

REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, AUGUST 9, 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 Michael Deisz.

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

MINUTES – The Minutes of the July 26th meeting were approved as printed.

COURTESIES - (1) **Native American Homeowner Partnership** (2) **Community Housing Resource Board (CHRB) & HUD**

Community Development Director John Walsh introduced Joe Burst, who just returned from the HUD Best Practices Conference. Mr. Burst said the City of Billings received one of HUD's Best Practice Awards for its Native American Homeowner Partnership program. 3,477 nominations were received. Montana had 17 nominations, with 5 making it into the top 400 nominations. Mr. Burst said there were 23 local partners in this program. A number of the partners were introduced at the meeting.

Mr. Walsh said the CHRB was also honored at the HUD Best Practices Conference, noting that both of these programs are fair housing projects. Russ Brown of the Community Housing Resource Board said they were recognized for outstanding achievements and program efforts over the past seven years. He introduced various members of the board that were in the audience this evening.

ADMINISTRATOR REPORTS – Bill McGill. Mr. McGill noted that a copy of the first monthly report from consultant Jani McCall has been distributed to the council on their desks this evening.

CONSENT AGENDA:

1. A. Bid Awards:

(1) **Concessionaire to operate a Public Parking Concession at Billings Logan International Airport.** (Opened 7/20/99). (Delayed from 7/26/99). Recommend APCOA Parking Company, \$750,000.00. (5-year term).

(2) **1999 Street Maintenance W.O. 99-03, Contract #2.** (Opened 7/27/99). Recommend JTL Group Inc., \$344,356.90.

(3) **One New Current Model 2000 Articulated Motor Patrol for Street/Traffic Division.** (Opened 7/27/99). Recommend Western Plains Machinery, \$106,279.00.

(4) **Montana Avenue Landscaping STPE 1020(12) – Billings.** (Opened 8/3/99). Recommend delaying award to 8/23/99.

(5) **Truck Chassis, Tilt Cabs for Solid Waste Division.** (Opened 8/3/99). Recommend delaying award to 8/23/99.

B. Change Order #1, High Service Valve Replacement. Star Service, Inc., \$10,700 and 30 days.

C. Change Order #1, W.O. 97-04, Schedule A: Rimrock Road Drainage. Don Kelly Construction, \$7,146.50 and 0 days.

D. Change Order #1, W.O. 95-06: 1998 School Route Improvements. Quality Concrete,

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\$69,166.18 and 0 days.

E. Acceptance of FY 1998/1999 Fourth Quarter Financial Report.

F. Right-of-Way Agreement with Montana Department of Transportation (MDOT) for handicap access ramps at street corners on South 27th Street, \$1,050.00.

G. Quit Claim Deeds in Moon Valley Subdivision conveying property to:

- (1) *Daniel R. Brown and Elizabeth Ann Brown* for the southerly 10 feet of Lot 29, lying adjacent to the lot line between Lots 29 and 30, Moon Valley Subdivision.
- (2) *John H. Williamson and Rebecca S. Williamson* for the northerly 10 feet of Lot 30, lying adjacent to the lot line between Lots 29 and 30, Moon Valley Subdivision.

H. Acknowledging receipt of petition to annex #99-03: a 5.46 acre parcel in Tract 1, C/S 2949 and setting a public hearing date for 8/23/99.

I. Acceptance of FAA grant to fund AIP #18, \$491,899.00. (FAA funding: \$442,709; City match \$44,271).

J. First reading ordinance changing the boundaries of Ward II to include recently annexed property (Annex #99-02), Tracts 1 and 2 of C/S 2866 and setting a public hearing date for 8/23/99.

K. Resolution 99-17486 relating to FY 1998/1999 Fourth Quarter budget adjustments.

L. Resolution 99-17487 directing reversion of title to Paul and Dorothy Rice on a recently vacated portion of 2nd Avenue North in Industrial Subdivision, 2nd filing.

M. Resolution 99-17488 creating Special Service District #19 for Lots 27 and 28, Block 1, Vista Heights Subdivision.

N. Resolution 99-17489 authorizing the use of Council Contingency monies for the skateboard project, \$15,000.

O. Preliminary Minor Plat of Amended Lot 19, Block 19, Parkland West Subdivision, 2nd filing.

P. Preliminary Minor Plat of Amended Lots 21 and 22, Block 19, Parkland West Subdivision, 2nd Filing.

Q. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

There were no separations of the Consent Agenda. Councilmember Deisz moved for approval of the Consent Agenda, seconded by Councilmember Elison. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING to consider proposed changes in the county's Air Pollution Control Program regulations. Yellowstone County Air Pollution Control Board recommends approval. (Action: approval or disapproval of board recommendation.)

The public hearing was opened. STEVE DUGANZ OF THE YELLOWSTONE COUNTY AIR POLLUTION CONTROL OFFICE said the changes being requested are minor changes in definitions, patterned after those made in Cascade County and have no effect on what the department is presently doing. The changes will be presented to the state on September 13th for approval. He urged the council to approve the changes.

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

3. PUBLIC HEARING AND RESOLUTION 99-17490 ORDERING IN THE IMPROVEMENTS OF W.O. 99-02, #2: Broadwater Subdivision Improvements, Phase II. Staff recommends approval. (Action: approval or disapproval of resolution.)

John Nowak of the City Engineers office said this project is a continuation of the Broadwater Subdivision project, the second phase of a 3-part program to make improvements in the entire area defined by 8th Street West, 16th Street West, Broadwater Avenue and Central Avenue. The Phase II area is bounded by 10th Street West and 15th Street West, Miles Avenue north to Broadwater Avenue and both sides of 14th Street West from Broadwater Avenue to Central Avenue. The different types of work involved in this project include: street reconstruction, miscellaneous warranted repair on sidewalks, curbs and gutters and retrofitting corners for ADA accessibility as well as property owner requests. Several property owners have requested items such as drive approaches and complete replacement of sidewalk.

Mr. Nowak said two separate public meetings were held prior to tonight's public hearing. Attendees were given estimated costs on the project. Details were also discussed at these meetings. A significant number of city funding sources are being utilized to help subsidize the project – street maintenance funds, PAVER funds, storm drain funds, gas tax funds and general fund dollars. Property direct assessments consist of sidewalk repair or new sidewalk installation, drive approach repair, and service walk repair and a portion of street reconstruction. The estimated project cost is \$1.9 Million with various city contributions, with direct assessments of \$810,000. The anticipated project schedule calls for design work to be completed by October. Solicitation for bids would be done in October and project construction would occur April to August of 2000.

The public hearing was opened. DUANE DIERENFIELD, NO ADDRESS GIVEN, said he is speaking on behalf of his mother Agnes who resides at 1421 St. John's Avenue. He asked the council to approve the project tonight because his mother's property would be included in Phase III. Mr. Dierenfield said he drives St. Johns frequently to visit his mother and the potholes are awful. It has been that way for over 30 years. He said his mother feels that the payment split with the city paying some costs and the people in the subdivision paying some costs is fair. He added that he would like the city to do some temporary "patch" work in the Phase III area until that area is approved for improvements.

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SELMA MADSEN OF 1206 MILES AVENUE said for decades her family has lived in Broadwater Subdivision with streets with names like Normandy, Custer, Miles, Cook and Howard – all military related titles, appropriately named because it is a “war zone”. She said they are full of “hideous holes, revolting ridges, repulsive ruts, bouncing bumps and cavernous cracks.” Ms. Madsen said the residents have been approached several times about rebuilding the aging area, only to be “drummed down by petition packing protestors. Now we have another chance at improving our neighborhood streets,” she stated. She said friends and relatives are appalled at the condition of their streets, making a fairly nice neighborhood impossible to navigate. “Of course the conditions of our streets do wonders for the values of our homes. It’s already an old neighborhood and it will be even more run down eventually because one drive through the area on our rickety streets turns off any prospective buyers. So anyone wishing to sell has to resort to renting or abandonment. Our homes will always be subvalued as long as our streets remain in such dire condition. Selling a home in this area is extremely difficult, if not possible, unless you practically give them away. The assessment for property owners in this area for this much needed improvement varies slightly around \$1500 and the City of Billings is bending over backwards to arrange lenient payment plans – up to 12 years to pay. Where else could we get millions of dollars worth of product for \$10/month – for such a vital improvement to our property,” she said. She urged the council to approve the project.

LESLIE W. HABENER OF 1236 CUSTER AVENUE said he has tried to get a street there for over 50 years. He said he opposes this district because they had one before and it was “so gross that you couldn’t do it and I imagine it will get so gross we won’t be able to do anything about it this time either.”

SHERYL SCHAFFER OF 409 14TH STREET WEST said she has invited a lot of people to her neighborhood lately so that they would understand how the City was hopefully going to spend its money on improvements in the area. She said she hasn’t heard any objections from anyone who has had to come to her home for meetings. “I think they would like to send me their tire alignment bills after they’ve been there,” she said. Ms. Schaffer added that after visiting with other parents in the area, everyone was pleasantly surprised with their assessments and happy with the dollar value. “I hope you take our feelings into consideration and please vote ‘yes’,” she said.

PHIL FRANK OF 1411 COOK AVENUE said, “enough is enough. I was very disappointed several years ago. I was part of the task force then and we tried to get these improvements done and it went down. It is bad. I’ve seen people actually drive over the sidewalks to get out of the chuckholes... Parts have fallen off vehicles driving through the area... With all the construction going on between 15th and 16th, many of us don’t have the ability to park in front of our property. I’m hoping to put up with another year or two years of inconvenience just to get a permanent street,” he stated.

There were no other speakers. The public hearing was closed. Councilmember Iverson moved for approval of the resolution, seconded by Councilmember Kennedy. Councilmember Iverson thanked staff for their efforts in constructing Phase I and bringing about Phase II. She thanked the neighbors for supporting the project and thanked the council for considering and supporting the project. Councilmember Elison said, “that was a pleasurable public hearing. That was amazing and I think it was the first time in 5 ½ years that I have been on this council where there was an SID to put in infrastructure improvements in this city, when there was a majority of people speaking in favor of putting in those improvements. We have finally over 5 years managed to put this around to a point where assessments are affordable; they pay for what you get, nobody feels like they are paying more than their fair share and I am really excited to have heard that public hearing and to hear people saying ‘yes, it’s a good project.’ “ On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION 99-17491 CREATING SID 1342: street and utility improvements in Lake Hills Subdivision, 23rd and 24th Filings. Staff recommends approval. (Action: approval or disapproval of resolution.)

Public Works Director Kurt Corey said the purpose of this special improvement district is to install street and utility improvements in a portion of a subdivision in the interior of Lake Hills Golf Course – on Wentworth Drive, Eastlake Circle bound the 21-property district. The district is a raw land district because all of the lots are presently vacant. The majority property owner has met the criteria for a raw land district by putting up in excess of one-half of the project cost. The nine additional lots not held by the majority owner will be each be assessed an average of \$13,000 for a total bond issue estimated at \$118,000 for the district. The protest period ended Friday, August 6th at 5:00 p.m. and no protests were received.

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

5. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5096 extending the boundaries of Ward II to include recently annexed properties of Annex #99-01: NW4NW4SW4 of Section 27, Township 1 North, Range 26 East, located at the northeast corner of Main Street and Lake Elmo Drive. Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)

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

6. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5097 amending Sections 6-1611 and 6-1622 BMCC providing that the dates of the flood insurance rate map and flood insurance study be updated. Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)

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

7. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5098 amending BMCC by adding Section 27-713 to create the Montana Avenue Sign District and establishing sign regulations within the district. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second reading.)

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

8. SECOND READING ORDINANCE 99-5099 ON 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. (Public hearing held on 7/12/99. Action delayed from 7/26/99). Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)

Councilmember Bradley moved for approval of the ordinance on second reading, seconded by Councilmember Larson. Councilmember Bradley asked for a clarification on the letter by Harley Damschen. Acting City Administrator Bill McGill explained that Mr. Damschen has now withdrawn his protest, so a valid protest no longer exists on this zone change request. On a voice vote, the motion was unanimously approved.

9. PRIORITIES FOR SCHOOL CROSSING UPGRADES. Staff recommends a priority order be established for upgrading existing school crossings. (Action: approval or disapproval of staff recommendation.)

Councilmember McDermott moved for approval of the staff recommendation, seconded by Councilmember Johnson. Councilmember Elison asked for a clarification of the motion – was it creating a priority list, not any specific priority list at this time? Public Works Director Kurt Corey said it was the intent of his recommendation to have the Council vote on the specific priority list be established in the following priority order to upgrade existing school crossings: (1) Rimrock Road at Arvin Road, (2) 8th Street West at Cook Avenue, and (3) 32nd Street West at Boulder Elementary School.

Councilmember Johnson said he is asking the council to do more than this. He made a substitute motion to include or install Boulder Avenue School signals, flashing yellow lights, as part of the City's traffic signalization program for this budget, with funds coming from either the Street/Traffic Fund or other contingencies as needed, with work to be done as soon as possible, seconded by Councilmember Ohnstad. Councilmember Larson said he has a deep concern about going beyond the staff recommendation with a specific work order at this point. "We have staff recommendation on these 3 crossings. They have recommended an upgrade they believe is the most appropriate based on standards that are established nationally, based on their study of these crossings. To say at this time that we should do more, I think, gets us into a part of the process I feel uncomfortable getting into. What I would like to see us do ... is request that staff not only set these priorities and begin to look at how to actually complete this work, but also to continue with the process of these other 5 that are not on this priority list, so that we know that within the next year that we are addressing those. They also have an obligation to come back to us and tell us what impact was achieved with the improvements made here," he said. He noted that the city receives calls for the flashing lights on a periodic basis. The council is told by the experts – engineers, that this is not the way to go, that these traffic calming, bulbing of crossings, etc. are a better approach.

Councilmember Deisz said he would not support the substitute motion, noting there is a dangerous situation on Lake Elmo Drive as well. He said he is disappointed that not enough money was set aside to do something with all 8 school crossings. Councilmember Kennedy said he would not support the substitute motion either, noting that groups lobby the council based on emotion, rather than looking at the hard facts. He wanted to see the outcome of these improvements and the prioritization first. Councilmember Johnson said the concern at Boulder Avenue School goes back a number of years, with the school requesting the flashing lights on previous occasions. He expressed his concern about when this work will finally actually be done, noting that it has been denied or delayed several times. Councilmember Johnson said, "there is no elementary school that has the parking congestion, street situation, physical location of the streets, unfinished streets, no curb or gutter or sidewalk, or real road service other than oil/tar and a half-street on the other side called Colton for a block or two... There is no room to drop off children or for buses to drive in to unload. That does not exist at Boulder School... As you go north on North 32nd Street, and until you are within about ½ block of the school, you don't know there is a school there, other than a little yellow sign hanging under the tree branches... Why does this school not have yellow flashing lights, like all the others do on straight streets through this town? ... I would really ask that you give reconsideration to doing this and then even a follow-up

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motion of what to do with the other 7 schools, because that is public school and child safety on our streets and roads as well," he said. On a roll call vote on the substitute motion, the motion failed 5-5. Councilmembers voting "yes" were: Bradley, Iverson, Tooley, Johnson and Ohnstad. Councilmembers voting "no" were: McDermott, Deisz, Kennedy, Elison and Larson.

Mayor Tooley called for further discussion on the main motion. Councilmember Larson said \$25,000 has been set aside to work on the three top projects. "Staff does know whether or not that money is enough to start this, but their job if we pass the main motion tonight will be to do the engineering and come back and tell us how much of this we can done for \$25,000 and how much additional money is needed. My argument again is allow the staff to do the engineering and come back with the improvements... We hire these people to look at how this is done, to set the standards around the community. They have a specific set of regulations they are going off of. We have 8 of these to address within the next year or so. The 3 that we are looking at first this year; the other 5 I expect to see in the budget next year, to get these things done," he said. Councilmember Deisz said the Heights Task Force and the PTA in the Heights on Lake Elmo have also written letters and nothing has been done there either. Councilmember Larson amended the (main) motion to direct staff to continue with the work proposed for this year and come back in next year's budget to address the balance of the work, seconded by Councilmember Deisz. On a voice vote, the amendment was unanimously approved.

Mayor Tooley called for discussion on the motion as amended. Councilmember Johnson asked if the curb bulbing is currently being used as schools. Mr. Corey replied that curb bulbing is a relatively new traffic engineering concept and is not currently being used at any of the elementary schools. On a voice vote on the motion as amended, the motion was unanimously approved.

ADJOURN – With all business complete, the Mayor adjourned the meeting at 8:45 p.m.

THE CITY OF BILLINGS:

BY: _____
CHARLES F. TOOLEY MAYOR

ATTEST:

BY: _____
MARITA HEROLD, CMC/AE CITY CLERK