

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## MONDAY, OCTOBER 25, 1999

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 Shirley McDermott.

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

**MINUTES** – The Minutes of the October 12th meeting were approved. The Committee of the Whole Minutes were approved as amended.

**BOARD & COMMISSION REPORTS** – Mayor Tooley introduced Dehlia Richlen, President of Bright N' Beautiful and Carolyn Miller, Executive Director of Bright N' Beautiful. He announced that they are being recognized because they have received the first place award in our population category for best overall program in the Great American Cleanup program. Over 100 communities have competed nationwide for this award. Ms. Miller will receive the award on behalf of the local Bright N' Beautiful organization on December 11 in Washington, DC.

Councilmember Johnson said Bright N' Beautiful met at noon last Tuesday and Ms. Miller presented awards to individuals and companies who did significant work in keeping the community clean and beautiful.

Councilmember Kennedy announced there would be an Executive Session of the Council tomorrow evening at 6:30 p.m. in the City Hall Conference Room to further discuss the selection of a new City Administrator.

**ADMINISTRATOR REPORTS – Bill McGill, Acting Administrator.**

Mr. McGill asked the council to review the summary of the Planning Review Committee meeting held this morning, prior to the meeting with the upcoming City/County meeting.

### 1. **CONSENT AGENDA:**

**A. Mayor's Appointments:**

(1) John Felton to the Board of Health. (Reappointment).

**B. Bid Awards:**

(1) **Fire Station #4 – Terry Park.** (Opened 10/5/99). Delayed from 10/12/99. Recommend General Contractors Construction Company, \$753,478.00.

(2) **Vehicles for City of Billings.** (Opened 10/12/99). Delayed from 10/12/99. Recommend Archie Cochrane Ford, \$84,830.00 and Menholt Chevrolet, \$148,505.48.

(3) **One New Current Model Forklift at Wastewater Treatment Plant.** (Opened 10/19/99). Recommend delaying award to 11/8/99.

**C. Lease Extension** for FAA Backup Generator Space for a period of one year at an increase from \$738/year to \$750/year.

**D. Lease Amendment** with FAA for Airport Terminal Building lease, reduction in rental income of \$2,619.03.

**E. Lease** of Airport Terminal Space to SITA, \$2,500/first year, adjusted annually for inflation, 1-year term with automatic renewal.

**F. Acknowledging receipt of petition to annex #99-06:** N2 of Lot 5 of Clark Subdivision, containing approximately 1.7 acres, D&M Family Partnership, petitioners, and setting a public hearing date for 11/08/99.

**G. Acknowledging receipt of petition to annex #99-07:** N2NW4NW4 of Section 12, T1S, R25E. Less Emerick Subdivision, C/S 1702 and the North 120' previously annexed, containing approximately 15.5 acres, Lena Emerick and Freda Emerick, petitioners, and setting a public hearing date for 11/08/99.

**H. Funding Request** by Montana Peoples Action and homeWord for \$160,000 from available HOME Program funds for Billings Heights Affordable Housing Project (8 new homes near Skyview High School), \$160,000.

**I. Rims Closure** for New Year's Eve Fireworks: December 30, 1999 – January 1, 2000.

**J. Confirmation of Police Officer:** Chad Philippi.

**K. Quit Claim Deed** conveying a portion of right-of-way to St. Patrick's Co-Cathedral (vacated by Resolution 99-17477).

**L. Resolution of Intent 99-17524** to create Special Improvement District #1323 (and repealing Res. 96-17146): water, sewer, storm drain and street improvements in the Burlington Northern Industrial Area and setting a public hearing date for 11/22/99.

**M. Resolution 99-17525** adopting final electronic records retention schedules and revised hard copy retention schedules and identifying the retention periods for all records series created, used, maintained and stored by the City of Billings.

**N. Resolution 99-17526** authorizing the use of Council Contingency funds for legal assistance to the Police Commission for the Arredondo case, \$10,000.

**O. Final Plat** of Southgate Subdivision, Second Filing, Amended Lots 1 and 2, Block 2. (Generally located on the south side of Southgate Drive.)

**P. Bills and Payroll.**

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

Councilmember Deisz separated Items B2, J, K, L, M, and N. Councilmember Deisz moved for approval of the Consent Agenda EXCEPT Items B2, J, K, L, M and N, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of ITEM B2, seconded by Councilmember Johnson. Councilmember Deisz asked what these vehicles were. Finance Director Nathan Tubergen explained that these vehicles are those included in the annual replacement program, budgeted each fiscal year. These vehicles were approved in the budget last May. Competitive bids were sought from all the dealers in town. On a voice vote, the motion was unanimously approved.

MINUTES: 10/25/99

Councilmember McDanel moved for approval of ITEM J, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of ITEM K, seconded by Councilmember Kennedy. Councilmember Deisz asked if this is the exact portion of right-of-way that came before the council earlier for vacation. Public Works Director Kurt Corey confirmed that it was. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of ITEM L, seconded by Councilmember Johnson. Councilmember Deisz asked who owns the water and sewer lines in that district. Public Works Director Kurt Corey said the utility systems within the district boundary are a combination of utilities that have been put in place through a course of ownership dating back to Burlington Northern, Glacier Park Company, etc. The most general answer is that those have remained in private ownership, subject to repair by private contract over the years. Mr. Deisz noted a letter he received from Lisa Brown, attorney for Burlington Resources, stating the land they own in Burlington Northern Industrial Park was purchased via Warranty Deed. The title insurance states the ownership of the utilities is as follows: sewer—City of Billings; water—Burlington Northern. Mr. Corey said the process before the council is one to put in the means of upgrading a water and sewer utility within the subdivision. Councilmember Deisz referred to the time this matter came up in 1996. He asked if the City would have some liability in this matter, "and if not, have these property owners over the years paid the full fees for sewer and water and would they not have some legal entitlement to these services being provided for them if they have been paying City water and sewer for the past 30-40 years?" Mr. Corey replied that kind of information will come back in a comprehensive report format throughout the proceedings of the council's deliberations on whether or not to create the district. He didn't have specific answers pertaining to individual water or sewer line sections this evening. Councilmember Deisz asked that the City Attorney be responsible for getting that information to the council in a timely manner, since this was debated four years ago and these seem to be legal questions. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of ITEM M, seconded by Councilmember Kennedy. Councilmember Deisz asked what the retention schedule was. City Clerk Marita Herold said the retention schedules are set up on an individual department basis, to reflect each of the records series created by that department and to guide the retention practices for those records. The recommended retention period for each series had been researched thoroughly to investigate all local, state and federal statutes. The revisions to the schedules were necessary due to recent changes made by the 1999 Montana Legislature, federal law changes in the Code of Federal Regulations and some recent Montana Supreme Court actions. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of ITEM N, seconded by Councilmember Johnson. Councilmember Deisz asked how many more thousands of dollars the City needed to expend on this case. City Attorney Brent Brooks replied that this request is from the Billings Police Commission. "Since we are a party to the proceedings I have absolutely no control over that request, nor should I lawfully or legally have control over that request. It is coming from the chairman of the Police Commission... I have no legal authority concerning the Police Commission and it would be inappropriate for me to ask them ... how much it will cost," he stated. Councilmember Deisz asked if we are legally obligated to continue this legal representation to this level. Mr. Brooks said the City is obligated to have a Police Commission hearing because it was requested by the discharged police officer and by statute if it is requested, we are required to have it. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. AUTHORIZATION for staff to proceed with the process to create a Tax Increment  
"Financing" Industrial Infrastructure District. (Action: direction to staff.)**

Councilmember Iverson moved to direct staff to proceed with the process to create a TIFID, seconded by Councilmember Kennedy. Councilmember Kennedy asked for a summary of the proposed schedule for this process. Finance Director Nathan Tubergen said an aggressive time schedule is proposed. On November 8<sup>th</sup>, the council will be asked to adopt a resolution setting a public hearing date for December 13<sup>th</sup> and consider on first reading an ordinance creating the TIFID. On December 13<sup>th</sup>, the council will conduct a public hearing on an ordinance creating the TIFID and take final action to create it. If approved, the district would go into effect 30 days after December 13<sup>th</sup>.

Councilmember Deisz asked what the rush was, as he thought there was no hurry in moving this forward. Mr. Tubergen said it was the council's decision as to how quickly they wished to pursue the process of creation. Councilmember Deisz asked if the end of the year benefit would be realized by creating the district on December 13<sup>th</sup>. Mr. Tubergen said the district would not be in effect before December 31<sup>st</sup> because of the 30-day effective date. The 30-day requirement is mandatory unless an emergency ordinance is concerned. Then the emergency ordinance is effective immediately but only for a term of no more than 90 days.

Mr. Tubergen said the projected revenue figures that the council has asked for depend on the boundaries of the district. Councilmember Kennedy asked if those boundaries will be ready for the council by the December 13<sup>th</sup> meeting. Mr. Tubergen said those boundaries must be ready for the November 8<sup>th</sup> meeting, so that the legal notice can be published and the property owner notification can be done prior to the December 13<sup>th</sup> meeting. Mayor Tooley said there has been concern expressed by property owners in the area about having an additional portion of area and some concern expressed by School District about removing a certain portion of area. He asked if these adjustments can be made at a later time. Mr. Tubergen said it will be easier to add area later than it is to reduce the area.

Councilmember McDanel asked if he understood correctly that "hurrying" the process along will not allow the council to actually implement the district any sooner – i.e effective as of December 31<sup>st</sup>. Mr. Tubergen confirmed that. The tax files are set right now as of December 31<sup>st</sup>. When the county does its evaluation after the first year, it may then take until June to complete their update because of the amount of time the Department of Revenue puts into the review. Councilmember McDanel asked what the motive was for rushing this item at this time. Councilmember Kennedy said SID 1343 is a part of this process as well, and in order to make SID 1343 more acceptable to individuals in the area, they need to have some set of tools to work with that will make that SID more "digestible".

Councilmember Deisz said he will vote against this item tonight. He noted that Mr. Tubergen needs the boundaries of the district to project the tax base that guarantees the bond revenue. He said he did not believe the creation of this district would help any of the people that will be charged for SID 1343. "Why would we be hurrying this if we can't get the benefit this year... I thought this was all on a slow track pace... We do not have a buyin from School District #2... They want the elementary section of this left out. If that's done, I believe that is 18%, and you also have no buyin from Elysian School District, which is at 11%, the total being 25-30%. Finally, how could anybody on this council think this is fair to the other five \$4 Million projects that we have coming up out there. If we are going to do this and we actually believe that this is going to have an effect on those projects, then we need the time to study the figures. Let Mr. Tubergen bring them back to us and then decide on this. Pushing this along before the end of the year is not going to help those people caught in SID 1343 and I don't believe there will be any relief in this for the other five projects of \$4 Million each that are coming forward. I don't see this as a win-win situation and I don't see why we are forcing this through this evening." On a roll call vote, the motion was approved 6-4. Councilmembers voting "yes" were: Iverson, Tooley, Kennedy, Johnson, Ohnstad and Elison. Councilmembers voting "no" were: McDermott, Bradley, McDanel and Deisz.

**3. RESOLUTION CREATING SID 1343: street and utility improvements in King Avenue West and S. 32<sup>nd</sup>, S. 31<sup>st</sup>, S. 30<sup>th</sup>, S. 29<sup>th</sup> Streets West, Cel Avenue and Henesta Drive.** Staff recommends approval. (Delayed from 9/13/99.) (Action: approval or disapproval of resolution.)

Councilmember Kennedy moved to delay action to November 22, seconded by Councilmember Johnson. Councilmember Kennedy said this issue is still pretty muddy to members of the council so he wanted them to have enough time to review the information before making a decision. This project is a lynch pin project in the expansion of King Avenue and the Shiloh Interchange area.

Councilmember Deisz said he wanted to make sure "that we are going to get public input. Is it your intent to have another public hearing on this issue?" Councilmember Kennedy said that is not his intent right now, since the public hearing was already held and closed, but the council needs to decide this issue. He encouraged property owners to make contact with the council individually by phone, letters or email. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #652: a zone change from Community Commercial to Controlled Industrial on Lots 20-22, Block 160 of Billings Original Town located at 219 South 24<sup>th</sup> Street. Ronald, Walter and Robert Hartung, Kent Wilson and Conrad Miller, owners; CTA Architects Engineers, agent. (NorPac Sheet Metal).** Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on first reading.)

Zoning Coordinator Jeff Bollman said the property is located on South 24<sup>th</sup> Street by the refinery, between Second and Third Avenues South. There is a mix of zoning and uses in the immediate area. The subject property currently has NorPac Sheet Metal located on it, which is a sheet metal fabrication business. That use is a nonconforming use in a Community Commercial zoning district. They are proposing to expand their facility. The Controlled Industrial zoning that they are applying for would allow them to expand.

The public hearing was opened. KURT ROTZ OF CTA ARCHITECTS ENGINEERS said they are the agents for owners of NorPac Sheet Metal. The zone change is being requested so that the business can be expanded. Business has grown and can support the expansion. It is expected that 2 – 4 new jobs will be created with the expansion. The zone change will not conflict with the Comprehensive Plan and are asking the council for approval.

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

**5. PUBLIC HEARING AND SPECIAL REVIEW #667: a special review to allow the placement of two (2) 8-plexes in a Residential-6,000 zone on Lot 19 of Wolf Subdivision, located at 3011 Boulder Avenue. JoAnn Stevens, owner; Engineering, Inc., agent.** Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this was the second time the subject property had been brought before Council in the past 6 months. The area along Boulder Avenue between Rehberg and 32<sup>nd</sup> Street West is zoned R6000. He said to the north, west and southwest of the subject site there are apartments mixed with some remaining single-family dwellings. He said the first proposal was for two 10-plexes. The current proposal is for two 8-plexes. Mr. Bollman said there was a special review on Colton Boulevard for two 4-plexes approved by Council a year ago. This is the second special review to come in that general area. The condition recommended by the Zoning Commission is that the site be developed as shown on the approved site plan, including landscaping of the site and construction of a six-foot decorative fence on the west, north and east property lines.

Councilmember Deisz asked if the preexisting buildings being brought in would be required to conform to all current building codes and inspections. Mr. Bollman answered, "yes". He said the owner is proposing to bring in existing modular homes from North Dakota onto the site. Any time an existing structure is moved from one location to another, it is required that the structure meet current building codes. Mr. Bollman said Building Official Kim Palmieri has been working with the owner and the owner's architect on the required inspections and codes. Councilmember Deisz asked if there was any fear of substandard housing. Mr. Bollman said there was no concern for that. Councilmember Deisz asked if the number of parking spaces had been increased when there was a change from 10-plexes to 8-plexes. Mr. Bollman said the number of parking spaces remained the same; there are more spaces than what is required by city code. Councilmember Deisz asked if the placement of the buildings interrupted water pressure would the owners be required to put in extra infrastructure. Mr. Bollman said the Public Utilities Department received notice of the special review and did not have any specific comments with regard to water pressure. Councilmember Bradley asked if there was a valid protest. Mr. Bollman responded that there is no valid protest for special reviews, but a petition had been received with 90+ signatures.

The public hearing was opened. ALAN KIRKWOOD, NO ADDRESS GIVEN said he and his mother have Lot 18 next to the proposed property. He said he understands this is a multi-family residential 6000 development and is concerned about the traffic and only 32 parking spaces for the 16-unit development. He said there is limited on-street parking on an unimproved street. There is a large amount of traffic, sometimes very fast traffic in the area. He is concerned for the safety of the children that may move into the development and concerned about a lack of recreational area for those children. He questioned the accuracy of information that stated the water and sewer had been updated in 1989.

PETE BACHELOR, NO ADDRESS GIVEN, said he owns property at 2114 Rehberg Lane. He said he opposes the zone change recommendation because the area, currently zoned R6000, is virtually saturated with multi-family dwellings already. There are a number of projects with square footage exceptions to R6000. The proposal for the two 8-plexes adds 16 more families to an area jam packed with people already. He feels there is inadequate off-street parking in the area. He is concerned about the impact of the project on Boulder School, which already has a high student-teacher ratio. He said allowing this kind of density is inappropriate for an area with significantly high police calls. There is a fear of increased vandalism. He said he is concerned that bringing older modular units into the area will lead to a degradation of the neighborhood. He requested council deny the zone change.

JUDY KIRKWOOD, NO ADDRESS GIVEN, said she is representing a property owner on Lot 18. She said she feels they were misrepresented in the first meeting. She feels the placement of the dwellings would depreciate the value of the homes that people have worked hard to create in the area. She said there has been new opposition that had signed the petition. The petitioners feel that two 4-plexes would be more acceptable to all concerned.

CHERY BAUMGARTNER, NO ADDRESS GIVEN, said she and her husband and family moved one block from the proposed area in 1983. There have been many changes in the area since that time. The traffic light installed at Colton and Rehberg is an indication of how busy Rehberg is already. She said they are concerned with increased traffic. The units will be crowded and there will be no place for the children to play. They are concerned for the children's safety. She asked council to disapprove the zone change.

LOU ANDERSON, NO ADDRESS GIVEN, said he owns Colonial Arms Apartments - one lot away. He understands the need for infill development. He is concerned things have gone from bad to worse – the original proposal was withdrawn for the two 10-plexes because there was a strong feeling it wouldn't be approved; now they have gone to 20-year old housing with 16, 3-bedroom units. He said his biggest concern is that the units will be 3-bedroom units. Three-bedroom units will attract families with children to a dangerous area with no place for children to play. He said parking availability is also an issue. He recommended some special conditions (2-bedroom, new construction) be placed on the development.

PAM BAILEY, NO ADDRESS GIVEN, said she owns a duplex east of the proposed site. She is concerned about the inadequate parking and the safety of the children in the area because they have no place to play. The entire north side of Boulder, from 30<sup>th</sup> to 32<sup>nd</sup> has been marked by the city as "no parking" on school days from 8:00 a.m. to 4:00 p.m. The street is unimproved and in very poor condition and there would now be more people using it and putting it in worse shape. She did not feel that the placement of these 20 year old buildings was the type of construction the city should be encouraging. She said the area has already started to deteriorate with increased vandalism and crime. She requested council vote against the special review.

LEE RUSH, 3014 COLTON BOULEVARD said he and his wife developed the Ridgebrook Subdivision, north of Colton between Rehberg and 32<sup>nd</sup> Street. He said at that time the City requested the older houses in the area be removed. Therefore, he strongly disapproves moving in two 20-year old 8-plexes with unknown conditions. He encouraged Council to disapprove the special review. He did not feel the two 8-plexes would be appropriate for the area.

DAVID PIPER, 3019 COLTON BOULEVARD, UNIT B, said he is president of Lake Forest Townhomes Association with four units on Colton Boulevard. He said they are one block south of the proposed property and have four units with six people living in those four units. He said the association opposes the development. He said the association members attended meetings at Will James Junior High with Mr. and Mrs. Stevens and Rick Leuthold with the understanding that an agreement would be decided upon for any construction on the proposed property. At that meeting nothing was said about the placement of two 8-plexes. He said Mr. Stevens had told him (before the first special review) it was not necessary for him to attend the Council meeting because they were withdrawing the request for the two 10-plexes. He said he became aware of the agreement for the two 8-plexes after hearing the news following the Council meeting. He encouraged Council to vote against the special review as the last resort for stopping this development.

MRS. LOU ANDERSON, NO ADDRESS GIVEN, said she and her husband own Colonial Arms Apartments and since they purchased the apartments have spent much time, energy and money on landscaping to make the building beautiful. She did not feel that bringing in 20-year old structures to a lot that could house very beautiful structures was appropriate for the theme of Billings. She encouraged Council to help keep Boulder Avenue a safe, clean, beautiful area for the people of Billings.

DIANE BURKE OF 3016 BOULDER AVENUE said Boulder Avenue is an unimproved street and children in the area have a total disregard for fences in the neighborhood. She said when Colonial Arms was built the stipulation was the development be built new. She encouraged Council to vote against the special review.

RICK LEUTHOLD OF ENGINEERING INC., NO ADDRESS GIVEN, said he was representing the owners of Mountain View Apartments. He said the area has many multi-family units intermixed with single-family housing. The proposal was originally brought forward as two 10-plexes because the property was capable of supporting that. He said there was no indication of public opposition of that development until the Zoning Commission meeting. After taking into consideration the concerns of the neighbors in the area, and the Stevens' financial circumstances, the decision for the two 8-plexes was arrived at. The two 8-plexes will have 32 parking spaces (in excess of current requirements) and a six-foot fence around the property. He did agree that Boulder Avenue was in definite need of services. He said the current owners, because of their building permit and development agreement, would be subject to participation in that type of project.

JOHN STEVENS, 1042 VICKERY DRIVE said he and his wife are the owners of the proposed property. He said they are requesting permission to build two 8-plexes on the site. They have gone through concept development with Hurlburt & Associates Architects and Engineering Inc. He said the units are attractive. The modules were built for and to specifications of the military but were never occupied by the military. He said they have access to 16 apartments. He said, "we are merely asking permission to build two

8-plexes." He said there is much income in the way of property taxes for this type of development. He said every property that he has owned, maintained and developed has increased in value; nothing has lost value or become run down.

JODY ORSER OF 438 1/2 TERRY AVENUE said she and her husband rent from the Stevens. She said the Stevens' are wonderful landlords that do a great job of maintaining and cleaning the property. She said she is a member of the Billings work force and understands the need for affordable housing with Montana's wages. The Stevens' provide affordable housing that is not substandard by any means. She feels the issue is the two 8-plexes being built in the area, not the fact that the units are not newly constructed.

JERRI ENGLERT, NO ADDRESS GIVEN said she has known JoAnn Stevens for approximately 30 years. She said the Stevens' own home was also brought in by sections and is not noticeably different from her own home. Ms. Englert said she has worked with JoAnn Stevens in her cleaning business and witnessed the work that Mrs. Stevens has put into the proposed property to bring it up to current standards. She said that knowing the way the Stevens do things, she could assure they would not bring "trash" into the neighborhood.

JON ENGLERT, NO ADDRESS GIVEN said he has known the Stevens for approximately five years. He said John Stevens is a perfectionist – anything he has done, created or built is of great detail. He said the proposed project would enhance the neighborhood.

BROOK KINNARD, NO ADDRESS GIVEN said he lives at Applewood. He agreed with most of what had been said. He did not feel this was a place for two 8-plexes. He said there is a lot of vandalism in the area, as well as a lot of subsidized housing. He was not blaming the people in the subsidized housing for the vandalism. He said Applewood is a very attractive place, but the tenants are working very hard to keep it that way. They are concerned with decreased property values.

CHUCK ZITUR OF 1114 ANCHOR STREET said he has known John and JoAnn Stevens for over 20 years. He described them as highly scrupulous, honest, hard working people. He has seen photos of the proposed units and drawings of the proposed finished development and feels it would benefit the area. He said the Stevens would be wonderful stewards of the property and suggested Council allow them the opportunity to complete the project.

LEWIS LEDEKER OF 3001 JONATHAN COURT said Council should not pass the special review if they cared about the community's young people. He said that traffic is very heavy in the area and children continually run across the street in front of traffic.

JOANN STEVENS, NO ADDRESS GIVEN, said she and her husband are the owners of the subject property. She feels the wrong things are being considered. They are only asking to put up two 8-plexes. She stated not all young people can afford to buy homes and not every apartment has five children occupying it. She asked where people who can't afford to buy 20 acres and build a home are supposed to live.

JOEL PITCH, NO ADDRESS GIVEN, said he works for JoAnn Stevens and has worked for her for three years. He did not see how the proposed development would add to vandalism in the area. He is sure the Stevens will do a good job of maintaining the apartments. He does not feel the apartments will bring down the value of property in the area. He is a young person and knows how difficult it is to find nice, affordable housing in Billings. He urged Council to support the development.

DAVE HURLBURT OF HURLBURT AND ASSOCIATES ARCHITECTS, NO ADDRESS GIVEN, said he was hired by the Stevens to put together the proposal for the development. He stated that just because the units were 20 years old did not mean they were slums. Many people's homes are over 20 years old and are still very nice homes. He has advised Mr. and Mrs. Stevens there will be a great deal of work to be done on the modular units to bring them up to contemporary codes. He assured Council that the Building Department would make sure that everything was brought up to code.

MARTHA DAVIDSON, NO ADDRESS GIVEN, said she lives in the Applewood Patio Homes Subdivision. She said there is obviously something wrong if there is not one individual living in the proposed

area speaking in favor of the development. The density is a real concern to everyone in the area. She stated that everyone in the neighborhood is against the development.

JERRY ALLEN OF 320 HICKORY DRIVE said he was speaking in favor of the proposed development. He said the Stevens are spending a lot of money to bring in multi-family housing to an area that already has multi-family housing. They are following all rules and regulations and zoning requirements and as a courtesy to their new neighbors they are asking for property protection. By paying property taxes, a property owner should only have to do what the current requirements demand, nothing more and nothing less. He said there are other properties in the neighborhood that look much worse than the units being brought in. The Stevens have gone to great expense and more trouble than is necessary to make the buildings aesthetically pleasing out of courtesy to the neighbors. He said the vandalism in the area would not change because of the proposed development.

TOM DAWSON OF 2306 REHBERG LANE said he and his wife were new to Billings. When they bought their townhome, they were assured by the Zoning Commission that this type of development would not be built in the vacant lot behind their property. They were told the types of homes to be built would be built to current zoning regulations and now a variance is being requested. He said he was being told that this would change his property value. He said he is 100% against the development.

Mayor Tooley requested staff give a clarification of the variance request. Zoning Coordinator Jeff Bollman responded that this was not a request for a variance. He said there is ample lot space for the number of units requested. This is a special review to allow the placement of the two 8-plexes. If it were a variance, they would have to appear before the Board of Adjustment.

ALAN KIRKWOOD RETURNED. He said there was too much in too little space. He requested that Council vote against the special review.

RICK LEUTHOLD RETURNED. He remarked that the parking spaces exceeded what is required for the two 8-plexes. He said with regard to utility impacts, the Public Utilities Department has indicated water and sewer are adequate for the area. Both Public Utilities and the Fire Department have indicated that because of the current location of fire hydrants on Boulder Avenue, they may require a fire hydrant near the entrance to the development. Water pressure and sanitary sewer are adequate for the area. Storm drain will be handled by on-site retention that meets stormwater management criteria. Mr. Leuthold reminded Council that the issue before them was a special review for the placement of two 8-plexes, not the condition and quality of the units to be moved in; the building department will handle that aspect. If the units cannot be brought up to code, then two new stick-built units will be constructed. He requested Council vote in favor of the special review.

There being no other speakers, the public hearing was closed. Councilmember Ohnstad moved for disapproval of the special review. The motion died for lack of a second. Councilmember McDermott moved for approval of the Zoning Commission recommendation, seconded by Councilmember Johnson. Councilmember Johnson asked if the small house on the property was going to be renovated or demolished. Mr. Stevens replied that they are renovating the house to rent. If the 8-plexes are approved however, the house will be demolished when construction begins on the 8-plexes.

Councilmember Deisz asked for clarification on the issue – is the type of building an issue at this time. Mr. Bollman replied that is not an issue at this time –only whether or not 8-plexes should be allowed on this property. The building issue will be handled by the building department through the building codes.

Councilmember McDermott asked if all the apartments would have three bedrooms. Mayor Tooley reminded her that the number of bedrooms is not an issue of concern at this time. Councilmember McDermott said she sees this request as a compromise from their last request for two 10-plexes. The development is R6000 and the current zoning is for R6000 and this is good infill development.

Councilmember Johnson said that vacant lots within the city encourage vandalism more than this type of development. There are many vacant lots throughout the city that would look much nicer with some

type of development. He said the Stevens were merely wanting to develop in an already heavily developed area. He agreed that Boulder Avenue was in dire need of repair and encouraged those people speaking in opposition of the development to vote in favor of any future SIDs for the area. On a voice vote, the motion was approved. Councilmembers voting "no" were: Elison and Ohnstad.

The Mayor called a brief recess at 9:15 P.M. The meeting resumed at 9:20 P.M.

**6. PUBLIC HEARING FOR CENTRAL-TERRY PARK NEIGHBORHOOD PLAN.** Staff recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Gail Kenson of the Planning Department said the plan had been in the works for approximately five years. She said she had worked with the neighborhood on goals they had established. The plan was approved by the neighborhood and forwarded to the Planning Board, who unanimously recommended City Council's approval of the plan. Ms. Kenson said the plan was a set of guidelines for the neighborhood, the Zoning Commission, the Planning Board and City Council for the continued development and redevelopment of the Central-Terry neighborhood.

The public hearing was opened. JIM HARTUNG OF 620 BURLINGTON said he is chairman of the Central Terry Park Neighborhood Task Force. He said the plan was important to the neighborhood so that developers, etc. know what the neighborhood wants to see in the future. He encouraged Council to approve the plan.

There were no other speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the staff recommendation, seconded by Councilmember Elison. Councilmembers Kennedy, McDermott, Bradley, Elison and Johnson each commented on how well the plan was done and thanked the staff members and members of the task force that worked on the update. Councilmember Johnson said he would abstain from voting because he was a member of the task force. On a voice vote, the motion was unanimously approved with Councilmember Johnson abstaining.

**7. PUBLIC HEARING AND FINAL APPROVAL OF RESOLUTIONS RESPREADING ASSESSMENTS:**

- (A) **RESOLUTION 99-17517 for SID 1191:** SW Billings sanitary sewer; (split tax code)
- (B) **RESOLUTION 99-17518 for SID 1313:** Storm drain and alley improvements in Gorham Park Sub., (split tax code)
- (C) **RESOLUTION 99-17519 for SID 1320:** utility and street improvements in Henesta Drive; (split tax code)
- (D) **RESOLUTION 99-17520 for SID 1281:** lateral sewers in Lake Hills Sub., (combine tax codes)
- (E) **RESOLUTION 99-17521 for construction of SILMD 259 in NW CBD:** (combine tax codes)
- (F) **RESOLUTION 99-17522 for W.O. 97-02, #3:** Alley approaches in 1997 Miscellaneous Sidewalk Program; (combine tax codes).

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

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

**8. PUBLIC HEARING AND FINAL APPROVAL OF RESOLUTION 99-17523 determining the rate of and fixing the annual assessment for Street Maintenance.** Staff recommends approval. (Action: approval or disapproval of resolution.)

The public hearing was opened. There were no speakers from the audience. The public hearing was closed. Councilmember Bradley moved for final approval of the resolution, seconded by Councilmember Elison. Councilmember McDermott said she considered the base used to set the street maintenance fees to be very unfair. The fees are based on square footage of the property without regard for the value of the property. She said she did not understand why the city could not do something similar with the large lot owners as they do for corner lot owners. She said because she has failed in her attempts to bring equity to the assessments, she will vote "no".

Councilmember Deisz said he voted against tripling of the street maintenance fees last year and he will be casting a vote against them again.

Councilmember Kennedy acknowledged the time and effort that Councilmember McDermott had spent on researching the issue and encouraged her to start up the process again and include more councilmembers.

On a voice vote, the motion was approved. Councilmembers voting "no" were: Deisz, Bradley, and McDermott.

**9. PUBLIC HEARING AND SECOND READING ORDINANCE relating to the modification of the Downtown Redevelopment Plan to approve certain projects as urban renewal projects.** Projects include:

- (A) Urban Design Recommendations
- (B) Montana Avenue Sign and Awning Incentive Program
- (C) Downtown Shuttle/Trolley
- (D) Property purchase for Youth Center expansion
- (E) Yellowstone County Courthouse
- (F) Garfield School Upgrades

Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)

The public hearing was opened. BRUCE MCCANDLESS OF THE DOWNTOWN BILLINGS PARTNERSHIP at 2722 3<sup>rd</sup> Avenue North said he was speaking on the first three projects, which the Partnership has approved and is recommending Council approve. The Urban Design Project will establish recommendations and guidelines for property owners, business owners, architects, and those involved with Downtown Billings Partnership with regard to land use, aesthetics, building size, lot coverage, and streetscaping in the various neighborhoods near and around downtown. He said the Montana Avenue Sign and Awning Incentive Program will provide financial incentives for businesses and property owners so they can install signs/awnings in conformance with guidelines developed by a committee of the Partnership and approved by the Montana Avenue neighborhood. The program will also help to remove signs and awnings that don't comply with the guidelines. Mr. McCandless said the Downtown Shuttle/Trolley Program is an effort to improve circulation and transportation within the downtown area and reduce parking/vehicular congestion. The tax increment monies would be used as match for federal grants that will be sought. Therefore the tax increment funds would be used only in the event the federal funds were also obtained.

JUDY MCNALLY, NO ADDRESS GIVEN, said she was with the Downtown Partnership Urban Design and Historic Preservation Committee. She said they plan to have eight architects working on the project and they have already started working with the architects on the design component. The committee has also been working with the property owners. She said there would be meetings held on November 2<sup>nd</sup> and 3<sup>rd</sup> for anyone wishing to attend. She invited Council to attend a meeting at the Northern Hotel on November 2<sup>nd</sup> from 7:30 a.m. to 10:00 a.m. to get a better understanding of the program.

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BRENDA BURKHARTSMEIER OF 1239 GRANDVIEW AVENUE said she has worked on the Urban Design Project and Montana Sign and Awning Incentive Program. She said she is a downtown business owner and was also speaking on behalf of the Montana Avenue property owners. She said there has been a tremendous amount of cooperation and involvement by property owners. She stated that there had been good representation and that all views had been taken into account. She said both programs were wonderful programs and she encouraged Council's support.

MARY WESTWOOD OF 1432 YELLOWSTONE AVENUE said she is a member of the Downtown Billings Partnership and secretary of the Downtown Shuttle/Trolley program. She said she was speaking in support of the three projects for downtown. She said the Downtown Shuttle/Trolley committee is hoping to create a vehicle that will bring downtown together, including the medical corridor, the college and connecting communities together as far as possible and provide people with an easier way to get around. She said the committee feels they will be able to get the necessary federal funds for the project.

DONNA FORBES OF 1116 8<sup>TH</sup> STREET WEST said she serves on the Shuttle/Trolley subcommittee. She said downtown is missing the people and she believes the shuttle/trolley system will start the process of bringing people to the heart of downtown Billings. She encouraged Council to support the proposal.

RENEE CHRISTENSON OF 1322 HOWARD AVENUE said she is a member of the Downtown Billings Association and owns Fun Adventure Tours that utilizes the present Billings Trolley. She said the trolley has already provided an image for Billings. The Chamber of Commerce has indicated there are people coming into Billings to ride the trolley already. She said she would like to continue the trend and have more trolleys in Billings to help with transportation and give Billings a more nostalgic look.

RON KINDSFATHER OF 1509 ROSEBUD LANE said he currently owns Billings Trolley. The business has been in Billings for three years. It started with a horse-drawn carriage owned by Terry Weaver. He said it has become very popular.

There were no other speakers. The public hearing was closed. Councilmember McDanel moved for approval of the ordinance on second reading, seconded by Councilmember Deisz. Councilmember McDanel emphasized that approval of the programs did not guarantee funding. With regard to the Garfield School upgrades specifically, he said it was important for the public to understand that if approved, the request for funding will ultimately come from the school district. Council was not guaranteeing funding for any of the proposed projects. Councilmember Bradley added however, that the action being taken was moving in a positive direction. Councilmember Deisz asked City Attorney Brent Brooks about the findings for Items C (Downtown Shuttle/Trolley) and D (property purchase for Youth Center expansion). Mr. Brooks responded that it was his understanding that there may be funding available for each of the projects. He said he would need to speak with Finance Director Nathan Tubergen to make sure that assumption was correct. Mr. Deisz asked if there was a legal ramification to Council for making the findings; if they could approve the ordinance and bring it back for reconsideration if necessary. Mr. Brooks said if he found something irregular in the findings for Items C and D, he would inform Council and they could reconsider the items. On a voice vote, the motion was unanimously approved.

**ADJOURN** – With all business complete, Mayor Tooley adjourned the meeting at 9:44 p.m.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

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Charles F. Tooley

MAYOR

ATTEST:

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