

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

## **MONDAY, APRIL 10, 2000**

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 Jan Iverson.

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

**MINUTES – March 27<sup>th</sup>**. The Minutes were approved as amended.

**COURTESIES** – Mayor Tooley presented retired Finance Director Nathan Tubergen with a plaque honoring his years of service to the City. The Mayor noted that Mr. Tubergen served as Finance Director since June 1987 until he retired on March 17, 2000. He won the Governmental Finance Officers Association award for excellence in financial reporting for 13 consecutive years.

City Administrator Dennis Taylor presented Faustine Schaff with a plaque for her years of service to the City. Ms. Schaff retired last month after working in various positions in the Public Works Dept. She began her employment with the City in September 1976.

Mr. Taylor also presented Fire Dept Training Officer John Staley with a plaque recognizing his exemplary performance in fundraising. Mr. Staley raised enough money to fund the purchase of five (5) new thermal imagers for the Fire Department.

U.S. Attorney Sherry Matteucci presented Community Development Manager John Walsh with a plaque for his work and assistance on the Billings Child and Family Intervention project.

**PROCLAMATIONS –Mayor Tooley**. Mayor Tooley proclaimed the month of April as Fair Housing Month, the week of April 9 – 15 as Public Safety Telecommunicator's Week and April 13<sup>th</sup> as Take Back the Night in Billings.

**BOARD & COMMISSION REPORTS** — None.

**ADMINISTRATOR REPORTS – Dennis Taylor**. Mr. Taylor reminded the council that he would be out of the office at the GOSCMA conference in North Dakota on Tuesday through Friday this week. Library Director Bill Cochran would be acting city administrator in his absence.

**CONSENT AGENDA:**

**1. A. Mayor's Appointments:**

(1) Joanie Fishburn, Tenant Commissioner for Housing Authority

**B. Bid Awards:**

- (1) **W.O. 95-08, Phase I: Shiloh Road & Grand Avenue Intersection Improvements.** (Opened 3/28/2000). Recommend delaying to 4/24/2000.
- (2) **W.O. 93-19, Montana Avenue Landscaping STPE 1020(12) – Billings.** (Opened 3/28/2000). Recommend delaying to 4/24/2000.
- (3) **W.O. 99-05, Kings Green Drainage Improvements.** (Opened 4/4/2000). Recommend delaying award to 4/24/00.
- (4) **Runway Sand for Billings Logan International Airport.** (Opened 4/4/2000). Recommend delaying award to 4/24/00.

**C. Contract Amendment #5, Solid Waste Engineering Services, EMCON/OWT, \$16,690.00.**

**D. Contract Amendment #1, Professional Services for FY 99/00 Household Hazardous Waste Collection Event, Philip Services, \$39,750.00.**

**E. Agreement** between the City of Billings and Yellowstone County to provide data processing services for the Yellowstone County Sheriff's Office in the amount of \$62,096, term: July 1, 2000 – June 30, 2001.

**F. Approval** of budget adjustment to Airport's Capital program to begin necessary hangar site development, \$197,000.00.

**G. Approval** of extension of agreement with US West for pay phones at the airport, term: 2 years. (\$3,000 – \$4,000 /year revenues).

**H. Approval** of WAIVER to allow Billings Depot, Inc. to follow Federal regulations for securing contractor and professional services, instead of City regulations.

**I. Resolution 00-17556** declaring the intent to sell city-owned property described as: Lots 1-19, Block, 231, O.T. (800 Block of S. 24<sup>th</sup> St.) and setting a public hearing for 5/8/2000.

**J. Resolution 00-17557** authorizing use of Council Contingency funds for

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Municipal Court video arraignment equipment, \$32,655.00.

**K. Resolution of Intention 00-17558** to order in the improvements for W.O. 00-02, Contract #1: 2000 Miscellaneous and Developer-Related Improvements project, and setting a public hearing date for 5/8/2000.

**L. Bills and Payroll.**

(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 Special Review #672: a special review to allow the placement of an all-beverage liquor license in a Community Commercial zone on Lots 4, 5, and 6, Block 2 of the Amended Plat of Lots 10, 11 and 12 and a part of Lot 9 of Arnold Subdivision, located at 2228 Grand Avenue, Ralph and Blanche Winchell, owners; Rebecca Reno and Moulton, Bellingham, Longo and Mather, P.C., agents. Zoning Commission recommends conditional approval. (Approved 3/27/2000). (Bradley). (Action: approval or disapproval of Zoning Commission recommendation).**

Mayor Tooley noted that this special review was approved at the last council meeting. Council rules of procedure allow any member on the prevailing side of the motion to bring any item back for reconsideration by the council at the next meeting. Councilmember Bradley did vote on the prevailing side of this issue at the last meeting and has requested that it be reconsidered again this evening.

Councilmember Bradley moved for reconsideration of Special Review #672, seconded by Councilmember McDermott. Mayor Tooley said the council has the authority to allow exceptions to the City Code so that liquor and gambling licenses can be placed in areas within 600 feet of schools, churches, parks and playgrounds. "There are carefully considered reasons why some members of this city council vote against such an exemption. One reason is that according to a map recently provided by City staff, numerous places exist where liquor and gambling are already allowed. The question that many City councilmembers ask themselves is 'why make an exception to the code, when it is not necessary for the good of this community?' Another reason to vote against the exceptions is that the vote is for all time and follows the property. That means no matter how well conceived or palatable a proposed use may be, like a wine store that does not

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expect a lot of on-premise consumption, the right to use a liquor and gambling license goes with the property. That means the property can be used at any time as a bar or a casino, once the special review has been approved by the City council. A proprietor with all the best intentions will go out of business or retire some day and it's only reasonable to expect that the property might then be used as a bar or casino. It's the responsibility of our elected officials to look at the effect of their decisions over a period of time. 'How do we want our city to look in 25 – 50 years?' if we continue to allow variances for liquor and gambling licenses, are we doing the best thing for our community? My record is clear on this issue. If the liquor and gambling license is not allowed in an area, I vote no on the variance. If it is allowed, I don't fight them... There's another issue we must address and that is the way this council deals with its citizens. There is no substantial information tonight that was not available at the last meeting. I'm very hesitant to reconsider the decision this council made two weeks ago in favor of this applicant, who is in front of us tonight. This citizen went through approval by the Zoning Commission, a public hearing and approval by this council. We're dealing with a local businessperson with a good reputation that is willing to accommodate neighbors and does not want to put in a bar or a casino. I don't think we should be telling an applicant like this to go ahead with a business plan at one meeting, and then tell them they are at risk of losing their business opportunity two weeks later. Our 'yes' should be our yes and our 'no' should be our no. I do not think we should bounce a citizen around with this kind of reconsideration," he stated.

Councilmember Deisz said those who voted against this item a couple of weeks ago knew exactly what they were voting for and why they were voting for or against it. He urged the Council (and Mayor) to vote for reconsideration to "maintain your stance." On a roll call vote on the motion to reconsider, the motion failed 4-6. Councilmembers voting "yes" were: Bradley, McDermott, Deisz and McDanel. Councilmembers voting "no" were: Kennedy, Tooley, Iverson, Ohnstad, Larson and Elison.

Councilmember Deisz asked if Councilmember Kennedy had a conflict of interest. City Attorney Brent Brooks said he has discussed this matter with Councilmember Kennedy and felt that the identified conflict, if it is one, is the application of Councilmember Kennedy's wife on this floating all-beverage liquor license. "She is about 80<sup>th</sup> on the list ... Our statutes talk about a 'direct' financial or personal interest. For consistency sake, Councilmember Kennedy could abstain from voting this time... The vote would not change obviously. However we have advised Councilmember Kennedy that ultimately this is his decision; we cannot instruct a councilmember not to or to vote on a certain issue," he stated.

**3. PUBLIC HEARING for Community Leadership Development to gather public input on the need for a proposed project to be constructed at the following proposed sites: 1019 South 30<sup>th</sup> Street, 124 South 30<sup>th</sup> Street, 816 South 31<sup>st</sup> Street and 105 South 34<sup>th</sup> Street. (Action: public hearing only).**

HOME program coordinator Joe Burst said the council had its first experience with a

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public hearing for a non-profit developer that was requesting an exemption from property taxes. This was allowed by SB167. Prior to the allocation of tax credits, the local government needs to hold a public hearing to receive comment on whether this developer meets a community need. This does not require any council action, but would welcome comments from the council and the public on these projects.

He said Community Leadership Development is proposing to build five (5) duplexes on the south side. They are also requesting a tax exemption that they have done last year. They are a non-profit organization with a long established history of providing clean, safe, affordable housing on the south side. Their projects have ranged from moving houses from the hospital corridor, rehabbing them and placing them on the south side, as well as new construction. Their role as a housing provider has made a significant impact in keeping the south side a viable part of our community. He introduced Dave Hagstrom with Community Leadership Development.

Mr. Hagstrom said he has applied for tax credits from the Montana Board of Housing to build five (5) duplexes on infill lots on the south side. MBOH does their allocation on April 13<sup>th</sup>.

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

**4. 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, 2<sup>nd</sup> 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, 2/14/2000 and 3/13/2000). (Action: approval or disapproval of Zoning Commission recommendation).**

Zoning Coordinator Jeff Bollman noted that the applicant has requested another 30-day delay on this item. He asked if the Council wished for him to proceed with his presentation. The Council chose not to have the presentation this evening. Mayor Tooley noted that this is the fourth time the applicant has requested a delay.

Councilmember Ohnstad moved for approval of the 30-day delay, seconded by Councilmember Iverson. Councilmember Deisz made a substitute motion to deny the special review and let them come back when they are finally ready, seconded by Councilmember Bradley. City Attorney Brent Brooks informed the Council that they should conduct the public hearing before they actually vote on the motion. It has been advertised as a public hearing. He advised the Council to withdraw all motions on the floor before holding the public hearing. Councilmember Deisz withdrew his motion and Councilmember Bradley concurred. Councilmember Ohnstad withdrew his motion and Councilmember Iverson concurred.

Councilmember McDanel said the question on the floor was not to approve or

disapprove the special review but to approve or disapprove of the delay. He said that was a legitimate question prior to opening the public hearing. "If we approve the delay, holding a public hearing now will still require us to hold another at a later date," he stated. Mr. Brooks said his concern was that the council would vote to deny the special review without having first held a public hearing. Procedurally the council would have to vote on the substitute motion to deny the request BEFORE they could vote on the original motion to delay.

The public hearing was opened. KENDALL MERRICK OF 2212 QUINN HAVEN said she is the manager of Rimrock Mall. She thanked the council for considering the request to delay, noting the reason they are requesting another delay is because they have had a significant turn of events in the leasing status of this property. "Up until late last week, we had a merchant on line that we thought we would readily execute a lease with. We thought presenting that merchant to you would relieve any concerns you had about approving the liquor license for that location. As of last week, it appears that the negotiations had broken down and that merchant most likely will not be the player for that property. We go back to the drawing board," she said. The reason for the delay is that this turn of events changes the focus of their presentation to the council. Instead of presenting a particular merchant, they need to go back and present a request for a liquor license in that location, based on the merit of the liquor license alone. She noted that they could present the "type" of merchant they are pursuing for that location. They are not prepared to do that tonight and request the additional delay.

There were no other speakers. The public hearing was continued to a later date.

Councilmember Ohnstad moved for approval of the 30-day delay, seconded by Councilmember Kennedy. Councilmember Deisz made a substitute motion to deny the special review and have them come back when they are ready, seconded by Councilmember McDanel. Councilmember Elison said the new information tonight suggests there will be no additional delays and there would be a presentation in the absence of the proposed proprietor and didn't think it was appropriate to deny the request. Councilmember Larson asked there is a time constraint as to when they could bring this issue back before the Council. Mr. Brooks replied there was not. Councilmember Larson asked if the process was for them to just go back through the Zoning Commission process again. Mr. Brooks confirmed that was the correct process. Councilmember McDanel said, "despite the new information tonight that assures us there will be no additional delays, I thought there would be no additional delays three other times," and stated he would vote to deny the request. Councilmember Kennedy reminded the Council that this is a small business and the Council is supposed to be business-friendly, not throw roadblocks up. Councilmember Deisz disagreed with Councilmember Kennedy and said they are not throwing up roadblocks, "we are simply saying please come back when you are 'ready' to do business before this City council. Stop wasting our time month after month," he stated. Planning Director Kerwin Jensen said if this request was denied, the applicant could not come back to the Council until the second meeting in June, after going through the entire

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process again. On a roll call vote on the substitute motion to deny the special review, the motion failed 4-6. Councilmembers voting "yes" were: Bradley, McDermott, Deisz and McDanel. Councilmembers voting "no" were: Kennedy, Tooley, Iverson, Ohnstad, Larson and Elison. On a roll call vote on the original motion to allow the 30-day delay, the motion was approved 6-4. Councilmembers voting "yes" were; Kennedy, Tooley, Iverson, Ohnstad, Larson, and Elison. Councilmembers voting "no" were: Bradley, McDermott, Deisz and McDanel.

The public hearing was continued and action delayed to May 22, 2000.

**5. PUBLIC HEARING AND SECOND READING ORDINANCE 00-5116 FOR ZONE CHANGE #657: a zone change from Residential 6000 to Community Commercial on Tract 1A2, C/S #1012 Amended (E1/2, NW1/4, Section 27, T1N, R26E), located at 630 Lake Elmo Drive, Timothy and Theresa Wilson, owners; Willard Wilson, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation).**

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

**6. PUBLIC HEARING AND RESOLUTION 00-17559 CREATING SID 1344: installation of sanitary sewer improvements on Hallowell Lane – Kissee Subdivision, Blocks 1 & 2; Byrnes-Stephens Subdivision, Blocks 1, 2 & 3; Balcher Acres, Lots 1-6 & Lots 9-10; C/S 480, Tracts A & B, and Lots 7 & 10 in NE1/4 of Section 9, T1S, R26E. Staff recommends approval. (Action: approval or disapproval of staff recommendation).**

City Engineer Brian Borgstadt said this district is for sanitary sewer only, brought forward by petition of property owners in the neighborhood. The consulting engineer on the project is Craig Canfield of Interstate Engineering. As of the close of the protest period, the valid protest calculated was 41%, based on the assessment values. He also passed out three letters he received today for consideration by the Council. One letter is addressed to the Council from the County Health Dept. Councilmember Kennedy asked for an explanation of the valid protest based on the value of the assessment. Mr. Borgstadt said each property in the district is assigned an assessment. When the property owner protests, the value of that assessment is based on that dollar value as it compares to the overall project.

Craig Canfield of Interstate Engineering said this SID was brought forward by a number of property owners in the district. The interest came from two groups: a group of property owners in the Byrnes-Stephens and Kissee Subdivisions who are experiencing problems with their drainfields. A number of the septic systems in this area have failed in recent years. A number of the drainfields have been replaced over the years and there is

no replacement area available for new drainfields. The area presently does not have sewer service and all of the residents in the proposed district take care of their wastewater with onsite septic systems. The properties within these subdivisions are generally 7500 sf lots. These areas were platted in the 1930s and 1940s and were in the county at that time. County approval was granted at that time for onsite treatment of sewage.

Mr. Canfield said Lots 7 and 10 are presently undeveloped and located on the east side of Hallowell Lane. They are approximately 10 acres in size. The property owners were interested in providing public sewer to the property so that it could be developed in the future. The third area included in the proposed district is the Balcher Acres Subdivision, a portion of the lots undeveloped. Single family residences are constructed on some of the lots and abut or face Hallowell Drive. The lots in Balcher Acres Subdivision range in size from 2.3 acres to 0.2 acres, with the average being about 1.2 acres.

Mr. Canfield said a number of property owners have had to limit their water usage or it will overtax their septic systems. The ground has become saturated at certain times of the year, leaving the ground spongy, soft and with an odor. Sewage often rises and stands on the surface. A number of the systems no longer function and serve only as holding tanks that must be pumped on a regular basis to remove the sewage.

He explained that the district boundary was determined by looking at the logical extension of city services. The district includes all properties that would benefit from the sewer. Those properties are: property owners on the east and west sides of Hallowell Lane. There are two assessments: one is based on collection laterals, to be constructed in the Byrnes-Stephens and Kissee Subdivisions (about 2800 ft) and the other assessment for the collection main (about 1900 ft) that is proposed to run down Hallowell Lane and tie into the existing city sewer on Vaughn Lane. With assessments being comprised of two components, those properties that receive benefit from the collection laterals would be assessed for the cost of the collection lateral and also a portion of the cost of the collection main. Those properties where a collection lateral is not being built (i.e. Balcher Acres and Lots 7 and 10) would not be assessed for the cost of the collection laterals, only the collection main. The collection laterals are to be assessed based on the service potential, with generally each lot having a service potential of one, because the owners do not have the ability to construct two residences on lots in the Byrnes-Stephens and Kissee Subdivisions. The collection main that runs north/south up Hallowell Lane is being assessed based on the square foot size of the properties. That SF assessment is about 19 cents/sf.

Mr. Canfield said there are really no other feasible alternatives for sewer service to these areas. The ability to expand and extend drainfields and septic systems has run its course and the ability to expand them is no longer feasible.

The public hearing was opened. HOPE RENNER OF 4221 BRUCE AVENUE said her property needs sewer service because their drainfield is failing. The septic tank is okay, but the drainfield is no longer functional. They had their septic tank pumped today at a cost of \$100. She urged the Council to vote for the district.

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KEITH BAUER OF 136 HALLOWELL LANE said his assessment is \$18,952. He said he circulated the protest petition in the neighborhood. His property is located in the Balcher Acres area and he has had no problem with his septic system or drainfield. He said there are seven houses in Balcher Acres and six of the seven property owners have signed the protest petition. The seventh property owner thinks she will get assistance through the grant program. He said on Arden Avenue, he had close to 75% protest and Bruce Avenue was close to that. Mr. Bauer said many of the people in the area are on fixed incomes and the proposed assessments are large and present quite a financial burden for the property owners. He said he was primarily concerned with Lots 7 and 10. Lot 7 is zoned for Controlled Industrial. That property owner is paying \$80,000 for that assessment. Lot 10 is zoned for Residential Manufactured Homes and that assessment is for \$70,000. "If you are going to turn that into a residential manufactured home park, it seems that \$70,000 is not quite substantial enough to pay for what everyone else has to pay for," he stated. He said there should be some other way to help these property owners out with the costs.

JOSH WATTS OF 4225 BRUCE AVENUE said he is against the way this process was handled. He said they did not receive mailed notifications about the district. He has owned his home for 8 months and is now facing a 15-year assessment of at least \$100/month. He would like to see the costs reassessed in a manner to lower the cost to property owners to make it more affordable.

ELANE POPE OF 4229 ARDEN AVENUE said she represents her mother, Lillian Wilson. Her mother is not experiencing any difficulties in her septic tank/drainfield system. They know that it will become a health problem at some time soon and her mother is not in a position, if something does happen with her current system, to do anything about it. They support the district and said delaying the improvements now will only cost more in the future.

WANDA HARTMAN OF 4225 CLEVENGER AVENUE said they have already dug up their drainfield twice and there is no sense doing so a third time. "I cannot use my washer whatsoever. I was using it one day and my grandson came in and said you have water in your backyard. So, it's coming up ... I'm going out about twice a week to do my laundry in order to keep the soil dry in case my grandson plays back there. I know it is going to cost a lot of money. My husband is retired and I'm getting close to retirement. We are going to bite the bullet and say go now, because later on the costs will just skyrocket more," she stated.

TROY CALHOUN OF 4243 ARDEN AVENUE said he supported the sewer project until he got the price quotes. His assessment will be \$10,000. He said a lot of people don't know that there are a lot of old steel tanks in that area that need to be replaced with concrete. "Have there been any groundwater tests available? I have a well that comes out clear. I'm all for alternatives to see what else we can do to make it fair to everybody. There's a lot of young people down there that don't realize that after they start paying their payment, and they get this added on to their taxes, their payment is just going to keep

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going up and up. Every year that I've been down their, my payment has been up by about \$50/year onto my house payment," he said.

CHRIS RUCKMAN OF 4218 BRUCE AVENUE said she is on a fixed income and she is still in favor of this sewer improvement district for health reasons and for compassion for her neighbors. "Let's do it before it gets more expensive ten years down the line. I was at the informational meeting in October. There are no other alternatives to the sewer," she stated.

J.R. POOLE OF 4222 BRUCE AVENUE said he is aware of what this district will do to his mortgage payment. "I am also very aware that if I was to dig up my septic tank right now and replace my sewage system, it would cost me about \$6,000 or \$7,000 just for that. I'm one of the fortunate ones. The only problems I have are some very green spots in my back yard and some spongy dirt. If I let my dogs go for a little while, they get to play in the raw sewage. I don't think there are a whole of people here that would want to put up with that. I know none of us on Bruce want to. Out of compassion for my neighbor, we need to go through with this thing. What have we got to lose?," he asked.

MATT ENGEL OF 4216 CLEVENGER said he submitted a protest. He noted that he and his wife found their home after looking for six months. They closed on May 1999. They knew nothing of this problem. They bought a house at the maximum limit they could afford. They cannot afford an SID now. He said he feels they should have been told about this problem before he bought the house – the former owners knew this was coming when they sold it and didn't tell him. They are a first-time homeowner and it is unfair to place this burden on them. He said they might have to sell this house if this proposal passes.

HEATHER WATTS OF 4225 BRUCE AVENUE said they live next door to a failing septic system. They were also first-time homeowners when they bought their house and also bought their home at the maximum limit they could afford. They were not informed of the SID either. They are concerned about the health concerns on Bruce Avenue. They have owned their home only eight months. "If it is a health concern, it needs to be addressed. But why is a health concern a \$10,000 a lot cost? I understand there is cost in laying it, but the health concern is for the good of the people and the good of the city. It doesn't need to push us out of house and home. If we do try to sell the house now, it's been disclosed in the paper. We would still be responsible for the SID pending, which the owner before us should have let us know and been responsible for this...," she said. She said they have paid taxes in their time and received no notification of the district. They found out only by word of mouth.

MARTHA OLENBURG OF 4221 CLEVENGER said their septic system has already been replaced and there is no where else to go with replacement – "unless the city wants to put some outhouses on our corner lots.". They need the sewer because there are no other alternatives. She stated she thought there was a lot of misinformation that went out and people have misconceptions about the project.

TONY PERRY OF 124 HALLOWELL LANE said this property is in Balcher Acres. He bought the house in 1982. The house was built in 1948. They never experienced any

problems with the septic system and he has not experienced any problems with it either. "I feel like we are being obligated to have something brought into our property, although no one in Balcher Acres has had any problems. I feel like we are being dragged into this. My assessment is \$13,000 plus the cost of bringing it into the house. It will raise my taxes and house payments. I feel if there are any other alternatives – like bypass or a yeah or nay if you want this on your property... I haven't heard any other options," he said.

VERNON DRAKE OF 3111 RUGBY DRIVE said he owns Lots 7 and 10 along with Leroy and Katherine Burdette, the two 10-acre parcels. He said they feel sewer is necessary to address the current problems and for future development. Infill cannot happen unless the sewers are complete. "We opt to be in favor of this. It's going to cost us a lot of money. We've already invested a lot of money in this property and have owned it for 30 years. But it can't go anywhere and develop," he stated.

ARVIN SCHAFFER OF 4230 ARDEN AVENUE said he signed the original petition for the district but is now against it, because of the price of it. "What gets me right now is I think the city paid for a bigger share of the sewer to the Temple. I heard on TV the other night where out on the West End they are going to spend another \$480,000 to add that sewer for that industrial site. Now if the city can afford to do that, and they can afford to pay the part of the sewer to the Temple, why they can't pay for part of this sewer, especially the main line coming down Hallowell and we'll pay for our laterals?"

HARRY GARBER OF 301 HALLOWELL LANE said he is not immediately affected by this district. He protested annexing into the city limits because he's had bad experiences with the City. He said based on the square foot cost proposed for this district, he cannot afford that when it gets to his property, because he has 2.5 acres. He asked if it was possible to charge per hookup instead.

MAVIS SCHULTZ OF 4231 BRUCE AVENUE said they are retired on a fixed income and do not qualify for the special assessment grant program. She is against the SID because of the large costs.

MITCH CHAPIN OF 4211 ARDEN AVENUE said he is concerned that the sewer line will be located in his back yard and all the fence lines will need to be removed, as well as ripping up their backyard. He wanted more information as to where the lines would be located. He closed by adding that this SID is very expensive for everyone.

DON THOMPSON OF 4246 ARDEN AVENUE said he has never had any problems with his septic system in the 21 years they have live there. He signed the original petition because the estimate quoted at that time was \$3,000 - \$5,000. He signed that petition because he "felt for" the people on Bruce Avenue and Clevenger. He is opposed to the district because of the increased expense of \$9,000 - \$10,000. He wanted to see other alternatives explored instead.

KARI KINDSFATER OF 4215 ARDEN AVENUE said she and her husband are not against the sewer but are against the cost. They have two young children, having to move their fence and shed, the cement the shed is on, etc. adds cost to this project for them. They are opposed to the project.

JAMES F. JACOBS OF 4208 CLEVENGER said he is in favor of the SID. He has lived in his home for 30 years and has no problems with his septic system. He thought the cost should be reduced however.

RON SCHULTZ OF 4231 BRUCE AVENUE said he is against the sewer basically because of the high cost. He has lived there about 40 years and has had very little trouble with their septic system. He asked about what is being done with the park at the end of Bruce Avenue and who will pay for that cost.

CECELIA BENDER OF 4217 CLEVENGER said they need to do the project now because it will only get more expensive if they wait. "But it is quite pricey for all of those people," she stated.

There were no other speakers. The public hearing was closed. Councilmember Elison moved for approval of the staff recommendation (to approve the district), seconded by Councilmember Kennedy. Councilmember Iverson urged anyone who cannot afford the cost of the assessments to see John Walsh in the Community Development office, because there is assistance out there. She asked staff if the city or the Temple paid for the cost of the trunk line to the Temple. Mr. Borgstadt said that the Temple paid the cost of running the trunk line to the Temple.

Councilmember McDermott asked staff to respond to a number of the questions asked by members of the audience this evening. In response to the question regarding the Temple and the West End expenditures, Mr. Borgstadt said that at the council's insistence, the Temple paid the cost to extend the trunk line to that property. In regard to the West End expenditure, the TransTech Center is a community economic development project that has various contributions for the center as a whole. The council has Gas Tax money, storm drainage funds and some public utilities money expended into that project. When the speaker said \$400,000 was the number he heard, that is Gas Tax and storm drain money.

In response to the park at the end of Bruce Avenue, Mr. Borgstadt said the park is city property and would be assessed as a normal property within the district. The protest is not treated either way and is evaluated as a neutral property. The city will pay that assessment, not the property owners. Councilmember McDermott said someone said they were told the cost would be \$3,000 - \$5,000 initially and asked if those were figures that came from the City Engineer's office. Mr. Borgstadt said he did not know where those figures came from. A petition is generally circulated with an estimated cost of what it might cost, to gain support for the SID. We encourage people who circulate petitions to have those costs at that time. He said he did not know when and by whom the initial petition was circulated. Mr. Canfield said the petition that was distributed did not have any costs included with it. He said in 1998, the original cost estimates that they pulled together were around the \$10,000 mark for the 7500-sf lot. "We have never been able to put any estimates together that have gotten below the \$10,000 threshold for 7500 sf lots," he stated. Councilmember McDermott asked about moving the shed and fences. Mr. Borgstadt said that might not be true; they do not know at this point. Once the project

moves forward that finite level of design gets done. If the fences are in the alley and not on individual properties, it is likely they would have to be moved. If they are on individual properties and they need to be moved, it becomes part of the project cost to do so. But that level of detail has not yet been reached with this project.

Councilmember McDanel asked about the costs associated with the undeveloped parcels of land and that the undeveloped parcels weren't paying their fair share. "As I understand it, as those undeveloped parcels are subdivided and/or developed, the developer will pay the full cost of all laterals and connections that would be associated with any sewer within that undeveloped parcel of land, is that correct?" he asked. Mr. Borgstadt replied that was correct. He said the Arden, Bruce and Clevenger residents that are paying for these laterals are paying for their laterals. Mr. Drake is not paying for their laterals.

Councilmember Iverson asked for clarification on the fence issue. "If indeed the fence is on their property and has to be taken down and put back up again, you said that is a project cost. That person will not have any extra assessment for having that done, will they?" she asked. Mr. Borgstadt said it would have to be accounted for somewhere in the SID.

Mayor Tooley said several people were concerned that they had not received any notification and asked what had happened there. Mr. Borgstadt said notices are sent to the owner of record as registered at the county courthouse. If the person happens to be buying a piece of property on a contract for deed, unless that contract for deed is registered, the county will still send tax notices to the owner of record or the seller. If it is a recent property transfer, sometimes the county record is not up to date. "At this point in the process of creating an SID, we do the best we can with the county records to send notice to the owner of record according to the tax statements," he stated.

Councilmember Bradley asked if Lots 7 and 10 were excluded from this SID, would there be a valid protest, based on assessment value? Mr. Canfield said he has not analyzed the petition in that regard. Mr. Borgstadt said of the properties represented by those two larger tracts, one of them is making a cash contribution to the district – \$70,000.

Councilmember Deisz asked if there were any other revenue sources identified to use on this project to lessen the assessments. Mr. Borgstadt said some residents might be eligible for special assessment grants through the Community Development Block Grant program. This is based on an owner-occupied home with an income level that falls within the low – moderate-income guidelines. A Treasure State Endowment Program (TSEP) grant was considered as well. The problem with a TSEP grant is that it has to go through the legislative approval process, a priority process, assigned points and ranked and essentially competes with projects all around the state. It is a large pot of money and a very long process. He said that based on the testimony presented tonight there is an element of eligibility there. He reminded the council that they would be competing with all the smaller communities in Montana; Billings has not fared well competing on that basis. The program generally funds health and safety projects, but this year it has also opened the program to bridge projects. He asked if other city funds could be used for this project.

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Mr. Borgstadt said the public utilities department waived the trunk fees that would normally be assessed to build the trunk line in Hallowell. This amounted to about \$20,000. With discussion complete, a voice vote was taken. The motion was unanimously approved.

**7. PUBLIC HEARING AND RESOLUTION 00-17560 annexing Tract 1-A of C/S 984 (1009 Mullowney Lane, north of Interstate 90), Annex #00-01, Add and Betty Reese, petitioners, Paul Thomae, agent. Staff recommends approval. (Action: approval or disapproval of staff recommendation).**

Planning Director Kerwin Jensen said this is a 4.3 acre parcel of ground northeast of the King Avenue West interchange and is a county island. It has been petitioned by the property owner to be brought into the City. All departments have had a chance to respond to the request and all departments have concurred that this would be a proper annexation. He noted that Tract 1B is a separate property and is not being annexed at this time.

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

**8. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #CC00-01: a variance from the Site Development Ordinance, BMCC Section 6-1208(h)(3) to allow a 110-foot driveway approach onto Riverside Road. Staff recommends approval. (Action: approval or disapproval of staff recommendation).**

City Engineer Brian Borgstadt said within the City Code driveway requirements for a residential area are for a minimum of 12 feet and a maximum of 24 feet; in commercial areas – 30 feet and an exception for trucking areas –approaching 40 feet. Beyond those limits, a variance would be necessary. The variance before the council this evening is for an operation that is a trucking use with a maneuvering problem.

The public hearing was opened. MICHAEL BURKE OF 2101 LOCUST said he is speaking on behalf of Western Sugar Company and American Driver Services, the group developing this project. The problem is that if they try to stay within the existing ordinance, the trucks would go over the tops of curbs as they make turns and destroy a new improvement. He urged the council to approve the request. Both firms met with the neighborhood task force and received their support. They have also committed to landscaping and trees along State Avenue.

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

**9. PUBLIC HEARING AND RESOLUTION 00-17561 authorizing sale of city-owned property described as: Lots 21 and 22, Block 247, Billings Second Addition. Staff recommends approval. (Action: approval or disapproval of staff recommendation).**

Councilmember Deisz asked what investment the City has in this property. HOME Coordinator said none at this point. The City was given the land. It has a taxable value of about \$4,000. "Historically we have given land to nonprofits for a \$1.00 value to encourage affordable value. That is our main focus. We will get something as an end result," he stated. This property is proposed for development of affordable housing by Community Leadership Development.

Councilmember McDermott asked if the property would then go back to the tax rolls. Mr. Burst said this is one of the properties that Mr. Hagstrom of Community Leadership Development is requesting a tax exemption on. As long as he is a non-profit organization and meets the standards of a non-profit, the development would stay off the tax rolls.

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

The Council took a brief recess at 9:95 p.m. Mayor Tooley called the meeting back to order at 9:30 p.m.

**10. PUBLIC HEARING AND RESOLUTION 00-17562 ordering in W.O. 95-13: the 1999 School Route Sidewalk Improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

City Engineer Brian Borgstadt said this is a project introduced to the council several meetings ago, as part of the City's annual curb, gutter and sidewalk program. This year's school route improvements focus on Boulder School and Rimrock School area.

Staff Engineer John Nowak said this program is a continuation of past projects. Predominantly the work being done is in the Priority 2 area, with some Group 1 sidewalks still out there within the City – lying either on an arterial or collector street. All the Group 1 sidewalks in residential sidewalks have been constructed. The project work location includes: 17<sup>th</sup> Street West from Poly Drive to Rimrock Rd, with a majority of work on the east side of the street – i.e. Rocky Mountain frontage and Urbaska Field frontage. Also included is Colton Boulevard between Rehberg and 32<sup>nd</sup>. 32<sup>nd</sup> Street West is included, the intersections with Colton and Boulder represent the school crossing safety improvements, and a missing piece of sidewalk on the east side of 32<sup>nd</sup> Street just north of Boulder Avenue.

Mr. Nowak said trees will remain whenever feasible. Diagonal parking in front of Urbaska Field will be eliminated. Missing sidewalk on Rimrock Road will be completed under the MDT project beginning later this summer. The school crossing improvements section of this program include bulbing at all four corners of the intersections of 32<sup>nd</sup> and Boulder and 32<sup>nd</sup> and Colton, to force traffic to slow down. It will also include replacing the school crossing signs with the new strong yellow/green signs elsewhere around town. Crosswalks will be repainted with the traditional ladder style school crosswalk striping.

Mr. Nowak stated that the estimated project costs are \$344,000.00 with various City

contributions. Assessed cost is about \$190,000.00. Construction is anticipated to begin before MDT starts their project on Rimrock Road, but to not start any work while school is still in session. Councilmember McDanel said he is not familiar with the concept of bulbing and how it slows down traffic, he asked staff to do some traffic counts and speed analysis through the area while school is still in session, then after the bulbing is completed, in the Fall and school is back in session, do the same tests again to see if in fact, the money spent on bulbing is having the desired effect.

The public hearing was opened. JAMI STEINBAUER OF 3102 FORSYTHIA BOULEVARD asked she is a parent and crossing guard at Boulder and 32<sup>nd</sup> Street. She said she is glad to see that the Council is finally doing something there, but doesn't think the proposed improvements will totally solve the problem. She asked the Council to still consider the yellow flashing lights. "I know we've been told that they don't work. I disagree. Over spring break I drove on Rimrock past the Arrowhead crossing on Rimrock. There was no school in session and I think 75% of Billings knew that. The yellow flashing lights were still on. Every time I went by and I went by every day, everybody slowed down. I do believe they work. I think bulbing is a step in the right direction, but I don't you to lose sight of the fact that I think we still need to have the yellow crossing lights," she stated.

STACIE RAPP OF 1530 WESTWOOD DRIVE said she is a grandmother who picks up her granddaughter every day at Boulder School. She said in the 15 minutes she waits, she has seen numerous offenders going anywhere from 25 – 45 mph. She said the kids in that area are in danger. She asked the Council to add the yellow flashing lights.

ANN MARIE HOLM OF 2220 BOULDER AVENUE said she has been at Boulder School since 1984 and has had four children go to that school. "I have personally seen four children hit in front of the school because of parents ... who did not see the children. One boy was flipped 50 feet in the air. Why? Because it was snowing and icy. He was not looking. The parents, the people who are driving are supposed to watch for a 6 or 7 year old kid. I petitioned the PTA and went to Terry Smith, the City Traffic Engineer. He has personally told me that flashing lights do not slow people down in front of schools. I go to work on Rimrock Road. I see the flashing lights every morning and it reminds me that I am approaching a school. I slow down. On my return trip, I drive in front of Poly School. It has a flashing light. It reminds me that there is a school there, to stop and slow down. I cannot emphasize enough that I think the flashing lights work. I do not know if the bulbing will work," she stated. It is a good start.

SCOTT JASARICH OF 3116 BOULDER AVENUE, #4 asked if it was possible to delay this item. He agreed something needs to be done, but, "I believe you need to focus your attention on another area. Boulder Avenue is a problem. It is an arterial with no sidewalks on either side. It is one of the worst streets in town... By opening Colton Boulevard, you are not going to slow traffic down, just creating another two-lane road for people to come through. Right now that sidewalk is the only place children have a safe place to go, where traffic can't get to them. I don't think you need to open Colton up; I think you need to keep Colton closed and improve Boulder...," he stated. Mr. Jasarich asked if

the council would delay the item a month, stating that he and his girlfriend would volunteer to walk the neighborhood and poll the neighborhood door-to-door and bring in some photos or whatever is needed. Many of the residents in the area rent and are not the people who will pay the taxes. He suggested they could bring the City some facts that would support fixing Boulder Avenue.

There were no other speakers. The public hearing was closed. Councilmember McDanel moved for approval of the staff recommendation, seconded by Councilmember Larson. Councilmember Elison said the council would like to fix Boulder Avenue, "but it would be the same situation as the sewer, when the prices came down to what it would cost to fix Boulder Avenue, I don't think you would be happy to see those costs. That's facing serious disrepair and the assessments that are going to come down whenever Boulder Avenue ever gets fixed are going to be enormous," he stated. He said until they can come up with a different way of assessing costs, it is cost prohibitive to fix that street.

Councilmember Larson said this is the first time on a school route project that representatives of a school came to say that the proposed project was something they were in favor of. "We sat here when we talked about the school route program several years ago and invited the School District to come tell us if this was an important issue, and we got one individual from the School District that frankly, they didn't care," he stated. He agreed with Councilmember Elison's comments and guessed that the average assessment would be 'absolutely astronomical'.

Councilmember McDanel said the City sometimes views things from the windows of its offices or through the virtual reality of computer models. "I think it is really important that we get hands-on, real data. I halfheartedly make a remark about the traffic engineer taking the stop sign and wading into traffic some morning with some of the crossing guards. I did that job one day for a woman at Bench Elementary School. I'll never do it again... They tell you that you cannot stop the traffic, that you can only go out in gaps. Well, I'd like to see someone try that, because there aren't any gaps big enough for kids to cross. If you can't get a crossing guard and a stop sign out there... it's not likely that a six-year old child will get very much attention either. I understand that as parents we are often times the offenders as we go through school zones. We need to be, as parents, more aware of that. But at the same time, we, the City, need to do whatever is necessary to protect our children and our neighbors' children. If that means bulking sidewalks – terrific. If that means we spend \$10,000 for flashing yellow lights, then to me that is a far better expense than a lot of other things we pay for out of the annual budget," he stated. He said we need real data before and after the bulking to get the real picture, noting in his mind, he believed flashing yellow lights did slow down traffic. On a voice vote, the motion was unanimously approved.

ADJOURN -- With all business complete, Mayor Tooley adjourned the meeting at 10:02 p.m.

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## THE CITY OF BILLINGS:

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

**ATTEST:**

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