

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

MONDAY, NOVEMBER 22, 1999

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Gary McDanel.

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

MINUTES – November 8th. The Minutes were approved as printed.

COURTESIES – Mayor Tooley recognized Fisher & Associates Landscape Architects as recipients of awards for their work on the Montana Avenue Landscape Project and the Peaks to Plains Park Master Plan.

PROCLAMATIONS – Mayor Tooley proclaimed that on December 7th the Magic City (Billings) will be known as "The Emerald City" in recognition of Billings Studio Theatre and their 48 years of service and entertainment in the community.

BOARD & COMMISSION REPORTS – None

ADMINISTRATOR REPORTS – Bill McGill. There were no Administrator Reports.

CONSENT AGENDA:

1. A. Bid Awards:

(1) **Polymer for Solids Processing at Wastewater Treatment Plant.** (Opened 11/9/99). Recommend Polydyne, Inc., \$1.40/pound.

(2) **One (1) New Current Model Hydraulic Sewer Jet Cleaner & Manhole Vacuum System for Street/Traffic Division.** (Opened 11/9/99). Recommend Western Plains Equipment, \$154,092.00.

(3) **Heating Upgrade for IP-5 for Billings Logan International Airport.** (Opened 11/9/99). Recommend Accent Air Conditioning and Heating, \$18,495.00.

(4) **Sale of Four (4) Used Paratransit Lift-Equipped Conversion Ford/Champion Vans from Met Transit.** (Opened 11/9/99). Recommend A-1 Johnson Auto Wrecking, \$1,759 for Van 57329; Mount Olive Lutheran Church, \$4,000 for Van 57330; Chapel of Hope Assembly of God, Inc., \$2,000 for Van 69771 and Mount Olive Lutheran Church, \$1,501.00 for Van 69774.

MINUTES: 11/22/99

(5) **Two (2) 2000 Current Model 48,000 GVW 8-Yard Dump Trucks.**
(Opened 11/16/99). Recommend Motor Power Equipment, \$106,440.00.

(6) **Mobile Video Monitoring Systems for Police Department.**
(Opened 11/16/99). Recommend delaying bid award to 12/13/99.

B. Change Order #1, Airport Improvement Project (AIP) 17 Security Access Control System (ACS), Yellowstone Electric, \$13,280.00, 0 days.

C. Change Order #1, W.O. 99-03, #2: 1999 Street Maintenance, JTL Group, \$25,200.00 and 15 days.

D. Contract Amendment #5, Water/Wastewater Treatment Plant Capital Improvements, Morrison-Maierle, \$74,236.00.

E. Contract Amendment #5, Design and Construction Administration of 2000 Water/Sewer Replacement Projects, MSE-HKM, \$554,897.20

F. Commercial Aviation Ground Lease with Big Sky Transportation Co., dba Big Sky Airlines, 20-year term, \$13,156.68 for first year with annual revenues adjusted annual by CPI.

G. Lease Agreement with Mountain Mudd for concession kiosk in front of Park II parking garage, \$200/month. Term: 12/1/99 – 6/31/2000.

H. Parking Agreement with Old Chamber Development Company re: Old Chamber Building parking lot.

I. Token Parking Program with Downtown Billings Association in downtown business district.

J. Agreement with Yellowstone County for City-County Special Investigations Unit (CCSIU), \$0. Term 1/1/2000 – 12/31/2000.

K. Agreement with Montana Department of Transportation, Traffic Safety Bureau, Occupant Protection Grant for Police Department, \$12,000. Term: 10/15/99 – 9/30/2000.

L. Authorization to declare old conventional radio equipment as surplus and authorizing sale of the equipment via public offering or public auction.

M. Confirmation of Police Officers:

(1) Mitch Brush

MINUTES: 11/22/99

(2) Mario Redlegs

N. Free parking in Park II Parking Garage on December 3, 1999 from 6:30 p.m. to closing, in association with the Downtown Christmas Stroll event.

O. First Reading Ordinance extending the boundaries of Ward I to include recently annexed property: Annex #99-06, N2 of Lot 5 of Clark Subdivision, containing approximately 1.7 acres, and setting a public hearing for 12/13/99.

P. Final Amended Plat of Lots 21 & 22, Block 19 of Parkland West Subdivision, 2nd filing. (Generally located at 38th Street West.)

Q. 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 Deisz. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5107 AMENDING SECTION 27-703 AND 27-706(b) BMCC, ESTABLISHING REVISED OFF-PREMISE/BILLBOARD SIGN REGULATIONS. (Amendment added on First Reading 11/8/99.) (Action: approval or disapproval of ordinance on second reading.)

The public hearing was opened. LYNDA BOURQUE MOSS OF 2540 HOOVER AVENUE said she encouraged the council to remove the language "necessary and appropriate" from the regulations. Several years ago the Western Heritage Center undertook an extensive survey of visitors. One of the questions asked was how they learned where museums are when they travel. The three high-ranking media used to learn about museums are: television, travel magazines and word of mouth – such as at visitors centers. Billboards ranked the lowest of any of the sources of information of the way people learn about cultural attractions in a community. She encouraged the council also to not provide any more incentives than currently in the regulations to construct new billboards. She said the council should set high standards for the community that convey a respect for the natural landscape and cultural landscape of the community, following the leadership of other communities who have done the same.

BARBARA SCHEPPELE OF 4322 PALISADES PARK DRIVE said she is highly emotional and "high tempered" about certain issues and duplicity is certainly a trigger. She

MINUTES: 11/22/99

said she wanted to present some facts surrounding this issue. "It has been suggested that billboards destroy precious viewsheds and that people just don't want billboards in their community." She displayed before and after shots of several streets – using computer enhancement to take the billboards out of the pictures. "To be honest, the impact is negligible. I've tried to include some of the most contentious boards. Mr. Elison was correct at the last public hearing when he pointed out that Grand Avenue without billboards is still Grand Avenue. The same is true of King (Avenue)... As the Shiloh Road corridor develops, the view of the mountains will disappear. 24th Street in days past offered a view of the mountains, yet you can't see them from 24th today. Between Colton and the Interstate on 24th Street, there are no billboards on the West Side of the road that could have possibly destroyed the viewshed. Growth of the city destroyed the view," she said. She said there are many advertising avenues available to businesses in Billings. "One billboard costs approximately \$700 for 30 days including paint and space rental. For the board at Sixth and Expo, approximately 30,000 vehicles will pass my message daily for 30 days. Just one mailing to 30,000 households in Billings will cost \$5,580 for bulk rate postage alone, not to mention the cost of printing 30,000 of anything. If I want a TV spot, I'd pay approximately \$350 for production and about \$10,800 to reach 30,000 households on a news broadcast once a day for 30 days, using bulk advertising at volume discount rates. If I want a ½ page black and white ad in the Gazette to run 30 consecutive days and applying all available frequency discounts, reaching approximately 30,000 households, my cost would be \$28,741.12. A ¼ page ad for the same length of time is \$14,840.32. My point is this. If removing existing billboards won't change much, and the new regulations will strictly curtail the appearance as the city expands, and billboards are a cost effective advertising tool for small-budget businesses, then banning billboards is not only an ineffective way to clean up the city, but punitive and detrimental to small businessmen. I'm asking you to vote in favor of the compromise proposal without alterations," she stated.

MARY WESTWOOD, NO ADDRESS GIVEN said she wanted to thank the council for protecting the beauty of "our special home, by deciding to prohibit the addition of any more billboards until such time as the current crop of over 200 billboards are brought into compliance with the new regulations. These new regulations protect our scenic views and reduce the frequency of these advertising messages... Much time and effort has been spent on this issue by many people and these regulations seem to be necessary to keep an aggressive out-of-state outdoor advertising company from continuing to damage our community further," she stated. She said these regulations are a step in the right direction. She also asked the council to strike the last sentence in the purpose and intent section – the clause that outdoor advertising is necessary and appropriate.

MARY FITZPATRICK OF 631 CLARK AVENUE said billboards are neither beneficial nor necessary. "The purpose of all 'in-your-face' advertising is to persuade us to want something we don't need... Speaking for myself, I don't need to be persuaded to supply myself with necessities and I don't want anyone trying to make me want what I don't need. In meeting my needs, I know at least three ways better than billboards to get information. First, I have my own experience. I know what I like, I've looked around; I

MINUTES: 11/22/99

know how to get it. This information is personal and reliable; billboards are neither. Second, when I do need to search for a product or service, the Yellow Pages Directory shows me a full range of choices in a page or two... No billboard can provide me the information that interests me at a time when I'm ready to use it. Third, I trust the experience and advice of my friends far more than any advertising. My friends have my wellbeing at heart; advertising does not. I don't doubt that the advertisers and the industry benefit from billboards. However as a consumer I have at least three better sources of information about products and services..." she said. These ways are tailored to her needs, do not promote consumerism and do not clutter the landscape.

JIM HARTUNG OF 620 BURLINGTON AVENUE said he supports the solution passed on the first reading on November 8th – that no new billboards will be allowed until all existing billboards meet current city codes. He said he feels they are visual pollution and unlike ads on radio or television, he cannot turn them off. "I don't think Billings' citizens really favor billboards. I think most of the people who are talking in favor of billboards in Billings are associated with billboard companies, advertising companies or are billboard users. I also believe you should remove the language that calls billboards a necessary and appropriate means of advertising," he stated.

MIKE PENFOLD OF 3552 PRESTWICK said billboards are not an essential element of the community and detract from the long-term community economic health. He noted he has lived in communities that have a very strict sign ordinance and the people there "drank Coca Cola and Pepsi, found motels, found restaurants, utilized the banks, etc. and they did it without billboards." Billboards are effective, but businesses in the future will locate in communities in which their employees want to live. Parks, good trails, medical care, schools and colleges and the scenery are the kinds of things that are going to drive a viable community. "It's an economic decision in a lot of regards... I like to see policies that are fair to the signing industry. They are a business and industry that made investments. If we could set a course that lets them know that in a decade or two there will be no billboards in Billings, I would be patient about that and encourage that policy..." he said. He noted that the policy before the council this evening falls short of that, but it is a better policy than the one in the past, so is a step in the right direction. He also asked that the sentence regarding "necessary and appropriate" be deleted, since it appears to create a right for billboards to exist.

PAUL WHITING OF 925 BURLINGTON said he wished only to thank the council for their efforts on this contentious issue.

There were no other speakers. The public hearing was closed. Councilmember Elison moved for approval of the ordinance on second reading, seconded by Councilmember Larson. Councilmember Johnson moved to amend the motion to remove the sentence "the city recognizes that billboards are a necessary and appropriate advertising medium, and that there are acceptable and viable locations for billboards within the community", seconded by Councilmember Bradley.

Councilmember Johnson said the purpose of the ordinance is a 5-part one: to regulate the impact of billboards in our community; improve the appearance of I-90, Main

MINUTES: 11/22/99

Street, Highway #3, 27th Street and entries; to enhance the urban design of the greater downtown area and the westend, to insure compatibility between billboards and adjacent land uses and to limit the impact that billboards have on sign clutter in the community. He urged the council to support the amendment. On a roll call vote on the amendment, the amendment failed 5-5 (tie). Councilmembers voting "yes" were: Johnson, McDermott, Bradley, McDanel, and Tooley. Councilmembers voting "no" were: Elison, Larson, Deisz, Iverson and Kennedy. On a voice vote on the ORIGINAL motion, the motion was unanimously approved.

PER COUNCILMEMBER JOHNSON: TEXT OF LETTER FROM ALAN REEDER OF LAMAR ADVERTISING TO MAYOR AND CITY COUNCIL:

"Dear Mayor and Council Members, I would like to thank you for your time and effort spent on the issue of billboards over the past five months. Our friends and foes have also invested many hours working towards the consensus or compromise ordinance. We support and ask for passage of the consensus agreement with Mark Elison's amendment as it stands. Afterwards we will work with staff to come up with a plan specifically addressing the Rim locations and at that time present it to you for consideration. Again, thank you. Alan Reeder, General Manager, Lamar Advertising."

3. **RESOLUTION 99-17530 ANNEXING #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.**
Staff recommends approval. (Public hearing held 11/8/99; action delayed from 11/8/99). (Action: approval or disapproval of resolution.)

Councilmember Kennedy moved for approval of the resolution, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

4. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #654: a zone change from Residential 9600 to Residential Multi-Family-Restricted, Residential Professional, Neighborhood Commercial and Community Commercial on the NW4NW4 of Section 12, T1S-R25E, LESS Emerick Subdivision and C/S 1702, generally located at the southeast corner of Central Avenue and South 32nd Street West. Lena Emerick and Freda Emerick Trust, owners; Engineering, Inc., agent. Zoning Commission recommends denial.** (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this zone change is a follow up to the previous item. The total property is approximately 37 acres in size. It does not include the US West building that is on the corner of Central Avenue and South 32nd Street. The existing zoning in the area consists of R9600 to east, R8000 to the south which allows single family or duplex residences. The property immediately to the south is PUD with an underlying zoning of Residential Multi-Family Restricted. The property to the west is also PUD – Parkland West Sub. There is additional residential zoning to the north of the subject property. There are 4 different zonings involved with this zone change. The zoning on this

MINUTES: 11/22/99

property mimics the zoning in Parkland West across 32nd Street to the west and also to the south in Terra West Sub and Parkland West. Mr. Bollman said they have tried to encourage Community Commercial zones at the nodes of principal arterial streets. The zoning transitions down to less intensive zoning districts to the south and east of this parcel. The Development Review Committee recommended approval to the Zoning Commission. The Zoning Commission reversed that recommendation and has recommended denial to the Council. Some of their concerns were about how far south the Community Commercial zoning went and some concern about the Residential Multi-Family zoning on the southern part of this parcel, adjoining Terra West. A protest petition was received and a valid protest has been registered. He noted that the new state law change no longer requires a super majority vote of the council. To approve the zone change, 7 councilmembers would be required to vote in favor of the request to override the valid protest.

Councilmember Elison asked if it was appropriate for the council to hear this request since the property is technically not yet part of the city. City Attorney Brent Brooks said annexation is effective when it is filed with the Clerk and Recorder's Office. Based on this practice, he suggested the council delay action on this item. Councilmember Larson asked if the council should hold the public hearing prior to the delay. Mr. Brooks said the council could do it either way, as long as they held two readings of the ordinance. The public hearing could be held, closed and action delayed to a date certain, OR the public hearing could be continued to a date certain and action delayed to a date certain. Councilmember Larson said a number of people were here tonight to speak on the issue and should be allowed to offer their comments.

The public hearing was opened. DENNIS RANDALL OF ENGINEERING INC, 1001 S. 24TH STREET WEST said they are the agents for the Sparrow Group. He reminded the council that the subject property is located at the intersection of two principal arterials and is an appropriate location for commercial properties. He said they have worked very hard with staff on this proposal, to meet the goals of the Comprehensive Plan by limiting Community Commercial, to provide a step-down zoning to neighboring properties, and mirrored the adjacent zoning on the other side of 32nd Street.

ED BADERA OF 3109 CENTRAL AVENUE said his concern is that this will increase traffic on Central. He asked if there are plans to widen Central Avenue up to 32nd Street, noting this should be done before this proposal is approved.

PAUL WOLD OF 3131 SOLAR BOULEVARD said he opposes this incredulous zone change. He objects to the Multi-Family Restricted classification proposed. "We have 10.7 acres dedicated to this zone change. The Sparrow Group, the developer of such buildings could build as many as 268 units with multiple garages on this property. They can have as many units in one building as they please with the RMF-R zoning, and can be as many as 3 stories high or a maximum of 40 feet high. They can have a 55% lot coverage, considerably higher than the 30% lot coverage on single-family residences. It is possible for the builder to build very close to the Terra Two property with no buffer, thus having a negative effect on the visible integrity of the residences in place to the east," he

MINUTES: 11/22/99

stated. High-density residential complexes are obtrusive to the eye and do not fit in or conform with the character or integrity of any of the residences along 32nd Street from Broadwater to King Avenue. He feels any additional commercial zoning in this area would only lead to further strip development.

TONYA FISHER CLARK OF 3131 SOLAR BOULEVARD said she hoped the council would deny this zone change. "Changing this from R9600 does not maintain the integrity of the existing homes and development there. What exists now is patio homes, single-family homes, a few townhouses and condominiums. This is mostly a residential area – a quiet area. This development would not mimic the existing homes in the area. This development does not mirror the land across 32nd – which is an empty lot. I pray that you will retain the R9600 zoning on this land," she stated.

TIM GERMAN OF THE SPARROW GROUP, 405 SOUTH PEABODY STREET, PORT ANGELES, WASHINGTON said they worked diligently with staff to come up with a proposal that corresponded with the Comprehensive Plan for the area. The goal of the plan was to channel the traffic and limit strip development by massing the commercial areas at the major intersections. This project looks into the future and developing Billings in the way that the planners wanted.

DENNIS EMERICK OF 1949 MARIPOSA said he represents one family that owns property at 32nd and Central that is agricultural land. "Over the years, we are being forced out of that agricultural business. We've owned the property for over 50+ years. I have 2 sheets here of SIDs of payments that we made while that was agricultural land. It has a grand total of roughly \$100,000 for water and sewer on Central Avenue and 32nd. This was a very hard, backbreaking thing for us to keep up all these years. We said 'this is agricultural land; it's hard for us to pay those.' We were told by the city that will increase the value of our property. That is the kind of the situation we have. Now we have an opportunity to develop that land. The developer is trying everything to meet all of the city codes and we have tried to do that all through the years with the development of it, with buffer zones and everything else. When you have roughly 15 acres right west of the corner of 32nd and Central that is already Community Commercial, I can't see where allowing Community Commercial zoning and various zoning on the other side would be any problem..." he stated. He said this is one of the undeveloped "pockets" in the city that the city wants to develop before extending past Shiloh. "It really deserves your consideration. You can't please everybody, but the developer is trying his hardest to do that," he stated. Councilmember Kennedy suggested that he visit with some of the individuals in the townhouse group to talk about their concerns and perhaps work through some issues. Mr. Emerick said he is more than willing to talk to anyone that wants to call him too.

There were no other speakers. The public hearing was adjourned to December 13th. No action was taken this evening.

5. PUBLIC HEARING AND SPECIAL REVIEW #668: a special review to allow the placement of a public parking lot in a Residential Multi-Family-Restricted zone on

MINUTES: 11/22/99

Lots 24-31, Block 1 of West Side Addition, located at the southeast corner of Wyoming Avenue and 1st Street West. Clifford and Donna Dunn, Fred Grider, Cindy Wong Grider and Vera Brougher Roybal, owners; Roman Catholic Bishop of Great Falls and CTA Architects Engineers, agents. Zoning Commission makes no recommendation. (Action: approval or disapproval of special review).

Zoning Coordinator Jeff Bollman said the subject property is proposed to have a parking lot on it. The underlying zoning would not be changed in this proposal. The Development Review Committee recommended conditional approval of the request. The DRC basically felt there was a need for this use at this location. At the Zoning Commission meeting, many people appeared to speak against the request. The Zoning Commission forwarded no recommendation because of a split vote. Councilmember Kennedy asked if variances for parking have been considered for this property. Mr. Bollman said he has spoken with representatives from CTA Architects about that possibility. Councilmember Elison asked if the applicants asked to postpone action until the variance possibility could be further reviewed. Mr. Bollman said the school's building committee met last week to discuss this matter. He said he did not know the results of that meeting.

The public hearing was opened. KEITH RUPERT OF CTA ARCHITECTS AND ENGINEERS said they are asking that action be postponed this evening. They intend to respect the wishes of the neighbors and try to acquire property on the Broadwater side, which will require variances. They do not wish to withdraw their request at this time, just to postpone action. "There are several hurdles to overcome to get the other approach approved, etc. If for some reason that does not work, we would rather not lose the investment we already have in this proposal. It is our intent to go ahead with an approach that will be respectful of the neighborhood wishes," he stated.

Councilmember Larson moved to adjourn the public hearing, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved. Councilmember Larson moved to postpone action to the second meeting in January (January 24, 2000) to allow the applicant to look into the variance alternatives, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

Mayor Tooley called a brief recess at 8:30 p.m. The meeting was called back to order at 8:35 p.m.

Councilmember Johnson asked for a point of personal privilege. He asked to read into the record on ITEM #2 a letter from Alan Reeder of Lamar Advertising. See ITEM #2 for the addition.

6. PUBLIC HEARING AND RESOLUTION CREATING SID 1323: water, sanitary sewer and street improvements in the Burlington Northern Industrial Subdivision. Staff recommends approval. (Action: approval or disapproval of resolution.)

MINUTES: 11/22/99

Acting Administrator Bill McGill noted there is a substantial staff report if the council wants to proceed with it. Councilmember Larson said no matter what the first motion is on the floor tonight on this item, he intends to make a substitute motion postponing action until the council has a chance to get together in an extended retreat and discuss how the council is going to approach these types of improvements. "I feel like we have been sitting up here listening to testimony, listening to concerns and we have nothing at this point to respond to the concerns of the people, the concerns of the staff. We are basically floundering... For me, right now, I believe we need, much like we did with the sidewalk issue, to take the time to look at this in depth and see what our options are," he stated. He noted he sat through the public hearing the last time and doesn't need to hear the staff report again to clarify any of the issues on this matter. He said he would rather save that for their retreat.

Councilmember Kennedy concurred. "I've been involved with both of these SIDs before and I'm not sure where we are going to go with it. We haven't seemed to have been able to solve any of these situations. We'll hear the same rhetoric tonight. I don't care to listen to that again. I just as soon have us postpone this until we are able to sit down as a council and come up with alternative ideas."

Councilmember Johnson also agreed. "I wasn't at the hearing previously... I've seen more mail in the last 10 days than ever before on these several issues... I hope we can postpone this," he stated

Councilmember McDanel said he didn't want the staff report right now and is in favor of delaying this item "until we can discuss this as a group, and develop some sort of plan for attacking these. However, this one is different. I still have some questions relating to ownership of that. After reading the material that I've been provided, I'm still not convinced that the city should be taking responsibility for this water system. It appears to me that it still belongs to someone else... I do have several questions related to the issues associated with this SID that I would want to have resolved before we go to some retreat," he stated.

Mr. McGill pointed out that if staff is provided with those questions, the answers can be provided prior to any retreat. Councilmember Deisz said he asked those questions over a month ago and the council still has no definitive answers on those questions. "I'm a little bit disappointed because to me ... there is a relationship between who owns them and who has responsibility for taking care of those pipes... When this was defeated in 1996, we the council at the time, told staff not to bring it back unless they had met with those property owners and come up with a solution. Now from what I understand in talking with some of those property owners is that they did come back with a petition and a lot of them signed onto a water project and a water project only. I hope some of this information comes out here tonight. I would like to hear the answers to this," he stated. He said he wants to have the public hearing and staff to answer these questions here this evening.

Councilmember Larson said the staff report probably could not resolve the legal dispute that may or may not exist in this area. "This is something that I would pretty much be prepared to guarantee right now is only going to be resolved in court... I'd certainly

MINUTES: 11/22/99

listen to the public hearing, but in terms of the staff report, I think we have plenty in writing; they can do their research and get back to us prior to a retreat. But to take the time for an extensive history of this area right now is almost a moot point. Whatever decision is made or whatever staff says tonight, is going to be challenged by the parties involved – no matter which direction they go. For me, to listen to a lot of that doesn't clarify much and takes a lot of people's time," he stated.

The staff report was not presented at this time. The public hearing was opened. JOHN OLIVER OF 1203 CONCORD said he is also a development representative for a 70-acre parcel on the King Avenue side of the road. He said he agreed with Councilmember Larson that it would be prudent and diligent for the council to take the time and do some research and fact finding for issues concerning westend development. "We have over 600 commercial acres that we would like to have developed with projects waiting in the wings right now, projects that will stimulate economic growth, provide full time and part time jobs, provide property tax increases that the City can draw upon... I've done a whole lot of research ... trying to get educated myself on what the truth is. There are a lot of issues that this council has to face. If they are not resolved now, I believe you are escalating into a worse scenario next year... There are several landowners in the area that are extremely concerned about how improvements will be paid for," he said. Mr. Oliver said he encouraged the council to do their retreat and fact finding and talk to developers, neutral people, etc. to just gather information from a data pool, so they can deliberate, choose and pick the pieces together so there is a plan for west end development.

REV. DENNIS DUNN OF 305 SOUTH 35TH STREET said as far as the water, sanitary sewer and street improvements in Burlington Northern Subdivision, the whole city needs a lot of technical improvements. He hoped after the council approved this item, they would consider the rest of the city as well.

TOM SMITH OF THE MOULTON LAW FIRM, NO ADDRESS GIVEN, said he recently filed a formal protest against this SID on behalf of the owners of 49 of the 69 lots proposed in the district. He said he was also here three years ago when this was first considered. It was the largest SID proposed in eight years at that time and is probably still the largest SID proposed in the same time period. This issue has been visited in the past and the past SID failed 8-1. The city was instructed not to bring it back unless 90% of the property owners concurred. "When you have 49 out of 69 properties protesting, whether it be valid or invalid protests (we don't need to advance to a discussion of waiver of protest), but when you have that degree of hostility to the SID by parties that are supposed to be benefitted by the SID, I believe the SID is inherently flawed or defective. I think there's a threshold question that must be considered here – what repairs are necessary? ... I don't believe there is any debate among the property owners in the SID. The water system itself is what pushes this SID each and every time. There's a question of the water system that is south of Monad Road. Property owners in the area agree that water system needs repair. However, it gets caught up in a different issue because there is a question of who owns that water system. I would note for the council's record that in 1996, Jerry Underwood stated in the Billings Gazette on the 12th of December when the issue was

MINUTES: 11/22/99

voted down 8-1, 'Northern Pacific Railroad, predecessor of BN had sold the private water/sewer system in the Industrial Park 40-50 years ago. It had agreed to maintain the lines as long as they existed. Because the system never met city standards, the railroad agreed to maintain it indefinitely. I don't think they can get out from under those obligations,' he stated. BN owns this water line. There's no reason to pass an SID to fix this water line. If the city does that, we assume BN's role and I believe we assume ownership and liability," he stated.

DUANE GROSALUK OF 5465 GENE SARAZAN said he would like the council to look at Industrial Boulevard – starting at the northwest corner which goes up against the city garages – there's a brand new water line and fire hydrant there. He said they do not have a water problem north of Industrial Boulevard. There's no benefit to the property owners there. "I will stand here in a public hearing if there is something to do with the water lines. We would participate. But to the extent that this thing is going to and was previous to that is totally ridiculous... I believe in infrastructure; we need infrastructure. But this gets to the point where it is totally ridiculous. The tax on the three parcels I have ... is \$40,000, two of them that back up to cemetery don't even have an access. There were lines drawn on this SID to include property owners so that they could get additional monies. Now that's not right... I'd like the council to take that into consideration when they go to their retreat," he stated.

RANDALL PATES OF 825 DELPHINIUM said he owns property on Monad/Daniels St – Midland Implement. He said they are opposed to the SID the way it has been structured and were opposed to it three years ago. "Unfortunately the land I own with my brother happens to be where the water lines always break. So we see the need to have some new water mains in place down there... I believe you gentlemen three years ago instructed the city staff to go around and meet with the various property owners to see what their needs were. They never came around. Now all we have is the same SID project," he said.

NANCY SCHIENO OF 511 LUTHER CIRCLE said she represents the property at the corner of 15th and Monad – Expert and Expert, a division of International Paper. She said they opposed the SID three years ago and still oppose the SID today. "A fundamental problem with this SID is that the ownership of the water system needs to be determined first – before any SID can be proposed or voted on. The homework needs to be done. That issue needs to be resolved whether it is in a legal court or not, before any proceedings go on," she stated.

ROBIN DANGERFIELD OF 1033 AVENUE D said he is probably one of the newest owners of a piece of land in that Industrial area. "In January about a year and a half ago, my wife and I purchased about 1.3 acres. We sold off a ½ acre and currently own a piece of land that is valued at about \$30,000. The SID as it is written now – our portion of that is right near \$14,000, which is about 50% of the value of our land. The neighbors to the south and east of us ... have mentioned that their water was marginally drinkable. Our land is currently vacant. We are intending to put a building on there with space for lease. We do want drinkable water and adequate water pressure for fire protection. I don't

MINUTES: 11/22/99

believe that my portion of that SID is worth 50% of the value of our land... I would like a new water line. We have about 90 feet of frontage on Bernard. I don't see where that will cost me \$14,000 to replace that water line... I've seen the breaks on 15th and Monad, so I can see where (Midland Implement) is coming from as far as putting in a new water line. It's new to my wife and I, but the price we are paying for the SID is a little overboard," he stated.

JOHN DECKER OF 407 PARKHILL DRIVE said he owns property at 1345 Monad Road. He is concerned that the area is designed to be an Industrial Park. "The need for sidewalks and big wide roads that can move lots of traffic that basically runs into a brick wall at Monad where the railroad crossing is, is something that we really don't feel we need or want to pay for. The water is important; the sewers are important, but other than that ... I would be happy to sit down with whoever would like to sit down ahead of time and work some of these issues out. But currently the way this SID is proposed, I am against it," he stated.

There were no other speakers. The public hearing was closed. Councilmember Larson MOVED to postpone action to the second meeting in March (3/27/2000) and to direct staff to arrange a retreat in which the council can discuss the issues of how the city is going to approach these large SIDs, seconded by Councilmember Kennedy.

Councilmember Larson said the motion was probably even more appropriate for SID 1343 than for 1323 in many ways. He said he would also recognize that there are issues (legal issues) with SID 1323 that do not impact 1343. "We can through other means, direct city staff to pursue some answers to the legal questions. What I am interested in addressing at a retreat is not so much that legal question of who owns this particular system, but rather the general question of how we are going to approach these large scale infrastructure improvements, what we are going to require for infrastructure improvements in different areas (i.e. sidewalks in a major industrial area) and the issue of what is a reasonable contribution from the city for roads such as Monad, which passes through this particular area. I agree we do reach out to pull in as many people as we can to try to minimize the assessments," he stated. He said he doesn't feel that Council has presented staff with many other options. "If Council wants staff to do things differently then Council should take control and make it a policy issue. Staff is operating with the tools they have now. They need an opportunity to defend those tools if they can and they need to hear from Council if the tools need to be different. This is an opportunity for Council to get involved and set policy that will move things ahead instead of sitting here and feeling like a victim during public hearings where we have no good solutions," he stated.

Councilmember McDanel asked Councilmember Larson his reason for postponing the issue until March. Councilmember McDanel said his concern for postponing the issue until March is that there are budget issues to deal with and whether or not those would be resolved before the March 27th meeting. He said he would like to have a retreat on the budget for the next year prior to having a retreat on how SIDs will be paid for. He said he is not convinced that there is any money for a city contribution to these SIDs at this point.

Councilmember Larson said he chose March in order to keep pressure on Council to move forward. "These people have been waiting for some time. There are improvements that these people feel are appropriate. I think we need to keep some pressure on ourselves. If a decision cannot be made in March, then Council can choose to continue to postpone the issue. There are a number of financial issues for the City of Billings to be discussed at the retreat. I don't think we can discuss those without discussing some of these types of issues as well," he stated.

Councilmember McDermott said she did not want to delay until March. She said she wanted time to review as many options as possible. She asked that council listen to the comments from the people at the meeting and for SID 1343 and to incorporate their suggestions and include them in the solution. "I do not want to have that pressure. We have had continued pressure since this whole affair started... I would like all of us, including those folks in SID 1323 and 1343 to have a good night's sleep. I would like to say 'no' and let us start over and let it come back up naturally in a year and by then we will have dealt with our retreat, we will have dealt with our budget to determine whether we have any money to assist these folks, and hopefully we'll have some options from these folks to assist us in some decisions," she stated.

Councilmember Kennedy said he feels Council is avoiding the issue. "Four months is plenty of time to get through this process which will lead to the point Council can decide whether they have enough information... A date certain puts pressure on council to make a decision. Pressure is really good at a time like this. It will force issues to come to the surface that might not have without pressure," he stated. Councilmember Kennedy, responding to Councilmember McDanel's question, said that the General Fund will continue to be a problem. He said the General Fund has changed drastically in the past six years. "It is now even more restrictive... We chose to do that, and I think it was a smart move. The goal to make street maintenance fees pay for the district has happened, now it is time to change the General Fund to reflect what we want it to do for the future," he stated. He said there would continue to be a problem with the restrictions of the General Fund and if those problems did not exist then, there would not be a need for the Council. It is for Council to make those decisions.

Councilmember Deisz said that SID 1323 and 1343 are two distinct SID problems and he did not see much correlation except the fact that the assessments are excessive to a lot of people. He said SID 1323 was debated a few years ago. "It was brought forward to this Council and Council sent it back 8 to 1 saying, 'don't bring this forward again unless you have studied and come up with a compromised position that the majority of property owners would buy into.' Staff brought it back forward. I don't feel, Mr. Larson, like I'm a victim here tonight, but I do feel we have victims in the audience. I want this Council to make a decision this evening and stand by it. Tell staff to come back when they have gotten a majority of the property owners to buy into the proposal, cut back the proposal so it is to the point of what they are willing to do - water project, not a street widening, not a sidewalk policy. They want water they can turn on and drink. That is the issue. I don't

MINUTES: 11/22/99

believe delaying it three to four months is going to allow us to come up with any solution to that, so I will vote against the delay," he stated.

Councilmember Kennedy responded by saying that by bringing the issue back in almost the exact form, that maybe staff does not have any other answers and are looking for some direction/leadership. He said he is encouraging the retreat to give Council an opportunity to voice their opinions to staff.

Councilmember Deisz said, "In talking with some of the property owners, they did sign a petition saying they would buy into a waterline project. That is what they agreed to do. Staff did not listen to them and did not agree to come back to us with any other proposal but the original SID."

Councilmember Johnson said he believed two separate meetings were needed outside the formal setting after the first of the year. One meeting to resolve the concerns of Councilmember McDanel and the budget and the General Fund, and one meeting to discuss this issue.

On a voice vote, the motion was approved. Councilmembers McDermott and Deisz voted "no". (DELAYED TO 3/27/2000).

7. RESOLUTION CREATING SID 1343: street and utility improvements in King Avenue West and S. 32nd, S. 31st, S. 30th, S. 29th Streets West, Cel Avenue and Henesta Drive. (Delayed from 9/13/99 & 10/25/99). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Councilmember Larson MOVED to postpone action to the second meeting in March (3/27/2000) and direct staff to coordinate a retreat to focus on the financial issues of the city and options for major SID infrastructure improvements, seconded by Councilmember Elison. Councilmember Deisz made a SUBSTITUTE MOTION to drive a wooden stake through the heart of the SID and let the people enjoy their holidays, seconded by Councilmember McDermott. On a voice vote, the substitute motion failed 4-6. Councilmembers voting "yes" were: McDermott, McDanel, Bradley and Deisz. Councilmembers voting "no" were: Iverson, Tooley, Kennedy, Johnson, Elison and Larson.

On a discussion of the original motion, Councilmember Larson said that sooner or later Council will have to deal with the improvements for this part of town and similar improvements all over town. "We are going to be dealing with major transportation issues in what is a growing community with a high demand for development, and from my standpoint, a desire to see be developed. I keep hearing people say that the current assessment policy is not fair, but I don't see people putting many options on the table. If we don't like the way our staff is approaching putting together these projects, we need to give them a different way. They are operating with the tools we have given them. If we want them to use different tools, we need to change them. That is a policy decision; we are the policy body. Let's get together and do our job," he stated.

MINUTES: 11/22/99

Councilmember Deisz said he couldn't disagree with Councilmember Larson more. "We are not giving them no tools to work with. We adopted a Transportation Plan August 17, 1999. The ink is barely dry and not only are you allowing staff to ignore that policy decision that we made, you are failing to acknowledge its existence. The Transportation Plan does not take into account these improvements for many years hence. Why are we skipping over all of the other projects and their priorities in favor of this one. Secondly, we specifically fail to prioritize some of the major projects, including the Heights. I would respectfully request that you put that on the retreat also. Thirdly, and most importantly, the other night at the agenda meeting other options were brought forward to you for funding and they are located in the Transportation Plan that was adopted August 17, 1999. And another option came forward in the last week and that was the adoption of a one or two-cent gas tax, which the City Council could go before the County Commissioners and get approved. So there are some other options besides this SID," he stated. Councilmember Larson responded by saying that the Transportation Plan tells him that this project is not a priority. "Therefore, why should I use any of the options suggested to do that project. I should just tell the people that live there that the City of Billings is making no contribution, it is not a priority, and I have other things on my list to take care of. I could make the argument we should not be participating in the improvement of this area at all. We could tell the property owners it is their problem so they can pay for it. I don't want to do that. I want to sit down with our Transportation Plan and develop priorities because I don't believe it is just their problem... I want to use this opportunity and this SID to talk about a situation we are going to see time and time again all across town. We need to come up with a uniform way to approach these across the board," he stated.

Councilmember McDermott asked to include property owners and developers in a committee to discuss solutions. Councilmember Elison MOVED for the previous question, seconded by Councilmember McDanel. On a voice vote to stop debate, the motion was approved. Councilmember Deisz voted "no". On a voice vote of the original motion on the floor, the motion was approved. Councilmembers voting "no" were McDermott and Deisz. (DELAYED TO 3/27/2000).

8. DISCIPLINARY HEARING pursuant to 7-22-3124 MCA on the disciplinary action of City of Billings Fire Fighter Ralph Freeman. (Action: hearing before the council).

Fire Chief Lorren Ballard said Fire Fighter Freeman broke the rules of the Billings Fire Department by not coming to work on time. He said the Fire Department followed the appropriate course of action by reprimanding Fire Fighter Freeman verbally and then in writing. Chief Ballard said that Fire Fighter Freeman was not in the audience. He said there was a union representative present that had no comments.

MINUTES: 11/22/99

Councilmember McDermott moved to uphold Chief Ballard's disciplinary action, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

ADJOURN – With all business complete, Mayor Tooley adjourned the meeting at 9:17 p.m.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK