

REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, FEBRUARY 8, 1999

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

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

COURTESIES: Mayor Tooley welcomed high school students Brooke Herzog and Katrina Hecimovic as student representatives to the Billings City Council.

MINUTES – January 25th. The Minutes were approved as printed.

ADMINISTRATOR REPORTS - Mark Watson

1. **Legislative Update.** Mr. Watson said the workers' compensation bill sponsored by MMIA would be heard this week. This bill, if approved, would increase the City's costs by \$386,000. The street maintenance district bill will be heard on Thursday.
2. **Informational Meeting.** Mr. Watson said an informational meeting will be held on Thursday at 208 N 29th Street with a firm that is interested in building a combination garage/retail structure downtown.
3. **Retirement.** Mr. Watson informed the council that Public Utilities Director Jerry Underwood has announced his retirement, effective 2/25/99.
4. **Committee of the Whole #2 Presentation.** Due to lack of time at the Committee of the Whole meeting, the GIS Presentation was given here. (SEE COMMITTEE OF THE WHOLE MINUTES FOR SUMMARY OF PRESENTATION.)

LATE ADDITION TO AGENDA:

Mayor Tooley noted an item that requires addition to the agenda as Item G-1. Councilmember Johnson moved to add the Final Plat of C/S 200, Amended, Tract 6 to the agenda as Item G-1, seconded by Councilmember Elison. On a voice vote, the item was added.

CONSENT AGENDA:

1. A. **Bid Awards:**

(1) **W.O. 98-05: Traffic Signal Installation.** (Opened 1/26/99). Recommend Action Electric, \$81,349.84.

(2) **One (1) Color Closed Circuit TV Inspection System for Street/Traffic Division.** (Opened 1/26/99). Recommend Optical Robotics, \$79,110.00.

(3) **Paratransit Software.** (Opened 1/26/99). Recommend delaying award to 2/22/99.

B. Change Order #1, W.O. 98-08: Senators Crossing Repair, Quality Concrete, \$3,864.21, 0 days.

C. Preliminary approval of Americans with Disabilities (ADA) Transition Plan update and establishing a 30-day public comment period (ending 3/10/98), with final approval scheduled for 3/22/99.

D. Approval of an additional full-time Administrative Secretary in the Police Department, as per the reorganization plan.

E. Resolution 99-17434 authorizing \$9,000 from Council Contingency for temporary, part-time clerical assistance in Municipal Court for the balance of FY 1998/99

F. Acceptance of Second Quarter FY 1998/99 Financial Report.

G. Acceptance of Quit Claim Deed from Jacqueline A. Tucker for Tract 6 of a new Certificate of Survey. (Tract for street right-of-way on Wicks Lane).

ADDITION: G-1. Final Plat of Certificate of Survey #200, Amended, Tract 6. (NOTE: This item accompanies the Quit Claim Deed listed as ITEM G above.)

H. Confirmation of Police Officers: Greg Jacobs and Jason Pawlowski.

I. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Deisz separated Items E and F. Councilmember Ohnstad moved for approval of the Consent Agenda except Items E and F, seconded by Councilmember Elison. On a voice vote, the motion was unanimously approved.

Councilmember Ohnstad moved for approval of Item E, seconded by Councilmember Larson. Councilmember Deisz asked for information on the allegations made against Municipal Judge Mary Jane Knisely. City Administrator Mark Watson said that an anonymous citizen alleged the Judge had been derelict in her duties by having part-time Judges come in to assist. Mr. Watson and Nathan Tubergan, Finance Director, looked into the matter. Mr. Watson noted that Judge Knisely has used only 38% of her allocated budget and that she does work non-traditional hours by doing 7:00 a.m.

arraignments to allow her time off in the afternoons to care for her small child. Mr. Watson said that from information compiled, it was determined that the allegations were false. The motion was unanimously approved.

Councilmember Ohnstad moved for approval of Item F, seconded by Councilmember Larson. On a voice vote, the motion was approved. Councilmember Deisz voted “no”.

REGULAR AGENDA:

2. PUBLIC HEARING on the proposed changes in the Yellowstone County Air Pollution Control Program regulations. Air Pollution Control Board and the DEQ recommend approval. (Action: approval or disapproval of Air Pollution Control Board recommendation.)

Air Pollution Control Director Steve Duganz gave a brief presentation on the proposed changes. Mr. Duganz said the 1967 Clean Air Act of Montana allowed local communities to form local air pollution control programs. This program was formed in 1969. The last revisions to the YCAPCP were in 1992 and the DEQ staff attorneys determined that these changes were necessary. Mr. Duganz stated that there is a bill before the legislature that will require any changes in approvals to be presented before each municipality in that jurisdiction and this was the reason for his appearance before council. The primary changes in the regulations are: 1) one source air quality permitting would be handled by DEQ in Helena; 2) many regulations will be referred to through reference and inspections will be based upon reference to regulations updated by DEQ; and 3) the open burn permit program outside the City of Billings will expand; major open burns will require public notification. Mr. Duganz said that the changes had been approved by the staff in Helena and the Yellowstone County Air Pollution Control Board.

Councilmember Johnson asked what public notification would involve. Mr. Duganz said that it would be similar to public notification given on other items – i.e. public notice published in the newspaper.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Elison moved for approval of the Air Pollution Control Board recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5076 FOR ZONE CHANGE #644: a city-initiated zone change from Neighborhood Commercial-Limited to Residential Professional on Lot 22A, Burnstead Subdivision Amended, located at 2125 8th Avenue North. JD Rentals, Inc., owner; Darrell Kreitzberg and Dana Davis, agents. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second reading.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Larson moved for approval of the ordinance on second reading,

seconded by Councilmember Elison. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND SECOND READING OF ORDINANCES amending various portions of Section 27: the Unified Zoning Code. Zoning Commission recommends approval. (Action: approval or disapproval of ordinances on second reading.)

- (A) **Ordinance 99-5077 Amending Section 27-306:** by eliminating beauty and barbershops (SIC 723 and 724) and Shoe Repair Shops (SIC 725) as allowed uses in the public zone; and ADDING Funeral Service and Crematories (SIC 726) as an allowed use in the Public zone.
- (B) **Ordinance 99-5078 Amending Section 27-306:** by eliminating Truck Stops (SIC 554) as an allowed use in the Central Business District.
- (C) **Ordinance 99-5079 Amending Section 27-405:** by making a minor language change regarding Nonconforming Uses of Structures.
- (D) **Ordinance 99-5080 Amending Section 27-809:** by eliminating the requirement that all structures exceeding 3,000 SF in the South 27th Street Corridor Zoning District receive special review approval.
- (E) **Ordinance 99-5081 Amending Section 27-1501:** by making a minor language change by correcting the length of the terms that City Zoning Commission members may serve.
- (F) **Ordinance 99-5082 Amending Section 27-812:** by revising the signage regulations in the South 27th Street Corridor Zoning District so they are similar to those of the Medical Corridor Permit Zoning District.

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

Councilmember McDermott moved for approval of Item B, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item C, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item D, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item E, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item F, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

5. STAFF REPORT on Traffic Signal alternatives for 13th Street West/Lewis Avenue and Colton Boulevard/Rehberg Lane (W.O. 94-07). Staff recommends

approval of the previous bid award to install the traffic signals. (Action: approval or disapproval of staff recommendation.)

Public Works Director Kurt Corey summarized the staff report. Mr. Corey said the intersections of issue were intersections at 19th/Howard, 13th/Lewis, and Rehberg/Colton. Each of the intersections met at least the warrants under the Manual on Uniform Traffic Control Devices (MUTCD) for the installation of a signal, based upon a school crossing warrant. The locations were initially prioritized and adopted by the City Council in 1994, with a contract award on January 11, 1999. They were reconsidered by the Council on January 25th - at which time the signal was approved for 13th/Howard and a staff report requested for recommended alternatives for the signals at 13th/Lewis and Rehberg/Colton.

Alternative recommendations and a report outlining history of the three particular locations, general discussion of warrants within the MUTCD as related to school crossing warrants, current traffic data (vehicle and pedestrian) pertinent to each location were given. Some recommended alternatives included shortening the crossing distance of the two intersections (median island), different signage, grade separation (bridge over intersection) and a cursory consideration of changing school district boundary. Conclusions in Traffic Engineer - Terry Smith's report for the 13th/Lewis intersection indicated that since the intersection met at least 3, possibly 4 of the warrants, it was recommended to proceed with installation of the signal, in absence of any suitable alternatives. With regard to the intersection at Rehberg/Colton, no better alternatives were determined. However, a "do-nothing" alternative was not considered to be satisfactory. Mr. Smith's report recommended that Council proceed with contract award for these two signals.

Mr. Corey presented other alternatives to the Council should the Council choose not to go along with the recommendations of the report. Mr. Corey suggested Council revisit the way in which signals are prioritized within the City and not take the position that the signals aren't warranted. The warrants for signal installation are based upon technical criteria. From a policy standpoint Public Works looks to Council for the method of installation of the signals. So although the signals are warranted, they may not meet the current Council priorities for immediate installation. Alternative installations that may be considered based upon different warrants that may be viewed as higher priority would include intersections at 29th Street West & King Avenue and Shiloh Road & Grand Avenue. Advantages of these alternatives may be that these intersections are viewed as higher priority by either the Council or by certain community members and that the original contract may be able to be renegotiated to install signals at these intersections and the project can proceed.

Councilmember Elison asked what the requirements of the city were when an intersection has met a warrant or number of warrants and if MUTCD required a light be put at that intersection if a warrant was met. Mr. Corey said that there is no automatic criteria under which a signal is installed, but that a signal is not installed unless at least one warrant is met.

Councilmember McDanel asked if a signal light was put in at Shiloh and Grand,

which is part of the Shiloh Road Improvement Project, if the signal installed at this intersection would end up costing the city double because of re-installation of the signal at a later date. Mr. Corey stated that the rationale used for considering that particular signal was that it is being designed in conjunction with the roadway improvements and as a result could be placed in final form as a stand-alone project. With regard to that intersection potentially being given top priority, Mr. Corey felt the council had already assigned it as high priority by virtually budgeting for it in the past two years through the gas tax budget.

Councilmember McDanel referred to Item No. 1 on page 7 of Terry Smith's report with regard to the signalization at 13th/Lewis, which stated that removal of the signal at 14th/Lewis should be investigated. Councilmember McDanel felt that the 14th/Lewis signal should be investigated prior to installation of the signal at 13th & Lewis or that possibly the two items should be investigated simultaneously. Mr. Corey said he didn't see the two as a parallel, or a directly connected effort. He said they each have their own individual characteristics and function on their own and that the warrants met at 13th are independent of what needs to be done at 14th, or any other intersection for that matter.

Councilmember Elison stated he is aware that there is a priority plan in place and that studies have been conducted as to where signals should be installed. He asked if there had been anything done in terms of studying existing lights and which ones may or may not be removed because they no longer meet warrants. Mr. Corey responded that had been done to a limited extent. In the 1994 study, as part of the solicitation of potential projects, they also asked about signals that people thought might fall into that category. Mr. Corey believed that two had been looked at - one at 6th Avenue North & 18th Street, and one at 4th Avenue North and 18th Street. Mr. Corey reiterated that they have solicited that type of information from the public as well as those intersections that are not signalized.

Councilmember Kennedy asked if the reason there was not a light at Shiloh and Grand was because it is County and the County does not want to share the cost and the City doesn't want to set a precedent by doing their traffic work for them. Mr. Corey said that had been more of a compelling reason in the past and is likely a more compelling reason for other intersections on Shiloh.

Councilmember Kennedy asked if the policy or traffic signalization study should be revisited and if there were other criteria that could be used in making these decisions. Mr. Corey stated that the Council is free to and encouraged to visit these policies regularly. This policy has not been around for that many years as opposed to other policies. If Council comes up against something like this and feels it should be looked at in a different way, than the policy should be looked at. Councilmember Kennedy asked if Mr. Corey saw a need to do that and if it was a tool that did not work as well as he would like it to work. Mr. Corey stated that almost immediately after the study was adopted, a proposal was brought forward to install a signal at 19th and Lewis that met various warrants. The Council elected to defer that proposal without a full review of the particular policy. Mr. Corey said that may be appropriate in this case, but cautioned that Warrant #4 in the MUTCD, which is a school crossing warrant, is one that by comparison to the

others, has more tragic implications through not acting upon it. If it is elected not to install a traffic signal at an intersection that has various vehicle delay problems being reported or accident histories, the outcome of not making improvements would be continued delays, continued accident histories, etc. With a school crossing warrant a certain assumption of risk would be recognized. Mr. Corey said, "there are insufficient gaps in the traffic stream for school kids to get across and we're electing as a policy body to live with that."

Councilmember Deisz again referred to the Traffic Signal Warrant Study and asked if there was a list of the top 20 signals needed in Billings. It was indicated that they are covered in the report. With regard to that, Councilmember Deisz asked how the two other examples stack up to the two that the council is reconsidering. Mr. Corey indicated that they were probably not in the list because they were already budgeted and Mr. Smith did not include locations that had previously been identified as moving forward. Councilmember Deisz asked if they each met at least 1 warrant. Mr. Corey said that they did, but they had been identified as a long-standing matter, not only meeting the warrants, but being a priority for construction and so they were not revisited as part of the most recent prioritization of signals.

Councilmember Iverson said that the report stated that the 13th/Lewis intersection meets 121% of the requirements for the school crossing. She asked if that took into consideration a light at 14th/Lewis also. Mr. Corey said that barricades, barriers and other types of materials could be put in place to physically prohibit the kids from making the crossing at 13th and force them to cross at 14th. Mr. Corey indicated that would be an answer to Warrant #4, but Warrants #9 and #10 would still remain.

Councilmember Elison said that the light at Grand/Shiloh seemed like a much more complicated situation than Rehberg/Colton and that the prices couldn't possibly be comparable. "The fact that we can change order and get a light at Grand & Shiloh doesn't make sense. That would be more than the entire contract for the three lights that we have suggested here," he said. Mr. Corey indicated that although the units would not be the same (there might be more units or more bid items at the other intersection), the unit prices would be extended. Mr. Corey estimated that they could provide a reasonable means to change order in the other signals based on units that have already been identified.

Councilmember Johnson asked about public response to Shiloh & Grand. He indicated he had been hearing approximately 3 or 4 to 1 in favor of Shiloh. Mr. Corey said that they also hear that Shiloh & Grand is the key. Mr. Corey said that if it is elected to proceed with the two school crossings, it would still make sense to move ahead with Shiloh and Grand. Councilmember Johnson asked if any of the base work had been done at Shiloh and Grand. Mr. Corey said that he was not aware of any signal work.

Councilmember Ohnstad asked if the additional right-of-way, ADA accessible ramps, and parking lot entrance with the school district were paid for separately or as part of the contract at 13th/Lewis. Mr. Corey said that they had all been included as part of the contract.

Councilmember McDanel moved for approval of the staff recommendation to install the two signals at 13th Street West/Lewis Avenue and Colton Boulevard/Rehberg

Lane; seconded by Councilmember Alison.

Councilmember Alison said he agreed with Mr. Johnson's request for the staff report and various options available for these two intersections, but said there didn't appear to be any viable options. He agreed that Grand & Shiloh is a dramatic area, but both of the suggested alternatives at 29th Street West & King and Grand & Shiloh are both lights to enable greater traffic efficiency; neither are pedestrian areas. "This council has gone out on a limb before to put lights at intersections on the basis of potential for serious accidents at those intersections; there was one in the Heights. It seems that the two intersections meet warrants for school crossings that are important to pedestrian movement. That is more critical than traffic efficiency movement," he said. Councilmember Alison opposed moving the money to 29th/King or Grand/Shiloh because the lights are needed due to excessive traffic or commercial development, not to get children across the street safely. He said that there are no great alternatives presented to get the children across the street. "Council should support putting the signals in where they have been determined by the professionals that we hire to determine that these things are needed. We can sit up here, and not one of us is a traffic expert, and second guess the priority study. We have the authority and the power to do that. I don't know if that's a wise thing to do," he said.

Councilmember Larson said that no matter what council does or what review process they go through, it won't alter the fact that Warrant #4 is met and that it's a school crossing. He said he is not as familiar with crossing at 13th & Lewis but noted that the traffic at Colton and Rehberg has increased dramatically over the last couple years. Councilmember Larson said he had analyzed the continuous flow of traffic on that street over the past several weeks and it is difficult to find a gap long enough to walk across during many parts of the day. He also pointed out that there are other options for funding the other alternatives. He pointed out the report stated the light at King Avenue had already been paid for to a large extent by the developer and the people in that area. He said patience and gas taxes would ensure that the intersection at Shiloh and Grand would be addressed within a year or so. Those options don't exist for Rehberg & Colton. It is not a commercial setting that would get a contribution from a developer to pay for that. "No matter what review process we go through, we are not going to alter that one and cannot alter the basic facts that warrant the addition of the light at 13th & Lewis," he stated.

Councilmember McDanel clarified that the traffic signal in the Heights did meet at least one warrant and that there were no lights installed in the Heights that did not meet at least one warrant. He supported the light at Colton and Rehberg because of phone calls he had received and felt that some type of provision needs to be made for school children to get across that street. He did not agree with the signal at 13th and Lewis.

Councilmember Alison called for the question. On a roll call vote, the motion to stop debate failed 6-4. Councilmembers voting "yes" were: Alison, Larson, McDermott, Tooley, Kennedy, and Ohnstad. Councilmembers McDanel, Deisz, Iverson, and Johnson voted "no".

Mayor Tooley stated that the motion currently on the floor was to direct staff to move forward with installation of traffic lights at 13th & Lewis and Rehberg & Colton.

Councilmember Johnson made a SUBSTITUTE motion to defer construction on the two signals to reevaluate priorities and direct staff to process a change order for signals at 29th/King and Grand/Shiloh, seconded by Councilmember McDermott.

Councilmember Johnson said he believed there was good discussion as to what traffic signals are for. He said he did not feel that traffic signals were for getting school children across to an elementary school four blocks away from school. Boulder School needs a whole lot of help right in front of the school, but that help is not a light at Rehberg/Colton. Councilmember Johnson said he thinks the main reason he hears favoritism for the light at Lewis is primarily because of the dissatisfaction of people trying to make a left-hand turn on Lewis at lunch time. He said a big part of this is educating ourselves and learning which spots/intersections to avoid.

Councilmember Deisz agreed with the observation that traffic signals are to move traffic and made mention of the \$700,000 being spent in the Heights to help move traffic. He said he would not vote for the substitute motion until staff could come back with a dollar amount for the Shiloh/Grand and 29th/King projects.

Councilmember Elison said that he was adamantly opposed to the motion because it was taking two lights out and putting two lights in. He said he didn't have the expertise and didn't believe that anyone on the council had the expertise to say, "these are bad lights and these are good lights. We had professionals go out and study the lights. Council gave it's input as to what signals were important in the city. The professionals weighed those findings, made ratings, and came up with the prioritization of where the lights should be put in. Now we're going to say, 'we don't like these two, but we do like these two'." He didn't think it was a good idea for council to jump around the prioritization study based on their understanding of what was a good light and what was a bad light. "We should live with our priority studies or go back and hire more professionals to build a new one. I can bet it's not going to be a lot different than the one we have now," said Councilmember Elison. He said that jumping around in the priority schedule because of likes and dislikes was not justification and that absent a report showing that a signal was more justified at 29th/King than Rehberg/Colton, it was best to stick with the recommendation of the professionals.

On a voice vote on the substitute motion, the motion failed.

Councilmember Deisz suggested making two separate motions, one for each traffic signal. Councilmember McDanel moved to approve the signal at Rehberg & Colton, seconded by Councilmember Elison. On a voice vote the motion passed. Councilmembers Johnson, McDermott and Deisz voted "no".

Councilmember Kennedy moved to approve the signal at 13th & Lewis, seconded by Councilmember Elison. On a roll call vote, the motion failed 5-5. Councilmembers voting "yes" were: Kennedy, Ohnstad, Elison, Larson, and Tooley. Councilmembers voting "no" were: Johnson, McDermott, McDanel, Deisz, and Iverson.

ADJOURN – With all business complete, the Mayor adjourned the meeting at 8:55 p.m.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AE City Clerk