

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

## **MONDAY, NOVEMBER 13, 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 Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by members of Boy Scout Troop #375, followed by the Invocation, which was given by Councilmember Mick Ohnstad.

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

**MINUTES – October 23.** Approved as printed.

**COURTESIES** -- Mayor Tooley called Eagle Scout Corey Hecht forward. Corey is a scout with Troop #375. He received an honor medal for his lifesaving efforts of his 11-year old cousin who was severely injured in a snowmobile accident in March this year. Mayor Tooley recognized Corey with a proclamation, proclaiming November 13<sup>th</sup> as Corey Hecht Day.

**PROCLAMATIONS –Mayor Tooley.** Mayor Tooley proclaimed November as Adoption Awareness Month.

**BOARD & COMMISSION REPORTS.** – None.

**ADMINISTRATOR REPORTS – Dennis Taylor.** Mr. Taylor reminded the Council of a public hearing next week Wednesday at 11:00 AM at the METNet site at MSU-B, Room 159. The Local Government Funding Committee will be holding the public hearing to hear comments on their proposals for six pieces of legislation which would change the way the state provides for reimbursement, improve and streamline budget and accounting laws, deal with earmarking, committees, local option sales tax and the realty transfer tax. He noted that the text of the draft bills can be viewed at the state's Department of Revenue site: [www.state.mt.us/revenue](http://www.state.mt.us/revenue)

### **LATE ADDITION:**

Councilmember Bradley moved to add Item 7 to the agenda as follows:

7. ACCEPTANCE OF RECOMMENDATION OF NEGOTIATING TEAM on terminating the agreement with CTA Development and to open the discussions with the #2 and #3 proposers and to advertise for new proposals within a 45-day time frame – from the date of advertisement to closure, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved and the item as added as Item #7.

Councilmember Kennedy moved to add Item #6 to agenda as follows:

6. PUBLIC HEARING AND SECOND READING ORDINANCE 00-5134 FOR ZONE CHANGE #664: a zone change from Neighborhood Commercial to Community Commercial on Lots 6-8, Block 2, Braswell Subdivision, located at 1420 Broadwater Avenue. Don Blehm, owner; Rick Roehn, agent, seconded by Councilmember McDermott. The motion was unanimously approved and the item was added as Item #6.

## **CONSENT AGENDA:**

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

- (1) Richard J. Deis, Parks Board
- (2) Downtown Revolving Loan Fund Review Committee
  - Art Scibelli, Executive Director Downtown Billings Partnership
  - Tom Nelson, Downtown Billings Property Owners Committee Member
  - Tiffani Coleman, Bank Representative – First Interstate Bank
  - Bill Paul, First Alternate Bank Representative – Yellowstone Bank
  - Eric Steingruber, Second Alternate Bank Representative – US Bank
  - Ernie Dutton, Downtown Development Corporation Board Member
  - Bob Keefe, Finance Director, City of Billings Representative

B. **Bid Awards:**

- (1) **MET Transit Detroit Diesel Engine Overhauls.** (Opened 10/31/00). Recommend Interstate Detroit Diesel, \$22,826.37 Schedule I, \$19,844.91 Schedule II, \$10,683.89 Schedule III.
- (2) **Vehicles for City of Billings.** (Opened 10/17/00). Delayed from 10/23/00. Recommend Montana Dodge, \$19,943.00 and Archie Cochrane Ford, \$126,165.00.
- (3) **Two New Current Model Fire Apparatus for Fire Department.** (Opened 10/17/00). Delayed from 10/23/00. Recommend Sutphen Corporation, \$527,400.00.
- (4) **One New Current Model 2001 Correlator Leak Location System.** (Opened 10/31/00). Recommend Fluid Conservation Systems, \$56,900.00.
- (5) **MET Transit Division Facility Renovation.** (Opened 10/31/00). Recommend delaying award until 11/27/00.

(6) **Police Cars.** Recommend purchasing 15 patrol cars via the State of Montana Patrol Car Bid, \$278,620.55.

**C. Change Order #1, Billings Depot Parking Lot Improvements,** Eggart Engineering and Construction, \$4,941.86 increase and 30 days.

**D. Change Order #1, South 30<sup>th</sup> Street West & King Avenue West Sanitary Sewer Extension,** COP Construction Co, \$4,128.60 increase and 0 days.

**E. Change Order #1, W.O. 99-03, 1999 Street Maintenance, Contract No. 2, Schedule II,** JTL Group, Inc., \$603.85 increase and 0 days.

**F. Change Order #1, W.O. 00-03, 2000 Street Maintenance, Contract No. 2, Schedule I,** Empire Sand & Gravel Company, \$1,285.97 increase and 0 days.

**G. Change Order #1, W.O. 00-03, 2000 Street Maintenance, Contract No. 2, Schedule II,** Empire Sand & Gravel Company, \$18,997.37 increase and 0 days.

**H. Change Order #1 - Final, SID 1341, Schedule II, Street Improvements,** Gray Construction, Inc., \$9,106.50 decrease and 0 days.

**I. Change Order #2 - Final, W.O. 98-05, Wicks & Lake Elmo Traffic Signal,** Action Electric, Inc., \$4,220.00 decrease and 0 days.

**J. Change Order #1, GOBF Park Improvements Projects,** Fisher Construction Co., \$3,851.00 increase and 0 days.

**K. Change Order #1, W.O. 00-01, 2000 Replacement Project, Schedule II,** COP Construction, \$47,337.11 decrease and 0 days.

**L. Contract for Professional Lobbyist Services** during the 2001 Legislative session, Janie McCall, \$20,000 + expenses.

**M. Approval** of reduced trade allowance from Kois Brothers Equipment for Solid Waste Division roll-off unit #0064 (\$8,100 to \$5000, (Bid awarded on 8/28/00).

**N. Agreement** between Yellowstone County and the City of Billings governing the operation of the City-County Special Investigations Unit (CCSIU), term: 1/1/2001 – 12/31/2001.

**O. Approval** of Operating Permit with Empire Airlines, Inc. to operate at Billings Logan International Airport as a freight hauler for Federal Express, \$9000.00.

**P. W.O. 95-08, Shiloh Road and Grand Avenue Intersection Improvements**

(1) PARCEL 21: Right-of-Way Agreement and Warranty Deed from Yegen Grand Avenue Farms, Inc., \$28,029

(2) PARCEL 22: Right-of-Way Agreement and Warranty Deed FROM e. C. YEGEN, PETER Yegen IV Trust, and Charles G. Yegen Trust, T/C, \$28,470

**Q. Resolution 00-17634** for use of Council Contingency funds for building permit and plan review fees for the Amend Park Pavilion/Concession Building, \$3000.00.

**R. Resolution 00-17635** authorizing final payment to MEGA and transferring budget authority to the accounts to which the payments will be charged, \$91,750.00

**S. Resolution 00-17636** supporting the Montana/Wyoming Association of Railroad Passengers project.

**T. Resolution of Intention 00-17637** to sell City-owned property described as: Lots 8-10, Block 2, Byrnes-Stephens Subdivision and setting a public hearing date for 12/11/00.

**U. SID 1348: Greenbriar Road water main extension:**

(1) Professional services contract with Morrison-Maierle, Inc., \$14,319.00.

(2) **Resolution of Intention 00-17638** to create and setting a public hearing date for 12/11/00.

**V. Final Bond Resolution 00-17639** for \$190,000 Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2000B, (1999 School Route Sidewalk Program).

**W. Final Bond Resolution 00-17640** for \$677,000 Pooled Special Improvement District Bonds, Series 2000A for SIDs 1344 and 1345.

**X. Preliminary Minor Plat** of Amended Lot 2, Shogren Subdivision (generally located at south side of the 200 Block of Reda Lane).

**Y. Bills and Payroll.**

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

Councilmember McDermott separated Item S. Councilmember McDanel moved for

approval of the Consent Agenda except Item S, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of Item S, seconded by Councilmember Larson. Councilmember McDermott asked if this resolution obligated the City in any way financially. Mayor Tooley replied that it did not financially obligate the City, only express support for the project. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING on the appeal of the denial of an encroachment permit application submitted by Donald L. Allman, President, SL& B, Inc. dba Maxines, for a drive-thru at Maxine's restaurant, 221 North 29<sup>th</sup> Street. Staff recommends denial. (Action: approval or disapproval of encroachment permit application.)**

The public hearing was opened. MAXINE ALLMAN OF 221 NORTH 29<sup>TH</sup> STREET said they feel this request is really not an encroachment, but merely the request for the use of two meter spaces and one ten-minute zone on 3<sup>rd</sup> Avenue North and the same on North 29<sup>th</sup> Street. No changes would be made to the streets themselves. The proposed hours would be 3 – 6 p.m. She noted there was always a 30-day cancellation period occurring in their request. “We see an unobtrusive, attractive speaker system attached to one existing meter post on each street and we have two 2x4.5 feet lighted signs inside the restaurant on both streets. We want to keep downtown a viable and interesting place after work hours. We would love to see shoppers walk into our bakery and eatery. The City Master Plan calls for a pedestrian oriented streetscape, but we can't afford to wait that long. We need to build sales now. There are fewer people downtown at lunch. The BLM is gone, Herbergers and soon Wells Fargo will be on the west end. Government flex time employees are arriving and leaving downtown earlier than ever,” she noted. She said there is no one strolling or window shopping downtown after 3:00 p.m. By 5:00 p.m. a majority of cars have already left downtown. She said they are asking for a speaker system as a convenience for customers to stop and place something for their dinners. “Why not give homeward bound employees an incentive to get their dinner to take home, instead of stopping at Albertsons, County Market for Walmart, where they can park at will. You, as members of the Billings City Council have been mandated by the voters to choose the direction of the City. City staff is an advisory capacity to you. We feel that present staff is too practical and worried about worst case to envision and negotiate completion of a project that is unique and untried. The City Council needs to decide if they are going to encourage downtown or if they will continue to encourage a general exodus by 5 p.m.,” she stated.

SPENCER STONE, CO-CHAIR OF THE TRAFFIC CONTROL BOARD said Mrs.

Allman came to them with her various proposals for trying to add a drive in concept to her restaurant. "At that time we tried to go over them with a fine tooth comb and find a way to make it work," he explained. The board unanimously felt, after really bending over to try to make something work, that it would just have too much of an impact on the traffic flow of downtown Billings, creating a backlog of vehicles. Their primary concern was stacking availability – of which there was none. They unanimously recommended denial of the proposal.

There were no other speakers. The public hearing was closed. Councilmember Kennedy moved for approval of the staff recommendation of DENIAL, seconded by Councilmember Iverson. Councilmember Kennedy said he is sympathetic of the plight the Allmans are in, because he has also experienced this situation. He reminded the Council that what they did for the Allmans, the Council would have to do for all, if they granted this request, noting it was difficult to support the proposal based on the Traffic Board's recommendations. It is the Council's job to protect the public interests and public right-of-way as well. Councilmember McDermott said this is a family restaurant downtown, which is a dying business. They are in need of assistance to help keep their restaurant open. She asked if staff could continue to work with the Allmans to see what can be done to resolve this situation. On a voice vote, the motion was unanimously approved. The appeal was denied.

**3. PUBLIC HEARING AND RESOLUTION 00-17641 creating SILMD 274, Wal-Mart Subdivision. Staff recommends approval. (Action: approval or disapproval of resolution.)**

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

**4. PUBLIC HEARING AND RESOLUTION 00-17642 creating SID 1347, Lampman Subdivision. Staff recommends approval. (Action: approval or disapproval of resolution.)**

Councilmember Kennedy said because he lives in the area, he will remove himself from the discussion this evening.

Staff Engineer Rick Selensky said the SID provides sanitary sewer and street improvements to the residents of Lampman Subdivision. One property has formally protested the creation of the district – out of 259 properties. The protest amounts to 0.65% of the total assessment. Staff is recommending approval of the district at this time.

Rick Leuthold of Engineering Inc. said the boundaries of the district are between Monad Road on the north, King Avenue on the south, east of 32<sup>nd</sup> Street West to a residential district bounded by the BBWA canal. It involves sanitary sewer installation throughout the subdivision and surface street improvements where they are missing in the lower third of the district. The project cost for the utility portion of the project based on a

15-year district @ 7.25% interest is \$6486.21/property. Properties with street improvements would as well would be assessed \$15,701.40/property.

Mr. Leuthold noted this project has been before the Council before in several different formats. This time the neighborhood has expressed a desire to pursue the sanitary sewer improvements. He explained the neighborhood process that was followed in designing the project proposal, noting that due to the past history of the project, they wanted to make sure they had neighborhood support before they moved forward with creating the district. All owners in the boundary area received a petition to indicate their support or opposition for the project. The Neighborhood Steering Committee circulated those petitions on a door-to-door basis, attempting to contact everyone in the district. The results indicated that 78% of the property owners were in favor of the utility installation and 87% were in favor of the street improvements. He asked the Council to create the district for the benefit of the neighborhood.

The public hearing was opened. CAM CRONK OF 3120 GEORGINA said they moved there in 1979 when this area was not part of the City and had no services. In the early 1980s they discovered their water was not fit for human consumption and they tried to create an SID to bring in City water and paving the streets. This was a successful endeavor. In the early 1990s the neighborhood tried to create an SID for sewer and were unsuccessful because not everyone in the neighborhood had failing septic tanks at that time. This problem has increased significantly over the years however. "I think it is evident by the large number of people that supported the petition drive that we not only want but also need that sewer system out there," he stated. He urged the council to approve the district.

MARK KENNEDY OF 3106 STILLWATER DRIVE said he has lived in the subdivision about nine years. They have had a septic failure in their yard and the neighbor to the west has had a septic failure. "We are sitting on a ticking time bomb as far as we are concerned," he stated. With two teens, two adults and one adolescent in their household, their septic system cannot handle the demand. He urged the Council to approved the district.

GARY BUERKLE OF 3105 MYRTLE DRIVE said he supports the district. He noted that he also supported the district a few years ago. The street in front of his home is not paved and seems to be a playground for all teenagers who want to experience what it feels like to make a car swerve around the corner and back and forth across the street. Mr. Buerkle said he has lived in his home 24 years and has not yet experienced a problem with his septic system, but also knows his time is running out. He asked the Council to approve the district.

KENT LUSTIG OF 3014 STILLWATER DRIVE said he has lived in the neighborhood since 1977. He asked the Council to approve the district for sanitary sewer.

GUY RAIDIGER OF 2964 CANYON DRIVE said he supports the district as well. He has lived in the subdivision for seven years and has had to have his septic system pumped a number of times. He said it is a continuous problem and often results in

backyard puddles for the dogs to play in. He said he was concerned however about the paving issue. "When there was work being done on King Avenue this year, it turned 30<sup>th</sup> Street West into a racetrack. People used it as a cut across our subdivision... A lot of kids live in that neighborhood and catch the bus at 31<sup>st</sup> and go over to the grade school in Harvest Subdivision. I don't know if that paving is going to turn that street into a thru-street, but if it does, I have a feeling that people will use that street instead of 32<sup>nd</sup> Street as a cut through. We need to do something as far as stop signage," he stated.

SHAWNA KENNEDY OF 3106 KENNEDY DRIVE said she has spent 11/2 years going to a laundromat, noting that they can only use the shower once a day. She asked the Council to approve the district.

RICK STANICH, NO ADDRESS GIVEN, said he lives on Stillwater Drive and has lived in the neighborhood since 1988. While he has no problems with his septic system at the present time, he said he feels it is only a matter of time before he will. He stated that he supports the district.

JEFF KENYON, 3007 MYRTLE DRIVE said he supports the sewer and street improvements. He noted that he has been at this address for four years and has a relatively new septic system, but would rather see a sewer in place. Mr. Kenyon also confirmed that Myrtle Drive is a "racetrack", noting that if he were to look out the window and see a 1968 orange Dodge charger, he would think they were filming the 'Dukes of Hazard' out there. He described a drag race incident that occurred this Spring. The street in front of his home turns into a virtual "lake" with heavy rainfall and snowfall. He asked the Council to approve the district because it would be a nice completion to a nice neighborhood.

MILAM HEARRON OF 2907 MYRTLE DRIVE said they have lived in the neighborhood for three years at the corner of 29<sup>th</sup> and Myrtle. They have an unpaved street that needs paving because of the dust problem in the summer. It presents not only a nuisance but also a health hazard. Mr. Hearron said however the sewer is a costly item and didn't think that someone that is 74-year old should be thinking about a project with a 15-year payout.

LOUIE KUCHERA, NO ADDRESS GIVEN, said he owns commercial property on King Avenue and supports the district.

TAWHE HECHT OF 2940 STILLWATER said they have lived there for 17 years and have four teenage boys and do a lot of laundry and a lot of showering. Recently, she reported that when the boys showered, the water came up through the washing machine. She said their drain field is irreparable and are doing Band-Aid fixes until Spring when hopefully the sewer will be installed. She said many of their neighbors are in the same position. She urged the Council to support the district.

TAMRA BAUER said she lives on South 29<sup>th</sup> Street West and moved there six years ago. Mrs. Bauer said she lived 33 years on a farm outside of Hysham with a septic tank, so when she came to Billings, she thought she would have sewer. She urged the Council to support the district.

There were no other speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the resolution creating the district, seconded by Councilmember McDermott. Councilmember Bradley asked if construction would begin in the Spring. Mr. Leuthold replied that every effort would be made to do that. Councilmember McDermott asked if Myrtle Drive only has one water connection. Mr. Leuthold said there are a small portion of lots in the unimproved portions of Rosebud that will have water improvements installed as well. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION 00-17631: SID 1281 respreading assessment (combine tax code). Staff recommends final approval of resolution. (Action: approval or disapproval of staff recommendation.)**

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

**LATE ADDITION:**

**6. PUBLIC HEARING AND SECOND READING ORDINANCE 00-5134 FOR ZONE CHANGE #664: a zone change from Neighborhood Commercial to Community Commercial on Lots 6-8, Block 2, Braswell Subdivision, located at 1420 Broadwater Avenue. Don Blehm, owner; Rick Roehn, agent. Zoning Commission makes no recommendation. DRC recommends denial. (Approved on first reading on 10/23/00). (Action: approval or disapproval of ordinance on second reading.)**

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Larson moved for approval of the DRC recommendation of DENIAL, seconded by Councilmember Iverson. Councilmember Elison made a SUBSTITUTE motion for approval of the ordinance on second reading, seconded by Councilmember McDermott. On a voice vote, the substitute motion was unanimously approved.

**7. ACCEPTANCE OF RECOMMENDATION OF NEGOTIATING TEAM on terminating the agreement with CTA Development and to open the discussions with the #2 and #3 proposers and to advertise for new proposals within a 45-day time frame – from the date of advertisement to closure. (Bradley). (Action: approval or disapproval of recommendation and advertisement.)**

Mayor Tooley explained this item is in response to the report received from staff at the Committee of the Whole this evening. The report said the proposal made by the primary and sole exclusive bidder was not acceptable. The agreement with that bidder expired on October 31, but the Council has been advised to accept the report's recommendation and terminate the agreement.

Councilmember Bradley moved to approve the item, seconded by Councilmember

Elison. Councilmember Bradley said the reason for doing this is that there is a lot of momentum downtown right now and several additional proposers have come forward. The exclusivity of the negotiations with CTA/Grace Development/Flintco precluded the Council from considering other proposals. He said in the original proposal, there were also other sites suggested. "We should move to those second and third sites, kick the door open for additional proposers, which will then allow Flintco, CTA LLP and Grace Development to come back in and re-propose with some additional new proposals out there... I think it is a better way to manage some of the tax increment and parking funds – to be able to spread it out so that we can have a couple of projects funded instead of just one project," he said.

Councilmember Kennedy said he agreed that it made sense to scale down the projects and do several smaller projects instead of just one large project. Councilmember McDermott also agreed. Councilmember Larson made a SUBSTITUTE motion to accept the recommendation of the Negotiating Team (for termination) and to refer the issue of future proposals back to the Downtown Billings Partnership as per the process they outlined (during the Committee of the Whole), seconded by Councilmember Johnson. Councilmember Larson said he agreed with everything stated by Councilmember Bradley as far as the status of the downtown and the project and that it is important to maintain that momentum. "We have a new executive director of the Downtown Partnership, who described a process to us tonight to aggressively go after these projects and present them back to the Council. I believe we need to give the process back to that group – that is their only reason for existence. They have connections to all of the affected downtown organizations, property owners, etc. I think for us to make suggestions about time limits, etc. are inappropriate," he stated. Councilmember Bradley said he would support the second motion because they both accomplish the same thing. On a voice vote on the substitute motion, the motion was unanimously approved.

**ADJOURN** – With all business complete, Mayor Tooley adjourned the meeting at 8:25 p.m.

THE CITY OF BILLINGS:

BY \_\_\_\_\_

ATTEST:

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