just trying to make this project work noted Councilmember Kennedy. Councilmember McDermott said she agreed with Councilmember McDanel, but had no problem with a delay as long as they had a date certain for the delay.

Councilmember Johnson moved for approval of the staff recommendation (to table action to 1/14/02), seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

**ADJOURN –** With all business complete, the Mayor adjourned the meeting at 8:47 P.M.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Charles F. Tooley MAYOR

ATTEST:

MINUTES: 9/24/01

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE CITY CLERK