

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, NOVEMBER 8, 1999

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> 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, which was given by Councilmember Michael Larson.

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

**MINUTES – October 25<sup>th</sup>**. The minutes were approved as printed.

**COURTESIES** – Mayor Tooley congratulated all of the incumbents on their re-election and for their continued service to the community.

**BOARD & COMMISSION REPORTS** – Councilmember Kennedy said he received a copy of a bill from Senator Baucus regarding the Downtown Equity Act. He noted that the City was involved with that when the BLM decided to relocate to the westend. "We tried to force our hand in trying to keep large federal agencies in the downtown," he said. This is a draft that will put a few more teeth in that act. He said he will present this to the council at their next agenda meeting and urged the council to review and support the bill.

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

## ADDITION:

Mayor Tooley noted that an item needed to be added to the Consent Agenda this evening regarding the Agreement with the Downtown Billings Association and the annual Christmas decorations. He asked for a motion to add the item. Councilmember Kennedy moved to add the Agreement with the Downtown Billings Association (DBA) to install/remove the annual Christmas decorations in the downtown area, seconded by Councilmember Iverson. On a voice vote, the motion was approved. The item was added as ITEM V.

## CONSENT AGENDA:

### **A. Mayor's Appointments:**

(1) Montana Avenue Sign Review Committee:

- Sondra L. Daly
- Randy Hafer
- Brenda Durand
- Michael Gregory
- Michael Schaer
- Mark Lynde

### **B. Bid Awards:**

(1) **One New Current Model Forklift at Wastewater Treatment Plant.** (Opened 10/19/99). Delayed from 10/25/99. Recommend Big Sky Lift Truck, \$14,500.

(2) **New Landfill Track-Type Tractor (Dozer) for Solid Waste.** (Opened 10/26/99). Recommend Tractor & Equipment Company, \$274,022.

(3) **Poly Drive Water Main Installation – Shiloh Road to June Drive.** (Opened 11/2/99). Recommend Gary Weber Construction, \$78,580.00.

MINUTES: 11/08/99

**C. Change Order #4, W.O. 98-01, #1: 1998 Water/Sewer Replacement Project**, Gray Construction, \$39,133.95 and 8 days.

**D. Change Order #2, W.O. 99-01, #2: 1999 Water/Sewer Replacement Project**, Gray Construction, \$112,668.05 and 29 days.

**E. Change Order #1, W.O. 99-06: 20<sup>th</sup> & King Avenue Intersection Reconstruction**, Empire Sand & Gravel, \$35,000 and 4 calendar days.

**F. Development Agreement** with McDonald's Corporation re: Lot 1-B-1 of Frank Thomas Subdivision, (located at the corner of Bench Blvd/Main St), (per Resolution 99-17478).

**G. Development Agreement** with Old Chamber Development Company, LLC re: parking lot north of Old Chamber Building, 301 North 27<sup>th</sup> Street.

**H. Utility Easement Agreement** with Montana Power Company, U.S. West and AT&T Cable Services, (for new Fire Station in Terry Park).

**I. Employment Contract** with Dennis M. Taylor as new City Administrator.

**J. Land Acquisition: 10 South 26<sup>th</sup> Street**, Southerly 66 ft of Lot 7, Block 189 O.T., currently housing Galles Filter Service, \$57,000.

**K. Tax Increment Financing** to Yellowstone County for purchasing adjacent properties (on South 27<sup>th</sup> Street) to the Youth Treatment Center for future expansion of the Center, \$40,000.

**L. Purchase Agreement** for New Phone System at Airport with Williams Communications Solutions (Wittel) of Helena. State of Montana Contract Price of \$54,018.87.

**M. Upgrade job classification** of the Assistant Planner position to a Planner I position in the Planning Department. (Recommend delaying to 1/10/2000).

**N. Acceptance of 1999/2000 Financial Report**, First Quarter Ending September 1999.

**O. Authorization of Payment** of \$216,065.13 of Tax Increment Funds to Billings Public Schools for Lincoln Center Roof Project.

**P. 2000 Unified Planning Work Program (UPWP)** for the Billings Metropolitan Planning Organization, recommendation to the Policy Coordinating Committee (PCC).

**Q. 2000-2004 Transportation Improvement Program (TIP)** for the Billings Urban Transportation Area, recommendation to the Policy Coordinating Committee (PCC).

**R. Resolution of Intent 99-17527** to create Special Improvement Light Maintenance District #269: Popelka Heights View Subdivision, (re: new post office area in Heights) and setting a public hearing date for 12/13/99.

**S. Preliminary Major Plat** of Forest Park Subdivision, 6<sup>th</sup> filing. (Generally located north of Grand, west of 24<sup>th</sup> Street West.)

**T. Preliminary Major Plat** of South Heights Subdivision. (Generally located between Heights Lane and Shawnee Drive.)

**U. Bills and Payroll.**

**ADDITION:**

**V. Agreement** with the Downtown Billings Association (DBA) to install/remove the annual Christmas decorations in the downtown area.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Bradley separated ITEMS I and O. Councilmember Deisz separated ITEMS N & Q. Councilmember Ohnstad moved for approval of the Consent Agenda EXCEPT the separated items: I, N, O, and Q, seconded by Councilmember Elison. On a voice vote, the motion was unanimously approved.

Councilmember Ohnstad moved for approval of ITEM I, seconded by Councilmember Elison. Councilmember Bradley said he would like to see a clause added to the contract to limit the amount of involvement that the City Administrator would have with the primary election for state offices. He said the reason is the implied nature of one of the candidates wanting to possibly hire the city administrator out from under the City, if he is elected. "If that takes place, we would be in this same position a year from now or a year and one-half from now, trying to find someone to replace our administrator," he stated. He said he felt that keeping involvement out of the primary election would not tip the scale in favor of this happening. Mayor Tooley explained that Mr. Taylor is the former Deputy Director of the Dept. of Justice, which means he worked very closely with Attorney General Joe Mazurek, now running for governor. He said that Mr. Taylor would be a desirable running mate for anyone, especially Mr. Mazurek, but his commitment is to the City, noting that he did discuss this at some length with the council. Mayor Tooley also noted that Mr. Taylor subscribes to the ICMA code of ethics, which precludes city administrators from participating in partisan politics. On a voice vote, the motion was unanimously approved. Councilmember Deisz asked about Section 15 on p-5 of the contract: "employer agrees to budget for and pay for travel and subsistence, professional development ... What is the dollar amount understood by this council included in those two paragraphs? How many thousands of dollars are we putting aside for professional development," he asked. Acting City Administrator Bill McGill replied that number is governed by the budget each year. "Usually it is one national conference – usually the ICMA conference and any other conferences included in the budget, usually a local conference or the local state area MLCT representatives. You basically review that each year and approve it in the budget process," he stated. Councilmember Deisz asked if a dollar amount is spelled out, since most of the other items are quite clearly spelled out as not to exceed a certain amount. Mr. McGill replied that normally that amount has not been in any of the contracts because that cost is governed by the location of the conference, whether there is airfare or the person drives; there are too many variables to actually include a set amount. "That's why you have the authority each year in the budget to set this amount each year for conferences," he stated. On a voice vote, the motion was unanimously approved.

Councilmember Ohnstad moved for approval of ITEM N, seconded by Councilmember Elison. On a voice vote, the motion was approved. Councilmember Deisz voted "no".

Councilmember Ohnstad moved for approval of ITEM O, seconded by Councilmember Elison. Councilmember Bradley asked if this is a current payment or an addition to the \$42,000. Finance Director Nathan Tubergen said this is a reimbursement to the School District for funds they have expended for the roof repair—which is part of the Tax Increment Program. This additional to the monies approved earlier. On

a voice vote the motion was unanimously approved.

Councilmember Ohnstad moved for approval of ITEM Q, seconded by Councilmember Elison. Councilmember Deisz asked if funding is being approved for the projects with this action. Scott Walker of the Planning Department said the Mayor will take the council's recommendation (of the projects) to the Policy Coordinating Committee on Friday. This document is a line item of various projects that the department hopes will be completed in the next few years. In order to utilize state and federal monies, any eligible project must be listed in the approved TIP for the City. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5106 FOR ZONE CHANGE #652: a zone change from Community Commercial to Controlled Industrial on Lots 20-22, Block 160 O.T., located at 219 South 24<sup>th</sup> Street. Ronald, Walter and Robert Hartung, Kent Wilson and Conrad Miller, owners; CTA Architects Engineers, agent. (NorPac Sheet Metal). 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 Elison moved for approval of the ordinance on second reading, seconded by Councilmember Bradley. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND FIRST READING ORDINANCE AMENDING SECTION 27-703 AND 27-706(b) BMCC, AND ESTABLISHING REVISED OFF-PREMISE/BILLBOARD SIGN REGULATIONS. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on first reading.)**

Gail Kenson of the Planning Department said the Council implemented a moratorium on the construction of new billboards in June, 1999. The Planning Department has held six (6) facilitated meetings to receive public input on the issue of regulating billboards. Comments ranged from: leave the regulations alone, make them less restrictive, make them more restrictive, ban them, amortize out the existing billboards – the full gamut of comments. Because of the inability to reach consensus with the large group, a small committee of four (4) individuals was formed to move the review ahead. The four individuals were: Alan Reeder of LaMar Advertising, Randy Reger, a local realtor and business owner were representing the billboard proponents and Mike Casey and Kevin Justis represented the opponents – i.e. those who wanted to see stricter regulations on billboards. After 4-5 meetings with that group, the proposed regulations before the council tonight were developed. Ms. Kenson said many people will argue that those regulations are not a consensus, but there are many people who would like to see more restrictive regulations and that has been brought forward. She said these regulations were reviewed by the Zoning Commission. The proposed regulations include the following provisions:

- Reducing the size of all structures outside of the interstate corridor from 378 sf currently permitted to 250 sf.
- Reducing the height of all structures from up to 50 ft down to 35 ft.
- Increase the spacing from 300 ft linear separation to 1000 ft radius separation in CC; 600 ft radius separation in HC, and 600 ft linear separation in the interstate corridor, CI and HI.
- Created some scenic corridors, which include Shiloh Road. No billboards shall be permitted on Shiloh Rd from the interstate to Rimrock Rd. No billboard shall be permitted along 27<sup>th</sup> Street from the interstate to Airport Rd with the exception of that portion of N. 27<sup>th</sup> Street in the CBD –(from Montana Avenue to 6<sup>th</sup> Avenue North). No

structures will be permitted along the Yellowstone River and Airport Rd from Swords/Alkali Creek Rd to the city limits at approximately Zimmerman Trail.

Ms. Kenson said the Zoning Commission made one change in the consensus draft. That change was in the interstate corridor, the proposed regulations permitted a structure to the size of 378 sf, reduced from 675 sf. The Zoning Commission recommended that number be changed to 480 sf – which is what is being presented in the proposal this evening. The council requested an inventory of existing billboards and an estimate of how many additional billboards could be built along Grand Avenue and Main Street. She noted that information was provided in her staff report. She noted that she has calculated worse case scenario in regard to the addition of new billboards under the proposed regulations. She noted also that she did not take into account adjacency to residential zones, so some of the potential new billboards may in fact not be allowed because they do not meet the residential zoning separation of 150 ft.

Ms. Kenson explained that if there were no existing billboards on Grand Avenue and the 300 ft spacing as the current code requires, there could be a total of 60 structures. If that spacing were increased, the number would be reduced to 30. With 1,000 sf radius spacing, the number of billboards permitted on Grand Avenue would be a total of 18. Currently there are 15 billboards on Grand Avenue – from Division Street out to the end of city limits, just past Shiloh Rd. She said there are spaces for about 4 additional structures.

If there were no structures on Main Street today, using the current 300 ft spacing, there would be a total of 58 structures permitted. With the 600 ft radius spacing proposed, a total of 29 structures would be permitted and if the spacing would be increased to 1,000 sf, the number of billboard structures would be reduced to 17. There are currently 18 structures on Main Street. There are five (5) spaces available on Main Street.

The billboard inventory indicates 123 structures. On these structures there are 223 faces. 34 of them (or 28%) are “on system” which means they are on a federally aided highway. Should the council at any time propose amortization, those structures could not be amortized; they would have to be purchased.

The total conforming structures under current regulations is 38 or 31%. Under the current regulations, 69% of the current structures are nonconforming. Under the proposed regulations, only 19 structures would be conforming, making 84% nonconforming.

The public hearing was opened. JIM PINNELL, NO ADDRESS GIVEN, said he represents LaMar Advertising. He noted that this has been a long process, starting into the 5<sup>th</sup> month now. They had six (6) night meetings of 12 hours + the time to prepare for the meetings. He said everyone worked hard at the effort and it has been expensive in the sense that it took them away from what they consider to be the mission of their business. He thanked everyone who volunteered their time during the process. “We felt we have been responsive to the concerns identified in the meetings. Out of the development of the consensus group, formatted by the Planning Dept, they came up with the ordinance. We feel the ordinance that they developed in balanced, that it is centered. We as the industry have given up a lot. There are still industry members who feel that we have given up too much. So we would encourage you to consider the consensus recommendations for the sign code and hopefully pass and support those recommendations,” he stated.

JOHN EISEN OF JGA ARCHITECTS, ENGINEERS, PLANNERS OF 644 GRAND AVENUE, said they are the consultant for the West End Master Plan. He said he wanted to present “a different twist” on this issue. During the preparation of the West End plan, they conducted dozens of meetings around town with all kinds of people. They have heard from about 2000 people. He said he has been a planner for 32 years, 25 of them in Billings. What he has noticed is that Billings is becoming like most cities – it is losing its character and identity. This has been mentioned at virtually every meeting during the West End planning. A visual preference survey was conducted in over 12 presentations. People cared dramatically about the declining community character and the aesthetics of Billings. They concluded that the city must raise its standards. Residents want to see smaller and lower signs and no billboards of any kind. They feel setbacks have

nothing to do with the issue, because once billboards are on the landscape, they can be seen. He said this issue is being addressed in the West Billings Plan.

CHARLES HAMWEY OF 1010 GRAND AVENUE said he is currently president of the City/County Planning Board. He commended the staff for their role in preparing the proposed ordinance for council review. He said it is balanced and somewhat acceptable to everyone. "You are not going to please everybody... Today, we've got a consensus on billboards on both sides of the issue... This is a reasonable recommendation before you." He urged the council to accept the proposed regulations.

MARY WESTWOOD OF 1432 YELLOWSTONE AVENUE said she supports parts of the ordinance – those parts that place tighter restrictions on sign companies. She suggested that the City go one step further to protect the citizens of the community from visual pollution. "I would urge you to issue an amendment to this ordinance that would make it so no more permits for billboards are issued. These are called off-premises signs, but for purposes of my discussion, I'm going to call them billboards. As a downtown property owner, I am concerned that between First Avenue North and Sixth Avenue North is a corridor that we are trying to use in our urban design as a 'jumping off' place for people to go into parts of our downtown. I recognize that there are property owners in one block who may want to put up another billboard where they already one. But my feeling is that we need to keep that corridor as clean as possible... Billboards are not constitutionally protected speech; they are not affordable for many local businesses, they are not a right owned by billboard companies – any property rights involved belong to the landowners. They are not any more informative than tourist information directional signs... Billboards are something called permitted nuisances and we permit them. But we also have the right to decide as a community that we will not permit them. They are advertising that you cannot turn off. It's hard to read them if you are going at any speed, they can be distracting and are safety hazards. And, they sell. I get really tired of being sold everywhere I do. I would like to have some places where I can just enjoy the natural beauty of my community without someone trying to sell me something," she stated.

PAUL DENEHY OF 4929 SWEET WILLIAM AVENUE said he was also involved in the sign code meetings. He said the keyword here is consensus. Staff has come up with a consensus plan that gets agreement from both sides, that have been at extreme ends of the gamut and have brought them to the middle through the 4-person committee. Both sides had to give. He urged the council to accept the consensus recommendations.

KEVIN JUSTIS OF 176 NORRIS COURT said the word consensus has been used, but it probably is more of a compromise. "There was no consensus from our group about a lot of things. It was a compromise. That was our charge – to come up with something that we could agree to... I think you have the opportunity to say some things about the quality of life in Billings. The survey results are giving you a message – the community is ready for something better than what we have. There are some monstrosities in the community, that block out and make a mockery of 'Big Sky Country'. I urge you to do what you can in the way of political will. This is one opportunity – an incremental step to make some changes," he stated.

PAUL WHITING OF 925 BURLINGTON said these recommendations are not a consensus. "There are several of us whose opinions were not represented among that group of 4... The problem with the consensus ordinance before you is that it would allow billboards to continue to grow... I would urge you to consider an ordinance which would allow no new construction, no more permits. This would not destroy them; this would not take down the existing billboards. It would allow them to continue and people to advertise in different ways," he said.

JOANNE BYLSMA OF 609 MILES AVENUE said billboards are out of scale and obtrusive in an urban setting. She would like to see all billboards eventually removed from within the city. "But since this probably won't happen any time soon, I hope that you would consider the option of allowing no new construction and allowing the existing billboards die their natural death over time. If that idea can't pass, then please don't dilute the proposed submittal before you from the Planning Dept. It has several good ideas for

limiting new construction and it would certainly be a step in the right direction," she said.

JEFFREY MURI OF 2946 ARNOLD PALMER DRIVE said he is a businessman here. He said this is a heated issue on which you will not get everyone to agree. "What you do have in front of you is a compromise, consensus, you can pick whatever term you want to use. But that is what those 4 people came up with, with a broad group of people giving them input. I do believe that billboards are a vital use for businessmen and a vital use for the consumer... The purpose of the billboards is for the consumer – to get information and that is just one opportunity we have to reach the consumer that we are going after. I've lived in this town, I grew up in Montana, and I take offense ... that the simple fact that I'm a businessman for billboards, the assumption is that I'm not for beauty and quality of life. My family and I have are some of the people that have bags and go out in our barrow pits and clean up litter. I think we have many more priorities in this town in terms of beautifying the city than to attack billboards. I think billboards are a valued utilization to many people in the community and if we want to talk about pollution, I think there are many other avenues that we can do that with..." he stated. He urged the council to approve the consensus ordinance before them.

MARY FITZPATRICK OF 631 CLARK AVENUE said she was here to urge the council to end the billboard blight and to make the moratorium permanent. "When we erect billboards that stand in front of our beautiful big sky and cut us off from the sight of the mountains and the plains that surround us, we are declaring that commerce has a higher value than nurturing our minds and imaginations with natural beauty. We're teaching our young people that consumerism is the purpose of life and that the natural world that sustains our bodies and spirits is secondary and expendable. That is the message of billboards -- in their words, images, and above all, their very existence. If there are parents who want their children to believe this, their way is easy. They have only to pop their progeny in front of the TV and let them listen to the preachers of consumerism. But there are those of us who want to live with and pass on to the next generation a spirit of gratitude and care for a natural world that is not a commodity. We know and want young people to know that commerce and consuming will never satisfy their hearts. We are not consumers only, but primarily participants in a community we call the ecosystem, the web of life. This is our life support system and it gives life, not just with food, air and water, but with beauty, spaciousness, silence, solitude, and darkness. These also are food, food that is not consumed, food that can never be supplied by commerce. Billboards are one of the ways we hide this truth from the young people in our care, hiding from them a vital necessity for their health and happiness," she stated. She urged the council to get rid of the billboards, make the moratorium permanent, and leave space for the natural world to communicate its own message to us.

RANDY REGER, NO ADDRESS GIVEN, said he was a member of the 4-person committee. He said there are many sides to this issue and he learned a lot from the process. He commended staff, particularly Gail Kenson, for her efforts on this matter. He said he didn't know if this was the best solution, but everyone worked hard and everyone gave something up to come up with a good compromise. He said the best part of this process was that staff worked with all the parties concerned.

ALAN REEDER OF 1861 COUNTRY MANOR, said he is with LaMar Advertising. He said they have been working on this issue for a long time and also commended Gail Kenson for her efforts in making the proposal come together. He said they gave up a lot with the current proposal. There was equal representation of both sides at these meetings of the committee. They came up with an agreement that they could live with. Mr. Reeder said he was the person that proposed the separation from residential zoning. He said they are currently built out on Grand Avenue, Main Street and Central Avenue and Broadwater Avenue at this time. He said that 98% of their advertisers are local businessmen. He urged the council to approve the proposed ordinance.

BETH WOODSON OF 3815 MESA ROAD said she didn't think signs were doing the community any good. She said they are not necessary because there are other ways to advertise. Ms. Woodson said having some viewsheds listed in the ordinance is important and other areas should be listed in addition to

those already listed. She urged the council to not allow any new construction of billboards and extending the moratorium or creating a new moratorium.

FRANK VALENZA OF 3247 ALJEMA AVENUE said he is part of LaMar Advertising and handles Billings and Bozeman. He receives phone calls every week from Bozeman businessmen requesting billboards. He said we don't have them to give them because of the restrictions placed on them. "People that say that billboards aren't needed should talk to some businesspeople. We would never get requests if they weren't wanted," he said. Mr. Valenza also commended Ms. Kenson on her work on this project. He asked the council to approve the proposed ordinance.

SUSAN MURPHY OF 321 CALYPSO DRIVE said she is the Director of Sales at the Billings Hotel/Convention Center. She said they are one of the largest employers in the city – in the top 25. They employ 125 people in the summer and about 85 in the winter. "A lot of people depend on us to eat every day. We have found that billboards are a mainstay of part of their immediate sales plan. It has been proven in our numbers this summer alone. Our people don't look for phone books, for any types of other signs, other than our big, beautiful billboards," she stated. She urged the council to approve the proposed ordinance.

SARAH MCNAMARA OF 541 AVENUE E urged the council not to approve the proposed ordinance. She said she works for a non-profit developer and hears people ask what the development will look like, with aesthetics being their biggest concern. People are concerned with aesthetics and the community needs to pay attention to how the city looks. She urged the council not to allow any more new construction of billboards. The existing billboards let us know what is there and additional ones would only further clutter and obscure the areas they are in now.

ARNOLD SCHULTZ OF 36 S. CRESTWOOD DRIVE said he and his wife own a sign service business. There are more than just the billboard companies themselves that are involved in this issue – you also have the production companies that make the billboards and make their livings manufacturing them. "I was born and raised in Billings and billboards have been here since I can remember. No one has ever complained about them. It seems that recently with all the new people coming in, complaints have come up. At the end of one of the meetings, Mr. Kerwin Jensen made the analogy that 'it's at the end of a softball game and the last out is made. A lot of people aren't going to like the call and aren't going to like the outcome of the game.' I see it a little differently. What you've got here is the game is over and you have a 100 people milling around. Three of them don't like it, so now they are going to change the rules after the fact and reverse the outcome of the game. What you've got is a lot of companies that have invested a lot of money. We've been involved with three different sign companies from Myhre to PrideMark now LaMar. LaMar has come in and improved their signs – making them smaller unilaterally and taking down the old wooden structures that looked awful and built metal structures to make them look better. They are community minded. You hear a lot of arguments that you can't see the mountains. If you are going to see the mountains in Billings, Montana, you better start tearing down some buildings because we're here as a city. We're not here to just see mountains..." he stated. He said it came down to a compromise and is a step in the right direction because we've got to have controls, but we can't kill an industry.

BETSY FORBES OF 32 HEATHERWOOD said she is interested in what has been said that businesses need protection. She asked what protection businesses have in the cities that have outlawed billboards. She said she has sympathy for people who feel their business is at risk, but many businesses in this town have gone out of business because of the box stores, etc. Ms. Forbes asked the council if they are here to preserve business for special interests or to try to make this be a new and good ordinance for the environment and for people to come and enjoy this city.

JERRY RAY, NO ADDRESS GIVEN, said as he looked around the audience this evening, it appeared that a majority of people were retired, older people, who for the most part never signed a check on the front as a business, never had to meet payroll, never had these people look at them and say 'look, I have to pay my house payment and buy groceries for my kids'. "Maybe that doesn't mean a lot to them, but it does



to guys like me that have a ton of people that I may every month, the same as LaMar or any of these other companies... A vast majority of people who advertise on these billboards are local people... The other thing that bothers me about this ordinance ... is that most of us are so busy trying to make a living and meet payroll and make our payments, that we don't have time to go see what the city is doing and to let some small group, that has basically made their mark in life trying to create take-it-with-ems... I look back at the zoning ordinance a few months back and was assured that 'what you see and are talking about is what you are going to get'. There were a couple of letters slipped into that ordinance under R-6000 called "SR: special review". We weren't privy to that and that basically wiped out the R-6000 zoning, as we knew it before. So, I get real nervous when I think about that this is the way it is going to be. I hope we really take a look at this and see what initials are involved in this thing," he stated.

DIANE MILLER OF 625 SOUTH 38<sup>TH</sup> STREET WEST said she is a proponent for the billboards. She said everyone has heard that just businesses try to use the media in any form they can to generate sales and/or support for their product. "The one billboard that I am going to mention tonight is one we should all take note of. It was a fabulous billboard right on King Avenue – black background sitting up really high, all white letters. And it said, 'Don't make me come down there. ---God.'" I think we should all take note. Billings is not just billboards for businesses; other people, firms, etc. utilize billboards also, and we need them," she said.

GREG LING OF 368 BENCH BOULEVARD said he is a copywriter, so he knows something about advertising. He said he didn't think most people wanted advertising in their face and that is what he finds with billboards. He opposes billboards.

SHERRY MILLEN OF 2314 IVY said during this age, national advertising comes at all of us all the time. She said the little guys need to have a chance to compete with the national companies and billboards allow the little guys to have that chance. It is affordable for them to get their businesses recognized.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the ordinance on first reading, seconded by Councilmember Elison.

Councilmember Johnson said the council has heard arguments from both proponents and opponents this evening. "Billboards have been around for over 100 years ... and they are still here and they continue... I still can't find a good 1999 reason to have a large structure pointed skyward in any location to try to tell me something, remind me of something I already know about, come from whatever company, a message put before us again, and find it so difficult to try to realize that it's important – that's the way to advertise, that's the way we need to do it...," he stated. He said he wanted the council to really consider whether or not this was a consensus report. He noted that given all of the other beautification efforts (like Bright 'N Beautiful) in the community, billboards no longer fit in the landscape of our community. Councilmember Johnson made a SUBSTITUTE motion to substitute the following language for the main motion, to change Section 27-706(b) to read "off-premise commercial advertising signs are not permitted within the Billings city limits", seconded by Councilmember Bradley. Mayor Tooley asked if his motion intends for all off-premise signs come down in the city limits, or that no additional signs be constructed. Councilmember Johnson said his intent is for no further new signage in Billings. He said he is not anti-sign and is not opposed to those that already exist. He hoped that someday they would also go away.

Councilmember Elison said the sign issue has been contentious within the City for as long as he has been on the council and it will never be one of those wonderful win-win situations where a compromise is reached and everyone goes away happy. He pointed out that there is nothing about billboards that prevents people from planting trees and participating in the Bright 'N Beautiful efforts. Councilmember Elison said, "the purpose of a city is to congregate the services which are provided to the people that live in and around the city. It is not to be a beautiful valley. We are very lucky because our city is in a beautiful valley, but there is a purpose to a city and it is where our commercialism is concentrated... The visual survey ... lacks some focus in the sense that if you take a picture of a billboard and you show it to somebody and compare that

against a picture of the mountains near Red Lodge, I think you will find people preferring the mountains near Red Lodge. If you take the billboard and you compare it to the large electrical poles, which were recently put up by Montana Power along Grand and Shiloh, I think people prefer the billboard. So, I think it is a little bit unfair to say that people don't like billboards. There are a lot of things around in our city that are worse than billboards... I am opposed to the billboards that exist. There are certain billboards in this town I would like to see gone because there are certain billboards that are directly within those viewsheds – the places where you can have a nice view. However, if we remove the billboards up and down Grand Avenue, ... you do not get a viewshed. You get the rest of Grand Avenue – with buildings and cars and potholes and smaller signs. You are not going to create a beautiful area by removing a billboard off Grand Avenue. The second point – the allowed locations. The results of where there are billboards now suggests that under these proposed regulations, 19 out of 123 current billboard locations would be conformable with the standards – less than 20% of the current billboards would be allowed under these standards...” he stated. He reminded the council that a member of the sign industry just told them that along Main Street, Broadwater Avenue, Central Avenue and Grand Avenue there are no more allowed locations for billboards. He said the proposed regulations are not liberal to the sign industry. There would be few, if any areas in the city in which new signs could be constructed. “I have to argue strongly against the idea that not permitting any new billboards within the city. What this agreement does is it gives the sign industry a motivation to move some of the most offending signs. If we say you cannot build another sign in the City of Billings, then the maintenance on those signs is going to be ‘mighty good’ because they are going to want those signs to last into the next millennium. They don't want them down because they aren't going to get any more,” he stated. Councilmember Elison pointed out that within the consensus proposal, there are provisions which encourage the movement of the nonconforming signs into other locations – a possibility that “we can get the signs that sit at the base of the Rims on 27<sup>th</sup> moved” so that there would be those viewsheds.

Councilmember Deisz said the people who took time out of their schedules to come to the meetings on billboards, came to them with a purpose – to come up with some suggestions and come back to the City Council, as instructed by the Council. “I personally thing this Council would be taking a giant step backwards if we were to ignore the efforts that have gone into this process, which we, sent out to staff (Gail Kenson) and to the public. We would be taking a giant step backwards if we did not accept and approve this consensus agreement... We're not going to get everybody to agree on this, but this is the closest I've seen come forward and I started watching the sign code before I got on City Council the first time... These (meetings) were probably no less contentious, but there was at least a spirit among the sign industry that they wanted to work out something and they did work out something, that in my opinion is not going to allow any new signs on Grand, Broadwater, Central or Main... Just because there are billboards does not mean that you cannot plant trees, bushes or green lawn... I also wanted to address the concept that the signs are ugly. I may not agree with the placement of all signs... I would love to see those at the base of the Rims come down; I think they are ugly... Who uses those signs? If you really want to punish the sign companies and get them to tear those signs down, why don't you go to the big advertisers in this town that use those? ... They use them because they work,” he stated. Councilmember Deisz said if the consensus agreement before the council this evening is passed, there is motivation for the sign companies to make some changes that will benefit the community.

Councilmember Kennedy asked for some clarification on the substitute motion. “Are you advocating that we cap the inventory and should somebody pull down a billboard in a nonconforming area, they could put a billboard in a conforming area, or are you saying no more new permits period?” Councilmember Johnson said he is suggesting the council consider no new billboards or permits for billboards in Billings period. On a roll call vote, the SUBSTITUTE motion was approved 6-4. Councilmembers voting “yes” were: McDermott, Bradley, McDanel, Iverson, Tooley and Johnson. Councilmembers voting “no” were: Deisz, Kennedy, Ohnstad and Elison.

Councilmember Johnson made a SECOND MOTION to have the Acting City Administrator direct the City Attorney and Planning Dept rep. Gail Kenson and whomever else is needed, to study and review the information in the consensus report, and all other hearings input offered on billboards this past summer and fall, including consideration of amortization of all existing billboards, and to prepare recommendations on existing billboard regulations for the City and report to the City Council on or before March 1, 2000, seconded by Councilmember Bradley. Mayor Tooley asked Councilmember Johnson "encapsulate" that lengthy motion into one sentence. Councilmember Johnson moved to have city staff, under the direction of the Acting City Administrator, review the consensus report and all that was heard in the hearings, make recommendations and report back to the council early next year, seconded by Councilmember Bradley.

Councilmember Elison said it appears that this is exactly what staff has done – reviewed all the recommendations and come up with a recommendation to the council. "To send them back to review their recommendation to us and come back with their recommendation to us, which we have right here ... is a waste of their time and our time," he stated.

Councilmember McDanel asked for a clarification on the motion. "You're not asking them to take these recommendations back and review them and come back with another set of recommendations for the sign code, are you? I think what you are asking is for them to apply these regulations to the existing billboards and come back with recommendations as to how we can either amortize, leave in place or offer some sort of incentive for moving those billboards to a new location, is that what you are doing?" Councilmember Johnson said that is much clearer than the way he said it. "The answer is "yes".

Councilmember Elison said, "that's impossible, since there are no billboards allowed anywhere in the City of Billings. You cannot move one to a new location, because they are not allowed in the City of Billings. You have removed any incentive to ever move a billboard from any of the offending locations to any more appropriate location. That's been done; it's been passed by the City Council." Councilmember Kennedy said, "we've also created an unfair advantage in the marketplace ... which I'm shocked that it got past us. What you now have done is that you've taken a certain number of square feet that is used for this medium and made that price more expensive to individuals in this community... Maybe, we played into a national's hand here. I think you might have had this conversation before and possibly this is exactly what they wanted us to do. They now control the market," he stated.

Councilmember McDanel restated his summary of the motion – as "applying these regulations to the existing locations of billboards throughout the city and coming back with recommendations to us for either leaving in place, amortizing or offering some incentive to relocate." City Attorney Brent Brooks said he is not sure "if the council has put a cap on all new billboard permits or what we have done. But if we have not voted on the main motion on the ordinance, I really am struggling with how we can apply the proposed regulations if that ordinance has in effect been voted down by passing the substitute motion. That is what I am struggling with right now," he stated. Assistant City Administrator Bill McGill said the council is also dealing with the issue of maintenance and repair of the existing structures. "If there is a request to repair one or one needs some kind of maintenance, if you substituted this ordinance, then there are no rules with respect to that."

Councilmember Kennedy urged the council to see what damage has been done to the whole process by passing of Mr. Johnson's substitute motion. "I would encourage you to approve this next one too, because we have no chance to bring anything to this with what he's just done... I would encourage you to allow us the chance to undo some of this," he stated. Councilmember Deisz urged members of the prevailing side to reconsider the decision a few minutes ago. "I'll make it as clear as I can that I think this substitute motion is assinine. We are giving no incentive for the sign companies to come back and do anything on behalf of beautifying Billings, Montana. That was not my intent when I walked in here this evening. I'm not sure what happened or how it got passed, but I'm asking someone on the prevailing side to reconsider this decision that was just made."

Mayor Tooley asked Councilmember Johnson if it was his intention to accept the report with the

exception of the moratorium. Councilmember Johnson said he had no desire to accept that report, but that report and everything else stated in the motion still can and/or does apply. "As you look beyond, we've now said 'no new permitting for new billboards in the City' and just a reminder that everything is thrown out. And I'm reminded that when meeting with staff, talking with other councilmembers, it was made clear 'be sure there's a follow-up motion'. I don't know what's happened in the interim, that we don't remember that now. Be sure there is a follow-up motion because if you do the one thing, then it's left wide open, or ... without any guidelines or support ... and a new ordinance started that says 'we will not permit new billboards'. The follow up motion is essential ..., or we need someone to scrap it all." He added that most of what he says is based on what citizens have had to say, whether here tonight or not. "I knew we were doing that -- I knew I was doing that -- making it more solid for a place named LaMar, the third largest billboard operator in the country. They are not from Montana. They are national or international. But one more time, I think it is important to have this follow up motion as a part of the first motion made," he stated.

Councilmember McDanel said as he looks back over the process over the last few moments, "I think the real problem here comes from the use of the word substitute motion. I think Mr. Johnson's motion should have been an amendment to the original motion, which was to pass this ordinance," he stated. Mayor Tooley said he gets a sense that those people who voted in favor of the substitute motion believed that they were voting for the original motion with one change offered by Mr. Johnson. Councilmember Johnson said that was not his intent, but realized that it muddies the waters even further. "I would not do that; I could not do that. I could not accept the concessions given to the billboard industry in the consensus report. Four people that spent several hours together, worked hard... But dozens and dozens of people worked hard to 'say we don't want new billboards in this town' and/or hoped they could work as proponents and opponents and couldn't or weren't allowed to, as four people made the decision. The Planning Board didn't do it; the Planning office didn't do it, council didn't do it; citizens gave some input and four people went into a room and made that. That was not part of my motion; it was a substitute motion," he stated. Councilmember Deisz rose to a point of personal privilege, "asking are you enforcing our rules this evening on one councilmember hogging the floor and not allowing others to speak?" Mayor Tooley explained that what has happened is the chair has asked a number of questions of this councilmember and that councilmember is responding to those questions. "I'm trying to comply with our rules of order, but ... go ahead Mr. Deisz," stated Mayor Tooley.

Councilmember Deisz said, "Jack (Councilmember Johnson), you have a very short memory or a selective one and I don't mean that in a mean or derogatory tone. We sat in the same room together with 80 some people that night and we divided ourselves into tables. We went through a list of proposed questions and answers that staff had developed and came forward with us that we were supposed to come to a consensus on that night. When each table broke out and gave their reports, we discovered there was no consensus. A couple of the tables then suggested that we select a smaller committee and let that committee work on it between the time of that meeting and the next meeting. That is all staff did. They took that suggestion, which came out of that meeting of 80 some people. Now, you can call it non-consensus or non-compromise or whatever you want, but there was 80 some people in the room that night when we held the public hearing and they seemed to agree that a smaller committee could maybe work this out. The four people that were on that committee were as diverse as you could get ... Now, I'm not going to sit here and let you derail what happened at those public meetings. I think it's low down; it's rotten. There was a process put in place Jack. Now, because you felt uncomfortable with the way that process turned out, I'm sorry. But there was a process. This evening you heard from some people who had never been to one of those meetings. I'm sorry for them. I gave up my evenings to go to those meetings because I thought it was important. You gave up your evenings because you wanted to be there; you thought it was important. Now the people that thought it was important were at those meetings. You don't see 200 extra ones here tonight. Most of the people you've seen and heard from this evening were the same ones you and I saw at those

meetings held at the Community Center – same identical ones. But, your substitute motion just derailed all of that work and I'm sorry because the public did not take the time to be there in your estimation. In my estimation, the public did take the time to be there at those meetings. What came out of those meetings was exactly what this council had given direction to staff to go to those meetings and come out with. And they did it. Again, I would like someone to reconsider the substitute motion," he stated. Mayor Tooley reminded the council that there is another motion on the floor – for the staff to review the consensus report and bring back recommendations to the council for action.

Councilmember Elison said the motion on the floor is nonsensical. "We do not have new regulations and there is no possibility for relocation. The motion is meaningless," he said. On a voice vote on the motion on the floor, the motion failed.

Councilmember McDanel moved to RECONSIDER the substitute motion, seconded by Councilmember Deisz. On a voice vote, the motion was approved. Councilmember Johnson voted "no" on the motion to reconsider. Mayor Tooley said the substitute motion is now on the floor for discussion, noting the Councilmember McDanel mentioned new regulations, which include revised face areas for the signs, revised distances for the signs, etc. in the consensus report. "Are you willing to put something on the floor that would include this report, but with the exception that a moratorium would be included in the regulations?" he asked. Councilmember Elison said there is a point of order here. "When you vote to reconsider and that is approved, we are considered to be back at the point exactly at the moment before the vote was taken. Therefore Mr. Johnson's motion is on the floor and under consideration," stated Councilmember Elison.

Mayor Tooley asked Councilmember Johnson to clarify the intention of his substitute motion. Councilmember Johnson said it was his intention to offer a substitute motion to substitute for the consensus report and it would be a motion that we would have no new billboard permits in the city. Councilmember Bradley called for the question, seconded by Councilmember McDanel. Debate was ended. On a roll call vote, the SUBSTITUTE motion failed 3-7. Councilmembers voting "yes" were: McDermott, Bradley and Johnson. Councilmembers voting "no" were: McDanel, Deisz, Iverson, Tooley, Kennedy, Ohnstad and Elison.

Discussion resumed on the ORIGINAL motion. Councilmember Elison amended the original motion to alter the consensus report by removing Section 6 a(5) and adding a new Section 2 and renumbering all others accordingly, said new Section 2 to read: "No off-premise/billboard sign shall be constructed or erected after the date of the enactment of this ordinance and until there are no nonconforming signs in the City of Billings, EXCEPT to the extent that each off-premise/billboard face replaces an existing nonconforming off-premise/billboard face from within the city limits, seconded by Councilmember Deisz.

Councilmember Elison said he did not want to see the billboard industry removed from the City of Billings. He wanted to see certain nonconforming billboards removed from the city. "I think a lot of work has gone into the discussion and creation of a set of restrictions that should apply to billboards. I think it became obvious in the discussion here that we needed some set of regulations to accrue only to those nonconforming billboards that exist at present, if nothing else. The amendment that I have suggested is that there will be no new billboards, no additional billboards until such time as there are no nonconforming billboards. The effort is to push and provide incentive to give both carrot and stick to the advertising industry to put their signs in locations that are conformable to this ordinance. At such time as all signs are in conformance, the possibility of new, i.e. additional billboards would be available," he stated. On a voice vote on the amendment, the motion was approved. Councilmembers Bradley and Deisz voted "no". On a voice vote on the original motion as amended by Councilmember Elison, the motion was approved. Councilmembers Bradley and Deisz voted "no".

Mayor Tooley called a brief recess at 9:45 p.m. The meeting was called back to order at 9:52 p.m.

**4. PUBLIC HEARING AND RESOLUTION 99-17528 CREATING SPECIAL IMPROVEMENT LIGHT MAINTENANCE DISTRICT #267: Kathy Lane.** Staff recommends approval. (Action: approval or disapproval of resolution.)

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

**5. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #CC-99-02: to allow a 24-ft wide increase in the width of a driveway approach onto 6<sup>th</sup> Street West for Proposed Fire Station #4 at the Northwest Corner of Terry Park.** Staff recommends approval. (Action: approval or disapproval of variance.)

The public hearing was opened. There were no speakers from the audience. 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.

**6. PUBLIC HEARING AND RESOLUTION 99-17529 ANNEXING #99-06: N2 of Lot 5 of Clark Subdivision, containing approximately 1.7 acres, D&M Family Partnership, petitioners.** Staff recommends approval. (Action: approval or disapproval of resolution.)

Planning Director Kerwin Jensen said the subject property is located near the South 27<sup>th</sup> Street interchange. It is currently zoned Controlled Industrial and was subdivided in 1909. There was no subdivision improvement agreement at that time. Staff recommends approval of the annexation, providing the petitioners provide either a development agreement or a subdivision improvements agreement. Councilmember Deisz asked what zoning the property would come into the city as. Mr. Jensen said it would be Controlled Industrial as well.

The public hearing was opened. DALE DAVIS, NO ADDRESS GIVEN, said he is the developer of the property. He is proposing to put a warehouse/office for subcontractors on the subject property.

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

**7. PUBLIC HEARING AND RESOLUTION ANNEXING #99-07: N2NW4NW4 of Section 12, T1S, R25E, less Emerick Subdivision, C/S 1702 and the North 120' previously annexed, containing approximately 15.5 acres, Lena Emerick and Freda Emerick, petitioners.** Staff recommends approval. (Action: approval or disapproval of resolution.)

Planning Director Kerwin Jensen said this property is located at the southeast corner of Central Avenue and 32<sup>nd</sup> Street West, and currently part of a much larger county island. The property is currently zoned Agricultural Open Space. A zone change is in progress as well, changing most of the property to Community Commercial. The council will review this zone change request at its next meeting (on November 22<sup>nd</sup>). Mr. Jensen said approval of the annexation is recommended, conditioned on having either a Development Agreement or a Subdivision Improvements Agreement approved by council.

The public hearing was opened. DENNIS RANDALL OF ENGINEERING INC., 1001 SOUTH 24<sup>TH</sup> STREET WEST, said they are the agent for the developer – Sparrow Group Inc. Mr. Randall said one of the city's goals is infill development. This property fills that goal. Currently it is an island within the City. It is bound by city limits on three sides and is at the intersection of two existing arterial streets. A good portion of the infrastructure necessary to support this annexation is already in place. That portion of the infrastructure that is not in place will be required via the SIA. There is a zone change request in process, to be reviewed by the council in two weeks. He said there is also a preliminary plat that will be reviewed by the council in

December. The SIA will accompany the preliminary plat. Councilmember Kennedy asked how large the Community Commercial lot is. Mr. Randall replied that the preliminary plat will encompass not only the N2 of the quarter quarter, but the S2 also – covering a gross area of about 38 acres. One-half of that is already annexed, that is why you are only seeing about 15 acres tonight with this annexation request. Of that 38 acres, there are 4 zone designations proposed: 11.50 acres of Community Commercial; 2 acres of Neighborhood Commercial, 8 acres of Residential Professional and 10 acres of Residential Multi-Family zoning.

PAUL WOLD OF 3131 SOLAR BOULEVARD said he is not against the annexation, but is speaking in regard to the proposed zone change. He said the Zoning Commission recommended denial of the proposed zone change.

There were no other speakers. The public hearing was closed. Councilmember Kennedy moved for approval of the annexation, seconded by Councilmember Elison. Councilmember Kennedy said he is glad to see that a Development Agreement is suggested because he is a little concerned about more Community Commercial in this area. Councilmember Elison said the annexation would provide for the land to come into the city zoned R9600. Any zone change would have to be approved by the Council. Councilmember McDanel reminded the council that they have talked in the past about requiring some sort of development plan associated with annexations of parcels of land exceeding some size. “We need to determine what size parcels are going to require or automatically trigger some sort of agreement or plan upfront. That’s something this council needs to do very quickly and kick that into the process,” he stated.

Councilmember Deisz said he would vote against this item this evening since there is no development plan and this council has not made a decision on that magic number – “I’ll say it—10 acres. I think we should have a development plan in front of us, so that we know what is going to go on that property,” stated Councilmember Deisz. Councilmember Elison reminded the council that this is a county island completely surrounded by the city. “We’ve worked very hard for a long time to incorporate those county islands into the city, where they are completely surrounded ... That is important for the Fire Department and the Police Department and other organizations that are trying to serve the city...When you have a little island within the city, which is presumably not entitled to those services, but how can you possibly deny them when any action that goes on within that little island affects all of the city that surrounds it. Making these islands part of the city is a priority. What happens to them after that, I don’t think you are in any danger of creating an unacceptable situation, as it is coming into the city in the most restrictive zoning classification that is available within the city. But it does become part of the city where it can receive the services that it is going to require,” he stated. Acting City Administrator Bill McGill said the council did not have to deny this annexation this evening, but could delay it because the SIA will be coming forward. Mayor Tooley asked the applicant is there was a problem delaying the annexation. The applicant (no name given as he spoke from the audience) said he would like to have the zone change request heard by the council in November and asked if the city had to have authority under annexation before ruling on a zoning request. If that was the case, he would not like to have this item delayed. Councilmember Kennedy reminded the council that if the annexation is denied tonight, then the applicant does not have a chance at the zone change anyway. Councilmember Kennedy withdrew his original motion and Councilmember Elison withdrew his second. Councilmember Kennedy moved to postpone action on the annexation until the council has a chance to look at the SIA and have it be at the very next meeting, seconded by Councilmember Deisz. Councilmember Elison said this part of a county island needs to be annexed to the city. “Nothing in the annexation precludes a future SIA or Development Agreement. Nothing in the annexation requires a specific decision upon zoning. It comes into the city at the most restrictive zoning that is available within the city and it needs to be part of the city,” stated Councilmember Elison. On a voice vote, the motion was approved.

**8. CREATION OF TAX INCREMENT FINANCING INDUSTRIAL DISTRICT:**

- (A) **Resolution of Intention to Create the Tax Increment Financing Industrial District and setting public hearing for 12/13/99. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**
- (B) **First Reading Ordinance creating the Tax Increment Financing Industrial District. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Councilmember Kennedy moved for approval of ITEM A, seconded by Councilmember Iverson. Finance Director Nathan Tubergen said Exhibit A to the resolution is a description excluding elementary school portion of District #2. A new map is included. Exhibit C is the project list – with five projects listed to date, including (1) the SID along King Avenue West and 32<sup>nd</sup> Street West, (2) Gabel Road, Hesper Road, Zoo Drive, (3) 32<sup>nd</sup> Street West from Gabel Road and (4) Gabel from 32<sup>nd</sup> Street West to the railroad crossing, (5) Shiloh Road from Zoo Drive to Hesper Road.. He noted that this would be the appropriate time to be adding projects to the project list. Councilmember Kennedy clarified that the intent of his motion was to accept these projects and exclude School District #2 elementary.

Councilmember Elison said inclusion of the SID project doesn't make sense to him "because an SID is funded by assessments to property owners and this would be an uncertain amount of money that is coming in based on tax increment. Would the tax increment financing money that came in be used to equal the offset the number of assessments or what assessments would be made ... How exactly does this proposed financing district pay for an SID?" he asked. Mr. Tubergen said that the city would issue bonds for approximately \$2.6 Million and \$1 Million would be taken from the Gas Tax Fund over the life of the bond issue to pay that portion of it. As the tax increment district came into place and the revenues were generated from the tax increment, those dollars would be utilized to offset what you have already committed from Gas Tax Funds. "I cannot sell a bond issue or the SID without having committed funds," he stated. He said he could not commit these funds without knowing how soon and how fast they would come in.

Councilmember Elison asked if there is a remaining assessment. Mr. Tubergen replied that would be the total assessment to property owners -- \$1.6 Million and the city is committing upfront \$1 Million over the life of the SID to pay the difference for that project. Councilmember Deisz said, "this is a policy decision and we are making a change in policy. How are we going to pull the rabbit out of the hat the next time? ... This is a one-shot, magic deal. But we are setting a precedent, a policy change for all of Billings and telling everybody 'this is the magic deal this time'. There is no magic rabbit to pull out of the hat a year and a half from now, is there?" Mr. Tubergen said there are pros and cons to this item. The pro is that we are using and collecting more dollars based on the taxes for this property, because we are 19% of the total tax bill. The adverse side of that is that we are taking money from the General Fund and we are also setting precedent. He confirmed that it is setting a precedent.

Councilmember Kennedy said the council sets precedent with a lot of things it does. "But I see this as a project of this area of town that needs to be given the chance to succeed. I think this tax increment district, which all we are doing tonight is setting the public hearing, an important part of this process. We haven't had that yet. Councilmembers said they haven't heard from people, well, you'll hear from them at this public hearing I hope... I don't want to make this into an East End thing versus a West End thing. These property owners see this huge projects coming at them. Maybe this is a one-trick pony here, but this is what our job is – to find those tricks, if you want to use that word Michael (Deisz). I don't call it a trick; I'm calling it a tool that the State of Montana has allowed us as a community, which we have very few of. It's an opportunity for these property owners to decide themselves where they want those tax increment dollars to go... We want it to go to hard costs of public infrastructure – things that all of us will use," stated Councilmember Kennedy. He said it would allow the council to see growth and decide how to finance it.



Councilmember Iverson said when property owners are faced with SIDs in excess of \$100,000; I feel that the council has to look at some mechanism to help them because people cannot be saddled with assessments like that. "When I came away from that open house ... and heard that assessments were being put on these small businesses, I thought we've got to look at something else. We got to listen to former Commissioner Mike Mathews present the tax increment district. I do think it is at the very least an opportunity for the council to ease the burden in this situation," she stated.

Councilmember Deisz said the council has an opportunity this evening to get real serious about where they want growth to take place and how they want to finance it. "I do not agree with this premise that this is the best one trick that we can pull out of the hat, because that is exactly what it is... There are several other developments that are going to be taking place on the West End. We need ... a master plan and we are waiting for a master plan of the West End to be put in place. I would suggest that we have an itemized infrastructure need drawn up by our staff. They already know the needs coming there and that we look at the infrastructure needs for the entire West End, not just this one project. When you look at what this project is doing, it's very self-serving ... and it is to get a lot of the little taxpayers to pay for one infrastructure need. That is not even where this council needs to be going at this time. Furthermore, we have not looked into any other financing strategies except this one magic trick. I don't consider it that magic, especially when the two options and the one option that Mr. Kennedy is suggesting this evening is the lower dollar amount of those options – cutting out School District #2 and we aren't even considering the Elysian School District... I've also heard there are threats of lawsuits against the City on the school equalization program ... Why would we go rushing forward into this proposal without taking the opportunity to examine all of these possibilities? On the Yellowstone County website, on the database, 1999 traffic analysis and planning, if you ring that up on your computer, you will find that this is a very small percentage of what we are supposed to be looking at for the westend. Why are we narrowing it down to this one project and saying it is a 'do or die situation'? ... If this city council were truly concerned about West End growth and proper planning, wouldn't it behoove us all to slow this process down? We're not going to gain any ground by doing this on this time schedule... Why are we pushing this forward at this rate? Some of the negative factors: the current SID proposal for King Avenue West/32<sup>nd</sup> Street does not cover all the infrastructure needs of the Billings West End growth area. It is a contradiction to the state department and an analysis completed in the last 1 – ½ years..." asked Councilmember Deisz. He urged the council to look at what is best for all of Billings, not just this one parcel of land.

Councilmember Bradley said he couldn't support this item because he considers it to be a tool to encourage the westward expansion of the city, when the city already has problems with infill development. "In reality, we have an investment in the downtown and we are going to end up in a situation where we've got competition. An example of that is the bank that went into the Homestead Business Park without tax increment financing. If tax increment financing is included in that, you will have more competition and we will lose more ground in the downtown area. We've spend too long a time and too many funds to get this downtown up and viable," he said.

Councilmember Kennedy reminded the council that development dollars come and they go. "We are one of the communities in the country that are vying for individuals to come in. We want economic development and expansion. You want to try and get the downtown to a point where it is interesting to individuals looking at redeveloping, not losing Norwest Bank to the westend, or the BLM to the West End. Why did they go there? Because the cost and land is much more readily available and it works within their budget to where they can make a profit. If we don't act now, I'm not crying Chicken Little and the sky is falling, but yes, there are other communities competing with us. I'm trying to show this neighborhood out there that there is a chance for them to create something for themselves... I think if we don't allow this to at least get to the public hearing on this issue, ... and after public input, let you decide what it is you should do for this community and plan it that way," he stated.

Councilmember McDanel said timing is bad. "I'm not comfortable with the pace with which we've moved on this issue. With the results of the election last week, there are a couple of things that became clear to me – one that applies here. I noticed that even those people who voted in favor of both bond issues had a tendency to vote in opposition to the mill levy. The mill levy went down big time. It told me that people are not interested in raising their taxes, even if we guarantee them how we will spend those monies. As we look forward to this city's future and I'm talking very near future, we are looking at at least a million dollars and then some of shortfall. What this tax increment district will ultimately do is cap the potential revenue from that whole area out there. We're not diminishing that revenue, but we are capping it, so that any potential growth is lost to the General Fund and goes into the tax increment district. As we face these shortfalls, we've already committed a level budget capped at 1998 for the safety issues – police and fire departments, so even with the de-valuing of the mill levy, we've guaranteed them that we will keep their dollar amounts, at least capped at that level that year. And we cap those based on dollar amounts, not mill levy. So we can't adjust those down with the devaluing of the mill levy that took place. That increases the shortfall to the remaining General Fund accounts. Those are services that people rely on all over this city. We're talking snow removal, parks and rec, basic functions provided to this community by this city. I just cannot at this time support capping any potential revenue source for the General Fund, until we resolve the budget issue. If you wanted to delay this action until the first meeting of July, after we've solved the budget issue, I would be much more open minded in dealing with this issue at that time. But right now, I don't see that we have much choice," he stated.

Councilmember Elison said his earlier question was not intended in any way to be negative toward this tax increment financing district. "I am in favor of it. The reason I'm in favor of it goes back to the history of trying to prevent the City from telling taxpayers that they are going to pay us more taxes because they happen to live near an important infrastructural development of the City. When the people vote against the mill levy, that's because they have some authority over that. When you go out there and hand them a bill for \$100,000 they don't have any authority over that... I think it is incumbent upon the City to come up with as many 'tricks', 'magic bullets', 'one-trick ponies' as we can in order to prevent individuals from paying for City infrastructural improvements. If this is one that works for that entire area and allows us over the next 15-20 years to put in the infrastructure that is going to need to be there as the Shiloh Interchange opens, that's a pretty good trick. If my pony only does that one trick, that was a pretty good trick. So, I think it is an important thing and we need to hear those people," he said.

Councilmember Deisz reiterated that it is a one-trick situation, "and we need to be looking at the future of all of Billings, not just this one section of town... We are facing 12 to 15 needed additional funding for next year's General Fund, is that correct Mr. Tubergen?" Mr. Tubergen replied that his latest projections indicated \$1.4 Million shortfall or approximately 12 mills for the General Fund. Councilmember Deisz said, "we are making a serious policy decision on this. I don't think the council should be doing this in a light-hearted fashion. We are now saying that we are going to rob Peter to pay Paul... Gary (McDanel) made a very accurate assumption about the voters. You are already looking at asking them for 12 mills, by the latest estimate."

Councilmember Iverson said Councilmember McDanel was referring to an increase of \$30-\$40/year in taxes. "These are people that are looking at \$100,000 and more on their SIDs! I just feel like we have got to look at other alternatives," she emphasized. Councilmember McDanel said he understood that, but the council was looking at \$30-\$40 spread over the entire population of Billings, so that adds up over a short period of time. He added that when the SID issue comes back to the council, he would also suggest delaying action until next year's budget is resolved. "This will be the most critical thing we will be working on in the next few months and we have got to focus our effort and energy on that. We need to postpone this tax increment district and this SID along with it, until such time that we resolve the issue with the budget shortfall," stated Councilmember McDanel.

