

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, MARCH 27, 2000

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by members of Boy Scout Troop # 7, followed by the Invocation, which was given by Councilmember Michael Deisz.

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

**MINUTES – March 13<sup>th</sup>**. The Minutes were approved as printed.

**COURTESIES** – Mayor Tooley welcomed former councilmembers Dan Farmer and Kevin Justis in the audience, County Commissioner Jim Reno and Planning Board Chairman Charlie Hamwey. City Administrator Dennis Taylor introduced John Guenther of the Finance Department and Warren Herman of the Parks Dept. Mr. Guenther is retiring from the City after 29 years of service and Mr. Herman retired last Friday after 20 ½ years of service to the City.

**PROCLAMATIONS –Mayor Tooley**. Mayor Tooley proclaimed the week of April 9 – 15 as Boys & Girls Club Week.

**BOARD & COMMISSION REPORTS** — None.

**ADMINISTRATOR REPORTS – Dennis Taylor**. None.

## **CONSENT AGENDA:**

### **1. A. Bid Awards:**

(1) **Chemicals – Ferric Chloride, Sodium Hydroxide and Chlorine for Public Utilities Department.** (Opened 3/7/2000). (Delayed from 3/13/2000). Recommend Dyce Chemical Inc. for ferric chloride and sodium hydroxide, \$0.144/lb & \$0.155/lb respectively. Recommend DPC Industries Inc for chlorine, \$363.00 (1-ton cylinder) & \$57.85 (150-pound cylinder).

**B. Change Order #2, Valve Replacement Project, Star Service, \$2,635.00, 45 days.**

**C. Executive Hangar Ground Lease** with Williams Enterprises, \$6,140.00 for first year, adjusted by CPI-U each subsequent year, 20-year term.

**D. Authorization of Payment** of \$223,674.18 of Tax Increment Funds to Billings Public Schools for Lincoln Center Roof Project.

**E. Authorization of Payment** of \$102,407.39 of Tax Increment Funds to Yellowstone County Treasurer for Courthouse Renovation Project.

**F. Application** to the Montana Department of Public Health and Human Services to host a VISTA volunteer for a second year, beginning in August 2000, \$3,000.00.

**G. Confirmation of Police Officer:** Matt Brewer.

**H. Release of Transfer Restrictions** for development of Forest Park Subdivision, 5<sup>th</sup> filing on Lots 15-32, inclusive Block 3; Lots 3-17 and 19-21, inclusive Block 10; Lots 1-8, inclusive Block 11; Lots 1-6, inclusive Block 12; and Lots 1-3, inclusive Block 13.

**I. Acknowledging receipt of petition to annex #00-01:** Tract 1-A of Certificate of Survey 984 (1009 Mullowney Lane, north of Interstate 90), Add and Betty Reese, petitioners, Paul Thomae, agent, and setting a public hearing date for 4/10/2000.

**J. Acknowledging receipt of application for encroachment permit:** Montana Brew Pub, 111/113 Broadway, Mike Schmechl, agent, and setting a public hearing date for 4/24/2000.

**K. Final Bond Resolution 00-17547** relating to \$1,700,000 General Obligation Bonds, Series 2000, determining the form and details, authorizing the execution and delivery and levying taxes for the payment therefore.

**L. SID 1340: Cenex Park Subdivision:**

- (1) **Resolution 00-17548** providing for the receipt of bids and the letting of a construction contract for improvements.
- (2) **Resolution 00-17549** authorizing the sale of bonds to fund the subject improvements.

**M. SID 1341: Circle Fifty Park Improvements and PMD 4012 improvements:**

- (1) **Resolution 00-17550** providing for the receipt of bids and the letting of a construction contract for improvements.
- (2) **Resolution 00-17551** authorizing the sale of bonds to fund the subject improvements.

**N. Resolution 00-17552** adopting REVISED departmental records retention schedules for the City Attorney, Human Resources, Solid Waste and the City Clerk.

**O. Preliminary Major Plat** of The Pryors Condominium Subdivision (generally located at southwest corner of Stillwater Drive and Decathlon Parkway).

**P. Preliminary Major Plat** of Willow Creek Condominium Subdivision (generally located at South 36<sup>th</sup> Street West, South of Monad Avenue.

**Q. Bills and Payroll.**

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Items D and E. Councilmember Iverson moved for approval of the Consent Agenda except Items D and E, seconded by Councilmember Larson. On a voice vote, the motion was approved.

Councilmember Iverson moved for approval of Item D, seconded by Councilmember Larson. Councilmember McDermott asked how much tax increment money has been spent on the Lincoln Center to date. City Administrator Dennis Taylor said he did not have that total available tonight, but would get that information for the council. On a voice vote, the motion was approved. Councilmembers voting “no” were: Bradley, McDermott, Deisz and McDanel.

Councilmember Iverson moved for approval of Item E, seconded by Councilmember Larson. Councilmember McDermott said this is a perfect example of how not to spend tax increment dollars. On a voice vote, the motion was approved. Councilmembers voting “no” were: Bradley, McDermott, Deisz and McDanel.

## **REGULAR AGENDA:**

**2. RECONSIDERATION of Contract with CTA Landworks Group Division of CTA Architects, Engineering, Inc. to provide consultant services for the General Obligation Bond Funds park improvement projects, \$157,457.00. (Deisz/McDermott). (McDanel). (Action: approval or disapproval of contract).**

Councilmember McDanel moved for reconsideration of the contract, seconded by Councilmember Johnson. Councilmember McDanel said this item was being reconsidered because it was a case of the City not following its own policies and procedures. A long time City employee was involved with this oversight. He suggested that the City Administrator be held responsible for ensuring that all staff adhered to the existing policies and procedures of the City. On a roll call vote, the motion to reconsider failed 5-5 due to a tie vote. Councilmembers voting “yes” were: Bradley, McDermott, Deisz, McDanel and Larson. Councilmembers voting “no” were: Kennedy, Tooley, Iverson, Johnson and Elison. The action taken on this item at the March 13<sup>th</sup> meeting stands.

**3. RESOLUTION 00-17553 prescribing a Revenue Policy for the City of Billings. (MAYOR TOOLEY). (Action: approval or disapproval of resolution.)**

Mayor Tooley explained this was a resolution stating that the City Council adopt a taxation policy that: (1) asserts the City's right to exercise our constitutionally guaranteed self-governing powers, (2) provides for an equitable sharing of the burden of providing public services, and (3) requires the City Council to consider presenting alternative revenue sources to the electorate for approval. He said the policy is non-binding because it is not specifying a particular type of taxation at this time. That is work for City Council to endeavor at a future date. He said the policy should be adopted even if it is non-binding because:

1. "It gives clear direction to staff that Council is serious about looking at alternative revenue sources. The amount of time and energy required by staff to gather the necessary materials for Council to make responsible decisions will be massive. He said it is understandable that staff does not want to spend time away from their main responsibilities unless they have a good faith acknowledgement by City Council.
2. It acknowledges that City Council believes in self-governing powers and claims the right to assert them. He said the City Council has a long record of not asserting their self-governing powers and it is time they make a statement showing they believe the Montana Constitution means what it says.
3. It is an agreement among ourselves that we have the political will and the courage to move forward with what may be some difficult decisions or even court cases.
4. There is clearly nothing in the resolution that precludes the Council from trying to reduce expenses. The City budget can be examined and reductions can be made in the way of costs or expenses or services and continue to have the full freedom to approve or disapprove the budget. However, unless Councilmembers make specific recommendations for and approve major cuts, the City is still faced with paying for the services it continues to provide – via property tax or through some alternatives that are more equitable.
5. It tells constituents and the community that the City is serious about addressing their taxation concerns. By adopting this policy it shows that the City will not ask for property tax increase after property tax increase, but rather research other options for spreading the burden of providing public services more equitably."

Mayor Tooley said the intention of paragraphs 2 and 3 of the resolution is to encourage the City Council to consider equity and to encourage citizen input as the Council makes decisions about taxation policies. He said he would like to see voter approval of any items that would impose new forms of taxation on Billings' people. "If local sales or income tax were found to be legal, for example, I would want the people of Billings to vote before imposing such taxes. On the other hand, because a local bed tax is normally not paid by Billings people, I do not see a need for the public to decide on that issue, although the City Council would decide that," he stated.

Councilmember Deisz said he had four questions for the City Council. "How did this get on our agenda? What three people signed up and told staff to spend time on this resolution? We met for several hours at the airport and decided on a procedure that we

would all follow. How is it the Mayor does not follow this procedure? Why were we not given this resolution until tonight in its final form? If you are like me you now have three or possible four versions of this resolution. What is the rush in adopting this policy? Why not enlist the Billings Gazette into publicizing the so-called 'white papers', then allowing a public hearing before we adopt this resolution?"

Councilmember Deisz, referring to item 1 of the "white papers" included in Council's packet, quoted the Mayor as saying, "rising costs include bargaining wage increases." Councilmember Deisz stated, "Yes, Mayor it does - 70% to 80% of our budget. You said in an email on Friday that you wanted input into our budget. My question to you is, when? I have asked for 4 years that this Council reconsider its policy of 50% parity and you pretend you don't hear me." Councilmember Deisz quoted from page 2 – "the only way to increase mills in Billings is to refer a charter amendment to the people for their consideration. This is not an ideal way to do business." Councilmember Deisz stated, "I strongly disagree with you Mayor. This is the only moral and honorable way for this City Council to do business." Councilmember Deisz quoted from page 3 – "In the four years I have been Mayor I have never seen anyone propose significant cuts in city services or expenses." Councilmember Deisz stated, "I beg to differ with you. On cutting, we have been told four years running that we are not in this business, that we have to tell staff to cut a specific dollar amount or a specific percentage and let them decide where the cuts are made, not the City Council. As to extravagance in the budget, what about the number of police cruisers driven out of the city and county by police officers? I have asked for four years the total number of vehicles in the city fleet and still don't get an answer." Councilmember Deisz referred to page 5 and the Mayor's comments about utility costs being controllable to some extent whereas property taxes were not and that citizens could have more control of their expenditures under the right-of-way system than with the property tax system. Councilmember Deisz said he seriously doubted that many people would think that was a responsible tax policy. He referred to a comment on page 6 regarding a 1% sales tax. He said Montana voters have turned down a sales tax several times, the last time 75% against. "If we were to suggest a sales tax and the public voted, I dare say it would only pass with equal or greater reduction in property taxes." Councilmember Deisz summarized by saying, "this tax policy says that we'll set taxes on anything we feel is right, we'll not ask for your vote necessarily and permission to impose these taxes and finally we'll spend your taxes in defense of our actions to the Montana Supreme Court level. I find this to be an irresponsible way of conducting business. After speaking with a couple different attorneys, I have found there are less expensive methods than going forward with this and taking it to the Supreme Court. This in no way supports my concept of a city government that is responsible, but one of a city government that no longer cares – about the people who put them in office," he stated.

Councilmember Deisz also referred to a document from the Montana Department of Revenue Director's Office on taxing principles. He said the three items that had the most impact on him were:

1. "A tax philosophy must include taxation based on benefits received - he who benefits the most pays the most.
2. A high quality taxation system treats individuals equitably; it imposes similar tax

burdens on similar people in similar circumstances and it minimizes regressivity (something such as a sales tax or right-of-way fees being paid by people the least able to afford those fees).

3. It is accountable to the taxpayers. The essence of accountability is that the tax law should be explicit not hidden, that proposals for changes should be well publicized to stimulate debate.”

Councilmember Deisz said he wanted to submit changes to the Council in response to what was presented by the Mayor. Councilmember Larson said there was no resolution on the floor – a motion had not been made and seconded. He said procedure says that a motion be made and seconded. Mayor Tooley said he had consulted with the City Attorney who indicated the Mayor did have the right to make a motion. Mayor Tooley moved for approval of the resolution, seconded by Councilmember Elison. Councilmember Deisz moved to amend the resolution to read:

1. The City Council shall continue to research, explore all available constitutionally guaranteed self-governing powers (such as those that specifically relate to local authority to generate revenue).
2. The City Council shall explore all revenue generating methods, which impose similar tax burdens in similar circumstances upon local taxpayers while understanding a formula that assesses tax based on benefits received.
3. The City Council shall present any taxation method to the electorate for their approval.

The motion for the amendment was seconded by Councilmember Bradley. Councilmember McDanel asked for a clarification of item 2 of the amendment. Councilmember Deisz said a formula would need to be developed that assesses the benefit to the community versus the property owner and this needs to be assessed on a regular basis. Councilmember McDanel said his understanding is that only local people would be taxed. He said his goal is to capture some money from some of the people passing through or coming here from somewhere else to shop. He said he did not feel that was the intent of the statement. Councilmember Deisz said the statement was saying that when the local people are taxed that they would be taxed on a fair and equitable system. He said he would not like the resolution to go forward, but rather consider it at a retreat and decide exactly what the wording of the resolution should be. Councilmember Elison said he did not see any difference between the Mayor’s wording and Councilmember Deisz’s wording. He said the only difference he could see is whether the City Council “shall” or “consider” whether or not the alternative revenue sources will be presented to the electorate for approval. He said he would like to see any new taxation method presented to the electorate for approval. He did not feel it would be smart for the City Council to make any taxation that would be specific to the City of Billings without asking the people of Billings. He said if there was any alternative to property tax, there would be overwhelming support. He said he agreed with Councilmember McDanel that the purpose is not to simply change the tax burden for the people of Billings, but to devise tax systems that capture some of the money coming through the city and put some of the burden for services received on the tax-exempt organizations in town, and spread the burden equitably. He said again he did not see any difference in the Mayor’s version and Councilmember Deisz’s version of the policy. He did feel it was important to have item 1 which states that

Billings is a self-governing city and shall determine what the tax policy will be. Councilmember Kennedy asked Councilmember Deisz if the amendment was one complete amendment or three separate amendments. Councilmember Deisz said he could do either, but stated again that he would like the Council to look at the resolution in depth before anything was adopted. Councilmember Bradley made a substitute motion to omit items 1 and 2 of the resolution and revise paragraph 3 to read "Whereas the City Council has identified certain areas, which it believes should be subject to its taxation policy", seconded by Councilmember McDermott. Councilmember Johnson said he opposed the substitute motion because he truly believed items 1, 2 and 3 of the resolution were needed and that he liked the final version as it was presented by the Mayor. Councilmember Iverson said the original version of the resolution was an explanation and an attempt of the Council to look for other sources to assist property tax payers in the community. On a voice vote on the substitute motion, the motion failed.

Councilmember Larson made a substitute motion to postpone action on the resolution until the next scheduled meeting, seconded by Councilmember Deisz. Councilmember Larson said the intent of what the resolution was to achieve was a message of unity. Any new revenue source will be challenged by the public and the Council not being unified in their goals is a recipe for disaster. He noted he would like to see a unanimous vote on the resolution, and he did not see that evolving right now. Councilmember Elison said he disagreed that the purpose of the document was to sure solidarity among the Council. He said it was critical and time sensitive that Council asserts the City's self-governing powers because there is no option to property tax unless those self-governing powers are asserted. He said there will probably be a segment of the population that is opposed to any change in taxation policy but since a large majority of the city population is property owners who are currently paying property taxes, any adjustment of the tax burden away from property tax would also reach great acclaim. That cannot be achieved without the City's assertion of its self-governing powers. Councilmember Johnson said he agreed with Councilmember Elison. He recommended action be taken immediately, not delayed. On a roll call vote on the substitute motion, the substitute motion failed due to a tie vote of 5-5. Councilmembers voting "no" were Kennedy, Tooley, Iverson, Johnson and Elison. Councilmembers voting "yes" were Bradley, McDermott, Deisz, McDanel and Larson. On a voice vote of the amendment by Councilmember Deisz, the motion failed. On a roll call vote of the main motion, the motion passed 7-3. Councilmembers voting "yes" were McDanel, Kennedy, Mayor, Iverson, Johnson, Larson and Elison. Councilmembers voting "no" were Bradley, McDermott and Deisz.

**4. PUBLIC HEARING on the Technical Advisory Committee (TAC) recommendations for Urban Area Transportation Plan projects. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

NOTE: Discussion on this item was heard during the COW meeting of the same date.

The public hearing was opened. BILL KENNEDY, YELLOWSTONE COUNTY COMMISSIONER, referred to the Congestion Mitigation Air Quality (CMAQ) recommendations. He asked Council to look at the Bench Boulevard connection to 4<sup>th</sup> and

6<sup>th</sup> Streets as the #1 project for the CMAQ funds. He said his concern was the congestion on Main Street in the Heights. A study was conducted about 5 years ago for construction of a bridge over the Yellowstone River connecting to Highway 87 and Highway 3. This would relieve some of the congestion on Main Street. He said a group is currently working on another study and to get additional funding for the design and completion of the study so the project for the bridge and an outer belt loop can move forward. He said he and Commissioner Jim Reno support the Bench Boulevard connection as a possible site to come across to the Metra area and then to 4<sup>th</sup> and 6<sup>th</sup> Streets, which would also relieve much of the congestion at Metra Park. Mr. Kennedy asked that the grade separation at the Highway 3 and airport intersection be the # 2 project.

JIM RENO, YELLOWSTONE COUNTY COMMISSIONER, said he could appreciate the anticipated growth on the westend, but the Heights has concurrent needs right now. He urged Council to reconsider giving additional emphasis to addressing those needs. He said the projects should be prioritized 1-2-3-4.

WAYNE GUSTAFSON OF 2520 WILDWOOD WAY said he owns property and a business on East Airport Road. He said he supports the Bench Boulevard connection. He said when Metra Park was built, the traffic changed drastically and Bench Boulevard was abandoned. He said Bench Boulevard to the Metra appears to be a logical extension. The public right-of-way is there, it is just a matter of policy and procedure. He feels the Bench Boulevard connection should be raised to priority #1.

DAN FARMER OF 385 STEWART COURT said he was in support of the Bench Boulevard connection. He said this section of roadway is already the single busiest street in the entire state. He stated that water and sewer control roads. The Heights already has water and sewer and large tracts of open areas where development can occur without any additional expense – so the traffic problem on Main Street will only worsen. He said the Metra is a valuable community asset and this project can improve Metra traffic also.

KEVIN JUSTIS OF 176 NORRIS COURT said the Heights Task Force has tried to participate in the TIP process and consider traffic to be the #1 concern – after swimming pools in the Heights. He said they would appreciate more opportunity to participate in the process. He said the task force knows the #1 traffic problem in town. The TIP doesn't reflect solutions to this problem.

BRUCE LARSON, NO ADDRESS GIVEN, said he lives on Bench Boulevard and when the Bench Boulevard connection goes through from 3,000 to 14,600 vehicles will travel Bench Boulevard and will have a severe impact on the neighborhood. He asked Council to give time for the contingency on Bench to be heard. He said they would like to see an alternative solution.

DOUG CAREY OF 415 WICKS LANE WEST said he opposed the Bench Boulevard connection because it was just putting a Band-Aid on a main arterial. He said this is not just a city problem, but a county problem, a state problem and a federal problem.

This project would just get more traffic flowing faster into a bottleneck where it's impossible to get out.

JEFF ESSMAN OF 2852 COLTON BOULEVARD said the community as a whole should be setting community-wide priorities to make sure that all members of the community are heard and feel they had a fair opportunity for that hearing. "I think the fact that this plan was not public until Friday, and a public hearing tonight is rushing things. I



certainly would encourage the council to move forward with anything that is under a strict time deadline, but I think it should have a 60-day delay so that people can be heard, so that the proposal can be scrutinized... I would like the council to reopen the public hearing in 60 days so that deliberation can occur," he stated.

KEN HOLLAR OF 616 O'MALLEY DRIVE said he has been active in the Heights for over 40 years in various issues. "My heart goes out to my many friends in the Heights who are suffering from the City being more aggressive in solving the traffic problems on Main Street. At present 46,000 vehicles per day travel on Main Street between Hilltop Road and 6<sup>th</sup> Avenue," he stated. He said this is the heaviest traveled piece of roadway in the state and the 6<sup>th</sup> Avenue/Bench Connection would go a long way toward solving this problem. He noted that the Metra Board does not want this connection constructed. Mr. Hollar asked the Council to put this project on a fast track and not delay it for the Heights Task Force or people who live on Bench Boulevard because they don't represent the Heights as a whole. He also asked that the Metra Board review their position and try to become better neighbors to the 20,000 people who live to the north of them. "This thing has been stalled since 1984 when the Marvin study came out and they stalled it and stalled it. They even got a master plan in 1993, which is totally contrary to the best interest of the area out there. It's high time the City took this thing by the horns and got it done, in spite of the Metra Board," he stated.

MARY WESTWOOD OF 1432 YELLOWSTONE AVENUE said she is Secretary of the Shuttle/Trolley Committee. She asked the Council to move their project up to a #1 priority from a #2 priority under the CMAQ funds. "We are a small requestor of funds under this. We are asking for a \$186,000 a year for three years to run a pilot project, which hopefully will be an inspiration to deal with some of the heavy traffic problems we have in our community and alleviate congestion and pollution," she stated. She said their project could reach out to the Metra area to alleviate some of the congestion that goes on there. Ms. Westwood said their project fits the CMAQ criteria and should be given due consideration.

CHARLES HAMWEY, NO ADDRESS GIVEN, said he is President of the Yellowstone County Planning Board. The recommendations being presented tonight are coming from a traffic study conducted about 1 –1 ½ years ago. "These people in this community had the opportunity through this whole process to come forth and voice their concerns. We know we have problems in the Heights; we know we have problems in the west part of Billings; we know we have problems in different areas. We also have the county coming forth and doing a study on a loop around the north part of our community. There are studies going on. We need those studies to have a firm, positive transportation plan that is going to help the community in general. I think we are getting closer to it," he stated. He said he would like the Council to proceed with these recommendations. Councilmember Kennedy asked if Mr. Essman's suggestion to delay the item to have a chance for the policy bodies to meet again and determine what the priorities are should be considered. Mr. Hamwey said the information is available. The recommendations are from the priority schemes designated in the studies that taxpayer money paid for. He said he would like to see this process move forward as recommended.

DAN BERRY OF 835 YELLOWSTONE AVENUE said he is the Chair of the Parking Advisory Board. He said they whole-heartedly support the trolley project because they feel

it has the potential to alleviate the parking and congestion problems currently experienced downtown. He encouraged the Council to give this project some extra consideration without bumping out other projects.

There were no other speakers. The public hearing was closed. Councilmember Larson moved for approval of the staff recommendation, seconded by Councilmember Johnson. Councilmember Kennedy amended the motion to change the priority order for the CMAQ funds as follows: (1) Bench Boulevard Connection to 4<sup>th</sup> and 6<sup>th</sup> Avenues, (2) Grade separation on Highway #3 at Airport Intersection, (3) Signal Coordination project and (4) Downtown Trolley, seconded by Councilmember McDanel. On a voice vote, the motion was approved. Councilmember Bradley voted “no”.

Councilmember Deisz amended the motion to amend the TAC recommendation of urban funded project priorities as follows: (1) Airport Road: North 27<sup>th</sup> Street to Main Street, (2) Shiloh Road: Grand Avenue to King Avenue; (3) 32<sup>nd</sup> Street West: Broadwater to Rimrock Road and Grand Avenue: 32<sup>nd</sup> Street to Shiloh Road, seconded by Councilmember McDanel. Councilmember Deisz said the problem on Main Street in the Heights has existed for 25-30 years and is not improving, but worsening. Many people leave the Heights via Airport Road, a dangerous road. He said the project costs for it are nearly half of the Shiloh/King Avenue project is and the immediate need is there. Councilmember Elison requested that the motion include prioritizing 32<sup>nd</sup> Street West: Broadwater to Rimrock Road as Priority #3 and Grand Avenue: 32<sup>nd</sup> Street to Shiloh Road as #4. Councilmember Deisz accepted the suggestion. On a voice vote, the amendment was approved (with the suggested Priority #3 and #4 added).

Councilmember Kennedy said the overall process seems to have been on a tight timeline, even though a lot of work was done before hand. “But we get accused of rubber-stamping sometimes. If you give me a week or two to think about this before I get it in the mail, maybe I wouldn’t feel like I’m just doing that,” he stated. On a voice vote on the motion as amended (2 amendments), the motion was approved. Councilmember Bradley voted “no”.

**5. PUBLIC HEARING AND RESOLUTION 00-17554 vacating alley between North 32<sup>nd</sup> and North 33<sup>rd</sup> Street and 4<sup>th</sup> Avenue North and 6<sup>th</sup> Avenue North, YMCA, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Councilmember Larson said he would be abstaining from discussion and voting on this item because of a conflict of interest and removed himself from the meeting until this item was completed.

The public hearing was opened. ANDY WHITEMAN OF 1082 SENORA said he is on the Board of Directors at the YMCA. This vacation will allow for a 15,000 sf expansion of the Youth Center to add a new gymnasium. He urged the Council to approve the vacation request.

LEO WOLLER OF 933 ARONSON said he supports the proposal. He is also a member of the YMCA Board and said the downtown is the heart of a community. Mr. Woller noted that this heart is hurting right now, but the “Y” is growing. He urged the council to help the heart of the downtown by helping the “Y” to expand. Mr. Woller spoke briefly about the need the “Y” fills for supervised youth activities. “It take an entire

community to raise a child,” he stated.

JEFF KANNING OF 620 BEVERLY HILL BOULEVARD said when he and his family moved to Billings in 1982, one of the first things they did was join the YMCA and it has been an integral part of their lives ever since, especially the youth events their children participate in. He said he is professionally involved with the project, as part of the design/build team that is providing services for the design and construction of the new facility. He said he is impressed by how the Board has waited patiently for this project, done their fund raising and has everything in order before proceeding, and how well they have been good neighbors. He noted they have been very conscientious about contacting those neighbors that are affected by the project. He urged the Council to approve the request.

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

Mayor Tooley called a brief recess at 8:57 p.m. He called the meeting back to order at 9:04 p.m.

**6. A. DETERMINATION OF ELIGIBILITY regarding the Tax Incentive Application for remodeling, reconstruction or expansion of existing structures, Evergreen Midtown Plaza LLC, applicant. Staff recommends disapproval. (Action: approval or disapproval of staff recommendation).**

**ADDITION:**

**B. PUBLIC HEARING AND RESOLUTION 00-17555 approving the Tax Incentive Application for remodeling, reconstruction or expansion of existing structures, Evergreen Midtown Plaza LLC, applicant. Staff recommends disapproval. (Action: approval or disapproval of staff recommendation.)**

Mayor Tooley explained that the applicant has requested tax incentive benefits. The correct procedure is for that application to be reviewed by staff and staff makes the determination whether or not to bring it before the City Council for consideration. Staff indicated they did not think this project qualified for the benefits and did not process the application. The applicant requested that the application be reviewed by the City Administrator. The City Administrator conferred with staff and concluded that staff was correct in denying the application. Mayor Tooley said the application must go through the process BEFORE it comes to Council. “It is a permissive item for the Council to consider, i.e. we may, but we do not have to approve this kind of tax incentive application. What’s happening tonight is that the City Administrator has allowed the applicant to come before the City Council to appeal the City Administrator’s decision. Because it has been quite a number of years since the City has actually issued an approval on one of these tax incentive applications, the City Administrator felt it was prudent that the policy body review it to see if we were on the right track and if we wanted to proceed,” he stated. The applicant will make a presentation to the Council. After the presentation, the Council will deliberate whether or not they want to see the application go further. Because there must be a public hearing for the application to move forward and because the public hearing

must be held by April 1<sup>st</sup>, tonight is the only night the council could hold a public hearing. “Even though it is not good procedure, it is allowable and legal procedure. If the council believes the staff should have processed this application and votes “yes” that the council should process it, I will then call for someone to make a motion to open a public hearing. That is the only way they can move forward and meet the requirement that the application be in before April 1<sup>st</sup>. If that motion is seconded and passed, I will open a public hearing so that we can meet the requirements of the law,” he stated.

Councilmember Deisz asked why the item was listed as determination of eligibility, when the draft agenda they reviewed at their agenda meeting had it tentatively listed as a public hearing. City Administrator Dennis Taylor said if the application was not deemed eligible by staff, it would not even appear on the Council agenda. “When we met with the representatives from Evergreen Plaza and their attorneys a couple of weeks ago, we offered for that decision by the Public Works Director on the eligibility of the application to get a review by me. Then we also said regardless of my decision, we would put the item on the agenda so that if I ruled to concur with the staff, that it was not eligible under the statutes and our resolution, I would still give the applicant every opportunity to explain their rationale to the Council. We don’t get these every day. I reviewed the material that was submitted. I sat down with the attorneys from Evergreen and listened to their arguments. I consulted with the City Attorney. On Tuesday, I reviewed the entire file and concurred with the decision made by the Public Works Director. You have before you the question of whether the staff erred in its interpretation of the statute and our resolution. If you find that we did, then I will ask that will adopt the motion to put this before the body as a public hearing on the application for tax incentives,” he stated. Mr. Taylor also noted that they had hoped to bring this item to the Council at the last meeting, but the applicant’s representatives were not all available for that date.

Councilmember Deisz asked what motion is required to have a public hearing. Mayor Tooley said the applicant will make the presentation first, then a motion by Council will be considered to concur with the applicant (i.e. accept their application) or not concur with the applicant, which means the issue is settled. Then if the Council votes to concur with the applicant, the Council will consider a motion to hold a public hearing. Councilmember Deisz asked, “how is it that the agenda tonight is not the same agenda that I walked out of the room on Monday night’s agenda meeting looking at?” Mr. Taylor said the ordinance with regard to establishing the agenda says the City Administrator must, by the Thursday before the Monday (Agenda) meeting issue the agenda. “I frequently have additional information and have made modifications to agenda items on Wednesday, when the agenda is formally published and distributed... In fact, at this particular discussion I talked about this as an area that I was still reviewing the material that had been recommended by the Public Works Director as not being an eligible application and the issue before you would be, in fact, the decision whether or not to overturn staff’s recommendation,” he explained.

Councilmember Deisz said, “I’m to understand that in all of our four years that I’ve been on this council that when that agenda is set, now goes by the wayside and you can change the agenda as you see fit on Wednesday? This is not the procedure you have followed in the past. I’m confused. Does the City Council need to have two agenda meetings in one week so that we get the one you think you will present us and then the

one we are going to go forward with?" Mr. Taylor replied, "actually by statute, it's my responsibility to propose an agenda and at the agenda meeting, ask councilmembers what additional information you need to address the items on the agenda." Councilmember Deisz acknowledged that, and added, "but the agenda is set at Monday night's agenda meeting." Mr. Taylor replied, "not according to your ordinance and not according to the past practice of this City Administrator and previous City Administrators. The decision on the agenda is made on the Wednesday it is finalized... In an example this week, on your Regular Agenda, we had the discussion of the emergency medical services commission. Because of the press of other business, I took that off because we were moving heaven and earth to get everything that was in your packet tonight ready for you. As you saw earlier tonight, we didn't do the kind of job that I'd like to do and we probably should have taken an item or two off as well. I do that almost every week. If we have problems with staff reports, if we have delay in meeting the deadlines that we have imposed on ourselves prior to the statutory ordinance deadline you've imposed on me for publishing the agenda," he stated.

Councilmember Deisz said, "based on the fact that these people have until April 1<sup>st</sup> and they were under the impression that it was going to be a public hearing, that there ought to be a public hearing this evening on this item for this council to be fair on this. But we can move forward with this the way you said it has to go forward." Mr. Taylor replied that he thought the applicant and his attorneys are comfortable with the procedure that has been outlined for them.

**RE: ITEM A.**

JIM SITZ, an attorney representing the applicant, introduced Jack Gray of Evergreen Midtown Plaza, the visionary behind the project. Mr. Sitz said he has circulated remarks to the Council and appreciated the opportunity to appear before the Council to speak in support of the tax incentive application. He said a new multi-tenant retail shopping center was established on the corner of 13<sup>th</sup> Street West and Grand Avenue. It houses 14 different businesses employing about 85 employees – full and part time now and is expected to have 130 employees within two years. The old serpentine Ernst Building improvement was on that site before. It had stood vacant for several years and was perceived as an unattractive and deficient building situation by most in the neighborhood. Reconstruction on the same site has produced many positive results – a pleasant shopping area, it has addressed functional obsolescence, employment opportunities were created, it is a central location where local folks can walk to shop, less pollution, and discouragement of urban sprawl.

Mr. Sitz said Res 89-16126, which has been on the books for about 10 years permits a tax incentive to be granted by the council to the extent of the City tax mills. The tax incentive applies only to the INCREASED taxable value that results from the project, according to the following schedule: in the year of construction, there is no tax on the increased taxable value attributable to the project; in the first year following construction, the increase in taxable value is taxed at 20%, then ladders up to at the conclusion of five years, being fully taxable. If granted, it is estimated that the total tax relief in this matter for the entire period of five years will be on the order of \$7,000. "Under the lease in effect on this property, the tax savings in this case would flow through to the tenants. The local

businesses will be the beneficiaries. The state statute underpinning the resolution is 15-24-1501. Initially it was only applied to remodeling, when it was enacted in 1981. However, in 1985, the Legislature favorably considered an amendment, which expanded the tax incentive to include 'reconstruction'. The Legislative Minutes reflect the motivation to amending the law to be as follows: at the time the Glendive area was competing with the Bismarck area to construct a new BN roundhouse in 1985. The existing roundhouse in Glendive had been built around the turn of the century and a new and improved one was needed. What the Legislature squarely had in mind by adding 'reconstruction' ... was obviously comparable property built on a site with pre-existing improvements. Comparable property is defined in the tax code (MCA 15-1-101) as 'property that has similar use, function and utility'. We're not dealing here with historic reconstruction or restoration, which is a subject of another statute. Statutes have to be interpreted in accordance with the purpose they were enacted for. Each word of the statute should be accorded meaning. So, when the statute was amended in 1985, it's no longer simply speaking about remodeling; we've now added reconstruction... By including reconstruction in the tax incentive legislation, the Legislature's manifest purpose was to encourage investment in economic development in new or additional improvements to an already developed property site. That is precisely what has occurred with the Evergreen Midtown Plaza. This clearly is a tax statute intended to incite reconstruction activities in order to create additional value on the tax rolls. The standard of interpretation for tax statutes in this state was delineated by the Supreme Court in a decision in 1966 as follows: 'in interpreting tax statutes, it should always be kept in mind that they are to be strictly construed against the taxing authority and in favor of the taxpayer.' What you are doing by granting in your discretion an incentive is to create additional tax value – over \$2 Million in this case ... in return for a modest incentive ... and the additional taxable value created by the reconstruction project of Evergreen Midtown Plaza flowing from your resolution 89-16126 will stay on the tax rolls for many, many years to come, bringing additional revenue to this City," he stated.

Councilmember Deisz asked if the County Commissioners have already acted on this application and if so, what action was taken. Mr. Sitz replied that the County Commissioners approved the application at their meeting on March 21<sup>st</sup>. Councilmember McDanel asked what would prevent First Citizens Bank (in the Heights) from coming in and requesting a tax incentive for the reconstruction at the site of the old Cenex station on Main Street. Mr. Sitz said he thought the business could have pursued the application and submitted it to the Council for approval or disapproval, but the decision turns on the Council's interpretation of comparable property; comparable property is the same use, effect and function. He noted at the former Ernst location, a multi-tenant retail establishment existed and that is what it was replaced with – a vastly improved, multi-tenant retail establishment. He said it essentially becomes a discretionary evaluation on the part of the Council.

Mr. Taylor commented on the staff's perspective. "When you take a look at the footprint of the Ernst store and you see that completely demolished and then you see rebuilt buildings on the same tract of land – formally owned by Ernst, in completely different locations and with different uses, it's hard for us to determine how that could be distinguished from almost any other situation where there was a structure on a property,

and that structure was changed and new structures were rebuilt. I can think of some opportunities that are currently under construction on Main Street, where there used to be a motel, or there is currently a motel – would that be eligible for this under reconstruction? Or Walmart, where you have structures being razed and rebuilt on Wicks Lane? If you think about any time where you clear the land and then you build new structures, if you use the interpretation of the applicant, then almost every one of those could apply and be deemed eligible for this tax incentive,” he stated.

Councilmember Kennedy moved for approval of the eligibility of the application, seconded by Councilmember Deisz. Councilmember Johnson asked who the tenants of Ernst were. Mr. Sitz cited the following examples: Volley-Gayverts, a shoe shop, a lock shop, restaurants, etc. He added, “I appreciate that Mr. Taylor is new to the city. But, in fact, I want it clearly understood that this Evergreen Midtown Plaza was built on the site previously occupied by the Ernst building. I thought that was clear in my presentation – that the predicate was that you had an improvement on previously developed property. To the extent there was any misunderstanding from Mr. Taylor’s remarks, I think that should be clearly stated on the record, Mayor.” Councilmember Bradley said he felt Mr. Taylor’s interpretation of the law is correct. “This law was specifically put into place for things that take place such as what is going on with the Walmart store on King Avenue. There is an increase in the footprint, which has increased the value by 2-½% or above. They could make application. Summarily, I guess BEST store could also do that same thing, if that’s what this was intended for. It was not intended for a tear down and rebuild on the site. That was not what the law was intended for. They added it in later after this took place in Glendive. That’s the only reason that was added in,” he stated.

Councilmember Larson said staff did a reasonable job in interpreting a difficult and challenging resolution, especially in terms of the definition of reconstruction. He also noted he understands the argument about “comparable” too. “But I guess the part of this that catches my attention the most are the terms ‘tax incentive’. We have talked as a Council, time and time again, about infill development, trying to pull people into the core, fighting the concept of urban sprawl, etc. I will tell you that unless we provide incentives to do this type of project, we are going to have a difficult time making an argument against bare ground or fresh start projects. It is a heck of a lot easier to go out and mow the ground down and start over again. This type of incentive --\$7,000, certainly doesn’t seem like a lot to me, but if it is enough to attract attention and get people interested in this type of project, I will vote to uphold the applicant’s point of view and recommend that this City Council look at this resolution, tighten up the language, so that staff does not find itself in this situation again. We have the opportunity to do this, no project is going to come in, in the near future. I think we need to get on this quickly and define that term – reconstruction, within the body of the resolution,” he stated.

Councilmember Kennedy said, “we have so few opportunities to create incentives here – ones that sort of go in the way, albeit it is a very small amount of money, and if it’s the only thing I can do, I’m going to do everything I can to incent individuals to do projects such as this because it has dressed up Grand Avenue tremendously.

Councilmember Deisz said, “these people have done everything that they should have done to present this to staff. And, again, I reiterate what Mr. Larson said. You know, we’re not saying that we don’t trust staff or that staff did badly. I think just the contrary. We

have been talking for week after week that we could promote infill development inside of Billings' city limits. This is exactly one of the kinds of tools that we need at our discretion, at our disposal. They have followed the intent of the law. I believe they did fulfill the requirements. I would urge us to look at this, so that we exactly interpret how 'reconstruct' should read or what it should mean. But the two definitions provided to us seem logical to me. They do not go against granting this. I also am amazed that they would spend this amount of time on a \$7,000 tax incentive, but if it wakes the City Council up to let us know that people are out there in the community and they want some tax incentives, some tax breaks so that they will remodel and reconstruct and bring new jobs and businesses to Billings, then I'm all in favor of it," he stated.

Councilmember McDanel referred to the legal review memo completed by Asst. City Attorney Bonnie Sutherland where she states that the word reconstruct is not statutorily defined and the court would rely on it's plain meaning. He indicated that she cites a case (Bryant v. Board of Examiners) where the Supreme Court ruled the plain meaning of the word reconstruct as is used in relation to the sale of certain bonds, it held that reconstruction includes rebuilding or repairing the existing structure, not erection of a new building. "As much as I want to provide incentive for people to do infill development, I'm concerned about how we define the word – reconstruct, in this case. I believe that we are very limited in how we can define or refine that word, because it is included in state statute, not in city resolution. I have reservations ... Mr. Brooks, if you could touch on what Bonnie says and maybe a couple of the examples I used..." he asked.

City Attorney Brent Brooks said, "the two-step process you are going through is a "qualifying" process, which to me, in this case, involves a mixed legal/factual analysis and your discretion of whether or not to grant the application. This is one of those things where reasonable minds can differ... Maybe we should get an AG opinion in the near future on this. I do agree with your observation that I do not think that we can unilaterally as a local body, define what reconstruction means, when the statute itself is silent as to what that means. We resort to case law to try to tell us what we predict a court in the future might hold reconstruction to mean, versus rebuilt or new building. So, you have some subtle nuances occurring here in terms of the interpretation used. The best I can offer you is that reasonable minds can differ. We have some case law that attempts to define reconstruction, but in a different atmosphere, on a different topic. Would our Supreme Court now hold the same thing? I don't know 44 years later. Would the AG issue a similar opinion? I don't know, maybe that is worth exploring; at least we would know at the AG level. The Attorney General opinion is in fact statewide binding law unless overruled by the District Court. That may be an intermediate solution to this particular issue..." he stated.

Councilmember Kennedy urged the council to think about what they are doing here. "This is a tax incentive for an incremental increase in property taxes. This is a tax increment district defined right here!" Councilmember Johnson asked Mr. Brooks if he agreed with the Asst. City Attorney's opinion on this matter. Mr. Brooks replied that he does agree. "I know Jim (Sitz), he is a very good friend of mine and I think we can agree to disagree on something like this and still maintain some intellectual freedom to arrive at a different opinion. That's why we have courts and attorney general opinions. Often times different County Attorneys will disagree on the application of a certain law and that leads to the submission of the issue to the Attorney General for his opinion," he stated.



Councilmember Iverson said she appreciated the City Administrator's, Public Works Director's and City Attorney's opinions on this. "I would much rather that they be conservative and hold to what is the letter of the law ... I think they have been very open with us that it is our prerogative to be more liberal in the interpretation of that. I agree with the infill and the incentive there – I think it's wonderful to have something that's replacing the Ernst building. It is a very nice vision that has become a reality. I've changed my opinion here tonight and will go with the tax incentive," she stated.

Councilmember Elison said, "if we are going to split hairs here, we should split hairs on the comparable use issue. I believe there is a comparable use. I don't think they have to have a hardware store as their retail to be a retail outlet. I think there is a big difference between a gas station and a bank. I don't think there is such a huge difference between multi-tenant retail and multi-tenant retail. For reconstruction, you can come up with abundant examples... If a house gets blown down in a hurricane, what do you do? You reconstruct it. You could knock it completely flat because it is no longer structurally sound and you'd reconstruct it. When you reconstructed the house, it doesn't have the same footprint; it's not in the same place, does that mean you didn't reconstruct your home? It all comes down to a series of legalistic definitions and hair splitting. I think the critical issue here is whether or not we are willing to step forward, as we have been talking about over the course of the last couple of years, with incentives for infill development. If the infill development requires a new structure in the same spot, doing the same sort of business, I think that is reconstructing our town. I think we need to be able to step forward with the incentives to cause that to happen," he stated.

Councilmember Kennedy called for the question. Debate stopped. Councilmember Iverson seconded the motion to call for the question. On a voice vote, the motion was unanimously approved. On a roll call vote on the main motion (to approve the application as eligible), the motion was approved 8-2. Councilmembers voting "yes" were: Bradley, McDermott, Deisz, McDanel, Kennedy, Iverson, Larson and Elison. Councilmembers voting "no" were: Tooley and Johnson.

#### **ITEM B.**

Councilmember McDermott moved to add the Public Hearing and Resolution approving a tax incentive application from Evergreen Midtown Plaza to the agenda, seconded by Councilmember Deisz. On a voice vote, the motion was approved and the item was added to the agenda as ITEM 6B.

The public hearing was opened. JACK GRAY, the applicant, said he resides in Bozeman and Arizona. He thanked the Council for the opportunity to explain his project and the application. "I know many of you may be deducing that I fall in the category of someone that has more money than brains for wasting your time and the very expensive time of my attorneys over what I thought was a non-issue, when we started this whole transaction. It was inconceivable to me ...as I undertook this project, that the City would not assent something like this. If any of you have been through the Ernst building and group of stores prior to us starting to work on it, you would have no question that something needed to be done. What we found there was a building that was, by IRS standards, functionally obsolete. It had essentially no roof, no air conditioning, virtually every component of the building had some hazardous material in it. We spent over six

figures on this building before we did anything, taking out hazardous materials in the floor, ceilings, paint, ballast in the lights, etc. – which had to be removed by strict OSHA and EPA standards... It would have cost us as much or more to try to rehab a building that was environmentally unsafe, as to build a new one, and it would have looked pretty lousy and not been rentable. It is inconceivable to me that it is an issue. It is also inconceivable to me that the 14 small businesses and the many more that we hope to have are somehow inferior to WalMart and Kmart out on the fringes of town. It is inconceivable that you would not want to support the local businesses, which is what I am standing here doing. This money is not going into my pocket. This small amount of incremental tax that's deferred for a few years is going straight into the pockets of the people that are putting the businesses up there. I apologize for not understanding simple declarative sentences written in a legal jargon. That's clearly what I did. I know I would not have spent all the money on legal fees on what I thought was a fairly clear-cut case... But once I got into the program, you know how it goes, you're into it, so you follow it through. But we've completed the first phase. This building will be larger than what we started with, when we complete the second phase. We are just trying to create an environment that will attract more people to the area, so we can afford to do the second phase," he stated.

CHARLES HAMWEY, NO ADDRESS GIVEN, said he is chairman of the commercial realtor group in Billings. He said they have tried for many years to get people of this nature to come into this community to rehab and redo rundown properties. We have known about incentives, we always look for them to pass them on. "What's the nice about this project is, is that the tenants are all under triple-net leases. That's our language and they really do end up paying the taxes. We're talking about a very small amount that will go back to those small business owners," he said. He urged the Council to approve the application.

JOHN OLIVER OF 1203 CONCORD said he congratulated the developer for doing such a wonderful project in that part of town. "One thing that occurred to me in listening to your overall discussion on this and please be aware of -- out of the advisory team meeting that we held in January, the current Finance Director and I worked the numbers to find out what kind of tax dollar contributions would be coming back to the City. For every full-time gainfully employed person, we generated \$406 annually back to the City. If we actually are taking an 80-position job base and turning that into 160, you've increased the City's tax base. It might appear that you are losing dollars upfront by giving the incentive, but actually in the long run, you are gaining so much more. Those are the type of businesses and economic projects you need in Billings," he stated. He urged the council to support the effort.

ARLENE BRADY OF 3125 SEQUOIA said she and her husband own one of the small businesses in Evergreen Midtown Plaza. She said the tenant ultimately pays the taxes on any property. She said there are other small businesses and they all appreciate the council's help with this project. They have all invested time, effort and quite a few dollars to make the building as attractive as it can be.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the application, seconded by Councilmember Deisz. Mayor Tooley said the idea of incenting people to do infill development is a good one. He and Councilmember Johnson were concerned about what effect this might have on future

construction that starts with bare ground and no reconstruction, and the fact that the City Attorney advised against this application. On a voice vote, the motion was unanimously approved.

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

Zoning Coordinator Jeff Bollman said Tract 1A was rezoned in 1979 to Community Commercial. The southern 180 feet being reviewed tonight remained Residential 6000. Since 1979, everything from the Hilltop turnoff to Main Street along Lake Elmo Drive is zoned some type of commercial. There are still some residential uses along Lake Elmo, but it is all commercial zoning. Staff and the Zoning Commission recommend approval of the zone change.

The public hearing was opened. WILLARD WILSON, NO ADDRESS GIVEN, said he sold this land to his son a few years back. All of the rest of the certificate has been rezoned to Community Commercial, except this one tract. They just want to change the zoning to accommodate future development.

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

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

Councilmember Kennedy said he had a conflict of interest and would refrain from discussion and voting on this item, and removed himself from the meeting until the item was completed.

Zoning Coordinator Jeff Bollman said the surrounding zoning is generally commercial in nature, with some residential zoning further to the south along Alderson. This is the site of the former Skate World, then Video Library and now houses City Brew and some of the offices for Video Library. The proposal is to locate an all-beverage liquor license in the space labeled for proposed retail. This project does require a waiver of the 600-ft separation requirement. Burlington School to the southeast and Rose Park to the northeast are both within 600 feet of the subject property. Both staff and the Zoning Commission recommend conditional approval. The two conditions recommended are: (1) the approval for the area be limited to the 1,604 sf labeled as proposed retail on the submitted site plan and (2) waiving the 600 ft separation for Burlington School and Rose Park.

Councilmember Bradley asked if they intended to have gambling in the establishment. Mr. Bollman said they would be allowed to have gaming with an all-beverage liquor license, up to 20 machines. Mayor Tooley asked if there is a rear entrance to this building. Mr. Bollman said this property does not have direct access onto Alderson Avenue. However, one of the issues that came up at the DRC meeting was that the project was short on parking. They did have an agreement with the Knights of Columbus to lease parking from them. The K of C parking lot does extend from Grand to Alderson.

Councilmember Larson asked if the lease agreement no longer existed and the only parking available was the front lot, would the staff recommendation have differed from what is now recommended. Mr. Bollman replied it would not. "Generally when issues like this come up with a staff review, they are not necessarily deal breakers as far as the use goes.

It is something that will have to be addressed before the liquor license is signed off on by us for the state or a building permit is issued for some type of remodeling. Either parking could be leased from the K of C or some other facility in that general area that would have extra parking," he replied.

The public hearing was opened. MIKE CAVALIER OF THE MOULTON LAW FIRM said he is representing the owners of the property and their tenant Rebecca Reno. He said Ms. Reno won the right to float an all-beverage license in the City of Billings in a lottery held by the State Dept. of Revenue. He said her concept is unique and there is really nothing else like it in Billings. He noted there is a valid lease with the Knight of Columbus for additional parking spaces.

REBECCA RENO, NO ADDRESS GIVEN, said she has lived here all her life and also owns 14 retail video stores in Montana and City Brew Café. She leases 20,000 sf of retail space in Billings. "We propose to start a new concept of wine, liquor and tobacco in an upscale store... Next to it, if you've been in City Brew, we tried a new concept with City Brew – coffee, the sale of coffee beans, some upscale teas, good natural herbs that we can sell you. You can come in and find kind of an oasis in your day. The 1604 sf that we intend to do the proposed City Vineyard – you'd be able to come in and buy a fine bottle of French wine or Spanish wine for your special occasion, or a wonderful cigar. Our intent absolutely is NOT to have gaming; there will not be gaming. We will have retail sale of other gourmet types of products as we learn the business a little bit more," she stated. Councilmember McDanel asked if she was selling bottle containers or serving. Ms. Reno said the Dept. of Revenue requires that they have limited seating and some on-premise sale of liquor and wine by the glass. She said they will do whatever the law dictates they have to do to have the retail store. Councilmember Deisz asked if the Dept. of Revenue also allows the gaming machines and what guarantee the Council would have that gaming wouldn't be placed on premises in a few months. Ms. Reno said she will not apply for a gaming license. She said the all-beverage license carries with it the right to have gaming. She said she doesn't have the space in the facility to have gaming and it is not designed to have gaming in any way, shape or form.

JOHN JONES OF 444 PINE COVE ROAD said he is one of Ms. Reno's attorneys. He said he has known her almost all of his life and is also speaking as a friend tonight. Mr. Jones said he has spoken directly to the Knights of Columbus representatives this morning – Tim O'Malley. He said Mr. O'Malley gave him permission to make two statements: (1) they do have a valid parking lease adjacent to the subject property which does satisfy the

parking requirements on site, and (2) the K of C has no objection to this application for special review. Mr. Jones said there is a little bit of “chicken and egg” going with the Dept. of Revenue because they say you need a special review to get the license and the council is told they need a special review to satisfy the Dept. of Revenue. Mr. Jones said the Dept. of Revenue indicated that Ms. Reno must have some on-premise liquor by the glass, but her intent is to do the upscale type of establishment similar to the aesthetics of the City Brew. He also said the state’s tax structure is a disincentive to come here or to encourage people to stay. He noted that her establishments are well done, clean and employ a lot of people. She could do business in Wyoming and pay far less taxes. Mr. Jones said the state and City needs to do something to encourage businesses like this to come and stay. He urged the council to approve the request.

DAVE SKANSON, 2107 ALDERSON AVENUE, said he is concerned that the space they are renting from Knights of Columbus only opens onto Alderson Avenue. The only point of exit from Alderson in either down past my house to 19<sup>th</sup> Street or to 24<sup>th</sup> Street. “If they are going to be serving liquor on this site, there are a lot of kids on this street. It might be upscale, but what kind of a problem – upscale, downscale, if you’re driving under the influence and driving past my house with my kids or every other homeowner on there with their children; it creates a problem,” he stated. Mr. Skanson said there are a couple of group homes in that area with residents that cross the street. He said if that is the only possible driving area, he suggested the council deny the liquor license.

JARED SMITH OF 35 PALMER LANE IN BOYD, MONTANA said he is the general manager for Video Library. He said he grew up on 18<sup>th</sup> and Alderson and has seen the changes come over the years. Mr. Smith noted that the lease agreement already exists with Knights of Columbus and has for several years. He noted that all of Ms. Reno’s ventures are upscale, wherever she does business. Mr. Smith said they are not inclined to have gaming – only a classy, presentable establishment that would be a nice addition to the neighborhood. Councilmember Johnson asked about the fencing around the property. Mr. Smith said there is fencing directly behind the building, as well as along the back parking lot, but there is no fence between the Knights of Columbus and Alderson Street.

CAREY REICHERT, NO ADDRESS GIVEN, said she lives on Parkhill. She said there are enough establishments in the City that already serve alcohol. “I admire the coffee shop; my daughter hangs out there quite often. A lot of the youth hang out there. It is nice to see some place they can go that they don’t have to have alcohol or tobacco around them. I’m sure it would be a very nice place, but the alcohol would be there. We don’t have enough places without alcohol. I would like to see that area stay free of alcohol,” she stated.

There were no other speakers. The public hearing was closed. Councilmember Iverson moved for approval of the Zoning Commission recommendation, seconded by Councilmember Larson. Councilmember McDermott said she has a history of voting “no” on these types of special reviews. She noted that of all the special reviews she has voted “no” on, this one has generated many letters and calls from neighbors in the Burlington neighborhood who have asked the council not to approve the request because of children in the neighborhood.

Mayor Tooley reminded the Council that the layout for the proposed establishment is very attractive and presentable. He said however that applicants have come to the

Council and said they were not going to do any gambling and within a few months, there was gambling on site. The special review goes with the property, not with the operator, he cautioned. Councilmember Larson said one of the conditions is to limit the area to 1600 sf. "If you are familiar at all with the existing coffee shop, you are talking about 1631 sf. I think one thing we can take some confidence in, is if you got 22 gaming machines into that building, you could fit about two people in. You are talking about relatively little space, whether it goes along with the building or not, we are talking about a small area. I also know that a number of people on the Council do not like to consider the applicant when we look at this. We are looking at an applicant that has a long history in this community, is running a number of excellent businesses in this community, runs a coffee shop that clearly would be diminished substantially if this were to become a bar/casino type facility. What we are talking about here is an effort to duplicate what has already occurred at the City Brew, which is a very nice, very upscale, very well run operation. Before you make up your minds, I would ask that you take some of that into consideration," he stated. He said the issue of the parking lot coming out on Alderson is the only issue that bothers him. Eliminating that issue would impact Grand Avenue, a commercial thoroughfare. He asked the council and applicant to consider looking at other potential parking options.

Councilmember Elison said he is intrigued by an establishment that has a liquor license that doesn't have 20 gaming machines. The voluntary separation of those two is exciting he noted. He said it is obvious that the space is too small for the 20 machines that are allowed with a license. Councilmember McDanel asked about the square footage proposed for the special review site in the Target complex. Mr. Bollman said he thought that site was approximately the same square footage as this site. Councilmember McDanel said, "we have a number of things here. We are within 600 ft of a park, within 600 ft of a school. I am one of those people who does not like to consider the applicant when we review these things, that's the state Dept. of Revenue's responsibility to screen the applicant. What is my responsibility is to determine if this is a location that I want the sale of alcohol. And, based on the proximity to the school and park, my answer is fairly easy; the answer is no," he stated.

Councilmember Deisz said, "we have the 600-ft school, park; we have doubling or tripling the number of drunks onto Alderson. Does anyone remember the pizza company we allowed to have a liquor license and were told there would be no gaming machines. And, less than one year later, guess what, there's gaming machines. I vote no," he stated.

On a roll call vote, the motion was approved 5-4. Councilmembers voting "yes" were: Bradley, Iverson, Johnson, Larson and Elison. Councilmembers voting "no" were: McDermott, Deisz, McDanel and Tooley.

**9. PUBLIC HEARING AND SECOND READING ORDINANCE 00-5115 amending Sections 7-604, 15-603, and 27-304 of the Billings Montana City Code by adding a section three sections to allow for the suspension of enforcement of the zoning and licensing regulations for Special Events hosted by the City of Billings. Zoning Commission recommends denial. (NOTE: Council approved on 1<sup>st</sup> reading 1/24/00). (Action: approval or disapproval of ordinance on second reading).**

Zoning Coordinator Jeff Bollman said this ordinance actually amends three sections of the city code, not only the zoning chapter. He said his comments would refer only to the

comments of the Zoning Commission and their rationale for recommendation for denial. They had three reasons for recommending denial: (1) felt the ordinance was not necessary, noting the last time the Gold Wing event was here, there were no issues that came up and they didn't understand why it would this time; (2) they felt the ordinance conflicted with what the purpose of zoning actually is – to protect the general health, safety and welfare. This ordinance would allow for the violation of health and safety codes and therefore conflicts with the purpose of zoning. (3) they disagreed with the exemption provided for businesses not having to obtain business licenses during this special period. They felt it was unfair to the existing “permanent” businesses that are required to get those business licenses. Mr. Bollman said the Zoning Commission suggested that if the council chooses to approve this ordinance, they should consider defining “temporarily” as far as how long the rules can be suspended.

The public hearing was opened. JOHN BREWER, NO ADDRESS GIVEN, of the Billings Area Chamber of Commerce said four months ago they brought forth the idea for an ordinance change for a variety of events. The pressing issue is for the Gold Wing Road Riders Assn. “Billings has 3500 hotel/motel sleeping rooms; only 2000 can be committed to this event. With 15,000 people anticipated to come, accommodations propose a major challenge. The best solution to all parties involved, including the Billings Chamber of Commerce and the Hotel/Motel Assn. Is the ordinance suggested by the City Attorney. \$5.5 Million could be the impact to the economy if we can get all of these people a place to stay,” he stated.

There were no other speakers. The public hearing was closed. Councilmember Deisz moved for disapproval of the ordinance on second reading. The motion died for lack of a second. Councilmember McDanel moved for approval of the ordinance on second reading with the following addition: we define temporary to say, ‘ not to exceed a period of 48 hours prior to the start of an event or 48 hours after the close of an event’, seconded by Councilmember Johnson. Councilmember Elison asked for a clarification, asking if they foresee this as 'something being used for a specific event and if the event was six months long, it would still be two days before and two days after the event, opposed to a one week event and two days before and two days after, leaving ultimate flexibility to focus it on a specific event. Councilmember McDanel affirmed that was the intent. Councilmember Kennedy said he has some concerns about the problems and pressures felt from a long event. Councilmember Elison said he had some concerns over the Zoning Commission comments – namely that there were no problems before. “The reason there was no problem before was because the zoning codes weren't enforced during that time period. It was a ‘don't ask, don't tell’ kind of situation. I would much rather have this above board, open, everybody understanding that there has been a suspension of the rules for a specific event and specific period of time. Because there was not a problem the first time and you sweep it under the rug, doesn't mean that it will not build up under there. I think it's important to make it clear what we are doing, not have that just as ‘nobody noticed, so it isn't a problem’,” he stated. Councilmember Deisz said he takes exception to the Zoning Commission's third concern – the Zoning Commission did not agree with the exemption for businesses not to obtain licenses during this special period and felt it is unfair to existing, permanent businesses that must obtain this licensing. He said he concurs with that finding. On a voice vote, the ordinance was approved on second reading. Councilmember Deisz

voted “no”.

Mayor Tooley called a brief recess at 10:35 p.m. He called the meeting back to order at 10:42 p.m.

**10. PUBLIC HEARING AND RESOLUTION CREATING SID 1323: water, sanitary sewer and street improvements in the Burlington Northern Industrial Subdivision. Staff recommends approval. (Delayed from 11/22/99). (Action: approval or disapproval of resolution.)**

City Engineer Brian Borgstadt began with a history of the area. In 1986, Burlington Northern retained a local consulting firm – HKM to investigate their water system because at the time they were having problems delivering water that met health requirements. The findings of this study were that something had to be done with the water system that was both deteriorating and delivering a questionable quality of water. The actual water system was constructed in 1947. The area was annexed into the City in 1972. They were having problems with turbidity, iron and chloride in their water. Burlington Northern ordered the 1986 study. Glacier Park Company, a division of BN, declined to pay some of the charges for hydrant fees, etc. and had put off maintaining the water system. Public Utilities Director Gerald Underwood at that time had no choice but to look at discontinuing service or creating an SID or in some way getting that system improved. In 1993 – 1996 SID creation efforts were under way. Parcels were also sold off around the Burlington Northern Subdivision and platting these parcels to be sold to individual property owners. New property owners signed a waiver to delay improvements until such time as the majority of the properties were able to complete improvements – which is a logical means to get improvements in a subdivision. There are about six parcels that do not have waivers of protest. They are either not part of the BN filings or they were very early filings of the subdivision that did not have a waiver attached to it. There are only six parcels in the proposed SID that do not have waivers attached to them.

In 1996, the City Council considered an SID for this area. It was determined that the cost was too high and that the property owners did not want to construct either the water system or any of the other improvements – i.e. sanitary sewer, street improvements, etc and the SID was terminated. The owners got the impression that the council was directing staff NOT to bring this issue back until there was a 95% agreement on what improvements to do. Mr. Borgstadt said research shows there was a comment to that effect at the council meeting, but it was not direction to staff. In June 1999 when the City was notified that Glacier Park Company would no longer take care of that system and repair the breaks that were occurring, the effort was re-initiated to start looking at improvements through an SID again.

In talking to the residents of the subdivision (since last November), there is some support (not unanimous) for constructing the water system only. The staff recommendation before the Council is to create the SID and build a water system, resolve the sanitary sewer problems and construct Monad Road. It is based on a cost-effective project and a professional recommendation. “It is costly... but if not now, I don’t know when you’re going to do it. And if we don’t do it now and do the water system only, you are going to disrupt the neighborhood now and in the future. If the area grows and redevelops



and becomes more prosperous, the disruption later is worse than now,” he emphasized. The sanitary sewer system is only the system north of Monad Road. One property owner came forth with a document that substantiates that the City accepted his particular sanitary sewer in his particular filing when that subdivision came about. This is the only such instance that could be found. Mr. Borgstadt said they recommend that property be exempted from the sanitary sewer cost and the City pay for building that improvement for them.

He said the properties north of Industrial Avenue within the district boundary had protested on the basis that there were no improvements being made in the northern part of this subdivision. These improvements had been completed by the property owners ahead of this SID. At the time of the first SID in 1996, a much larger area was being discussed and these properties would have benefitted from the increased supply and availability of water to the subdivision for fire flow etc. In the interim, Trillium Subdivision has developed and that water system was extended to the edge of the subdivision and is supplying that more reliable water supply to these properties. Staff recommends excluding properties from assessment north of Industrial Avenue.

Mr. Borgstadt said the total project costs being proposed are \$3,121,000 – close to the estimate when the process began in November 1999. This project is \$1,600,000 less than the proposed project in 1996, because Trillium has built their own improvements separate from this area. The community funding contributions of \$564,000 come from a combination of gas tax money to help with widening Monad Road and mainly from the Public Utilities Dept to install the water main in Monad Road, because it is a redundant water main to provide better circulation. It is an enhancement to the system, so PUD has agreed to fund that portion of the project, as well as the sanitary sewer in Charles Street, part of the subdivision filing described earlier. The total assessment to property owners is \$2,557,000. Sidewalk installation is proposed only on the north side of Monad Road from Edwards to Daniels, which completes the walking path to the arterial street in Daniels Street. Curb and gutter has been designed to accommodate property owner requests for drive approaches, etc. The highest assessment is \$454,000 for the Sisco property. The lowest assessment is \$12,345 based on the area where the relative contribution to the water main to the properties is small.

Mr. Borgstadt noted the waivers on file and the fact that improvements have been delayed. The improvements are needed. The owners have come forward in support of a water-only improvement district. He said staff has heard this request, but as professional staff, also know what needs to be accomplished in that area. He concluded by stating they believe now is the right time to do the improvements. Councilmember Johnson asked if this project includes storm drains. Mr. Borgstadt said only a short segment of storm drain is included in Daniels Street but it could be taken out without impacting the project.

The public hearing was opened. JOHN OLIVER OF 1203 CONCORD AVENUE said there is no doubt that there is a need for the infrastructure work. He has been working with staff and the council to assist with possible funding ideas and resources for infrastructure needs throughout the community. He presented the council with letters of public support from Senator Burns, Senator Baucus and Congressman Hill. “These letters actually address your needs for support and financial aid for specific areas. This is support offered to the City of Billings for funding infrastructure in our community in the form of

federal and state funding. The actual funding amount is not provided right now, but somewhere between \$4 and \$5 Million could be applied for in this joint effort and obtained,” he stated. He said this is special and separate funding that could be available. He said he feels it would be premature to set into place any financial programs until the council organizes with state and federal support through the senators. He urged the council to act on these offers as soon as possible, noting that there are only a couple of weeks before the requests are due in Helena.

TOM SMITH, SUITE 1900, SHERATON PLAZA, said he is an attorney with the Moulton Law Firm and represents 49 of the 69 lots in the district. Mr. Smith said local support is needed for the improvements and a majority of the property owners object to the district as proposed. In light of this amount of objection, the SID should be rejected. The staff recommendation is for a district very different than the district advertised and preliminarily described on October 28, 1999. As a result, SID 1323 cannot be approved as recommended by staff because it is a different SID than was advertised in October.

GARY PATES OF MIDLAND IMPLEMENT said he is a property owner in the proposed district. He’s been to almost all of the meetings and “my read on the property owners as a majority is that they are not in favor of this project at all. The City Engineering staff has continually tried to force this upon us. We’ve not in favor of this project at all,” he stated.

RANDALL PATES OF MIDLAND IMPLEMENT said over the last four years as this SID has continued, they continually told City staff that the property owners were not in favor of a project like this. They still oppose it. “We would like to see if we can go back to the drawing board at some point in time to work on different points of this SID. Let’s break them down and see where we can go from here with this. It’s just too large a package. We don’t want the whole thing,” he emphasized.

There were no other speakers. The public hearing was closed. Councilmember Johnson moved for approval of the resolution, seconded by Councilmember Bradley. Councilmember Elison asked the City Attorney to comment on the legal questions brought up during the public hearing. City Attorney Brent Brooks replied that he would have to look at the Resolution (of Intent) and compare it to what has been presented tonight before making any determination on the matter. Councilmember Elison asked if the numbers must be exact as stated in the advertisement. Mr. Brooks said they had to be approximate because there are variations in numbers due to contract bids. Councilmember Kennedy said Mr. Smith talked about the water system being ignored by the City. He said it isn’t the City’s problem, it needs to be done by Burlington Northern. He also said this reminds him of a situation in his neighborhood on the west end. “They wanted water. The City came in with the best plan, because you want to do once and you want to do it right.... But there were new homeowners out there that could not afford that plan. They could afford water because the state was beginning to say nitrates in the water – you’re on a well and septic system and it can’t be that way anymore. I see this as the same kind of resolution here that I’m going to propose. Either we kill this deal and bring it back in a cafeteria style plan – water, streets, sewer – let them go through and pick or we tear it down to water only and let it lie as it will. I guarantee you that within five years time, the property owners down there will have sewer problems, street problems and we need to let staff know we support them in this kind of recommendation because they’ve given us the best one they can by their

professional standards. But these property owners can't afford it and they need to know if a problem happens down there, we have to back away from taking responsibility for it," he said.

Councilmember Larson said he believed the boundaries were also proposed to be changed and thought that change was a substantial one. Councilmember Bradley said he worked on this project in 1986-1987. He said the railroad was the one that created this problem and they sold this property to the landowners with the understanding that there was a waiver of protest. "However, they told them at the time that they were going to back out of the deal and let the City take care of it. This is where we are at right now -- trying to take care of it. I would like to see this thing settled. I don't think we need the same design standards as far as curbs, gutters and sidewalks needed in residential subdivisions. However, there is a need for a substantial water system down there, specifically for fire protection purposes. The sanitary water system is probably not as important ... The storm drain system currently works, it is a little under, and you do have some overtopping when it does rain. The road needs to be reconstructed however..." he said. He said there does need to be some kind of consensus between the property owners and the city on how this project is going to get accomplished.

Mr. Borgstadt said staff understands that the changes in the SID they are recommending requires that the council start at square one again with a new resolution of intent. It is materially different than the original resolution of intent. Staff just needs direction from the council on what it wants to do. Mayor Tooley asked if Burlington Northern or its subsidiaries own the water system, where does that leave the city. "Should the property owners try to recover their costs from Burlington Northern? Where does that leave the City legally?" he asked. Mr. Brooks said this is a dispute between current and previous owners and the City should not be dragged into this property dispute.

Councilmember Larson made a SUBSTITUTE motion to direct staff to amend the SID proposal according to Option #2, which includes no assessments north of Industrial Avenue, reduced improvements or no sanitary sewer as appropriate, and reduced or no street reconstruction as appropriate unless water system work, seconded by Councilmember Kennedy. Councilmember Larson said he has heard from a number of the property owners about the need for the water system improvements. He agreed that staff has put together a proposal that is the best proposal for what the area needs. "But we have an industrial area here. We are telling them we want to improve the streets, improve the traffic, get sidewalks up to them, where the businesses are probably not too interested in having people walk to them anyway. This is clearly an industrial area with heavy truck traffic. The few sidewalks there seem incredibly out of place where the businesses do not deal with foot traffic, they deal with truck traffic.... This is a reasonable approach. Let's meet with those people... They probably will still protest because a vast majority of the improvements are water system improvements. They will still end up with a substantial assessment, but we need to end up with an assessment that meets the needs and concerns that they say they have," he stated.

Councilmember Elison said the City needed to be careful not to assess people who may not be responsible for the assessments and also to not do the improvements and be left holding the bag. "I'm not in favor of this SID. I think Mr. Brooks put it very well – it's not our problem. If people don't want the SID, don't put the SID in," he said. On a voice vote,

the motion failed. Councilmembers Tooley and Larson voted “yes”.

Councilmember Kennedy moved to reconsider the item, seconded by Councilmember Bradley. On a voice vote, the motion was approved. Councilmember Elison voted “no”.

Councilmember Kennedy moved to direct staff to bring back a new SID proposal based on a cafeteria plan with the following four points: (1) no assessments north of Industrial Avenue, (2) reduced improvements or no sanitary sewer as appropriate, (3) reduced or no street reconstruction as appropriate unless water system work, and (4) water system work as proposed, seconded by Councilmember Iverson.

Councilmember McDanel amended the motion to include a 67% property owner buy-in before the district is brought back to the Council for consideration, seconded by Councilmember Deisz. City Administrator Dennis Taylor reminded the council they have waivers of protest. If this motion is approved, it would be the policy of the council to require a higher standard than required by law to impose an SID. An SID requires 50% + 1 of those properties affected. Councilmember McDanel said he did that specifically. “If there is a valid protest on many of the things we do, it requires a  $\frac{3}{4}$  majority of the council to do that. I’m asking for  $\frac{2}{3}$ ’s. I’m asking for property owners to work with staff and come up with something. If there is no hope of getting  $\frac{2}{3}$ ’s of them to buy in, then don’t waste our time with it either. Stop working on it until we have some hope of achieving that. That means that either conditions deteriorate to a point where people are willing to buy it at that level or that we find an option that is palatable to at least  $\frac{2}{3}$ ’s of the property owners... This council does not recognize waivers of protest. We have not demonstrated any desire to recognize them... To paraphrase former president George Bush, ‘read my lips’ “no new waivers; let’s quit giving these waivers because we don’t recognize them anyway. We don’t expect that people truly understand what they are signing when they are signing them. They are signing a blank check that can be called at any time regardless of the financial burden that is placed upon them. They don’t realize that. And often times, as in this case, it is passed from one landowner to another. We need to terminate that process, because it isn’t working,” he stated.

Councilmember Bradley asked if we are required to provide water to a system that we don’t own or treat discharge from a system that we have no say in. Mr. Brooks said “no”. Councilmember Bradley asked if they could be turned off then. Mr. Brooks said there are safety concerns and past practice considerations that become a concern in that instance. “You have built a system of reliance,” he stated.

Mayor Tooley said staff has conveyed their best professional recommendation. “When people develop a piece of property within the boundaries of the city or county, they must comply with certain standards. In the City of Billings, developers need to provide curb, gutter and sidewalks, etc. In some cases properties will not be fully developed, but we allow them in anyway. Sometimes it’s a financial hardship at the beginning of development – for owners to put infrastructure in all at once. In the past, many developers and landowners have asked to they be allowed to come into the City without making the necessary improvements. The City of Billings has allowed this in a number of cases, but they are required to promise that when it is appropriate, those improvements will go in. I can’t think of a more appropriate time. They signed waivers of protest to insure the improvements. What this means is that there is no legal right for landowners to protest

when it comes time to put in the improvements. It's important for us to remember that goes with the property, not with the landowner. If the original landowner has sold the property, the waiver of protest is still attached. However, on the other side, just because someone has signed a waiver of protest doesn't mean they have given up their right to free speech. They can certainly express their opinions about an SID. Developers know that there will be waivers attached to some pieces of property, so they research those records at the county courthouse before making decisions on what to do with development. This is one of the primary ways that Billings has been able to develop – by offering these waivers of protest. When it comes to the appropriate time to put in the required standard improvement, we do it. I don't think there is any better time than now for SID 1323," he stated.

On a voice vote on the amendment, the motion failed. On a roll call vote on the main motion (by Councilmember Kennedy), the motion failed 4-6. Councilmembers voting "yes" were: Bradley, Kennedy, Iverson and Larson. Councilmembers voting "no" were: McDermott, Deisz, McDanel, Tooley, Johnson and Elison. Consideration of a district was terminated.

**11. 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. 29th Streets West, Cel Avenue and Henesta Drive. Staff recommends approval. (Delayed from 11/22/99). (NOTE: PH held 9/13/99). (Action: approval or disapproval of staff recommendation.)**

City Engineer Brian Borgstadt said the first proposal on this SID was to do the improvements for water, sewer and street improvements and full improvements of King Avenue, 32<sup>nd</sup> Street West, etc. It also included doing paving and utility improvements in Cel Avenue and 30<sup>th</sup> Street West. The alternative that was proposed to delete the interior improvements on Cel Avenue and looking at a support funding for the King Avenue improvements with a proposed \$1 Million support. This was the TIFID – Tax Increment Financing Industrial District that was subsequently declined by the Council. There was no source for the \$1 Million support for the SID. He noted the Council has struggled with what type and what level of support needs to be provided for these developing areas. Mr. Borgstadt said this is another case of an area being subdivided in recent years, with the delay in improvements and waivers being filed. "The problem with trying to get the improvements done at this point is that you have the waivers in place and you don't enforce them, there's nothing else to get the improvements in place," he stated. He said as a result, as individual properties are being developed, improvements are being done piecemeal. Other developments are coming up and improvements on those will also be done in a piecemeal fashion. Mr. Borgstadt said the staff has brought a recommendation to Council with what they believe is the best proposal to improve this area, noting that without any other revenue support, they lack direction to take it any further. He said there is considerable disagreement about this SID as well and some properties could not sustain the high level of assessments based on their present use.

Councilmember Elison said, "this is ridiculous. We are in the midst of a battle with ourselves to try and figure out how to deal with SIDs. We know that. We're having work sessions biweekly to try to figure out how to deal with the infrastructure funding issue. Why do we come to a City Council meeting at midnight and display for the world our inability to solve this problem? It makes no sense to me. We know this doesn't work. We know it's

the best that staff can give us. We understand they are doing the best they can to develop the infrastructure. We can't accept it. We're not going to throw people out of their businesses to put streets in front of their businesses. We know there is a problem. We haven't come up with a solution. Why do we have something on the agenda for approval tonight? It makes no sense to me. I can't approve this. I know it's the very best staff can do. I think they are working their hearts out to try and make the infrastructure come in and we are sitting here and can't even give them direction. To put the item on the agenda seems foolhardy to me; to put the item on the floor seems foolhardy to me. Where are we going to end up? No, we are going to vote it down and we can't even tell staff what to do with it! We need to make some decisions prior to having SIDs occur on the agenda... We don't know what we are doing! Unless we can solve that problem, we shouldn't have SIDs on the agenda," he stated.

Councilmember Kennedy moved for disapproval of the resolution, seconded by Councilmember Deisz. Councilmember Deisz called for the question, seconded by Councilmember Iverson. On a voice vote, the motion was approved. Councilmembers Bradley, Johnson and Elison voted "no". On a vote on the main motion (to disapprove the resolution), the motion was approved unanimously. Consideration of a district was terminated.

ADJOURN -- With all business complete, Mayor Tooley adjourned the meeting at 11:50 p.m.

THE CITY OF BILLINGS:

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

ATTEST:

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