

REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, FEBRUARY 22, 1999

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by members of Boy Scout Troop #9, followed by the Invocation, given by Councilmember Mike Larson.

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

MINUTES – February 8th The minutes were approved as printed.

COURTESIES – Mayor Tooley welcomed Mr. Hartung, a member of the Board of Adjustment, who was in the audience that evening.

ADMINISTRATOR REPORTS - Mark Watson

1. Legislative Update.

City Administrator Mark Watson said HB363 on the Parks/Forestry districts failed. HB336, sponsored on behalf of the City, was approved on Saturday. Mr. Watson said he would be forwarding a report from City Lobbyist Jani McCall to the council. It has an in-depth listing of the bills the City has been monitoring.

Mr. Watson reminded the Council of the Joint Meeting with the School Board on Thursday at 5:30 p.m. in the Lincoln Center Boardroom. Councilmember Deisz asked if there was a list of discussion topics on the Tax Increment item on the agenda for that evening. Mr. Watson said he would try to get a list of subtopics on that item.

CONSENT AGENDA:

1. A. **Mayor's Appointments:**
 - (1) **Replacement for Ward I Councilmember Jeff Regnier to fill an unexpired term until 12/31/99.** Recommend Stephen Bradley.
 - (2) **Community Development Board.** Recommend Paul DiLorenzo (new appointment) and Pattie Miller-Webster (reappointment).
 - (3) **Housing Authority Board.** Recommend Mike Kennedy (reappointment) and John Gerharz (reappointment).
 - ~~(4) **Parks & Recreation Board.** (NO APPOINTMENT WAS MADE).~~
 - (5) **Historic Preservation Board.** Recommend Jan Elsworth-O'Brien (reappointment); Bruce Toole (reappointment).
 - (6) **Board of Appeals.** Recommend Max Griffin (reappointment).

- (7) **Aviation & Transit Board.** Recommend Ralph Stone (new) and Richard Larsen (reappointment).
- (8) **Traffic Control Board.** Recommend Leon Odegaard (new) and Sandy Fischer (reappointment).
- (9) **Board of Adjustment.** Recommend Doug James (new).
- (10) **County Planning Board.** Recommend Charlie Hamwey (reappointment).
- (11) **Parking Advisory Board.** Recommend Mary Ann Andrews (new), William Gottwals (new) and Dan Berry (reappointment).
- (12) **Zoning Commission.** Recommend Patrick Sheehy (reappointment).
- (13) **Animal Control Board.** Recommend Ed Jordan (reappointment).

B. Bid Awards:

- (1) **Paratransit Software.** (Opened 1/26/99). Recommend Intelitran, \$48,550.00. (City's share: \$9,710.00; balance paid by federal grant).
- (2) **Three-Year Lawn Service for Billings Logan International Airport.** (Opened 2/16/99). Recommend delaying award until 3/8/99.
- (3) **Repainting of the Air Traffic Control Tower and parapet Walls for Billings Logan International Airport.** (Opened 2/16/99). Recommend delaying award until 3/8/99.

C. Amendment #4, Professional Services Contract, AIP #17, Morrison Maierle, \$159,625.00 (City's share: \$15,963.00; balance paid via AIP grant).

D. Lease renewal for Terminal Building and Air Traffic Control Tower space, Federal Aviation Administration, \$147,548.16/year, 5-year term.

E. Retainer for Professional Services for a labor attorney for the Teamsters' Contract negotiations, Steven J. Lehman of Crowley, Haughey, Hanson, Toole & Dietrich, \$6,000.

F. Agreement with Integrated Solutions Engineering for Process Control System conversion at the Water Treatment Plant, \$29,000.

G. Authorization of grant application through the Montana Board of Crime Control for training reimbursement for a Crime Prevention Seminar, \$5,285.00.

H. Authorization to enter into a contract with Montana League of Cities and Towns (MLCT) for electrical supply to city facilities.

I. Subordination of Housing Rehab Loan: Margaret Holder, 540 Howard Avenue, \$15,000.

J. Subordination of Housing Rehab Loan: Bonnie Watson, 1847 Bender Street, \$10,000.

K. Declaring Surplus Equipment: out of warranty ballistic vests of Billings Police Department and authorizing the BPD to send 20 vests to the Gold Beach, Oregon Police Department.

L. Acknowledging receipt of a petition to vacate an alley in Block 1, Normal Subdivision, between 12th Avenue North and Poly Drive, between North 27th and North 28th Streets, St. Vincent Hospital, petitioner, and setting a public hearing date for 3/22/99.

M. Resolution 99-17435 declaring the intent of the City to dispose of city owned property described as: a house located at 610 South Billings Boulevard, (in Amend Park, Tract 1, C/S #2783) and setting a public hearing date for 3/22/99.

N. Final plat of Amended Plat of Lot 3, Block 4, Eaton Subdivision.

O. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Deisz separated Items 1A2-1A12, H, and K. Mayor Tooley requested that Item 1A1 be separated. Mayor Tooley requested Councilmember McDermott place Item 1A1 on the floor. Councilmember McDermott moved for acceptance of Item 1A1 - replacement for Ward I Councilmember Jeff Regnier to fill an unexpired term until 12/31/99, seconded by Councilmember McDanel. Mayor Tooley thanked the members of the committee (Elison, Johnson, McDermott) appointed to screen the five candidates that applied for Councilmember Regnier's position. Mayor Tooley commended the committee for their efforts and said because the committee chairman felt that all five candidates were good candidates, he decided to interview the five candidates himself also. He agreed with the committee and commended the candidates for coming forward and offering to be of service to their community. Mayor Tooley selected Stephen Bradley. Mr. Bradley has been a chairman of the Southside Neighborhood Task Force, vice-chairman of the Yellowstone Historic Preservation Board, and one of the Mayor's appointees to the Mayor's Task Force. Mr. Bradley has also been very active in the community and is very knowledgeable about city issues. Mayor Tooley urged the Council to support his selection. On a voice vote, the motion was unanimously approved. Mayor Tooley administered the oath of office to newly appointed Councilmember Bradley.

Councilmember McDermott moved for approval of the Consent Agenda except Items 1A2-1A12, H, and K, seconded by Councilmember Larson. On a voice vote, the motion was approved.

Councilmember McDermott moved for approval of Items 1A2-1A12, seconded by

Councilmember Larson. Mayor Tooley noted that the information was distributed to the council rather late, adding that if the council was not prepared to confirm the appointments, it could be delayed to the next meeting. Councilmember Deisz said he would prefer to have it delayed. On a voice vote on the motion, the motion was approved. Councilmembers Deisz, McDanel and Ohnstad voted “no”.

Councilmember McDermott moved for approval of Item H, seconded by Councilmember Larson. On a voice vote, the motion was approved. Councilmember McDanel voted “no”.

Councilmember McDermott moved for approval of Item K, seconded by Councilmember Larson. Councilmember Deisz asked if other communities in Montana were surveyed to determine if they wanted this equipment. City Administrator Mark Watson replied that they had not surveyed other Montana communities, noting that the community in Oregon contacted the Police Department about the equipment. Councilmember Deisz asked that in the future staff be directed to survey other communities in Montana to determine their interest in surplus equipment before offering it to out-of-state communities. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #645: a zone change from Residential 6,000 to Community Commercial on Lots 41-48, Block 1, Houle Subdivision, generally located at the southwest corner of Broadwater Avenue and 12th Street West. KCWD Partnership, owner. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the parcel is approximately 28,000 square feet and is currently vacant with existing Community Commercial to the north and east and Residential 6000 and Residential 7000 to the west and south. The Zoning Commission held a public hearing on February 4, 1999. There were a number of petitions submitted in favor of the zone change. The Zoning Commission voted 3-0 for recommendation of approval. Councilmember Bradley asked if it was realized that this property was on Spring Creek drainage. Mr. Bollman indicated that the drain was piped underneath the property and that there were certain areas of the property where buildings could not be constructed. The proposed building is to be built on the extreme western portion of the property away from where the drain is piped.

The public hearing was opened. GORDON TRYON OF 3123 AVENUE D said he is the General Manager for Brown’s Auto Service. Mr. Tryon said that they tried to gain support from the community and to prove they could be a good neighbor in a residential neighborhood. They sent letters to individuals in the surrounding neighborhood inviting them to an open house where it was explained what Brown’s Auto wanted to accomplish. Fifteen members attended the meeting and signed a

petition in favor of the zone change. The people not attending were contacted personally by Mr. Tryon, which resulted in another 13 signatures in favor of the petition. Mr. Tryon said they explained to the individuals how the building would be built, what type of building and the measures that would be taken by Brown's Auto to protect the community's interests. Mr. Tryon indicated that the brick building would be built on the west end of the lot, not on the ditch, and that it would not have an alley access so it would not affect any residential neighbors behind the proposed location on Custer. He also said a fence would be constructed in conjunction with the neighbors and that trees would be built along the alleyway to work as a screen for noise, lights and traffic from Broadwater. Councilmember Kennedy commended Mr. Tryon on canvassing the neighborhood and getting the neighborhood involved. There were no other speakers. The public hearing was closed. Councilmember McDanel moved for approval of the Zoning Commission recommendation, seconded by Councilmember Deisz. Councilmember Elison said this is a stellar example of an applicant working with the neighborhood in advance. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND SPECIAL REVIEW #651: a special review to allow the placement of an all-beverage liquor license and an outdoor patio in the Central Business District zone on a portion of the Burlington Northern/Santa Fe Railroad right-of-way, generally situated between North 23rd Street and North 25th Street along the south side of Montana Avenue, located at 2314 Montana Avenue (Beanery Building). Billings Depot, Inc., owner; Chuck Platt and Jerry Neumann, agents. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said they are requesting an all-beverage liquor license for the Beanery Building and an outdoor patio to the west of the building. This use would require the waiver of the 600-foot separation requirement. Both the Zoning Commission and the Development Review Committee (DRC) recommended conditional approval with two conditions: 1) waive the 600-foot separation requirement, and 2) no live or piped-in music on the outdoor patio. Councilmember Elison questioned whether or not the City has a lease on the building and if the developers were aware of this situation. Mr. Bollman indicated that the City has a long-term lease and that Billings Depot, Inc. (non-profit organization) is managing the property for the City, noting developers are aware of that situation. Councilmember McDermott asked if it would be feasible to have an area within the Central Business District exempt from these special reviews on the 600-foot separation. She said, "there are four buildings in that 600 feet that really have no impact on the liquor license. This location is a very appropriate place for a liquor license." She asked if it would be feasible to amend the code or if research could be conducted on the issue. City Administrator, Mark Watson said that research could be conducted. But he also noted that the special reviews allow the opportunity to waive the 600-foot rule if it is in the public's best interest, and at the same time it reserves the right to review some of the issues and determine if the cause is legitimate.

The public hearing was opened. CHUCK PLATT OF 610 30TH STREET WEST, said he and Jerry Neumann were selected to receive one of the lottery all-beverage liquor licenses awarded by the State Revenue Department. He indicated that the uniqueness of these "lottery" licenses is that they are selected for a particular site. The Beanery Building was the site for which they were selected. He said he felt this particular location could work well for them because the building is an historic building, which they cannot make any exterior changes to, and because there has been a real effort by downtown property owners to create a destination area downtown in the historic district. He felt the business would work well with the other area businesses. They intend to build a bar/restaurant facility with a 50/50 mix of beverage and food. He feels the outside patio would be an enhancement to their success at that location. Mr. Platt also indicated that because the license had to be held for five years before it would become a marketable commodity, they had put a lot of effort into the design of the interior of the building.

DENNIS DEPPMEIER, RESIDING WEST OF LAUREL, said he was speaking on behalf of Harry Gottwals, the President of Billings Depot Inc. Mr. Deppmeier said he has served on the board of Billings Depot Inc. since its infancy and the board is comprised of many different professional members including a developer from Baltimore, Maryland who has worked with them to create a development strategy for the property. Mr. Deppmeier said the board had reviewed the use for the intended site and found it to be very complimentary to the multi-building complex and support it unanimously.

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

4. PUBLIC HEARING AND SPECIAL REVIEW #652: a special review to allow the placement of five 10-plexes in a Residential 6,000 zone on the south 405 ft. of Tract 1, C/S 1972, east of the BBWA Canal (also described as proposed Tract 1B of C/S 1972), generally located on the northwest corner of Reda Lane and Broadview Drive. Norwest Capital Management & Trust, owner, Engineering, Inc., Douglas Carlson and Dale Fasching, agents. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the special review is for the location of five 10-plexes on approximately 8.6 acres of land that currently has single-family manufactured homes to the south and single-family development to the east, with some apartments on the south side of Reda Lane. The Development Review Committee and the Zoning Commission reviewed the requests and recommended conditional approval. Mr. Bollman said the DRC and Zoning Commission looked closely at the compatibility/appropriateness of the use of this site. He said that the Unified Zoning Code had been modified to require that any use of a 3-plex through 10-plex in the R 6000

zoning district go through special review. This particular site could hold up to 19 10-plexes without any review under previous regulations. There are approximately 40 units currently existing along Reda Lane and the proposed development of the 50 units on the 8.6-acre site would be approximately 7,500 square feet per unit. It was suggested that a development agreement be entered into between the City and the developer because it was not anticipated that the site would go through subdivision review and therefore there would not be a Subdivision Improvement Agreement. Because there had been concern voiced over the current condition of Reda Lane, the developer agreed to (at his own expense) pave Reda Lane, install curb and gutter on both sides, install drive approaches, and put sidewalk on the north side of Reda Lane. Mr. Bollman went on to say that the existing intersection of Reda Lane and Lake Elmo Drive would be looked at with regard to any potential improvements and mitigating any impacts the development would have on that intersection. The improvements might consist of a left-hand turn lane and/or clearing some of the current vision obstructions, but this would be determined after the traffic study had been done for the project. He stated that the second condition required that a six-foot fence be located along the south property line and that the developer place three trees per 40 lineal feet along the south property line to separate it from the existing residential development. This standard is the same standard stated in the landscaping regulations for commercial development adjacent to residential development, he noted.

Councilmember Elison asked how many duplexes could be built on this property without special review. Mr. Bollman indicated that there could be 62 single-family units, with each dwelling unit requiring 7,000 square feet.

Councilmember Johnson asked why the encumbrances on the property at the corner of Reda Lane and Lake Elmo Road were not included in the conditions that the developer agreed to. Mr. Bollman indicated that a traffic accessibility study would specifically address the needs at that intersection. Councilmember Johnson asked if it was guaranteed that the developer had generally agreed to take care of those encumbrances. Mr. Bollman indicated that John Stewart with Engineering Inc. could probably address that question. Councilmember Ohnstad asked if putting 50 units on the 8.6 acres would complete the project or would additional units be added. Mr. Bollman said that under the current codes, if more units were to be added, the developer would have to go through another special review.

Councilmember Deisz, referring to the \$200,000 in street improvements indicated in the report, asked what level of street improvements that amount would cover. Mr. Bollman said that figure was provided by John Stewart of Engineering, Inc. at the City Zoning Commission meeting which he understood to include paving; curb, gutter and sidewalk on both sides; drive approaches and sidewalk on the north side. Councilmember Deisz asked if there had been any staff recommendation on the improvements because he felt the improvements would cost much more than the figure quoted. Mr. Bollman said that the figure came from Mr. Stewart and he could better answer what improvements would be included in that figure. Councilmember Deisz asked if there was a seven-year warranty when entering into a contract. City Attorney, Brent Brooks said that was something that could be negotiated with regard to the

improvements. Councilmember Deisz expressed his concern about the continued problems with Wicks Lane after the road had been put in and tore up. He said that he did not want the people living on Reda Lane to get hit with an SID three years down the road because the original street was substandard. Councilmember Deisz asked if something to this effect could be specifically written into the contract before approval. Mr. Brooks stated that this would be something for the council to decide in consultation with the contractor and engineer as to a fair warranty time period. Councilmember Deisz asked if there is a storm drain on the property and if there were any storm drains on Lake Elmo. Mr. Bollman indicated there were not and that the storm drainage would be contained on-site. Councilmember Deisz asked if special reviews were required on R 6000 prior to this year. Mr. Bollman stated that special reviews were not required previous to when the Unified Code went into effect a year ago. Councilmember Deisz asked if the paving of the street is being paid for now because of the special review or if the number of trips and density of this particular building site had triggered participation in the paving of Reda Lane. Mr. Bollman said that there probably would've been some off-site improvements because of the number of units in the development, but because of the special review requirement and the developer's willingness to make all the improvements, the people on Reda Lane were getting a little more (in the way of improvements) than without the special review.

Councilmember McDanel said there are already existing low spots along Reda Lane where water ponds from 4 to 6 inches deep and asked where the storm water would go if there were no storm drain outlets. Mr. Bollman said that was an issue the consulting engineer would need to look at when they design the street section and curb and gutter. Councilmember McDanel asked if there was any idea how deep the retention pond on the site would be. Mr. Bollman said he did not know how deep the retention pond would be, but that Mr. Stewart may be able to address that question. Councilmember McDanel asked if the school capacities had been given any consideration. Mr. Bollman said that they do not conduct research on school capacities for any of the zoning requests. Mr. Bollman went on to say that a school board member from the Heights had said at a task force meeting that school attendees were needed in the Heights, maybe not in the two schools within the proposed area, but there was a need for elementary students in the Heights.

John Stewart of Engineering Inc. responded to council questions, explaining to Councilmember McDanel that he did not know the exact depth of the retention pond on the proposed site. He said that the retention system would be similar to the one installed in Stewart Park for the entire area west of Rimrock Mall. The grade of the retention pond would be raised so that the water would disperse in the soil down below. He said that the pond was on sandstone and most of the water came from the BBWA canal, and followed the sandstone across the property and into the groundwater through natural flow. And although that is where they want the storm water to go, it does not have to be in the form of a lake or swamp.

Councilmember Deisz asked what grade level would be used on the street to prevent the water from pooling on the street as it currently does. Mr. Stewart said that

everything within the property will stay on the property and Reda Lane itself will have to be built so that it does drain somewhere. The overall development agreement will address the handling of the stormwater. He said the development agreement with the City of Billings reads very much like a Subdivision Improvement Agreement. Mr. Stewart said that once the Traffic Accessibility Study is completed for the intersection of Reda Lane and Lake Elmo Drive, the specific improvements will be stated in the development agreement. He said that because the intersection is in a public right-of-way, the plans would look a lot like a set of plans put together for an SID. Mr. Stewart stated that the \$200,000 was an estimated budget number for the mentioned improvements, not a contract figure. He said that the actual costs would be established through the development agreement.

Councilmember McDanel said that the current retention pond is very wet during the summer rain season and the water table very near the surface. He asked how the on-site water would be drained if the water table was so near the elevation. Mr. Stewart said, "the water table varies across the site as far as top soil that exists. Basically the groundwater is following the top of the sandstone surface to the north and west. The entire area is bisected by several drains that ultimately end up on Wicks Lane and as part of the city storm drain system. The whole groundwater is flowing to the north and to the east."

Councilmember McDermott asked if there were plans for the other 20+ acres of the property. Mr. Stewart indicated that he was the consulting engineer only on this specific project for the property, and didn't know of plans for the other property.

Councilmember Larson asked if there were any limitations on council discretion on a special review like this. City Attorney Brent Brooks said he did not know of any restrictions, other than issues of reasonableness related to the goals of the project and the goals of the surrounding land use plan. City Administrator Mark Watson informed the council that there was a list of areas on which the council could impose conditions. He said, "the list includes street and road capacity, ingress/egress to adjoining streets, off-street parking, fencing, screening, landscaping, building bulk and location, usable open space, signs and lighting, noise, vibration, air pollution and similar environmental occurrences." Councilmember Deisz said he asked the Finance Department for information on how this would increase property owner taxes in the area. Mr. Watson replied that it was hard to know the actual values of the various types of homes along Reda Lane, but a \$40,000 home would equate to \$1,544 in taxable value, \$694.80/year in combined millage for all the properties within the community. He said that a \$5,000 increase in value would equate to \$86.85 in annual taxes (millage). He said, "if we look at it with the philosophy that the legislature is taking and divide it out by 50 years and implement any increases, it would be a very nominal increase of \$4 of taxable value each year. Multiply that by 450 mills and it becomes \$1.80 per year increase. Twenty percent represents the City, so \$.36 would come to the City government for a \$5,000 increase with a 50-year implementation system that we're operating under at the present time."

The public hearing was opened. AL HOFF OF 1245 CODY DRIVE said he bought that property in the 1960s and has lived there most of that time. He stated that he has

grave concerns about this project, because he feels it will negatively impact their neighborhood and their community and that it would also set a precedent. He said, "there will be 20+ acres in this tract that won't be developed, plus another 45 acres that lie immediately to the north and just north of Rice Lane there is another 30 acres. This is some of the nicest property in the city." He said that placing 10-plexes would impact the infrastructure greatly and drive many of the people from their neighborhoods. The water will have no where to go without the development of proper storm drainage. He was also concerned about what will happen on Lake Elmo Road because of increased population in the area.

JACK BUTTMAN OF 216 NASH said he lives in a mobile home and pays over \$1200/year in taxes. He noted that both Bench Elementary and Castle Rock School are bursting at the seams. He is really concerned about how this is coming about and no answers seem to be available. He is upset by the whole way the entire project has progressed. He doesn't feel enough consideration has been given to the drainage issues in the area.

DAVID MILLER OF 174 WINDSOR CIRCLE SOUTH said he is speaking on behalf of the condominium association of Windsor Circle. He is concerned about the storm water drainage primarily. He said that they already have problems with flooding in the area after a heavy rain. He feels that the water from Reda Lane will drain toward Lake Elmo Road and will end on Windsor North and Windsor South and in their drain field. He said there is no way that their drain can handle it. It was designed to handle the 124 residents on Windsor North and Windsor South only. He said there is currently a massive leak from the ditch on the south end of Windsor South and feels that there will be a similar problem with the ditch water on the proposed development. He doesn't want the water from Reda Lane or any other streets draining into their drain field.

ROY DAUENHAUER OF 243 NASH LANE said that every time it rains it causes a lake in front of his house. He said that there is nowhere for the water to drain in that area. He is concerned that there will be an increase in the speed of traffic along Reda Lane after it is paved. He is also concerned about increased taxes, the development of the other currently vacant lots in the area, and an increase in traffic at Wicks Lane and Lake Elmo Road because of population increase.

JOE LABRIE OF 315 NASH LANE said that a few years ago some 10-plexes were built on Lake Elmo without any consideration given to drainage in the area. He feels this same situation will occur with the proposed development. He said that after a good rain there are virtual lakes on Reda Lane and Nash Lane. He said their neighborhood is neither ready nor willing to accept this problem into their neighborhood. He feels the drainage/flooding issue should be given further consideration.

JERRY LYON OF 218 WINDSOR CIRCLE NORTH said he agreed with what the previous speakers had said. He said the rainwater has a direct impact on their drain field and that it often backs up because it cannot handle the water capacity and there is no other place for the water to drain. He has a major concern with how the development will affect the schools. He said the proposed improvements on Reda Lane would do nothing to help the situation on Lake Elmo with regard to traffic. He noted his concern with the

increase in traffic, the limited sight on the corner of Reda Lane and Lake Elmo. He said that one of his children had already been hit by a car in that area last year. He felt that the issues should be looked into further before bringing more people and more traffic into the area. He didn't feel that the plan was feasible for the neighborhood or the schools. He said the superintendent at Bench Elementary indicated that the school was full and could not handle any more kids. He said he didn't feel the developer gave enough consideration to what the neighbors wanted. The developer did not work with them to try to achieve a common goal. Mr. Lyon said he's not opposed to development, but does not feel that the area can handle it. He's also worried that the development will increase property taxes.

LORI ANN HURRY OF 122 REDA LANE said she has owned her home at this address for the past seven years and the area for the proposed development has been basically her back yard. She said she knows first hand about the water level and drainage problems in the area. She said that the entire neighborhood is concerned about the potential traffic problems and congestion on Lake Elmo. She stated that she doesn't want to see more units and more traffic come into the area and is opposed to the development.

CAROL MCCRACKEN OF 308 REDA LANE said she was speaking for herself and for her mother who resides at 236 Reda Lane. She said that everyone in the area is opposed to the development. There is a huge concern for the safety of the children on Lake Elmo. Making a left-hand turn from Reda onto Lake Elmo is virtually blind. She stated that her mother and others living on social security in the area could not possibly handle an increase in taxes. She asked that council consider the people currently residing in the area and the safety issues.

JOHN STEWART OF ENGINEERING INC, 1001 SOUTH 24TH STREET WEST said that the proposed property had been zoned Residential 6000 for years and that is the density to which the Heights sanitary sewer was designed. He stated that Mr. Carlson is only proposing five units so that the drainage issues can be worked through. Mr. Stewart noted that Mr. Carlson is the buyer and Norwest Capital Management & Trust is the current owner of the property. He stated that Mr. Carlson did not own, did not build and did not operate Brush Meadows Apartments, which was of some concern at the Zoning Commission meeting. Mr. Stewart also said that Mr. Carlson has agreed to come back to City staff with a development agreement that will address potential impacts on Lake Elmo, pedestrian traffic, etc. The development agreement will address the items outlined by staff and all issues will be addressed before the contract is signed. Mr. Stewart urged council to review the staff report and requested their concurrence with the staff and Zoning Commission recommendation.

SANDRA BELL OF 309 REDA LANE said she is opposed to the development and feels that other things could be built that would be more advantageous. She asked that council give much consideration to all the items that have been discussed and reject the development at this point in time.

JAN FALSTEAD OF 239 REDA LANE said she is highly opposed to the development.

RHONDA HARRIS OF 155 NORTH WINDSOR CIRCLE said that she owns a mobile home at that address that will be directly affected by the development. She said that there is already a tremendous volume of traffic and that she couldn't imagine what it would be like if the development is built. She stated that she was also very concerned about the availability of law enforcement with an increase in population. She said she is very opposed to the development.

RON LARSO OF 105 WINDSOR CIRCLE NORTH said that most everyone is opposed to the type of development being proposed. He asked that council take into consideration the type of development, the influx of people it would bring to the area, traffic congestion, and the watershed.

DALE FASCHING OF 3911 LAREDO PLACE said he is an agent of the developer and did not anticipate so much opposition. He said he thought they were doing a lot of good things for the neighborhood. He stated that the developer could essentially put 54 duplexes on the site without a special review and with no improvements to Reda Lane. He said he thinks the developer will improve the water drainage problem. He noted that the developer is faced with a serious time constraint because of the tax credit application process. His application was due in Helena on Friday and he could not afford the Council's decision to be deferred pending receipt of additional information. Mr. Fasching said that the information printed in the Gazette with regard to school populations is proof that school overcrowding would not be an issue. They are trying to address the in-fill issue and stop the urban sprawl. He added the property has been zoned R 6000 for years and the owner has a right to realize and reap the benefits of that.

There were no other speakers. The public hearing was closed. Mayor Tooley called a 5-minute recess at 9:05 p.m. The meeting was called back to order at 9:10 p.m.

Councilmember Kennedy moved for approval of the Zoning Commission recommendation, seconded by Councilmember Johnson. Councilmember McDanel asked what drains are in the area into which the stormwater could drain. Mr. Bollman said there are no storm sewers in Lake Elmo Drive. The closest would be on Hilltop Road or Wicks Lane. Councilmember Johnson asked for a clarification on condition #3 and the paving of Reda Lane. Mr. Fasching replied that the paving would be on Reda Lane to Lake Elmo Drive. Councilmember Deisz said he wanted some type of protection within the agreement for the residents on Reda Lane, in terms of street warranty and visual problems at Reda Lane and Lake Elmo. Councilmember Deisz moved for an amendment that would: 1) establish a warranty for a period of seven years for street improvements, 2) guarantee satisfactory drainage of water off Reda Lane and 3) ensure visibility improvements be made at the intersection of Reda Lane and Lake Elmo. Councilmember Kennedy seconded the amendment. Councilmember Johnson agreed with the items of the amendment and felt that the items needed to be addressed and stated and that the in-fill issue was also important. Councilmember Ohnstad asked if the City takes over the maintenance and guarantees the maintenance of the road after the developer has built it. City Administrator, Mark Watson said that on roadways a bond is held on the property for one year and after that there is a "guarantee" period of six to ten years (depending upon the type of roadway constructed) for any deficiencies in design or

construction work attributed to the roadway. On a voice vote the amendment passed unanimously.

Councilmember Elison said the 50 units being proposed by the developer would be better than the 108 units that were possible with no special review and no agreement for improvements on Reda Lane. He said, "with the 108 units there would be more traffic, more impact on schools, more lot coverage, and more drainage problems. If the area is going to be developed in an in-fill manner, the 50 units would be better than the 108 units.

However, the people out there don't agree with that." Councilmember Larson said, "we, traditionally here in Billings, vote rather conservatively. We time and time again send people off to Helena to protect property rights. Tonight an individual who owns a piece of property is trying to develop it in a way that that property is zoned to be developed. Tonight there is a very good likelihood that we on the City Council, based on your objections are going to say no. And we will be making this property less valuable to the person who owns it and we are therefore taking away value of this property from that individual." Councilmember Larson said that we need to get input from property owners not only when they object to a development but when property issues are being discussed in general. He said, "I don't want to ruin their neighborhood any more than anyone else up here, but we also need to consider that someone has put their money on the line for this particular piece of property as well. So we're going to have to balance two evils."

City Administrator Mark Watson stated that he and the City Attorney felt that the drainage restrictions mentioned in the amendment needed to be more specific and comply with current subdivision rules. Councilmember Deisz said he would accept the change to his amendment to state that the drainage regulations comply with current subdivision rules. The second concurred. The revised amendment passed unanimously on a voice vote.

Councilmember Deisz said, "this is probably one of the most difficult decisions I've been given since being on the Council. Lake Elmo is a mess and I don't expect this one developer to clean up this mess. Lake Elmo is dangerous, I don't expect this one developer to make it safe. Are schools an issue? They were not here tonight. Drainage is a big problem and I hope that problem will be solved. I came here fully prepared that this council will probably accept this development and pass it tonight, but I did want to make sure that there were some provisions passed along and that's why I made the amendments I made. Politically speaking, I'm very disappointed with our staff that we were not informed of this last year or made aware of this zoning change when we adopted the city-county code. It is a property rights issue and it boils down to 'do I value the property rights of those who have lived in that neighborhood for 20 or 30 years and paid their taxes or do I value the rights of a trust fund and a developer who wants to get some low-interest money and put in some housing development.' I have to vote for the neighbors of the neighborhood even though I'm going on record for believing in in-fill development..." The motion, as amended, passed 6-4 on a roll call vote. Councilmembers voting "yes" were McDermott, Tooley, Kennedy, Johnson, Ohnstad, and Larson. Councilmembers voting "no" were Elison, Bradley, McDanel and Deisz.

5. PUBLIC HEARING AND FIRST READING ORDINANCE amending the BMCC to revise Sections 27-305 and 27-308 by eliminating the requirement that 3-plex through 10-plex buildings located in the Residential 6,000 zoning district must obtain special review approval. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said one of the purposes of zoning is to protect against encroachment of incompatible uses and to mitigate the potential negative impacts the use may have through the special review process. Mr. Bollman presented some history on the Residential 6000 zoning. He said that in 1972 the city allowed up to an 8-plex outright; the county allowed up to a 6-plex. In 1977 the city and county zoning codes were revised and the city increased its allowance within the Residential 6000 up to a 10-plex with 19,000 square feet and the county increased up to an 8-plex. Mr. Bollman said that in 1994 his department began work on revisions to the Unified Zoning Code. As revisions were made to various chapters they were presented to the City Council and County Commissioners for approval. Two public hearings were held for the draft of the Unified Code and a copy of the draft was made available for public review and comment. The Residential 6000 change was made early on and was printed in all those drafts. He said the reason for the requirement of the special review for 3-plexes through 10-plexes was because there was concern that a 10-plex would be accepted if there was enough lot area and it was felt this would not be compatible in some areas currently zoned Residential 6000. He emphasized that zoning regulations are a living document and that they change from time to time. He also said that staff supports keeping the regulation as it currently exists with the special review requirement, but that both city and county zoning commissions disagreed with the staff recommendation. The City Zoning Commission recommended unanimously to City Council to make the change and revert back to the old regulations.

Councilmember Kennedy asked about the status of the North Elevation Task Force changing from Residential 6000 to Residential 7000. Mr. Bollman said he is waiting for additional information from the Task Force before he can process the zone change. Councilmember Kennedy asked if Mr. Bollman anticipated the change from R6000 to R7000 occurring in other neighborhoods. Mr. Bollman said that it was a possibility. Councilmember McDermott said that the North Elevation Task Force was in the process of getting signatures and will probably have everything ready next month. She recommended that people go to the task force meetings and get involved in the zoning issues early on.

The public hearing was opened. CHARLES HAMWEY OF 1010 GRAND AVENUE, said he is the Chairman of the City/County Planning Board. He said the two zoning committees have approved reverting back to the original R6000 regulations. If it is not approved by City Council, but approved by the County Commissioners than it would not be a Unified Zoning Code any longer. This is the only zoning consideration

that is required for any special review.

TOM EMERLING, NO ADDRESS GIVEN, said he is the Chairman of the City Zoning Commission. There are many issues associated with this item. Deciding whether it is a 3-plex, 5-plex, or 8-plex is not the answer. He suggested requesting input from the City Zoning Commission, Planning Board, and County Zoning Commission to identify problem issues and then decide how to address which properties should have a public hearing and which should not. He said it doesn't make sense to have a public hearing every time somebody wants to build a 4-plex. The old regulation had been in place for 25 years without problems. The new regulation will cause problems such as increases in building costs, urban sprawl, and decreased property values. Mr. Emerling asked that the regulation be changed back and suggested that the various boards/commissions get together to discuss the various issues and then present a workable plan to Council.

JERRY T. RAY OF 2245 54TH STREET WEST said that he was involved in the process of zoning coordination between the City and County. He stated that he was told that the only change made was the landscaping requirement and that he had never been informed about the special review on R6000, nor were any of the other owners of R6000 property. He said that this constitutes taking of the value of people's property without due process. He said he thought that people were supposed to be notified of any changes made affecting the value of your property. He noted he didn't feel it was right that staff did not notify anyone of any changes. He asked that the regulation be changed back and that if it's going to be changed, then all R6000 property owners should be notified beforehand.

RODNEY GARCIA OF 4141 ARDEN AVENUE said he is the Chairman of the Southside Neighborhood Task Force. He stated that this issue was on their Task Force Agenda this month and they would like for Council to "lay the issue to rest." He said anytime there is a major impact on any neighborhood, the people in the surrounding area should be able to give some input. He said he would appoint a committee to look into changing the R6000 zoning at the next Southside Task Force meeting.

TOM LLEWELLYN OF 5819 RIMROCK ROAD said he has been a developer in Billings for 30 years and was representing the Billings Association of Realtors who are officially of record in favor of the resolution to return to the original zoning. He said that during the past year he had been the chairman of a statewide coalition for affordable housing and that the current special review process, which takes additional time and additional money, is not in the best interest of affordable housing. The community needs to have a vision of how the infill versus sprawl issue will be addressed. He recommended Council approve the resolution to return to the original R6000.

SHIRLEY RAY OF 511 SOUTH 83RD STREET WEST said she was in favor of going back to the original R6000. She stated that she had not been informed of the change requiring the special review until recently. She said that she owns property on the northeast corner of 6th Street and Avenue E. She remarked that she currently has the property up for sale and that the realtor is having a rough time marketing the property because of the special review requirement on the property

4 AL HOFF OF 1245 CODY DRIVE said he was in favor of keeping the review process because it is the last safeguard people have. He feels that the R6000 zoning regulations are a problem in general. A lot of the problem is that many of the people do not understand the language of the zoning code to begin with. Many of his neighbors think multiple-family unit means a duplex. Many of the people in the Reda Lane neighborhood never knew that a 10-plex could be constructed across the street from them. He said the special review process is currently the only thing that gives the people a voice. He suggested that maybe if the developer for the property on Reda Lane would have worked with the surrounding neighbors and had worked out all the details beforehand, there might not be so much opposition.

GAYE RYE OF 2016 REHBERG LANE stated that she is a past member of the Mayor's Task Force and a current member of the Development Process Advisory Review Board. She said she wanted to remind council that it had been said by Council, builders, developers, and the public that with timeliness, consistency and cooperation there would not be any problems with regard to development. She said that the special reviews cost time, money, and cause inconsistency. Doing away with the special reviews would provide developers, builders, and City staff with timeliness, consistency and cooperation. The public does not want urban sprawl and because of that these developments may be necessary to prevent the urban sprawl and keep housing affordable. She stated that people are not going to develop property if they do not know what it can be used for when they purchase it. She said she felt we needed to revert back to the old policy.

DICK KLEIN OF 1302 AVENUE D said he is with Professional Management Inc. He stated that it is expensive for developers to go through the special review process. He said the process is very emotional. He said he would like to speak for his tenants, who had not been represented. By obstructing multi-family development the very people that have need to be helped in Billings are being hurt. He stated that he is greatly in favor of going back to the old way and that throwing a zoning law in front of a developer hurts the people we are most trying to help.

PHILIP EVANS OF 5136 CHEVELLE DRIVE said he is opposed to the R6000 special review and would like to see it go back to the way it was before. He said as a builder, affordable housing (single-family and multi-family) is a big issue to him and the rest of the Billings community.

MIKE TUSS OF 1046 NORTH 31ST STREET said he is the Chairman of the North Elevation Task Force. He quoted a statement that he heard a developer state at the Zoning Commission meeting, "people have to know what they have, what they can do with the property and have stability of land prices." He said that could be looked at from a neighborhood's standpoint also. When you move into a neighborhood, you want to know that your life's biggest investment will be somewhat protected, that the quality of life and the neighborhood you have moved into is going to have some stability. He stated that by keeping the special review requirement, the developer should be encouraged to get cooperation in the neighborhood before building. He said he thought the special review process should be kept and that the R6000 zone should be re-evaluated.

JACK BUTTMAN OF 216 NASH LANE said that the special review process

needs to exist. He said he is tired of council decisions dictating his lifestyle. He stated that the information needs to be distributed. "I had no idea that this property could have all these people. Very few of us know what R6000 means; there is not enough information," he stated. He said that he hoped council did not decide to revert back to the old regulation.

BILL KALE OF 2015 WEST ECHO DRIVE said he was the President of the Homebuilders Association of Billings and is also a building contractor that has been building for over 25 years in Billings. Mr. Kale said that he thinks there needs to be specific guidelines for builders and developers when they apply to build certain buildings and there should be clarification of what uses are available for particular properties. He said, "we can't go out and buy property and after the fact think that 10 people sitting here can take away our livelihood because somebody is going to protest against it in a special review like this." He said that if changes need to be made to the zoning codes, then it should be worked on cooperatively. He stated that it would have been very difficult to track all the changes that were made to the zoning code and that some of the major people or groups affected by the changes should have been notified of some of the major changes so that they could have had some input. He was opposed to the special review requirement.

JERRY LYON OF 218 WINDSOR CIRCLE NORTH said he is opposed to the change. He stated that people should have an opportunity to voice their opinion. Had it not been for the special review process, then the people in the Reda Lane/Lake Elmo Road area would not have been allowed to give their opinions this evening and no changes would have been made. He said that the people living in the affected neighborhoods would know best what should and should not go into the area and should have an opportunity to present that before developers start building the developments without hearing from the people being affected.

PAUL DUCHARME OF 2525 WHITTIER PLACE said that he is a past member of the Planning Board and the City Zoning Commission and had he known of this particular footnote (special review requirement) he would have strenuously objected. He had understood and told many people that it was a unification of the codes and not a change in the zone. He said that when the unification was adopted it was the taking of R6000 property. "There's no question you can have a piece of property that will support a 10-plex one day and get up the next morning and it will support a duplex at the whim of government review and a neighbor," he stated. He said he felt that the City should go back to the old regulation, address the issues that have been mentioned, and then go forward with a new zoning regulation.

TOM EMERLING RETURNED. He said that over 4,000 landowners were affected by this change without their knowledge. "Let the City Zoning Commission, Planning Board, and County Zoning Commission get together with the task forces and identify the problem areas and come up with something that works for all the neighborhoods, all the task forces, all the zoning and all the different trade organizations you heard from tonight," he urged.

Councilmember Kennedy asked Mr. Emerling if he had heard any comments

with regard to splitting the R6000 regulation into two separate entities, R6000 single-family and R6000 multi-family. Mr. Emerling said that he had heard the same remark and thought that it had some merit. He said that it is sure one thing that can be addressed in some of the committee meetings with some input from the public.

There were no other speakers. The public hearing was closed. Councilmember Johnson moved to retain the special requirements in the code as they presently are (in regard to R6000 zoning), seconded by Councilmember McDanel. Councilmember Elison amended the motion to return the item to the Zoning Commission for public input and a report on possible alternatives and modifications to the requirements, seconded by Councilmember Kennedy.

Councilmember McDanel asked if the motion was to retain the special requirements as is and the amendment was to also return it the Zoning Commission to review the special requirements and make recommendations of modifications to the Council. Councilmember Elison responded, "exactly." Councilmember McDermott said that she was reluctant to do away with the special review until the Zoning Commission came back with some alternatives. Councilmember Kennedy said that he felt it was important that the Council go back to the experts on these issues and ask for their recommended alternatives as well as the input of the public. Councilmember Larson said that he felt the amendment is a very critical part of the motion. He said it was important to have the Zoning Commission work with Council and other appropriate groups to clear up concerns. He stated that there needs to be some clarification of the R6000 zoning district. City Administrator Mark Watson said that he agreed that the process should not be kept within the confines of the Zoning Commission and the Planning Board but should include comments from other neighborhood groups, task forces, etc. to ensure all perspectives were included. Councilmember Elison stated that the R6000 zoning code offers no consistency for either the developer or the neighbor. "You can buy a single-family home in R6000 adjacent to single-family homes in R6000 adjacent to a vacant lot in R6000 which may become a 10-plex. It's not consistent now; it cannot be consistent the way it's written. The number of square feet you have within R6000 determines what you can do with it. All you have to do is put together sufficient square footage and you can do whatever you want, unless there is a special review provision." He added that he believed that the special review provision was presently necessary, and he pointed out if a more workable solution could be developed for the R6000 zoning, then maybe a special review would not be necessary.

Mayor Tooley asked Councilmember Elison if he would accept Mr. Watson's suggestion to include more than just the Zoning Commission in the review process. Councilmember Elison said that the exact wording of his initial amendment would be "the Zoning Commission should hold hearings to listen to all of these people. I was only putting the Zoning Commission as the responsible body and asking them to ask for input from all affected parties and then come forward to Council with a recommendation," he clarified. Mr. Watson said, "I think these issues are part of the discussion that will be in the minutes which establishes more of a clear-cut legislative intent as to why this is being rebounded back to this group to look at." Councilmember

Deisz said, “this to me, makes this as clear as mud. We were given a job to do tonight and we want to send it back for discussion. I’ll vote for it, but I think we’re negating our responsibilities in not making a decision. The building community and the realtors are waiting for direction, and we’ve just given them nothing.” Councilmember Bradley said he also felt that public input was necessary for the process and for the Zoning Commission to come back to City Council with recommendations.

With discussion concluded on the amendment, a voice vote was called. The amendment was unanimously approved. Discussion resumed on the main motion, as amended. Councilmember Larson made a substitute motion to approve the Zoning Commission recommendation (i.e. approval of the ordinance changing the requirements on R6000 zoning) and keeping the amendment (i.e. sending it back to the Zoning Commission for public input and a report on alternatives) intact, seconded by Councilmember Kennedy. Councilmember Larson explained the intent of his motion was to return the current R6000 to the position it was prior to the Unified Zoning Code and direct the Zoning Commission to review the entire R6000 classification and some of the other concerns to help Council resolve some of the problems that had been discussed this evening. Councilmember Kennedy asked that Councilmember Larson put a time limit on the request. Councilmember Larson said he would request a response from the Zoning Commission in six months. Councilmember McDanel said that he felt that the discussion of the development of the five 10-plexes in the Heights was a perfect example of why the special review requirement should be left as is until Council could be presented with workable options. He said it made sense to provide the development community with tremendous incentives for finding workable solutions and getting back to Council in a timely manner and at the same time protect the residents of those communities being affected. He also said that the resident’s rights had no protection without the special review process.

Mayor Tooley said he was concerned about the public process under the substitute motion. Councilmember Elison said that people should have actually been notified prior to the original change and a study should have been done at that time. He said he preferred to have the special review because with the current way the R6000 zoning reads, he could see situations in areas zoned R6000 with single-family residential on the south side where the Council may not approve a project that would buy up a block and put in eight 10-plexes. So he would prefer to maintain the special review until presented with other options. On a roll call vote on the substitute motion, the motion failed 2-8. Councilmembers voting “yes” were: Kennedy and Larson. Councilmembers voting “no” were: McDermott, Bradley, McDanel, Deisz, Tooley, Johnson, Ohnstad and Elison. On a roll call vote on the main motion as amended, the motion was approved 8-2.

Councilmembers voting “yes” were; McDermott, Bradley, McDanel, Tooley, Johnson, Ohnstad, Elison and Larson. Councilmembers voting “no” were: Deisz and Kennedy. The Zoning Code regulations on R6000 will remain the same as they currently are, but the Zoning Commission has been charged with reviewing these regulations, soliciting public input and offering some alternatives to the Council.

ADJOURN – With all discussion complete, the Mayor adjourned the meeting at 10:40 p.m.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AE CITY CLERK