

REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, SEPTEMBER 13, 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 Mark Kennedy.

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

MINUTES – The Minutes of the August 23rd meeting were approved as amended.

COURTESIES – Mayor Tooley acknowledged former Councilmembers John Michunovich and Kay Foster in the audience.

Finance Director Nathan Tubergen said the Finance Department received the GFOA Distinguished Budget Award and the Certificate of Excellence in Financial Reporting. He recognized and congratulated members of his staff: Alene Malloy, Jim Hauck, Carol Ruff and John Guenther on their efforts.

BOARD & COMMISSION REPORTS – None

ADMINISTRATOR REPORTS – **Bill McGill.** There were no Administrator Reports.

CONSENT AGENDA:

1. A. Bid Awards:

(1) **Concessionaires to Operate the Terminal Building Displays for Advertising at Billings Logan International Airport.** (Opened 8/10/99). Recommend Epcon Sign Company, \$51,000/year guarantee.

(2) **Overhauls of Met Transit Detroit Diesel Engines.** (Opened 8/24/99). Recommend Interstate Detroit Diesel, \$18,432 for electronic engines and \$16,158 for the mechanical engines.

(3) **One New Current Model 2000, 35,000 GVW Single Axle Truck, Double Dump Sander/Spreader for Street/Traffic Division.** (Opened 8/31/99). Recommend Billings Truck Center, \$63,886.00 w/trade.

(4) **W.O. 99-02, #3, Developer-Related and Miscellaneous Improvements.** (Opened 8/24/99). Recommend Rock Pile Construction, Inc., \$273,275.00 and 75 calendar days, contingent upon the sale of the bonds.

(5) **SID 1342: Water, Sanitary Sewer and Street Improvements.** (Opened 9/7/99). Recommend Paradise Excavation Inc., \$95,270.00 for Schedule I; Empire Sand and Gravel Co., Inc., \$71,819.00 for Schedule II.

(6) **Sale of Recyclable Metals Pile, Solid Waste Division.** (Opened 9/7/99). Recommend Golden Recycling @ \$5.25/ton.

(7) **Winter Traction Material for Street/Traffic Division.** (Opened 9/7/99). Recommend JTL Group Inc., \$39,000 for Schedule I and \$41,400 for Schedule II.

B. Change Order #1, W.O. 97-04, Schedule B: Durland Heights Drainage Improvements, AME, Inc., \$7,383.22 and 0 days.

C. Contract Amendment #9: Centrifuge Project at Wastewater Treatment Plant, Professional Services Contract, HDR Engineering, \$9,846.00.

D. Contract for Library Services to Golden Valley County, \$4,414.90.

E. Agreement with CommNet Cellular for cellular phone services.

F. Agreement with Lockwood Area/Yellowstone County Water and Wastewater District for wastewater treatment and disposal.

G. Interlocal Maintenance Agreement with Yellowstone County for maintenance of the traffic signal system at the intersection of Johnson Lane and Old Hardin Road.

H. Purchase Agreement with Ameritech Services for an upgrade of the Library's automated integrated circulation system, \$185,506.00.

I. Reimbursement Agreement with C & S Construction (Clint Stovall) for wastewater special benefit facilities being constructed for Lots 15-19, Block 58 and Lots 25-29, Block 57 of Lake Hills Subdivision under private contract (P-418), term: 7 years from acceptance of special benefit facilities.

J. Revised Disadvantaged Business Enterprise Plan (DBE).

K. Partial termination of Right-of-Way Easement on a 10 foot temporary construction easement in T1N-R26E-S22:NENE in connection with the new Heights Post Office.

L. Acceptance of a Warranty Deed from Ralph L. and Marvelle E. Cole for Lot 6A, Valley View Subdivision, 4th Filing for rimrock park land, \$882.63.

M. Preliminary approval of Resolutions levying and assessing the 1999 annual assessments:

- (1) Resolution 99-17497: Demolition of Dangerous Buildings
- (2) Resolution 99-17498: Encumbrances, Obstructions or Encroachments
- (3) Resolution 99-17499: Light Maintenance Districts
- (4) Resolution 99-17500: Property Safety Water Supply
- (5) Resolution 99-17501: Refuse Fee
- (6) Resolution 99-17502: Storm Sewer Fees
- (7) Resolution 99-17503: Weed Cutting/Extermination
- (8) Resolution 99-17504: Park Maintenance Districts

and setting a public hearing date for 9/27/99.

N. Preliminary approval of Resolutions levying and assessing the Original spreads:

- (1) Resolution 99-17505: SID 9904 (W.O. 95-06): 1998 School Route Improvements.
- (2) Resolution 99-17506: SID 9905 (W.O. 95-14): Lake Elmo Road Improvements, sidewalks etc
- (3) Resolution 99-17507: SID 9999 (W.O. 95-14): Lake Elmo Road Improvements, alleys
- (4) Resolution 99-17508: SID 1339: Southwest Park Subdivision storm drain improvements
- (5) Resolution 99-17509: SID 9902 (W.O. 98-02, #1): 1998 Developer-Related Improvements

and setting a public hearing date for 9/27/99.

O. Preliminary approval of Resolution 99-17510 respreading the assessments for SID 9903 (W.O. 95-15, #2): St. Andrew's Drive Sidewalk Program, and setting a public hearing date for 9/27/99.

P. Resolution 99-17511 relating to \$170,000 1999 Developer-Related Curb, Gutter and Sidewalk Program, W.O. 99-02, #3 Bonds, Series 1999B, authorizing the issuance and setting a public sale date for 9/27/99.

Q. First reading ordinance extending the boundaries of Ward II to include recently annexed properties: Annex #99-03: a 5.46 acre portion of Tract 2, C/S 3011, and setting a public hearing date for 9/27/99.

R. Bills and Payroll.

LATE ADDITION:

S. Quit Claim Deed for Tract 2B of Amended Tracts 1 and 2 of Certificate of Survey No. 2866.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Bradley moved to add the Quit Claim Deed as Item S, seconded by Councilmember Deisz. On a voice vote, the motion was unanimously approved. The Quit Claim Deed was added as Item S. Councilmember Deisz separated Item E. Councilmember Bradley moved for approval of the Consent Agenda EXCEPT Item E, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

Councilmember Bradley moved for approval of Item E, seconded by Councilmember Larson. Councilmember Deisz asked Acting City Administrator Bill McGill if he could see the other proposal received (Cellular One) so he could compare the two proposals. Mr. McGill said he would provide that information. On a voice vote the motion was unanimously approved.

REGULAR AGENDA:

2. DESIGNATION OF CTA ARCHITECTS/GRACE DEVELOPMENT as developer for the Mixed-Use Parking Structure, and authorizing continued negotiations. Staff and Downtown Billings Partnership recommend approval. (Action: approval or disapproval of developer designation.)

Dan Berry with the Downtown Billings Partnership presented information for selection of CTA Architects/Grace Development as developer. He said the request for qualifications brought in seven responses with five companies being interviewed: Fischer Construction, Streeter Brothers, Civic Partners, MPC Development and CTA Architects/Grace Development. The committee heard each proposal for approximately 2 hours and then discussed the pros and cons of each proposal. There was no lobbying by any members of the committee for any particular proposal and there were no preconceived notions about who should or would be the chosen developer. He said CTA and Grace Development were able to combine their local knowledge, financial strength, experience and their vision to convince the committee to decide unanimously on their proposal.

Mr. Berry said there are three goals that need to be met with the project: 1) parking – there is a demonstrated need for up to 400 additional parking spaces downtown; 2) encouraging business and housing growth downtown; and 3) increasing the tax base in the tax increment district. He said there is an opportunity to do much more than just build a parking garage. It must be decided what that structure is and where it will be located. He said the property available would influence the type of development. It is expected that property owners will come forward with ideas and

interest in the process. Mr. Berry said there has already been considerable interest by the property owners and that they would definitely be included in the process. He stated the property owners have endorsed the process and the selection of CTA. He said the initial proposal by CTA may or may not be what the finished project looks like. This is the first step of determining what the facility will include. Mr. Berry said there is a long list of items that could be incorporated. If all the needs can be put together with CTA/Grace in such a manner that the City and the developer would both benefit, then the process can move forward. If an agreement with CTA/Grace Development cannot be worked out, other options would be explored until all involved parties are satisfied.

Councilmember Deisz said the agenda stated that CTA was being selected as the developer. The letter from the Downtown Property Owners Committee stated CTA/Grace Development was being selected as the first entity that the City and the Partnership would negotiate with regarding the development of the multi-use parking structure. Mr. Berry said if they were unable to reach an agreement with CTA/Grace, then a second company would be selected. Mayor Tooley asked if the Partnership was requesting permission from the Council to enter into negotiations with CTA. Mr. Berry replied that was correct.

Councilmember Deisz asked what the time frame would be for cutting off negotiations with CTA/Grace and moving on to the second choice if the housing issues were not being brought forward sufficiently according to the downtown property owners.

Mr. Berry said they hope to see completion of the housing study within 30 to 45 days, which would show the feasibility of housing downtown. He said his goal is to have a report to Council within 60 days on the progression of negotiations with CTA/Grace.

Councilmember Johnson asked about CTA/Grace Development's experience with middle to higher income housing in the downtown area. Mr. Berry said both companies have some experience, but it still needs to be determined which type of housing will work best for downtown. He said the housing study would help make that determination. Councilmember Kennedy said that at the property owner's meeting on Thursday, the concern was that middle to higher income housing be addressed. Mr. Berry said that housing is a critical part of this project and that it is premature to determine whether it will be lower, middle or upper income housing.

Councilmember Deisz said the financial statements reflected that CTA's current assets are listed at \$101 million but \$89.5 million were in accounts receivable. He wanted to know if CTA had given an explanation for those figures. Mr. Berry said they checked references but had not yet verified the financial statement information received. He said the references received were very good and they have every reason to believe that CTA is financially sound. Councilmember Deisz asked what percentage of ownership CTA had retained for projects they had done in the past. Mr. Berry said he did not have that information but could get it.

Councilmember Johnson asked if the financial information and references would be provided to Council as the information was compiled. Mr. Berry said there would be some confidentiality linked to some of the documents and the information would be shared with Council to the extent it was appropriate.

Councilmember Deisz asked Assistant City Attorney Bonnie Sutherland what right the City has to stop negotiations if it is decided not to move forward with CTA/Grace Development. Ms. Sutherland responded that City Attorney Brent Brooks was reviewing that issue but that Council was only approving the negotiation process at this point. Councilmember Deisz asked if the findings regarding the representations made by CTA (financial and project experience) would be provided to Council in a report. Mr. Berry responded yes.

Councilmember McDanel moved for approval of staff recommendation, seconded by Councilmember McDermott. Councilmember Bradley moved to amend the wording of the motion to include "start negotiations with CTA/Grace Development as developer", seconded by Councilmember Deisz. On a voice vote, the amendment was unanimously approved. On a voice vote of the main motion as amended, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION CREATING SID 1343: street and utility improvements in King Avenue West and S. 32nd, S. 31st, S. 30th, S. 29th Streets West, Cel Avenue and Henesta Drive. Staff recommends approval. (Action: approval or disapproval of resolution.)

City Engineer Brian Borgstadt said SID 1343 is for full improvement of the major street arterials and adjacent area on King Avenue West, west of the BBWA canal. He said the area has been subject to very rapid development. The improvements are to be primarily assessed against the property owners in the district. Mr. Borgstadt said the project had been brought forward because of the pressure to develop further west of Billings. He said single developments on single parcels have a very difficult time meeting the improvement standards that are required and often times it is necessary for them to have temporary or delayed improvements in order to do a more reasonable, larger project. He said there is a predominance of that type of development in that area right now and there is a need to get the improvements completed. "Piecemeal projects don't work very well for administering right-of-way improvements," he stated. Mr. Borgstadt said there are often a number of investments that are wasted and have to be reconstructed when the full improvement comes along, so the SID is the cost-effective approach for this type of project.

Mr. Borgstadt said there is also an anticipated increase in pressure for that particular area as the interchange at Shiloh Road opens. The objectives of the project are to make the improvements cost-effective, not only to the existing landowners but to future developers; to prepare in advance for the anticipated growth; and to complete construction in the area before the disruption to businesses becomes even worse than it is presently. He said there is always a concern in a commercial/industrial area about the disruption that occurs to business activities.

Mr. Borgstadt said that many issues have surfaced in discussions about development of the district. Staff has met twice with affected property owners and an open house was also held. The primary concern for both the large and small landowners is the size of the assessments. The assessments are as high as \$500,000;

the average assessment is \$100,000. The SID is very critical and very costly to the landowners. How the district boundary is defined, the timing of the development of the district, and having this large of project take place all at once are also issues. All the landowners understand the improvements are necessary and need to be done at some point and see them as beneficial to the area. He said they all know it will be disruptive and that it will be expensive. All of the landowners would like to see the improvements if the costs were distributed differently. Most of the landowners would like to see more Billings residents participate in the cost of the construction. Mr. Borgstadt said there have also been many questions about outside sources of funding.

Bob Sanderson of Engineering, Inc. said King Avenue West and 32nd Street West are designated as principal arterials in the City of Billings Transportation Plan. King Avenue from 20th to 24th was built by SID 1148 in 1982; King Avenue from 24th out to the BBWA Canal was constructed by private contract in 1992 (Phase I) and 1995 (Phase II) and paid for by the property owner on either side of King Avenue. Mr. Sanderson also said in 1995 Yellowstone County replaced the BBWA Canal bridge with their dollars and some participation from landowners east of the canal. Today, King Avenue from 20th to 24th carries 23,000 cars per day; from 24th to the BBWA Canal carries over 18,000 per day; west of the canal (proposed project area) carries from 12,000 to 15,000 cars per day. By the year 2020 that section of King Avenue is expecting 25,000 to 30,000 cars per day. There is an expected 20% increase in traffic next spring after the completion of the Shiloh Interchange. South 32nd Street West south of King Avenue currently has a count of approximately 4,000 cars per day and is expected to increase to over 7,000 within the next 10 years, and by 2020 over 10,000 cars per day is projected. Mr. Sanderson said trunk water was brought to the area in 1977 by SID and paid for by property owners on either side of 32nd Street. The Public Utilities Department brought trunk sewer to King Avenue in 1980 through grant funds and a loan and by a matching SID fund. Water and sewer were extended south on 32nd Street West in 1986 by SID 1243 and paid for by Willow Bend Subdivision and United Industry. Storm drain was trunked into the area in 1988 when the city acquired master drain (located west of the canal on King Avenue). Engineering Inc. began working with the city staff in 1995 identifying the parameters of this project. Once the project was identified a cost was attached. The total cost of the project at current construction unit prices is \$3,992,000. Mr. Sanderson stated because of multiple owners on the project an SID is necessary as a private contract is not possible with multiple ownership. He said the SID assessment method used was similar to that used for SID 1148 (lower area of King Avenue). Each property owner pays for his own water and sewer, curb and gutter and sidewalk, and pays for either a residential or commercial equivalent as if it were not an arterial street. Mr. Sanderson said the arterial component includes the extra width in the middle of the street for turn lanes, lighting, signal modifications/installation and storm drainage. All property owners in the project will share equally in the arterial component. The arterial component of the project is half the cost to the district. The City is contributing \$150,000 to the arterial component, which includes oversizing of the storm drain to serve properties beyond 32nd Street and signal operation.

Brian Borgstadt said that of the 39 properties involved in the SID, 16 have protested - for a 57% total protest. Of those protesters who have not deferred improvements previously, the valid protest is 22.3%. He said the highest assessment is \$547,000, the lowest assessment is \$7,000, the median assessment is \$63,400, and the mean is \$100,000. Mr. Borgstadt said the district is being presented before Council with the recommendation that it be created based on the fact that there is not a valid protest in excess of 50%.

The public hearing was opened. PAUL SHERIDAN OF 3181 HENESTA DRIVE said his property is included in the district and he believes the district should be larger. He said there are other property owners in the area that will benefit at least as much as his property. He said the additional expense for improvements to a major arterial like King Avenue should be spread over a much wider area because everyone in the west end of Billings will benefit from the improvements.

LOYANN KIMMERY OF VILLAGE GARDENS said she and her husband started their business in 1976. She said it has taken them 23 years to build and pay for their business. She said they were annexed into the city six years ago and have paid their fair share of taxes. The amount they are expected to pay for this SID is more than their property is worth. She stated the general consensus of the area landowners is that this project is much too large for the few landowners that are being assessed. No one can understand why Cel Avenue is being included in the projections. She said the development of a Tax Increment District suggested by Bob Matthews with Engineering, Inc. seems to be a better deal for all concerned. "This SID does not include information or a consultation from the majority of the owners within the district," she stated.

LORAN ONSTAD, NO ADDRESS GIVEN, said he understands the development of the SID but does not understand himself having to contribute \$250,000 to a project that will benefit so many. He said they have sewer and water and a paved street so he doesn't see how this SID will benefit him directly. He said the people in the district are not against progress, they just cannot afford this amount of debt.

BEVERLY CLARK, NO ADDRESS GIVEN, said she is a widow and has inherited the property at the corner of King Avenue and 32nd Street. She paid for the property with the understanding that if she did so she would have a steady income for the remainder of her life. She said she will be assessed close to \$144,000 for this project. She stated there are so many little people in the area that will have to close their doors while the project is being constructed. She said she is for progress and development but that there must be another way to complete this project that will benefit so many people in the city and the county. She asked that Council decline the proposal.

TOM ROSHAWN said he lives in the Henesta/Rosebud Avenue area. He said he questions the boundary of the district. He said the fact that many of them have no right to protest because someone else signed a waiver to protest is unfair. He said they are the only residential property owners included in this commercial area and although their share of the costs is relatively smaller than those assessed the commercial owners, they do not feel this is a fair.

HAROLD TOWER OF 2951 HENESTA said he is not against the SID, just the way the costs are being assessed. Instead of paying based on square footage the

assessment is based on frontage. He said because he lives on a corner lot, he will have to pay double what his neighbors will pay.

BILL BROWN OF 3105 HENESTA DRIVE said it is strange they have their water, sewer and paved streets and they will receive no benefit from King being fully developed but will be required to pay for it. He said he doesn't believe that the residential area should be taxed for an arterial highway. There should be some other way of financing a project of this size without putting a further burden on the residents of the area.

EDNA ONSTAD OF 3112 KING AVENUE WEST said she has lived at this address since 1974. She is against the SID because of the way it is being proposed and for the cost coming out of their pockets. She said it is not fair that the property owners be assessed while others benefit. She stated that some of their neighbors will go out of business because of the costs of this SID. She said they are asking Council to just say "no".

RANDY REIGER , PROPERTY OWNER AT 32ND & KING said he has been buying and selling land in Billings for 25 years. He said that 20th Street West to 24th Street West on King Avenue was funded by an SID similar to the one being proposed, and it forced many of the businesses involved to go out of business because they could not afford the SID. Another SID in the 32nd Street West and Hesper Road area in the middle 80s had the same type of results. He said it is a true fact that the little guys lose their land because of these huge SIDs. He said it is not fair to expect businesses to pay \$2 million for arterial streets and let everyone in the city of Billings and everyone coming into the city benefit from it.

RON HARMON OF 3131 KING AVENUE said he is a business owner at that address and that his bill would be approximately \$51,000 over 15 years for this project.

He said he is one of the small business owners that could go out of business because of this SID. He said King Avenue needs to go through to Shiloh to truly alleviate the problem, not just stop at 32nd Street West. He said he opposes the overall project because of the costs.

TOM DALY OF 1207 1ST STREET WEST said he purchased the property between 30th Street West and 31st Street West in 1996. Before buying that property he researched who was waived and consulted with the City relative to an SID. He said that he felt that the development of this area and an SID was inevitable and based his development on that fact. He paid over \$100,000 of his own money for development on 30th Street. "If the city has a policy of requiring waivers and doesn't honor that policy, then the city is disenfranchising potential developers and investors," he stated. He said that right now there is a real safety concern at 32nd Street and King Avenue. If the project is delayed, there is the potential for an increase in accidents at Shiloh and King.

He said this project needs to be completed to deal with the Shiloh Interchange. He thinks this project will increase land values and many people will reap profits from this project.

GREG MCDONALD OF 2929 3rd AVENUE NORTH, SUITE 538 said he is the original developer and the current owner/operator of a manufactured housing park on the west side of 32nd Street West. He said he protests the proposed SID including the

proposed work, the extent and creation of the district to be assessed, the boundaries and the unfair allocation of costs. He said the benefit of the improvements is disproportionate to the proposed assessments of certain properties within and outside the proposed improvement district. There are many properties that would benefit from the improvements and are not being assessed at all. He said based on a condition of prior planning activities for the area he was required to sign a Waiver of Protest. He expects to pay his fair share of off-site improvements and has already paid hundreds of thousands of dollars for off-site public improvements in this area. He said the costs for these improvements have been reasonable in the past. The proposed SID 1343 cost allocation is not reasonable and is not based on benefit. He said his share of the SID costs is \$763,255. He believes that the state statutes with regard to creating SIDs require the cost allocation be based on benefit. In this instance the costs to be allocated are not remotely close to the benefit. He said this project provides an opportunity for the City, the development community, and private landowners to form a committee to evaluate the needs for providing and funding public improvements and find a way to stop the burden of placing the cost on such a small number of people.

There being no other speakers, the public hearing was closed. Councilmember Kennedy asked when bids would be let for the SID if the SID was approved that evening. Brian Borgstadt said, optimistically bids would be let in the spring. Councilmember Kennedy asked if there was enough time for Council to discuss with staff some of the possible options for this SID. Mr. Borgstadt said that would be possible. Councilmember Kennedy moved for postponement of a vote until the October 25th Council meeting, seconded by Councilmember Larson.

Councilmember Kennedy requested additional information from Bond Council with regard to the proposed tax increment district. He said delaying the vote until October 25th would also give Council an opportunity to speak with Elysian School District. It would also allow time for Council to think things through and come up with a plan for dealing with these types of assessments. Councilmember Elison said he agreed Council could use additional time to discuss this issue, but unless there was a substantial change in the way the SID was drawn up, he would vote against it. He said much had been mentioned about future growth of principal arterials and the Shiloh Interchange. One-half the cost of this district is to provide the arterial component of these streets. "The people that are here before us tonight that are being assessed these costs are not the ones to benefit from the improvements. They are paying for an arterial street for the entire city of Billings," he said. He stated that the arterials would serve people from the Heights, Laurel, Columbus and anyone else using the Shiloh Interchange. The improvements are to serve the Shiloh Interchange and the people using the Shiloh Interchange are not the people paying the costs. The costs are being assessed to a few property owners who happened to purchase property along King Avenue. "The arterial costs should not be borne by those property owners. If we are going to assess the costs of our major public infrastructure to a few people, enough that we put some of them out of business, it makes no sense. The benefit is not related to the assessment," he stated.

Councilmember Larson said the project obviously needs to be done. This is not the first time a tax increment district has been mentioned for this type of issue. He said this issue should be on the agenda for the upcoming meetings with the County and the School Board. He said alternatives would need to be created to pay for these projects. "The revenue does not currently exist. All we are taking is the growth that may occur because we are allowing this development to occur," he stated. He said this tax increment district is one of the fairest ways to fund these types of improvements. He said it was important to include the County and the School District because both entities would benefit from the project. Councilmember Iverson said she agreed with all that had been said. She stated that this Council has had a strong willingness to tackle tough issues such as this. She said she would like Council to look at other alternatives for funding the project.

Councilmember Deisz said he would have to vote against the SID given the testimony heard. He said that if the tax increment district were developed the funds would come from next year's budget. Councilmember Deisz requested Nathan Tubergan prepare information for Council that would show what that tax increment would produce. He said the tax increment district was merely a stopgap method and not a way of saving the people. He requested the information be given before Council meets with the School Board and the County.

Councilmember Johnson said he disagreed with the idea that those people owning property in the immediate area would benefit the least. He said that everyone could benefit from the project and hopefully a solution could be found for everyone to contribute. Councilmember Kennedy said there needed to be a dedicated participation of all councilmembers on the issue before the October 25th vote. Councilmember Larson said that when Council meets with the County they need to be made aware they are currently approving subdivisions with Waivers of Protest in place for major improvements in areas that are in close proximity of the city limits. He said Council needs to discuss with the County whether this is an appropriate way to develop public infrastructure and how the issue will be dealt with in the future, with continued west end development.

Councilmember Deisz said the protest for the proposed SID was 57%; if the Waivers of Protest were disallowed the protest was 22%. He said he would recognize the protest as 57%. Councilmember McDermott said she agrees with Councilmember Kennedy that Council needs to look at every option possible. On a voice vote, the motion to postpone vote of the resolution until October 25th was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION 99-17512 ANNEXING Lots 11-20, Block 14; Lots 1-20, Block 13; Lots 1-10, Blocks 10; Lots 1-2, 9-10, Block 11; Lots 9-11, Block 12, Daniels Subdivision, 2nd filing; George Rosenfeld and Gene Brosovich, petitioners. (Annex #99-04). Staff recommends approval. (Action: approval or disapproval of resolution.)

Planning Director Kerwin Jensen said this annexation is 8.5 acres consisting of 47 individual lots in the Heights, approximately 1/2 mile east of Main Street and south of

Mary Street. He said the area was recently subdivided a few years ago and is currently zoned Residential 7000. He said most of the development will be single family housing and there is a Subdivision Improvement Agreement currently in place.

The public hearing was opened. JOHN TUFTE OF ENGINEERING, INC. said he represented George Rosenfeld and Gene Brosovich and he would answer any questions about the annexation. Councilmember Deisz asked if the annexation would be R7000 and strictly single-family residential housing. Mr. Tufte said that was true. There were no other speakers; the public hearing was closed. Councilmember Deisz moved for approval of the annexation, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5101 amending Sections 27-1004 and 27-1005 BMCC to create a new Entryway Light Industrial Zoning District, including those uses allowed outright or requiring special review, along with the development of standards for this new zoning district. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second reading.)

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

6. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5102 amending BMCC by adding a section to be numbered 18-102: Extending Police Officer Arrest Jurisdiction to five (5) miles of the Billings city limits and along the line of the water supply of the City of Billings, pursuant to Section 7-32-4301, MCA. Staff recommends approval. (Action: approval or disapproval of ordinance of second reading.)

Councilmember McDermott asked Police Chief Ron Tussing for statistics from other cities (Great Falls & Helena) that have the five mile arrest jurisdiction. Chief Tussing said he did not know the officer-citizen ratio for these cities. He said their policy was the same as what Billings would implement. It would be for emergencies only; they would not patrol or answer calls in the area. Councilmember McDermott said her concern was that the Police Department is already short-staffed and expanding the jurisdiction to five miles would only add to the problem. Councilmember Deisz asked the number of incidents in the past year when this would have been of use to the Police Department. Chief Tussing responded, "one." Councilmember Deisz referred to a letter from MetraPark and asked if the Police Department would have been called for assistance for a particular incident that recently occurred at the Metra. Chief Tussing said only if the Sherriff's Department had requested assistance. Councilmember Deisz asked if city ordinances would apply at the Metra. Chief Tussing said they would not. Councilmember McDanel asked Chief Tussing if he anticipated patrolling the area outside the city limits or

not patrolling some other area within the city limits because of the extended jurisdiction. Chief Tussing responded, "no."

The public hearing was opened. BOB BERKNER, NO ADDRESS GIVEN, said he is a strong advocate of emergency services. He said he is against the city patrolling the areas outside of the city limits. He said he is in favor of a mutual agreement with the Sheriff's Department. He feels Yellowstone County should assist with some of the costs of patrolling.

KEVIN NELSON OF 1912 AVENUE B said by extending the jurisdiction there would be even less enforcement by the Police Department. "The only thing the cops would catch by expanding the jurisdiction beyond the city limits, would be bugs on a windshield," he said.

LEON PATTON OF 453 NEWMAN said he didn't understand why an understaffed, underpaid and overworked police force would want to expand their jurisdiction. He said the Sheriff's Department and Highway Patrol were competent enough to do their jobs. He stated the present arrangement has worked well for many years and he did not see a reason to change it.

There being no other speakers, the public hearing was closed. Councilmember Johnson moved for approval of the ordinance, seconded by Councilmember Iverson. Councilmember Kennedy said he supports and understands that Chief Tussing's objective with the expanded jurisdiction is to serve and protect. ADDITION AS PER COUNCILMEMBER KENNEDY: HE SAID THAT ASSISTANT CITY ATTORNEY BONNIE SUTHERLAND STATED IN THE LAST PARAGRAPH OF HER MEMO, "POLICE OFFICERS WILL BE BETTER ABLE TO PROTECT BILLINGS WHEN THEY HAVE A CLEAR LEGAL AUTHORITY TO MAKE NECESSARY ARRESTS IN AREAS IMMEDIATELY OUTSIDE THE CITY LIMITS." COUNCILMEMBER KENNEDY ALSO REFERRED TO A MEMO FROM CHIEF TUSSING THAT STATED COUNCIL COULD IMMEDIATELY RESCIND THE ORDINANCE IF NECESSARY, SHOULD THERE BE A CHANGE IN THE POLITICAL SETUP WITH THE COUNTY. Councilmember Bradley said he understands the reasoning but disagrees with the timing of the proposal. He said the jurisdiction is being expanded almost 175 square miles. He said he would propose to delay this for 6 months and conduct some testing to see what would happen if the County Commissioners cut the Sheriff's budget and let the City pick up the additional jurisdictional area. Councilmember Elison asked why the 5 miles was chosen. Chief Tussing said it was because the Montana Code stated five miles. Councilmember Kennedy asked if the County has jurisdiction over the city. Chief Tussing said that was correct. Councilmember Kennedy said that Montana law states that the County shall have jurisdiction over the entire county regardless of whether there is a city police force. Chief Tussing agreed. Councilmember Deisz said he doesn't understand why the jurisdiction area is being expanded when the Police Department claims to be understaffed and overworked. He said he feels this is 'much ado about nothing' – "there was one case last year when the Police Department would have assisted." He said that 175 miles of jurisdictional area is unjustified. He suggested an ordinance that would give police jurisdiction of all county islands within city boundaries. Councilmember McDanel said he would support the full 5 mile area. Mayor Tooley pointed out that the city does not want

to patrol any new areas. He said it is specifically stated in Chief Tussing’s proposal that the Chief would like the police department to have the authority to make an arrest of someone with a warrant that is in the immediate area, even if that individual is in county territory. He said the intention is to include the county islands, and if an officer sees someone with a warrant for an arrest, the officer can arrest that individual. On a roll call vote, the motion was approved 8 to 3. Councilmembers voting “yes” were McDanel, Iverson, Mayor, Kennedy, Johnson, Ohnstad, Elison and Larson. Councilmembers voting “no” were McDermott, Bradley and Deisz.

ADJOURN - With all business complete, Mayor Tooley adjourned the meeting at 9:45 p.m.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Colleen Schell-Berg DEPUTY CITY CLERK