

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, MAY 14, 2001

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Charles Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the invocation, which was given by Councilmember Milton "Mick" Ohnstad.

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

**MINUTES – April 23<sup>rd</sup>** Approved as printed.

**COURTESIES – Public Works.** Mayor Tooley welcomed Randy Parker and members from the Mason's Ashland Lodge. Acting Public Works Director Brian Borgstadt introduced staff engineer John Nowak. Mr. Nowak was recently recognized by the Rocky Mountain Chapter of the American Public Works Association as an emerging leader in public works. Mr. Borgstadt also announced that May 20-26 is National Public Works Week and described the local events that will take place in observance of the week.

**PROCLAMATIONS – Mayor Tooley.** Mayor Tooley proclaimed May 19 as POPPY DAY and the week of May 20-26 as NATIONAL PUBLIC WORKS WEEK.

**BOARD & COMMISSION REPORTS.** – NONE.

**ADMINISTRATOR REPORTS – Dennis Taylor.** NONE.

## **CONSENT AGENDA:**

### **A. Mayor's appointments:**

- (1) Kendall Merrick to Board of Adjustment.
- (2) Michael Paterson to Board of Adjustment

### **B. Bid Awards:**

(1) **W.O. 95-08, Phase II -- Bike/Ped Underpass Shiloh Billings: STPE Project 1031(1): 4506.** (Opened 4/10/01). Recommend delaying award to 5/29/01.

(2) **W.O. 01-02, #1: Developer-Related/Miscellaneous Curb, Gutter and Sidewalk Program.** (Opened 4/17/01). Recommend JTL Group, Inc., \$458,350.00 and 95 calendar days.

(3) **Electronic Parking Meter Mechanisms.** (Opened 4/17/01). Recommend Duncan Industries, \$115,744.35 for 833 new meters.

**(4) Billings Community Center Interior Renovation.** (Opened 5/01/01). Recommend General Contractors Construction Inc., \$41,251.00.

**(5) W.O. 01-03, #1, 2001 Street Maintenance.** (Opened 5/01/01). Recommend JTL Group, Inc, \$303,302.00.

**(6) Billings Logan International Airport: Steam Boiler Replacement.** (Opened 5/01/01). Recommend Accent Air and Mechanical, \$125,900.00.

**(7) Interior Terminal Painting and Exterior Painting for IP-9 and Operations Building.** (Opened 4/24/01). Recommend Sayer Painting, \$120,522.00.

**(8) SID 1346: North 28<sup>th</sup> Street Landscaping – Billings STPE 1099 (31).** (Opened 5/01/01). Recommend delayed to 6/11/01.

**(9) Trench Drains for Billings Logan International Airport.** (Opened 4/24/01). Recommend High Tech Construction, \$34,800.00.

**(10) Chemicals – Water Plant Polymers for Public Utilities Dept.** (Opened 5/01/01). Recommend delaying to 5/29/01.

**(11) 2001 City of Billings Water Service Line Replacement Project.** (Opened 5/08/01). Recommend Jay's Waterline Repair, \$101,000.

**(12) 2001 City of Billings Water Leak Restoration Project.** (Opened 5/08/01). Recommend Hardrives Asphalt Inc., \$61,775.25.

**C. C.O. #2, W.O. 93-19: Montana Avenue Landscaping STPE 1020(12),** Scott Long Construction, Inc., \$26,858.37 and 0 days.

**D. C.O. #3, Access Control System, AIP #17 Project,** Yellowstone Electric, \$3,838.00.

**E. C.O. #1, 2000 Capital Improvement Project, Waldo Pump Station,** Star Service, \$7,415.00.

**F. C.O. #1, Contract XI: Pumping Improvements,** Star Service, \$8,605.21.

**G. Bus and Bus Bench Advertising Agreement,** Blair Unlimited, \$29,500/year or 50% of annual gross revenue, whichever is greater, Term: 5/1/2001 – 4/30/2006.

**H. Audit Services Agreement,** Eide Bailly, LLP, \$159,100.00, Term: 3 years.

**I. Airport Buffer Zone Lease** with State of Montana, \$2,000/year, Term: 10 years.

**J. Engineering Service Agreement** with Morrison Maierle, Inc. for engineering services for all federally funded airport improvement program (AIP) and passenger facility charge (PFC) projects and general engineering services for the Aviation and Transit Dept., Term: 5 years

**K. Third Quarter Financial Report** for FY 2000-2001.

**L. Subordination of Housing Rehab Loan:** Cynthia Black, 4130 Ryan, \$15,000.00.

**M. Authorization for Police Dept. to pursue an additional grant #410-01-01-07-01** through Traffic Safety Bureau for in-car video systems, \$10,500 for 3 video systems. (No City match required).

**N. W.O. 98-06: King Avenue West Improvements, Parcel #2:**

(1) Right-of-Way Agreement, a portion of C/S 662, Dennis & Linda Nitschke, owners, \$21,236.00.

(2) Accept Warranty Deed, a portion of C/S 662, Dennis & Linda Nitschke, owners.

**O. Authorizing sale of surplus property** at City Auction on 6/2/01.

**P. Authorizing Rims Closure** due to July 4<sup>th</sup> Fireworks: July 3-4, 2001.

**Q. Downtown Billings Association request** for Big SkyFest Parade of Balloons in downtown area, July 19, 2001, 2<sup>nd</sup> and 3<sup>rd</sup> Avenues North, North 26<sup>th</sup> Street to North 32<sup>nd</sup> Street.

**R. American Legion request** for Memorial Day Parade, May 28, 2001, 24<sup>th</sup> and Central east to Mountview Cemetery.

**S. Pallotta Team Works request** for Montana AIDS Vaccine Ride Parade, August 5, 2001, MSU-Billings to Pioneer Park.

**T. Acceptance of Public Services Report, Annex #01-05, C/S 2374, Steven R. Fisher and Thomas Bennett, owners and setting a public hearing date for 5/29/01.**

**U. Acceptance of Public Services Report, Annex #01-06, Lots 9-10, Block 2, Lillis Heights Subdivision, B and J. Uselman, owners, and setting a public hearing date for 5/29/01.**

**V. Acceptance of Public Services Report, Annex #01-07, Lots 2, 3, 15-17, Block 4, Lillis Heights Subdivision, D. Anspach, owner and setting a public hearing date for 5/29/01.**

**W. Acknowledging receipt of petition** to annex C/S 866, Tract 1 and C/S 2560, Annex #01-01, Long Family Limited Partnership, petitioners, and setting a public hearing date for 5/29/01.

**X. Acknowledging receipt of petition** to annex Lots 1-2, Block 1, Sharptail Subdivision, Annex #01-02, Kincaid Land LLC and King Resources, petitioners, and setting a public hearing date for 5/29/01.

**Y. Acknowledging receipt of petition** to discontinue public right-of-way, North 19<sup>th</sup> Street between 6<sup>th</sup> and 7<sup>th</sup> Avenues North, HeadStart, petitioner, and setting a public hearing date for 5/29/01.

**Z. Resolution 01-17694 authorizing use of Council Contingency** for expenses incurred for Right-of-Way legal services by Miller and Van Eaton, \$78,500.00.

**AA. Resolution 01-17695 relating to \$841,000 Pooled Special Improvement District Bonds, Series 2001B** (SIDs 1346, 1348, 1350 and 1352), authorizing the issuance and calling for the public sale of on 6/11/01.

**BB. SID 1355: sanitary sewer and street improvements on Greenbriar Road:**

(1) **Professional Services Contract** with Morrison-Maierle, Inc., \$51,957.84.

(2) **Resolution of Intention 01-17696** to create and setting a public hearing for 6/11/01.

**CC. First reading ordinance** extending the boundaries of Ward III to include recently annexed properties: Annex #01-08, C/S 3050, Tract 1 and setting a public hearing date for 5/29/01.

**DD. Preliminary Plat of William D. Pierce Subdivision**, generally located east of Shiloh Road and north of Interstate 90. (C/S 2050, Tr 1)

**EE. Reinstatement of Preliminary Plat approval and one-year extension of Preliminary Plat approval** for Zabawa Subdivision,

**FF. Bills and payroll.**

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Item 1 A (1) and Item Y of the Consent Agenda. Councilmember Iverson moved to approve the Consent Agenda less Item 1 A (1) and Item Y, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved. Councilmember Iverson moved to approve Item 1 A (1), seconded by Councilmember Larson. Councilmember McDermott requested applications for both board appointments. On a voice vote, the motion was unanimously approved. Councilmember Iverson moved to approve Item Y, seconded by Councilmember Larson. On a voice vote, the motion was passed, with Councilmembers Bradley, McDanel, and McDermott opposing the motion.

## **REGULAR AGENDA:**

**2. APPROVAL OF FY 2001-02 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP PROGRAMS (HOME).** Public

hearing held 4/23/01. (**Action:** approval or disapproval of Community Development Board recommendations.)

Councilmember Ohnstad moved to approve the Community Development Board recommendations, seconded by Councilmember Larson. Councilmember McDermott moved to amend the recommendation to remove the amount allocated to Headstart and fund \$30,000 for repaving of Central Park parking lot and \$20,000 for the No. 22<sup>nd</sup> Street Sidewalk project, plus \$5,000 from the unallocated funds to the No. 22<sup>nd</sup> Street project, seconded by Bradley. Councilmember Kennedy commented that the CD Board takes considerable time and effort to come up with the recommendations and he feels very comfortable with them as they stand and further commented that the Headstart group is a benefit to the community. He stated that he would vote against the amendment. Councilmember McDermott stated that the City Council has the ability to make changes to the recommendation of the CD Board. Councilmember Elison stated that we cannot turn our backs on our children, and further stated that Headstart is an important program in this area. Any effort to take money away from education will meet with his disapproval, he said. Councilmember Johnson reminded those present that CDBG funds are primarily used for improvements to economic conditions of low and moderate-income households and Headstart attempts to do this. He further stated he would be in opposition to this amendment. Councilmember Larson stated that he realizes we cannot fund any program to the level that is desired each year and commented that he is very reluctant to change the CD Board recommendations because Headstart is clearly serving a population that fits into the CDBG guidelines and is worthy of the Council's support. On a voice vote, the amendment failed, with Councilmembers Bradley, McDermott and McDanel voting to approve. Councilmember Kennedy moved to amend Councilmember Ohnstad's original motion by creating a benchmark process with the \$50,000 allocated to Headstart and giving them \$25,000 now, and when they have raised \$100,000 in the capital fund raiser, giving the remaining \$25,000, with the specific condition that the funds are for the purchase of the North Park building only, seconded by Councilmember Johnson. On a voice vote, the motion passed with four dissenting votes including, Councilmembers McDermott, Bradley, Larson and McDanel. During further discussion, Councilmember Bradley moved to take \$10,000 from the Police Department Tow Fund for junk vehicles and allocate it to the Big Sky Economic Development Association, seconded by Councilmember Johnson. Councilmember Bradley went on to comment that the county will receive a 100% increase in junk vehicle fees, via vehicle licenses this coming year, therefore he would like to give the Big Sky Economic Development Association an additional \$10,000 for the minority owned business assistance program. Councilmember Elison asked if the motion would specify that this money be used only for the minority business program and Councilmember Bradley verified that it would. Community Development Director John Walsh confirmed that Big Sky Economic Development Association will be receiving their full \$10,000 requested amount and that the additional monies from the junk vehicle tow fund would actually be \$5,000 as City Manager Dennis Taylor pointed out. Councilmember Bradley concurred that the additional amount his motion covers would in fact add only \$5,000 to their original amount. Mayor Tooley asked Mr. Taylor if he was confident that the county would be receiving a doubling of the funding for junk vehicles. Police chief Ron Tussing came forward to clarify that the county will receive \$118,000 this year, however there is no guarantee that this money will trickle

down to the City for the efforts of the police department to remove the junk vehicles from the streets, he added. He stated that the Police Department has tried to be more proactive toward this issue as it was indicated that it was a priority with some members of the Council. He further stated that this is the first he had heard that there would be a county windfall that they would be available to use for funding the removal of junk vehicles. Councilmember McDermott commented that she receives numerous calls regarding this problem and would really want to have the abandoned vehicle problem addressed. She stated that the \$5,000 funding to the Police Department would be the best approach to solving the problem. Councilmember McDanel stated his opinion that any organization should not expect more money from the CD Board than originally requested, especially when funding is limited. He suggested that the funding be left as it stands now. On a voice vote, the motion was defeated with Councilmember Bradley and Elison voting "yes". Councilmember Bradley moved to amend the motion asking that the \$22,500 from the affordable housing allocation be redirected to the South Side Task Force for the purchase of Al's Tavern for their headquarters, seconded by Councilmember McDermott. Community Development Director John Walsh advised that this would not be an appropriate use of the HOME funds, therefore it was discussed that the funds allocated for the Irma House could more appropriately be exchanged for the South Side Task Force Headquarters purchase. Councilmember Elison voiced concerns regarding this funding exchange due to the conflict arising from within the South Side Task Force. He stated that it is hard to determine who is running the organization, what the level of stability is in the organization and their ability to adequately monitor the funds. He cited letters that were given to Council documenting these concerns. He further stated that he is not sure whom to call on to account for the funds of this organization. Councilmember Bradley noted that it would be important to have the Community Block Grant Office make sure all details are accounted for with the funds and that the City oversee the transfer of property. Councilmember McDermott stated that if the purchase agreement between the task force and the owners of Al's Tavern did not go forth there was a strong possibility that it would return to its former use as a tavern. She said that she would not like to see that happen. Councilmember Johnson voiced his concern with the City providing meeting places for the task forces and stated his opposition to the motion. Councilmember Larson commented that we are in a time when ownership of a building is more of a liability than an asset, as maintenance and utility costs make it unaffordable. He felt this would be an unnecessary cost to a task force that has seen its activity pick up and dwindle over time. Councilmember McDanel concurred with the concerns regarding stability of the organization, the on going operations and maintenance costs associated with operating a building, and spoke in opposition of this motion. Councilmember McDermott asked whether there was a purchase agreement between the City and the owner of Al's Tavern for \$25,000. Community Development Director John Walsh verified that there is no agreement on record. On a voice vote for the amendment, the motion failed with Councilmember Bradley and McDermott voting "yes". On a voice vote, the motion to approve the recommendations of the Community Development Board was passed, with Councilmembers Bradley and McDermott voting "no".

**3. PUBLIC HEARING AND RESOLUTION 01-17697** approving the C/S 866 Urban Planning Study and expansion of the Urban Planning Area to include C/S 866, subject

area generally located southwest of Willow Bend and Golden Meadows Mobile Home Parks between South 32<sup>nd</sup> Street and Shiloh Road, south of King Avenue West. Planning Board and Staff recommend approval. (**Action:** approval or disapproval of Planning Board and Staff recommendation.)

Planner Bruce McCandless introduced the Planning Study and explained the necessity of approval of a property for it to be added to the Urban Planning Area in preparation for annexation, and further stated that City staff and the Planning Board have reviewed and recommended approval of the study and inclusion of this area in the Urban Planning Area. He described the property location and general attributes and added that it is an island surrounded by properties already included in the Urban Planning Area. He further stated that the owner does not intend to develop the property stating that it will remain a water retention basin that serves as a home for waterfowl, and will be maintained by the owner. For this reason there will be no need for City services, streets and associated improvements. He introduced Bob Sanderson from Engineering, Inc., representing the Long family, who spoke to the wetland issue raised by Councilmember Bradley explaining that this is a natural storm water retention basin that fluctuates seasonally and the owner intends to utilize it in its natural state. Mr. McCandless responded to Councilmember Johnson's concerns for future improvements to this property by explaining that there will be a subdivision request of adjacent property in the future and at that time the planning department will review what improvements will need to be made for this property to continue as a water management tool.

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

**4. PUBLIC HEARING AND RESOLUTION 01-17698** approving the Sharptail Subdivision (to be known as the Montana Sapphire Subdivision) Urban Planning Study and expansion of the Urban Planning Area to include the Sharptail Subdivision (to be known as the Montana Sapphire Subdivision), subject property generally located at the southwest corner of King Avenue West and Shiloh Road. Planning Board and Staff recommend approval. (**Action:** approval or disapproval of Planning Board and Staff recommendation.)

Planning Director Ramona Mattix introduced this public hearing as the first of several public hearings regarding activities around the Shiloh Road area that are primarily economic development activities and the associated subdivisions. She stated that this is an urban planning study of 72 acres that has a preliminary plat with 18 lots associated with it. It is a commercial subdivision that was developed with the attitude that the West End Plan had already been adopted and therefore meets the commercial criteria. She added that there would be an annexation agreement in the future that commits to looking at all the details involved with improvements, and added that the study shows the ability to provide services. She further stated that the planning board has recommended unanimous approval of the planning study.

The public hearing was opened. RICK LEUTHHOLD, ENGINEERING, INC., representing the owners of the property, came forward to highlight a few of the technical issues. He described the property development as very similar to the Homestead

Business Park with a green campus-like setting that fits in with the West End Master Plan, including the storm drainage plan. Utilities will be extended and zoning is in conformance with other zoning in the area, he said. He further stated that a tax increment district could be pursued.

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

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**

**#668:** a zone change from Agricultural Open Space to Entryway Light Industrial on C/S 3050, Tract 1, generally located on the east side of Shiloh Road across from ZooMontana. G. Ronald and Linda Pierce Family Trust, owner; Engineering, Inc., agent. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

Planning director Ramona Mattix introduced this zone change as being consistent with the West End Plan. She further stated that the City Planning Commission recommended approval of the zone change on a 5 to 2 vote.

BOB SANDERSON, ENGINEERING, INC., representing Ron and Linda Pierce, owners, came forward. He stated that the property would be the new home of the Pierce's businesses, as the former property has been sold and this action tonight is confirmation of the zone change. He added that construction would start this summer with occupancy anticipated this time next year.

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

**6. PUBLIC HEARING AND RESOLUTION 01-17699 ANNEXING C/S 2991, Tract A,**

**Annex #01-09, Mary Kramer, petitioner.** Staff recommends approval of the public services report and conditional approval of the annexation. (**Action:** approval or disapproval of staff recommendation.)

Planner Bruce McCandless introduced the annexation and explained that the recommendation is for conditional approval. There are two conditions that are recommended, the first is that a subdivision approval agreement be executed to insure that everything is developed to City standards and secondly that portions of Central Avenue be annexed at the same time to reduce any jurisdictional issues that might arise between the City and the County. He further described the entire 80-acre parcel as agricultural and exempt from annexation according to state law, however he stated that the owner of this 9-acre portion has petitioned for annexation and if approved the remainder will stay agricultural. He advised that there is a zoning application that has been submitted recommending approval by the zoning commission to rezone as residential professional. He further stated that the property is already in the Billings Urban Fire Service Area and therefore receives City fire protection; and it is also in the Urban Planning Area where utilities are nearby. He added that the developer would be required to deal with the necessary street and traffic control issues both internal and external. He further stated that commercial development of this property should generate taxes and fees that will pay for City services provided to the property.



The public hearing was opening. DENNIS RANDALL, ENGINEERING, INC., 1001 S.24<sup>th</sup> STREET WEST, representing the developer, Jim Boyer, stated that the developer's intent is to build professional offices in a campus setting similar to Homestead Business Park.

CHARLIE GAMBLE, 1008 POLY DRIVE, representing the owner Mary Kramer who owns 3 of the 9 tracts that are in a checkerboard pattern, stated he is broker of record. He confirmed that this is a good time to consider this action as all the improvements are being installed in Lampman Subdivision, which is south of this property. He further stated that the zoning commission has given unanimous approval for the RT zoning.

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

**7. PUBLIC HEARING AND SECOND READING ORDINANCE 01-5151 FOR ZONE CHANGE #679:** a zone change from Residential 6000 to Community Commercial on Lots 3-6, Block 2, North Park Subdivision, located at 610 North 14<sup>th</sup> Street. Gerald and Lucille Hill, owners. Zoning Commission recommends approval. **(Action:** approval or disapproval of ordinance on second reading.)

Planning Director Ramona Mattix commented that this zone change has the support of the North Side Task Force.

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

**8. PUBLIC HEARING AND SECOND READING ORDINANCE** revising BMCC Sections 27-619 and 27-620: providing updated definitions; limiting height and number of antenna support structures in certain zoning districts; allowing a review procedure for proposed antenna support structures on government owned properties; regulating the location, construction, height and co-location requirements of antenna support structures, antennae and wireless communications facilities; requiring antennae support structure separation; and requiring certain application submittal information for wireless communications facilities; (a/k/a wireless communication facility ordinance). Zoning Commission recommends approval. Staff recommends delaying action to 6/11/01. **(Action:** approval or disapproval of staff recommendation.)

Planning Director Ramona Mattix stated that the reason for the recommended delay is to update the matrix associated with the zoning book.

The public hearing was opened. ROBERT RIGHTMIRE, 839 PARKHILL DRIVE, a ham radio operator stated that he has just become aware of this proposed ordinance that could possibly impact all ham radio operators in Billings, and would support the delaying action so that they have a chance to review this action. The specific concern he had deals with Section 620C which has to do with the exemptions from the ordinance. He noted that broadcast stations have been removed from this section and wonders if they have been informed of this and whether their input has been received. He further commented that the section specifically speaks to the amateur radio operators.

TERRY WHITESIDE, 372 ZION CIRCLE, referred to Section 620C (2) commenting

that the original idea, as discussed with Gail Kenson of the Planning Department, was for amateur radio operator towers up to 100 feet be exempt, along with all pre-existing towers. He further stated that the wording appears to be unclear and asked that the exemption previously intended stand.

There were no other speakers. The public hearing was closed. Councilmember McDanel moved to delay action until 6/11/01, seconded by Councilmember McDermott. Councilmember Elison requested that the Planning Department speak with the amateur radio operators to assess their needs to be sure that we don't "step on their toes". Planning Director Ramona Mattix commented that their department would meet with the amateur operators and make certain that their interests are covered. On a voice vote, the motion was unanimously approved.

**ADJOURN – 9:00 p.m.**

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Susan Shuhler, Deputy City Clerk