

REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, JULY 12, 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 Gary McDanel.

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

MINUTES – The Minutes of the June 28th meeting were approved as printed.

COURTESIES – Mayor Tooley acknowledged the following people in the audience this evening: council candidates John Michunovich, Tammy Elliott and Danny Graves, Rep. Kim Gillan, Rueben Chen, a student at the Kennedy School of Business at Harvard University, who will be an intern to the Mayor this summer, Sen. John Bollinger and County Commissioner Ziggy Ziegler.

ADMINISTRATOR REPORTS – None

CONSENT AGENDA:

A. Mayor's Appointments:

- (1) Angela Cimmino to the Zoning Commission.

B. Bid Awards:

- (1) **Sale of Park Land in Byrnes-Stephens Subdivision.** (Opened 6/22/99). Delayed from 6/28/99. No bids received. Recommend discontinuing any further action to sell these lots at this time.

- (2) **BLIA Water Main Improvements – 1999.** (Opened 6/22/99). Delayed from 6/28/99. Recommend COP Construction, \$247,599.00.

- (3) **Janitorial Service.** (Opened 6/29/99). Recommend Automated Maintenance Service, \$17,500 for FY 1999-2000.

C. Change Order #2, MET Transit Garage Facility Addition, Jones Construction, Inc., \$57,758.00.

D. Change Order #1, Wastewater Treatment Plant Upgrade, Contract VIII: Centrifuge Addition, Star Service, Inc., \$18,107.00.

E. Change Order #2, Water Treatment Plant Upgrade, Contract IX: Clearwell Addition, Star Service, Inc., \$36,606.17 and 29 days.

F. Renewal of Lease with Airborne Freight Corporation, land and building space, 4-year term, \$9,742.56/year.

G. Contract with Teamsters Local 190, 2-year term: 7/1/1999 – 6/30/2001.

H. Contract Montana Department of Public Health and Human Services – Developmental Disabilities Division, paratransit service for specified individuals, 2-year term: 7/1/1999 – 6/30/2001, \$156,319 for FY 1999-2000 and \$157,882 for FY 2000-2001.

I. Agreement with Downtown Billings Partnership Inc., 1-year term: 7/1/1999-6/30/2000, \$216,455.00.

J. Agreements with MDOT re: STPHS 0002(78): District 5 Electrical Traffic Safety Projects, defining the roles and responsibilities of the two agencies regarding the installation/maintenance of traffic control improvements at five intersections.

K. Acknowledging receipt of Petition to Annex #99-02: C/S 2866, Tracts 1 & 2, Joy & Lennie Turner, petitioners, and setting a public hearing for 7/26/99.

L. Resolution of Intention 99-17468 to order in W.O. 99-02, Contract #2: Broadwater Subdivision Improvements, Phase II, and setting a public hearing for 8/9/99.

M. Resolution of Intention 99-17469 to Create SID 1342: Street and Utility improvements in Lake Hills Subdivision, 23rd and 24th filings, repealing Res 99-17458 and setting a public hearing for 8/9/99.

N. Final Bond Resolution 99-17470 relating to \$685,000 Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 1999A: for Broadwater Subdivision Improvements, Phase I.

O. Resolution 99-17471 amending the boundaries of Special Improvement Lighting Maintenance Districts #160 and 235.

P. Preliminary approval of Resolution 99-17472 spreading the original costs on SID 9903 for W.O. 95-15: St. Andrew's Drive Sidewalk Program, and setting a public hearing for 7/26/99.

Q. Resolution 99-17473 temporarily reducing the fees established for building, electrical, plumbing and mechanical permits by 10%, from 7/15/99 to 6/30/2000.

- R. **Final plat** of Amended Lot 4, Block 2, Brewington Subdivision.
- S. **Final plat** of Amended Lot 6, Block 4, Superior Homes Subdivision.
- T. **Bills and Payroll.**

(Action: approval or disapproval of Consent Agenda.)

Councilmember Deisz separated Item I. Councilmember Larson moved for approval of the Consent Agenda EXCEPT Item I, seconded by Councilmember Elison. On a voice vote, the motion was approved. Councilmember Larson moved for approval of Item I, seconded by Councilmember Johnson. Councilmember Deisz amended the motion to change Paragraph 4 to state that verbal and written reports would be provided, to include a detailed summary of financial expenditures, seconded by Councilmember Bradley. On a voice vote, the amended motion was approved. On a vote on the main motion as amended, the motion was approved.

REGULAR AGENDA:

2. RESOLUTION 99-17474 ADOPTING the Annual Budget for FY 1999-2000. Staff recommends approval with technical amendments. (Action: approval or disapproval of staff recommendation.)

Councilmember Bradley moved for approval of the budget with the technical amendments, seconded by Councilmember Iverson. Councilmember Deisz said he would be voting against the budget for the following reasons: (1) the severe spending increases and growth in the budget in the four years he's been on the council. "In 1995, the budget was \$102 Million and this year we are approving expenditures of \$139 Million." (2) failure of the staff or the council's direction to staff to do anything about the tax and spend attitude. "There are three fee increases in this budget. Don't forget the Public Works Dept. wanted another street maintenance district increase, but we told them they could maybe have it next year." (3) the public safety and child safety. "When we as a council ... don't even feel comfortable to tell our city manager or staff to give us two or three flashing lights at 32nd Street West and/or Lake Elmo. The cost of these -- \$15,000 or \$18,000 would represent less than 1/10th of 1% of this total budget."

Councilmember Larson amended the motion to amend Item 1B under the General Fund re: the \$25,000 for the promotion of the skateboard park project, to give \$15,000 to the Police Department for a volunteer coordinator, leaving the remaining \$10,000 for the skateboard park, seconded by Councilmember McDanel. Councilmember Larson said he is presenting this item at this point because he and Councilmember McDanel have been working with the Community Crime Prevention Council to return them to a healthy financial position. The CCPC has paid off all of its

past overdue bills and now has money in the bank. A number of volunteers are being reinstated. He said he is not optimistic about the ability of the CCPC to fulfill one of its primary obligations to the Police Dept – the recruitment and training of volunteers for the COP Shop program. Councilmember Larson said he has discussed this situation with the Police Chief, and while the Chief prefers to have the volunteer program continue to be a privately led effort, he believes hiring a part-time volunteer coordinator would insure that the volunteers needed to staff the COP Shops would be continued. Councilmember McDanel said at the time the police department budget was discussed, it was not clear that the CCPC could no longer provide this service. Councilmember Deisz asked if the reason the CCPC could no longer provide this service was because the City was no longer funding the CCPC with \$35,000. Councilmember Larson said this was not the reason. He said the CCPC is currently operating without any paid staff.

The feeling was that this position would require someone giving a substantial focus to the program on a regular basis. Councilmember Larson said the CCPC will have a Volunteer Montana person in September and will be developing more along that line, as opposed to having a full-time paid staff. Councilmember Deisz asked if the \$15,000 were given to the CCPC, could they find a volunteer coordinator. Councilmember McDanel replied that the CCPC feels they could no longer adequately perform this function. They are focusing on their core programs, things people associate with them – McGruff House, Crimestoppers, Neighborhood Watch, etc. to rebuild their organization. He said this is just a part of the evolution, growth or rebirth of that organization. Councilmember Deisz asked if there is somewhere else from which to get the \$15,000 because a lot of people are depending on the \$25,000 for the skateboard project. Acting City Administrator Bill McGill said that when this issue was discussed with the Police Chief and Councilmember Larson, the idea was to maintain the balanced budget before the council tonight. He said staff would support the current motion.

Councilmember Johnson said he has a hard time understanding how you can change a budget item for a different use, but the council is not willing to consider use of a contingency. He said a number of the councilmembers worked hard to try to “correct an ill” in the downtown area where the young people go to enjoy skateboarding. He said they are doing it in some of the wrong places and the proposal is a way to address that. “Business in this community and the downtown are not about to stand out in front of the stores and complain about the children of the folks who bank there or come there or pick up the mail or whatever they do there. That is not good for business,” said Councilmember Johnson amended the motion to provide the \$15,000 from some contingency rather than from a program the council endorsed, seconded by Councilmember Deisz. Councilmember Elison said he would not support a motion for random contingency source that staff is supposed to locate somewhere.

Councilmember Larson said he chose the skateboard project because “frankly there is no skateboard project on the table right now. There may be a conceptual drawing, but it will be difficult to locate a piece of ground near the downtown that anyone would be willing to give up for this activity. Realistically we are some time away, probably at least through the school year before we can identify a location and actually

begin the project. It will take public input on that location... By leaving this at \$10,000 we at least are participating. We can add to that as we go down the road, plus the opportunity for CDBG funding also exists. In an effort not to unbalance the budget or send staff off looking for some phantom source of funds, this seemed relatively clean.” He said he would rather see the council vote down the concept of a volunteer coordinator, rather than unbalancing the budget over this issue.

Councilmember McDanel said he believes the \$10,000 would still allow the skateboard project to move forward. Downtown business people and property owners are now involved in the process and helping look. He said he thought private contributions and CDBG funds were viable sources. Councilmember McDanel said he thought they were at least a year away from actually moving forward on a project. “However if something came to us that was so wonderful that we could do it if we had the money quickly, I would be eager to pursue Council Contingency funding at that time,” he stated. On a voice vote on the amendment by Councilmember Johnson, the motion failed. On a voice vote on the amendment by Councilmember Larson, the motion was approved. Councilmembers Bradley and Deisz voted “no”.

Councilmember Elison said this budget is a “business as usual” budget. He noted staff has worked very hard to balance it. Looking ahead for the next five years, he noticed that the projected mill levy “goes up and up and up... It looks like the City is in a position to either be in a several shortfall situation or ask the citizens to ante up more money... The budget does not take a look at making substantial cuts; there are no lost services; there are no dramatically reduced hours of operation of anything or even significant considerations of where those dollars could come from. I don’t like looking at a projection showing an increase of millage of 35 mills over the next 3-4 years, when a budget seems to just roll along ‘business as usual’ without a dramatic effort to cut or a consideration of cutting services rather than raising taxes.”

Councilmember Larson reminded the council that a large share of the increases in the budget are for personnel costs – built in increases for cost of living raises etc. He said one of the objectives of the COLA is to obtain the labor force. “Then we send out our Human Resource people and say at all cost, we don’t want strikes. We don’t want those types of issues to come up. So, when we go to deal with the Police or Fire Union and the Teamsters, we sign two-year contracts that guarantee we are going to have to go back and either cut services in some other area, not affecting those particular people or we are going to have to raise the dollars through a tax increase. We don’t have that many options. We can’t make it up in pencils and paper products... If the people of Billings are truly interested in dealing with the cost of doing business, we have two options: (1) we can try to do less, fewer services, which is not the trend. People are asking for more services. (2) continue to go to the taxpayer until they say ‘no, no way’ then we’ll definitely be back here talking about reducing hours, because we won’t have a choice.” He said the choices are clear, but not very comfortable.

Councilmember Johnson said he regretted having to spend time this evening looking for a few thousand dollars for two very important items – the volunteer coordinator and the skateboard park. He said the citizens of the community just last fall said, “don’t cut those places; we will vote those mills and we’ll give them to you to use...”

I'm sorry to see -- as I vote for this budget, that we can't put in a pair of flashing yellow lights at Boulder Avenue School, or Bench School or the other three requests from schools talking about school children safety. There are so many things to be done with the \$139 Million," he stated. He again asked staff to look at other places to fund the \$15,000.

Councilmember Deisz said last year when everyone debated the mill levy, everyone on the council said they would be ready "to get out their red ink pen if it didn't pass. Then it passed and CI-75 also passed. So, you all said we'll get our red pens out anyway and we will hold the line this year... That's what I heard all of you say. And, guess what? You just voted to increase another person; that's 10 new positions with this budget. You haven't held the line... You also told the public that you were going to get 20 mills, 5 mills/year for the next 4 years. They haven't even paid their first year's assessment and we are being forced to look at a mill increase tonight when we pass the bond issue. So, I want to realize I listened to what you said last year. I even believed you," he stated. On a voice vote on main motion as amended, the motion was approved. Councilmember Deisz voted "no".

3. OUTDOOR RECREATION CENTER/POOLS PROPOSAL:

- (1) **RESOLUTION 99-17475 making Findings necessary to allow Voter approval of Tax Liabilities Exceeding existing limits. Staff recommends approval. (Action: approval or disapproval of resolution.)**
- (2) **First reading ORDINANCE amending the City Charter providing a 2.3 dedicated Mill Levy for Operation and Maintenance of a New Recreation Center and Three Outdoor City Pools, and setting a public hearing for 7/26/99. Staff recommends approval. (Action: approval or disapproval of ordinance on first reading.)**

RE: RESOLUTION 99-17475:

Councilmember McDanel moved for approval of the resolution, seconded by Councilmember Deisz. Councilmember Larson said he would be abstaining because of his conflict of interest. On a voice vote, the motion was unanimously approved.

RE: ORDINANCE AMENDING CITY CHARTER:

Councilmember McDanel moved for approval of the ordinance on first reading, seconded by Councilmember Deisz. Councilmember McDanel asked the Finance Director to address any new developments on this item. Finance Director Nathan Tubergen said he has been working with bond counsel on the proposed General Obligation Bond Issue. There have been several changes in state law since the City last issued a G.O. bond. One of the changes affects the calculation the City needs to do to prepare the taxing limit with G.O. bonds v. the taxable value of the City. The second issue that has arisen is that of a single purpose bond issue. Mr. Tubergen said two

resolutions would be prepared in regard to the bond issue – for consideration by the council. The pros and cons of each will be discussed at the July 19th Agenda Meeting.

Councilmember McDanel said the resolution referred to is basically the resolution moving forward the request to the voters of a dedicated 2.3 mills to maintain the aquatic systems within the City of Billings. Currently the aquatic facilities operate at a net annual loss. The loss is between \$30 - \$70,000/year. The council has in the past considered raising the rates for children utilizing the aquatic facilities, but has rejected that option as not being community minded. “It’s my belief that the cost of a service should be paid for with money that is clearly a straight line from your pocket to that service. This 2.3 mills does that exactly. It dedicates that money to the operation and maintenance of those facilities throughout the City and allows some opportunity to rebuild them in the future if they require major and significant renovations,” he stated.

Councilmember Deisz asked if a 25% voter turnout was required to pass the mill levy. City Attorney Brent Brooks confirmed that was true. Councilmember Deisz asked if the mill levy is attached to the pool issue, so that if it or the pool issue fails, they both “go down”. Mr. Brooks said that was correct. Councilmember Bradley amended the motion to include the Athletic Park/Cobb Field proposal in the bond issue. The motion died for lack of a second. On a voice vote on the main motion, the motion was approved. Councilmember Bradley voted “no”.

4. COBB FIELD/ATHLETIC PARK BOND ISSUE. (McDermott) (Action: approval or disapproval of proposal.)

Councilmember Deisz moved for approval of the bond issue, seconded by Councilmember Bradley. Councilmember Larson said he would be abstaining from voting because of a conflict of interest. On a voice vote, the motion failed. Councilmember Bradley cast the only “yes” vote.

5. RESOLUTION calling for a primary election for City Council candidates. (Action: approval or disapproval of resolution.)

Councilmember Iverson moved for approval of the resolution, seconded by Councilmember Johnson. Mayor Tooley said current state law does not require cities or counties to hold a primary election unless there are an abundant number of candidates in each race. But it does allow a local government to call for a primary election in the cases where there are several candidates in each race. He explained that 3 of the 5 wards have several candidates who filed for election. “My intention in putting this on the floor for discussion by the Council was to make sure the Council understood that there is a very good chance that one or more of these 3 seats may be won by someone who did not get a majority of the votes of the people voting in that ward. I want everyone to understand what is at stake here... Theoretically we could have a majority of the new Councilmembers elected by a minority of constituents,” he stated.

Councilmember Deisz said he disagrees with that concept. "If we accept the premise that we want more people to turn out, why would we be providing this as an option in an off-year City election? Traditionally, the City election typically has the smallest turnout of any election held in City limits and secondly, an off-year is even smaller. We just passed a mill levy resolution, which everybody here at this table except yourself Mr. Mayor, has said they would go out and support. You advised us last week that you would not publicly support it. We need a 25% turnout in order to get this thing passed. In talking to Mr. Winslow at the Election Department, his question to me was: 'why would you want to cut down the chances of having a good turnout at a general election, when you have hotly contested races, by pulling it off and having a primary?' My answer was: 'I don't know.' But, the most important reason I can offer this evening for not having a primary is the cost... The cost will be approximately \$29,000 to hold this election. Now, I ask you, why would you submit this to the taxpayers as a needed expense, when we are all looking to cut expenses? ...This state legislature specifically enacted this so that we, the City of Billings and other communities could save money by not having unnecessary elections. There is a mandate under the state law whereby a City primary is called for. We do not meet that," he stated.

Councilmember Johnson said he didn't think the City needed to spend the money for the primary. Mayor Tooley said he didn't think this would cut down on the interest of the voting public. It will add to the interest from the voters if there is both a primary and a general election. The City Attorney has researched the state law and said this is proper procedure to consider a primary election. "Democracy is expensive! Democracy does not come cheap. If you want to have a democracy where people are elected by a majority of the voters, then you need a primary election," he stated. On a roll call vote, the motion failed. Councilmembers voting "yes" were: Iverson, Tooley, Ohnstad and Elison. Councilmembers voting "no" were: Bradley, McDanel, Deisz, Johnson and Larson.

6. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5090 relating to the City of Billings Revolving Loan program modifications and renaming the program and making certain other findings related thereto and repealing Ordinance #99-5087. Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)

The public hearing was opened. MARY WESTWOOD OF 1432 YELLOWSTONE AVENUE said she is a board member of the Downtown Partnership Inc. The board met last Friday and has requested some minor changes as follows:

- Section 13-1106: re: loan application and underwriting criteria. Language should state that the City Administrator is to develop program guidelines in conjunction with the Downtown Billings Partnership Inc.

- Section 3: re: who is responsible for reporting to the Council. The language should be changed to read the Downtown Billings Partnership Inc., or its designee.

There were no other speakers. The public hearing was closed. Councilmember Johnson moved for approval of the ordinance on second reading, seconded by Councilmember Deisz. Councilmember Deisz amended the motion to add the corrections requested by the Downtown Billings Partnership Inc., seconded by Councilmember Johnson. Finance Director Nathan Tubergen said he had no problem with the requested changes. On a voice vote on the amendment, the motion was unanimously approved. On a voice vote on the main motion as amended, the motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION 99-17476 vacating a portion of North 28th Street and the 80-foot dedicated right-of-way, lying between the north right-of-way line of 12th Avenue North and the seventh right-of-way line of Poly Drive, being that portion of North 28th Street lying between Block 1, Normal Subdivision on the easterly side of the street and Block 2 of Normal Subdivision on the westerly side of the street. MSU-Billings and St. Vincent Hospital and Health Center, petitioners. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Public Works Director Kurt Corey said the request is for a closure of North 28th Street between 12th Avenue North and Poly Drive. He noted that it follows in line with previous vacations of right-of-way in the medical corridor, and a continued evolution of the medical corridor in developing into more of a campus-like environment. This petition was submitted by St. Vincent Hospital and Hospital in conjunction with their ongoing expansion plans. Staff reviewed the request and recommends approval subject to the final negotiation of a Development Agreement with the petitioners that the Council would receive for consideration and action at a later date.

The public hearing was opened. KEITH RUPERT AND MICHAEL O'LEAERY OF CTA ARCHITECTS said they represent St. Vincent Hospital and Health Center, one of the petitioners. Mr. Rupert said the purpose of the vacation is to provide better access to services and parking. The completion of the new ambulatory care center, which becomes the primary entrance to the hospital has moved the traffic away from the existing parking area. This vacation will help rectify that situation. Planning for their current facilities expansion project started about two years ago. This is the end of a 10-year expansion plan. Several of the main features of the plan include the addition of 130+ new parking spaces, right-turn lanes, medical corridor landscaping standards, improved turn radius at the corner of Poly Drive and 27th Street, screened and improved loading dock, controlled lots for staff and doctors, fewer drives off of North 27th Street and a new water main in North 28th Street. He urged the council to approve their

request. Councilmember Bradley asked if the buildings along 27th Street would be demolished to improve the turning radius. Mr. Rupert said the demolition has already occurred.

ECHO BARFIELD, DIRECTOR OF FACILITIES AT MSU-BILLINGS said they support the project because it will enhance the green space in the area and facilitate a pedestrian corridor.

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

8. PUBLIC HEARING AND RESOLUTION 99-17477 vacating an area of right-of-way 20 ft by 150 ft on the northeast corner, adjoining North 31st Street between 2nd and 3rd Avenues North, being the west 20 ft north-south adjacent to Lots 13-18, Block 55 O.T. St. Patrick's Co-Cathedral, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Engineer Brian Borgstadt said the co-cathedral came forward with this request to facilitate its expansion in front of the church, to add a gathering space. They are also trying to maintain access to the front of the church for funerals, weddings, etc. typically accessed by vehicles in front of the church. Staff recommended that the vacation be approved, subject to the public hearing and approval of a Development Agreement. Staff has reviewed the traffic in the area and are confident that they can make this proposal work. Only a fraction of the right-of-way is being vacated; the balance can be used to carry existing traffic. The church would like to move forward with the project this year. The only thing that needs to be worked out is the Development Agreement. Councilmember Bradley asked if there was a reduction in the number of parking spaces on the street. Mr. Borgstadt said there are several alternatives being considered, including diagonal parking in front of the cathedral in order to accommodate the drop-off lane they would like to have. Mr. Bradley said he was concerned about the loss of parking along 3rd Avenue with the bulbs that would extend past the right-of-way. Mr. Borgstadt said it was possible that a few spaces would be lost there. He said that one of the problems staff is trying to address is an accident problem at that intersection. In bulbing out, you start to move the parked vehicles back so that it opens up view of the intersection. One of the ways to try to pick up parking spaces is to look at angle parking in front of the cathedral property.

Councilmember Elison said it would seem that one of the causes of accidents at that intersection is having 2 lanes with only a stop sign at the intersection. He asked if eliminating having one through lane would mitigate the accident problem. Mr. Borgstadt said it would. Councilmember Deisz asked if the June 3rd memo is to be accepted as part of the package to be voted on tonight or just comments to consider. Mr. Borgstadt

replied they are the opinion of the traffic engineer and the concerns he has and are comments to consider. Mr. Deisz also referred to a comment that refers to the importance of the City understanding and acknowledging that the tradeoff in approving this vacation is that the City limits its ability to deal with significant traffic growth on North 31st St. He asked how concerned he should be with that comment. Mr. Borgstadt said it is merely a fact. Once the ROW is vacated and given to the church, the City no longer controls it. It is church property and they need to be able to count on that in the building of their addition. The City will still have two lanes when the project is completed.

The public hearing is opened. FR. JOHN HOULIHAN OF ST. PATRICK'S CO-CATHEDRAL thanked the Council for considering their request. He introduced Michael Burke, the architect working on their expansion project. MICHAEL BURKE OF 2101 LOCUST said he is a parishioner at St. Patrick's and an architect. He summarized the proposed project and noted that they have worked with City staff to work out about 99% of the concerns expressed by the City Traffic Engineer and will continue to work out the rest of them. The church has been downtown for nearly 100 years and is a major player in property ownership and community activities. The question was asked about parking spaces. He said it will probably be an even exchange by the time the diagonal parking is in place and the street parking is decreased. Councilmember Deisz asked if the cost of re-striping would be borne by the church. Mr. Burke said it was his understanding that the city will take responsibility of the traffic issues and the church will take responsibility for the remaining area. Councilmember Deisz said the letter in the packet suggested the church would be responsible for the striping. Public Works Director Kurt Corey said there would be a development agreement brought back to the council. He noted the City has identified the accident problem at the intersection of 3rd Avenue North and North 31st and has consistently suggested some solutions. The issue of striping will become part of the development process and will represent minimal cost to the church.

SANDY FISHER, NO ADDRESS GIVEN, said she is a member of the Traffic Control Board. The Board neither supported nor opposed this request, but was concerned about the impacts without a quantified traffic study. She noted that a traffic study would part of the development agreement and it could be the basis of approval or disapproval of the vacation. There was not likely to be any traffic conflicts. The Board was concerned that the City is looking at these issues piecemeal instead of according to an overall traffic plan for the downtown area. She suggested that some of the existing plans for downtown should be integrated with an overall traffic plan for the downtown area.

JUDY MCCORMICK OF 607 AVENUE F, #5, said she is president of the parish council at St. Patrick's and a parishioner for almost 20 years. She submitted a petition of support from their parishioners and other people supporting the project.

JOHN BOLLINGER OF 2233 REMINGTON SQUARE said the church is a community asset and the proposal will enhance the community. As a member of the parish, 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 staff recommendation, seconded by Councilmember Larson. Councilmember Larson said this project is the type of project envisioned in the Downtown Plan – options for the downtown to include parking, traffic dampening, etc. He said he agreed with Ms. Fisher that it is incumbent upon the council not to do this traffic planning piecemeal. “We have got to deal with this issue long-term – where is it and where is it not... One of the unfortunate things about a wonderful structure like this downtown landmark is that it has no place to grow. There are few options... The proposal accomplishes a number of things: it’s a very attractive pedestrian area, which is what we want, more people walking around the downtown,” he stated. He said he thought the council would see more of these types of projects as the downtown continues to grow. On a voice vote on the motion to approve the staff recommendation, the motion was unanimously approved.

Mayor Tooley called a brief recess at 8:55 p.m. The meeting was called back to order at 9:00 p.m.

9. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5091 providing that Section 6-1042 BMCC be amended to allow subsurface foundation walls to remain if it is safe to do so. Staff 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.

10. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5092 to amend Section 24-443 BMCC to permit placing time limitations on the curbside handicapped parking spaces at Billings Logan International Airport. Staff 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 Bradley moved for approval of the ordinance on second reading, seconded by Councilmember Deisz. Councilmember Johnson asked if this means restrictions on curbside parking only. Aviation/Transit Director Bruce Putnam

replied that it did only apply to curbside parking. This is in response to incidents like the Oklahoma City bombing and the Jersey Rail vehicle search procedures they are required to have in place. He said this eliminates the conflict between federal regulatory law and city ordinance. Councilmember Elison asked if the same 10-minute time limit would apply, as with anyone else. Mr. Putnam replied that it would be the same. On a voice vote, the motion was unanimously approved.

11. PUBLIC HEARING AND RESOLUTION 99-17478 annexing a portion of T1N-R26E-S27: NW4NW4SW4, containing 22,743 sf located at the northeast corner of Main Street and Lake Elmo Drive. John Q. Hammons, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Zoning Coordinator Jeff Bollman said this annexation in an unplatted parcel located on the northeast corner of Main Street and Lake Elmo Drive. The existing city boundaries go around this triangular shaped piece of property. It contains about a ½ acre. Once the property is annexed into the city, it will be aggregated with some of the adjoining parcels to create a larger parcel. The property is current vacant. Once the aggregation is complete, it is proposed to be the site of a new restaurant. Staff has recommended approval of the annexation with one condition: a development agreement or Subdivision Improvement Agreement be filed on this property.

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

12. CIRCLE FIFTY SUBDIVISION:

(A) **PUBLIC HEARING AND RESOLUTION 99-17479 creating SID 1341: park improvements in Circle Fifty Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

(B) **PUBLIC HEARING AND RESOLUTION 99-17481 creating Extended Maintenance District #4012: park maintenance for improvements installed as part of SID 1341. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Public Works Director Kurt Corey said the public hearings this evening are to consider the creation of SID 1341 to construct park improvements in Circle Fifty Subdivision and an accompany maintenance district #4012 for the maintenance of

these improvements. Circle Fifty Subdivision is located at the intersection of Shiloh Road and Grand Avenue. The proposed district has 202 parcels with an estimated construction cost of \$564,000. The park was identified in the Circle Fifty Master Plan and covered in the Subdivision Improvements Agreement. All properties as a result have filed a Waiver of Protest for this type of improvement. The SIA further stipulates that a maintenance district be created to provide for perpetual and ongoing maintenance of the park. Within the demographics of the project, the average assessment spread among the 202 parcels is \$2800, with a median assessment of \$1300, a high assessment of \$41,000 and a low of \$0. The resolution of intent was passed on June 14th. The formal protest period ended July 9th and resulted in a total protest of 1%. Staff therefore recommends approval of the creation of the district and the maintenance district. The estimated first year cost of the maintenance district is about \$20,000, translating to an annual assessment of \$68 for a 10,000 sf lot.

Councilmember Johnson asked if there is any chance for expansion of that small park. Mr. Corey said a representative of the developer, who is in the audience this evening can reply to that question. Councilmember Alison asked how much of this subdivision is currently built. Mr. Corey said about 50% is currently built. The raw land district requirements are met by virtue of previous assessments having been levied and paid. Councilmember Alison asked why the maintenance district is coming forward at this time, rather than when it is 80-90% built. Mr. Corey said this is at the request of the property owners and is a marketing tool for the remaining undeveloped parcels.

Mayor Tooley announced the public hearing would be a joint hearing for both items. The public hearing was opened. TOM LEWELLYN OF 2110 OVERLAND AVENUE said he is the developer for the project. He said the park was requested because there are a lot of children in the neighborhood and a lot of people living in the area that have small children who currently play in the street. A safe place for them to play is needed because of the large volumes of traffic in the area. The subdivision started with its first home about 2 ½ years ago. There are currently 48 homes built in the subdivision, plus the townhomes, plus 75 occupied apartments, plus 175 more apartments under construction and the commercial establishments. Everyone is participating in the cost of the park. Mr. Lewellyn said it adds to the neighborhood and to the community.

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

13. PUBLIC HEARING AND RESOLUTION 99-17480 ordering in the improvements of W.O. 99-02, Contract #3: 1999 Developer-Related Curb, Gutter and Sidewalk Program. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Engineer Brian Borgstadt said this project includes both the improvements of the 1999 Developer – Related program and the Miscellaneous Program. Because both projects were so small, they were combined into one contract this year. The type of work involved in this contract includes the following:

- Recent development in subdivisions that have not fulfilled the requirements of their permit
- Miscellaneous repair warranted. These repairs precede the PAVER program that will take care of the overlays in town. These also include citizen complaints about injuries or falls on faulty sidewalk.
- Property owner requests. These are requests from people that wanted their curb, gutter and sidewalk improved.
- Some PUD warranty work. In 1995, a PUD project resulted in some failures of alley approaches and sidewalk work. The contractor defaulted on those repairs. The bonding company has provided funding to make those curb and gutter repairs.

Mr. Borgstadt reminded the council that property owners are sent a 30-day notice in advance of the project and given the opportunity to enter into their own contract to take care of their improvements. Some improvements are actually completed in this fashion and not included in the program. The project is about \$400,000, resulting total estimated direct assessments of \$225,000 after City contributions are deducted. The resolution of intent was passed on June 14th. Following the public hearing this evening, a 30-day notice will be sent out to give property owners an opportunity to obtain a permit to do the work with their own contractor outside the program. An August 3rd bid opening for the project is projected. The contractor will be awarded and completed by this fall.

Councilmember Bradley asked whom the contractor was that defaulted on the warranty work and will they be excluded from bidding on this project. Mr. Borgstadt said the contractor was Holm Sutherland, who is no longer in business. Councilmember Johnson asked how far west the project is going, noting that Locust was listed. Mr. Borgstadt replied that the Locust property was included at property owner request. The park in the triangle at 30th and Poly Drive will also be done. Mr. Johnson said the west side of Locust from Grandview to 12th Street is in dire need of repair, with heaves in the road from old trees pushing the pavement up.

The public hearing was opened. RICHARD WEBER OF 1215 NORTH 31ST STREET said he had no problem with replacing sidewalk, but Locust is far worse than his sidewalks and Virginia Lane has missing sidewalk. Other sidewalk running down Virginia Lane is totally deteriorated. He said he lives, walks and pushes a stroller with his 10-month old in it in that neighborhood a lot. He said there are places there that are far worse than his block is. In his block there truly "rolling" sidewalks because of what the trees have done. "It's a roller coaster ride granted; they are not smooth and don't have the grade they are supposed to have. You don't have a six-inch step and two pieces of concrete. Whereas in other locations you have a six-inch step and a foot on Locust," he stated. He said he received an estimate from Engineering for \$200 to remove and replace a 6-ft square of concrete. He said only the sections that are bad should be replaced, not the whole sidewalk.

There were no other speakers. The public hearing was closed. Councilmember Iverson moved for approval of the staff recommendation, seconded by Councilmember Johnson. Councilmember Elison requested that someone from the City Engineer's Office talk to Mr. Weber about replacing only the necessary sections of sidewalk. On a voice vote, the motion was unanimously approved.

14. ZONE CHANGE #647:

- (A) **DEVELOPMENT AGREEMENT.** (Delayed from 6/14/99 and 6/28/99). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

- (B) **PUBLIC HEARING AND SECOND READING ORDINANCE FOR ZONE CHANGE #647: a zone change from Residential 6000 to Planned Development with underlying zones of Single Family (Manufactured and Modular Homes) and Residential 6000 (4-plexes) on the S2S2NW4SW4 of Section 23, Township 1 North, Range 26 East, lying west of the old railroad right-of-way, located at 5021 Bench Boulevard. Roy and Betty Clause, owners; Engineering, Inc., agent.** Zoning Commission recommends approval. (Delayed from 6/28/99). Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)

Zoning Coordinator Jeff Bollman reminded the council that at a previous action, the zone change ordinance was approved on first reading, but the development plan was denied. The council made some suggestions as to modifications that could be made and indicated a desire that the developer work with the neighborhood to come up with an agreement that everyone could live with. The agent will be presenting the council with the latest version of the development plan. He summarized some of the changes that have been made since the first version:

- Lots were created to allow modular or stick-built homes only—toward the east side of the development area, where the neighbors had expressed concern
- The four-plexes on the extreme east side of the development area will be limited to one story and will be either two duplex units or one four-plex unit
- Minimum lot size for single family area has been reduced slightly
- Additional paragraphs added per the request of the City Attorney

Mr. Bollman reminded the council that a valid protest is still in effect for the second reading of the zone change ordinance. It will require that all (9) members present this evening vote in favor of the ordinance to approve the zone change. The development agreement requires a simple majority to be approved. Councilmember Deisz asked if the council has all of the information up to date and if there were any additional last minute changes. Mr. Bollman said Mr. Leuthold, the agent can respond to that. Councilmember Deisz asked if anyone has requested that their name be withdrawn from the valid protest. Mr. Bollman indicated that Lucien Ball had requested that his name be withdrawn. However, the way the valid protest provision is set up, if 20% of any one of the four sides protests, it constitutes a valid protest. He said there is still 20% on the east and north sides that have NOT withdrawn their names from the protest petition.

The public hearing was opened. RICK LEUTHOLD OF ENGINEERING INC, 1001 S. 24th St West said the negotiation on the development agreement has been a back & forth process for the past few weeks. On June 14th the council approved the zone change on first reading and requested that they go back to the neighbors and adjust the development agreement, which they have done. A neighborhood meeting was held on June 30th. They met with representatives of the neighborhood to hammer out differences. The current version was submitted to the City Clerk on July 8th to be sent out to the Council in their Friday packets on July 9th. The City Attorney forwarded his additions to Mr. Leuthold on July 9th and they have been included in the final document that the City Attorney has in hand at this time. The only change in the final agreement was Item 4D re: minimum lot size. The lot layout has been reworked to allow smaller lots for the manufactured homes and the lot size maintained for the modular homes and duplexes or four-plexes. The minimum lot size changed to 9100 sf. The other five paragraphs were added verbatim per Mr. Brooks' request. Councilmember McDanel asked if there was any willingness from the residents about their willingness to withdraw their protests. Mr. Leuthold said some did indicate they were willing to do so. Those that indicated they no longer protested the development include: Lucian Ball, Bill and Valerie Giesig, the McKenzies, and the Jensens and their neighbors. Councilmember Deisz asked if they got letters removing their names from the protest. Mr. Leuthold said the only letter that was requested was from Mr. Lucian

Ball. A letter removing names from the protest was not requested from the other parties.

There were no other speakers. The public hearing was closed. Councilmember Johnson moved for approval of the development agreement, seconded by Councilmember Ohnstad. On a voice vote, the motion was approved. Councilmember Deisz voted "no". Councilmember Johnson moved for approval of the ordinance on second reading, seconded by Councilmember Larson. Councilmember Deisz said he was contacted by two property owners who asked him to vote against the zone change because of the legal protest. Councilmember McDanel said he is torn because while there is a legal protest, the developer has followed the direction of this council and tried to work with the neighborhood. He has not received any calls from that neighborhood recently. Councilmember Iverson asked for clarification about the need for all of them in attendance tonight needing to vote for the ordinance in order for the zone change to be approved. Mr. Bollman confirmed that. Councilmember Larson asked what options the developer has if the zone change is denied tonight. City Attorney Brent Brooks replied that he could not reapply for a zone change on this property for one year. Councilmember Johnson said the current proposal seems more workable than it did in the beginning. He reminded the council that the purpose of the development is to provide affordable housing in the Billings Heights community. Councilmember Larson made a substitute motion to postpone the vote on the second reading of the ordinance for two weeks, seconded by Councilmember Elison. Councilmember Larson said the council is again faced with the valid protest issue. He said the council needs to verify if that valid protest still exists. He wants to see the developer work with the neighborhood to see if he can obtain some written withdrawals of protest so that a valid protest no longer exists, as opposed to "killing it tonight and forcing it into a year-long wait." Councilmember McDanel said he believes the valid protest may no longer be there and if that is the case, the project should move forward. If the valid protest still exists, the council needs to have that reconfirmed. Councilmember Deisz said, "I am loath to overturn a valid protest when it exists, especially when it is my own neighborhood." On a voice vote, the substitute motion to delay was unanimously approved.

15. PUBLIC HEARING CONTINUED AND FIRST READING ORDINANCE FOR ZONE CHANGE #649: a zone change application from Planned Unit Development to Residential Manufactured Home on Tract A of Amended C/S 657, generally located on the south side of King Avenue East, between Jackson Street and Ponderosa Elementary School. F.C. Pierce II, owner. Zoning Commission recommends approval. (Action delayed from 6/28/99). (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this zone change has a valid protest. One of the property owners signing that protest petition – the radio station, has submitted a letter of complete withdrawal of protest. This removes the valid protest for the zone change.

Councilmember Elison asked if the potential for flooding in that area has been considered. Mr. Bollman said some of those issues have been previously reviewed by the City Engineer's Office.

The public hearing was continued from June 28th. BRIAN ARCHER OF 912 JACKSON ST. said he opposes the request because he does not want to see 30 trailers in his backyard. He said he owns two lots in the protest area. There is no change in what Mr. Pierce is proposing to do. He has not presented a plan for what he intends to do with that property.

CHARLES WILLIAMS, NO ADDRESS GIVEN, said he also lives on Jackson Street. He also opposes the request because he would prefer to see modular homes built on the property. He is concerned about the loss of value on his property when trailers that are 12 years old are brought in. He thought the development should be developed before it is sold. Mr. Williams said there are at least 370+ trailers in his area already.

FRED PIERCE, THE APPLICANT said he wrote to all of the people in the neighborhood and told them to call him with questions. He said he received no calls. Councilmember Johnson said he did not feel where children in future residences in the development can get to school. Mr. Pierce said that was true, but that was also true with the Kings Green Subdivision. Children need to cross the bridge and a street to get to school. Mayor Tooley asked if he could respond to Mr. William's concern about development before the lots are sold. Mr. Pierce said even stick built homes don't put in landscaping before it is developed. He said he did not intend to put in 30 mobile homes on the property, noting he hasn't quite figured out how to limit it yet. He's thinking of putting in some type of covenants.

VICKIE ARCHER OF 912 JACKSON STREET said she is still concerned about the traffic in the area, noting that Tract 1B will be the only way in and out of the proposed development. That street in the morning is already dangerous with traffic and school children darting in and out of traffic on their way to school. The ditch in the area has been dug deeper and several larger culverts installed to handle the flooding problems in the area. Ms. Archer said the last time someone commented that this property had been on tax deed sale several times. She noted that she researched that at her office today. That property has not been a tax deed sale property. Adjacent parcels have been on tax deed sale several times. Taxes have been paid and the county has never had any interest in the subject property. She said they deal with people who come in with problems in their subdivisions and the regulations filed with them. "All it takes is one person not to follow them. But to take that problem corrected usually takes at least one person, a lawyer and a court system to get it straightened out," she stated. She said they are all concerned about their property values.

There were no other speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the ordinance on second reading, seconded by Councilmember Johnson. Councilmember Bradley made a substitute motion to delay action for two weeks, seconded by Councilmember Deisz. On a voice vote, the motion failed. The only councilmembers voting "yes" were: Johnson, Bradley and Deisz. On a

voice vote on the original motion, the motion was approved. Councilmembers Bradley and Deisz voted "no".

16. PUBLIC HEARING AND FINAL APPROVAL OF RESOLUTION 99-17464: respreading assessments on SID 1332 (Utility and street improvements in Circle Fifty Subdivision), tax code split. Staff recommends approval. (Action: final approval or disapproval of resolution.)

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

17. PUBLIC HEARING AND FINAL APPROVAL OF RESOLUTION 99-17465: respreading assessments on SID 1333 (Water mains, storm drain and street improvements in 38th Street West between Poly and Colton Blvds), tax code split. Staff recommends approval. (Action: final approval or disapproval of resolution.)

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

ADJOURN – With all business complete, Mayor Tooley adjourned the meeting at 10:10 P.M.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE City Clerk

