

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

MONDAY, FEBRUARY 14, 2000

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 Councilmember Mark Elison.

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

MINUTES – January 24. The Minutes were approved as printed.

COURTESIES – None.

PROCLAMATIONS –Mayor Tooley. Feb 20-26 was proclaimed as National Engineer's Week.

BOARD & COMMISSION REPORTS. – None.

ADMINISTRATOR REPORTS – Dennis Taylor.

(1) Mr. Taylor requested that three late additions be made to the Consent Agenda as Items Z1, Z2, and Z3. The items were grant application approvals for the Police Department.

Councilmember Kennedy moved to add Items Z1, Z2 and Z3 to the Consent Agenda, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved. ITEMS Z1, Z2, AND Z3 were added.

CONSENT AGENDA:

1. A. Bid Awards:

(1) **W.O. 98-09: Rose Park Bridge.** (Opened 1/11/2000). (Delayed from 1/27/2000). Recommend Edward T. Cops Construction, \$49,459.81 and thirty (30) calendar days.

(2) **5th Floor Parmly Library Egress and Dumbwaiter Removal.** (Opened 1/25/2000). Recommend Hardy Construction, \$54,000.00 for additional fire exit.

(3) **New Crack Sealer for Billings Logan International Airport.** (Opened 1/25/2000). Recommend Brock White Company, \$34,681.00.

(4) **One (1) 2000 Current Model Skid-Steer Loader for Public Utilities.** (Opened 2/1/2000). Recommend delaying award to 2/28/2000.

B. Change Order #1, Colton Trunk Sewer Project, Northern Line Layers, \$39,490.54 decrease and 0 days.

C. Change Order #1, SID 1342, Street and Utility Improvements to Eastlake and Westlake Circle, Lake Hills Subdivision, 23rd and 24th Filings, Schedule II, Empire Sand and Gravel, Inc., \$1,469.00 decrease and 0 days.

D. Amendment #4, W.O. 94-07: Priority Signals, Professional Services Contract, Marvin & Associates, \$1,600.00.

E. Construction Agreement (and Resolution 00-17540) with Montana Department of Transportation for W.O. 79-35, Rimrock Road Reconstruction Project, Phase II, MDT Designation STPU 1002(9) for reconstruction of Rimrock Road from Wisconsin St. to 17th St. West.

F. Reimbursement Agreement re: water and wastewater special benefit facilities in Block 18A, Lampman Subdivision, Paul Sheridan dba Sheridan Builders.

G. Annual Turnkey Agreements for Stewart and Poly Vista Parks, Billings Softball Association.

H. Acceptance of non-binding recommendation from the Local Law Enforcement Block Grant Advisory Board for grant fund expenditures. (\$132,139 grant monies; \$14,682 City match from Drug Forfeiture Fund).

I. Approval of the DBA's request for street closures associated with the annual *Farmer's Market* on Saturdays from 7/15/2000 to 10/7/2000.

J. Approval of DBA's request for street closures associated with the annual *Strawberry Festival* on 6/10/2000.

K. Approval of DBA's request for street closures associated with the annual *Food Fair* on 8/9/2000.

L. Approval of application for Domestic Violence Prosecutor grant. (\$103,618 grant dollars; \$20,723 City match).

M. Approval of application for Victim/Witness Specialist grant. (\$100,095.30 grant dollars; \$25,000 City match).

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N. Approval of application for Misdemeanor Supervision subgrant from Montana Board of Crime Control.

O. Allocation of \$40,000 of FY 1999-2000 HOME Affordable Housing funds for debris clean up on Covert Lane in Billings Heights.

P. Allocation of \$60,000 of FY 1998-1999 HOME Affordable Housing funds to create new Second Mortgage Program.

Q. Acceptance of Financial Report for the Second Quarter of FY 1999-2000.

R. Confirmation of Police Officer: Jerry Smidt.

S. Acceptance of Quit Claim Deeds for Lake Hills Subdivision Drainage Ways.

1. Lot 19, Block 39, Lake Hills Subdivision, 12th filing
2. Lot 16, Block 39, Lake Hills subdivision, 12th filing

T. First reading ordinance adopting Uniform Fire Code, 1997 Edition, and setting a public hearing date for 2/28/2000.

U. Resolution 00-17536 declaring the intent to sell city-owned property described as:

Lot 22A, Lake Hills Subdivision, 12th Filing and setting a public hearing date for March 13, 2000.

V. Resolution 00-17537 authorizing the issuance and calling for the public sale of \$1,700,000 General Obligation Bonds, Series 2000 on 3/13/2000.

W. Resolution 00-17538 authorizing participation in the INTERCAP Loan Program for construction of Terry Park Fire Station, \$450,000.

X. Preliminary Minor Plat of Amended Tract 3A Siewert Acres Subdivision, generally located on Lake Elmo Drive and Siewert Lane.

Y. Bills and Payroll.

LATE ADDITIONS:

Z. Approval of application for Police Grants:

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- (1) Stop Violence Against Women Grant; \$7500 grant dollars, City match: \$1875.00
- (2) Anti-Drug Abuse Grant; \$96,920 grant dollars, City match: \$29,076.00
- (3) Anti-Drug Abuse Grant – 5 video cameras; \$20,136 grant dollars; City match: \$6,041.00

(Action: approval or disapproval of Consent Agenda.)

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

REGULAR AGENDA:

2. RECONSIDERATION of Preliminary Development Agreement between the Downtown Billings Partnership and CTA Development Billings LLC for the downtown multi-use parking structure. (Approved 1/24/2000). (DEISZ). (Action: approval or disapproval of agreement.)

Councilmember Deisz moved for reconsideration of the Preliminary Development Agreement, seconded by Councilmember McDanel. Councilmember Deisz said he did not want to make any changes to the language, just to fill the obligations the Council addressed a few weeks ago that the public would be allowed input on this and secondly to have a report from the City Attorney on the indemnification language in the contract. Councilmember Elison asked for clarification of what the Council was doing with this item at this time. Mayor Tooley advised that the City Attorney informed him that when an item is to be reconsidered, it is not put on the agenda at the Agenda Meeting because the Council cannot vote on it at the Agenda Meeting. "Instead, any item for reconsideration must come forward either at the same meeting in which it was first considered OR at the Council meeting immediately following that meeting," he stated. Mayor Tooley noted there was a public hearing and asked if another public hearing is being requested this evening. Councilmember Deisz said there was no public input at the last meeting. "You allowed the people who are principals in CTA Limited Liability Partnership to talk, but you did not allow other public members to make public comment. I was just requiring or asking that they be allowed to have public comment tonight if there is anyone who wants to," he stated. Mayor Tooley noted that "this is kind of on a slippery slope here. We're not following correct procedure in not announcing a public hearing in plenty of time for everyone who wants to participate to actually give their comments. It is irregular, although I guess it is legal, is that right Mr. Brooks?" City Attorney Brent Brooks said the Council could take comments, but if the Council wanted to advertise the public hearing, they could do that as well. It is better to

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advertise a public hearing than to have one just tonight, he stated. Councilmember Larson asked, "if the item is reconsidered and comes back to the agenda in the same way it was originally presented, therefore any additional public comment would have to be voted on after reconsideration as an amendment?" Mayor Tooley asked what the intention was – to reconsider the motion or to have public comment. Councilmember Deisz said, "actually I guess, legally we have to do both, because you cannot reconsider without putting it back in the same position. The City Attorney and I talked this afternoon. I have no wish to change the wording at all on the Agreement; I wish to go forward with it, but I do wish to allow for public comment this evening if anyone wants to publicly comment," he stated. Mayor Tooley asked for guidance from the City Attorney. Mr. Brooks said, "having a second on the motion to reconsider, you would first vote on the motion to reconsider. This requires a simple majority. If this motion passes, the item is placed back on tonight's agenda; it does not necessarily mean that you have to abide by that document, but it places it back on tonight's agenda for any discussion or any council action that you may desire at this point. I think I also explained ... that since the contract has already been signed by all parties, if there was some modification, pursuant to your collective wishes tonight, those modifications would have to be proposed amendments to the contract to the other two parties. They would have to consent to that written modification to the document... In terms of passing the motion to reconsider, you can discuss or take comment, whatever you would like to. You are not bound to change the document in any way if you desire not to do so. It simply places the item back on its originally, unapproved, if you will, status – back to where it was originally... It has been approved, but you are certainly welcome to reconsider the approval of that document. However in the process of that reconsideration, if you wanted to modify the language some, that would really take the form of a proposal to the other two parties that have signed that contract to modify that contract," he stated. Mayor Tooley said even if the motion on reconsideration this evening fails, "the public is still invited to give their opinions to members of the Council, the Mayor, to staff, about what they think about this particular agreement. On a roll call vote on the motion for reconsideration, the motion failed 4-7. Councilmembers voting "yes" were: McDermott, Deisz, McDanel and Larson. Councilmembers voting "no" were: Bradley, Kennedy, Tooley, Iverson, Ohnstad, Johnson and Elison.

3. PUBLIC HEARING AND SPECIAL REVIEW #669: a special review to allow the placement of an all-beverage liquor license in a Community Commercial zone on Tracts A1 and A2 of C/S 1136, 2nd amended and Tract B of C/S 1136 Amended, located at 2520 Central Avenue (former World West Theater), Macerich Rimrock Limited Partnership, owner; Macerich Company, agent. Zoning Commission recommends conditional approval. (Delayed from 1/10/2000). Applicant requests delay to 3/13/2000. (Action: approval or disapproval of applicant request).

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Planning Director Kerwin Jensen said the applicant is looking at a potential owner to help answer some questions the Council had earlier. Staff recommends allowing an additional delay until March 13, he said.

Mayor Tooley announced that the public hearing would be continued to the 13th of March. Councilmember Ohnstad moved for approval of the delay to March 13th, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION CREATING SILMD 270, on Rimrock Road from Wisconsin to 17th Street West. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Public Works Director Kurt Corey said the Montana Department of Transportation will install streetlights with the upcoming Phase II improvements on Rimrock Road. In accordance with the construction agreement between MDOT and the City, the City is obligated to provide ongoing energy and maintenance costs. A similar lighting improvement district was created in the Phase I area to the east. The public hearing this evening is to review the equity of the proposed assessments under the SILMD. The assessment rate for this district is about 0.6 of 1 cent/sf, which equates to about \$48.00/year for an average 8500 sf residential lot. It will generate total annual revenues of \$8800.00. The resolution of intent was considered on January 10th. The total protest received was about 2% of the district. Councilmember Elison asked if this would be eligible for inclusion in an arterial lighting district, if one ever was formed. Mr. Corey replied that it would be eligible. Councilmember Elison also asked about assessments on the southwest corner of 17th Street and Rimrock Road – a small portion of a large condominium development. “The costs for that are spread throughout all the owners of the condominium, but the costs are only assessed on that small portion of the condominium property that abuts Rimrock Road, is that right?” Mr. Corey replied that was correct. Records show an assessable area of 60,000 sf. The entire condo complex was not assessed, just that small area spread over all of the owners.

The public hearing was opened. GEORGE HEFENRIDER OF 984 RIMROCK ROAD said he is already paying \$78 for lighting and said the City now wants to assess him another \$56 for this district. He said they are not the only ones who use that street; a lot of people use that street to gain access to Rimrock and go down that street. “I don’t think we should be assessed all of that; it should be split up equally between everybody,” he stated. He questioned whether all the right-of-way had been secured on which to construct the lights. Public Works Director Kurt Corey replied that this project is under the Montana Department of Transportation. He didn’t think all of the right-of-way acquisition had been completed to date. Mr. Hefenrider said he felt this was premature to assess anyone until that happens.

There were no other speakers. The public hearing was closed. Councilmember Johnson moved for approval of the resolution, seconded by Councilmember McDanel. Mayor Tooley asked if there are a number of property owners who will be assessed

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another amount for streetlights. Mr. Corey replied there would be some properties in this situation, but that is a common issue. Mayor Tooley asked to have that information compiled. Councilmember Iverson asked if the assessments start before or after the project is completed. Mr. Corey said in the case of a project like this where the actual construction and energizing date is uncertain, a most likely scenario is that the first set of assessments would be levied a year from now in November, at which time the first year assessment would pick up the following year plus however many months in 2001 the lights had been in place. Alternatively, if the construction schedule is more imminent, it is possible to levy those assessments this Fall, with a projected energize date. Mayor Tooley asked if it is staff's intention to assess two streetlight district charges per year. Mr. Corey reminded the Council that it is not uncommon to have residential local lighting districts in place, and an arterial assessment district overlaid on top of that – not an uncommon occurrence with the current method of assessment for arterial lighting.

Councilmember Elison asked about the progress on creating an arterial streetlighting district. Mr. Corey said Doug Streeter from the Engineer's Dept presented that concept to the Council last Fall. The direction received from the Council that evening was to bring back a proposal at a future date (uncertain). He said they are at a point where most of the analysis has been done and if the Council would choose to have that item before them at a specific date and time that could be done, but additional Council direction is required. Councilmember Johnson asked if the arterial light district would also apply to this new district to be created. Mr. Corey replied the concept presented before was to aggregate ALL of the arterial lighting districts into a single citywide boundary to be assessed across the entire community – which would include a district like this one. With discussion complete, the vote was called for. On a voice vote, the motion was unanimously approved.

ADJOURN – With all business complete, the Mayor adjourned the meeting at 7:55 p.m.

THE CITY OF BILLINGS:

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ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK