

REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, MARCH 13, 2000

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, which was given by Councilmember Gary McDanel.

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

MINUTES – February 28th - The Minutes were approved as printed.

COURTESIES - Mayor Tooley recognized Yellowstone County Commissioner Bill Kennedy in the audience.

PROCLAMATIONS –Mayor Tooley. – None.

BOARD & COMMISSION REPORTS. – None.

ADMINISTRATOR REPORTS – Dennis Taylor. – None.

CONSENT AGENDA:

1. A. Bid Awards:

- (1) **BLIA Water System Improvements – 2000.** (Opened 2/22/2000). (Delayed from 2/28/2000). Recommend COP Construction, \$478,678.00.
- (2) **Cobb Field Lighting System First Base “B” Pole Replacement.** (Opened 2/29/2000). Recommend Action Electric, \$38,287.00.
- (3) **Self-Contained Breathing Apparatus.** (Opened 3/7/2000). Recommend L.N. Curtis Company, \$28,155.55.
- (4) **Chemicals – Ferric Chloride, Sodium Hydroxide and Chlorine for Public Utilities Department.** (Opened 3/7/2000). Recommend delaying to 3/27/00.
- (5) **Sale of \$1,700,000 General Obligation Bonds, Series 2000.** (Opens 3/13/2000). Recommend D. A. Davidson & Co., 5.533%.

B. Contract with CTA Landworks Group Division of CTA Architects, Engineering, Inc. to provide consultant services for the General Obligation Bond Funds park improvement projects, \$157,457.00.

C. Agreement between the City of Billings and the County of Yellowstone to share interlocal GIS data, 3-year term: 2/14/2000 thru 2/14/2003.

D. Approval of utility easements with Montana Power Company for:

1. Pioneer Park: a strip of land in T1N, R26E, Section 32, W1/2SW1/4.
2. Stewart Park.: a strip of land in T1S, R25E, Section 12, W1/2NE1/4.

E. Acceptance of Quitclaim Deed for Tract 3, Certificate of Survey (located in T1N, R26E, Section 23, SW1/4SW1/4) from Gene R. Culver, Joy L. Culver, and Kincaid Land, LLC, \$0.

F. Acknowledging receipt of petition to vacate alley between North 32nd and North 33rd Street and 4th Avenue North and 6th Avenue North, YMCA, petitioner and setting a public hearing date for 3/27/2000. (See reconsideration after Item #6.)

G. SID 1344: installation of sanitary sewer improvements on Hallowell Lane – Kissee Subdivision, Blocks 1 & 2; Byrnes-Stephens Subdivision, Blocks 1, 2 & 3; Blacher Acres, Lots 1-6 & Lots 9-10; C/S 480, Tracts A & B, and Lots 7 & 10 in NE1/4 of Section 9, T1S, R26E:

1. Contract for professional services, Interstate Engineering, Inc., \$109,500.00.
2. Resolution of Intention #00-17542 to Create SID 1344, and setting a public hearing for 4/10/2000.

H. Resolution of Intent #00-17543 to install curb, gutter and sidewalk improvements under W.O. 95-13, 1999 School Route Improvements Program, and setting a public hearing date for 4/10/2000.

I. Resolution #00-17544 relating to \$1,700,000 General Obligation Bonds, Series 2000, awarding the sale thereof and approving the official statement.

J. Authorization for application of Montana Board of Crime Control Grant #00-18-U for Enforcement of Underage Drinking Laws. (Grant amount \$296,510; no City match required.)

K. Resolution #00-17545 declaring the intent to sell city-owned property described as: Lots 21-22, Block 247, Billings Second Addition and setting a public hearing date for April 10, 2000.

L. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Item 1A(2) and Item G from the Consent

Agenda. Councilmember Deisz separated Item 1A(5) and Item B. Councilmember McDanel moved for approval of the Consent Agenda EXCEPT Items 1A(2), 1A(5), B and G, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of Item 1A(2), seconded by Councilmember Larson. Councilmember McDermott asked how many times repairs needed to be made to Cobb Field before it would have to be fully renovated. Parks Director Mike Hink said Cobb Field is an aging stadium that does need to be rebuilt and how long we can keep the stadium running is unknown because of the many variables involved. He indicated the pole being replaced is one that was damaged in the severe windstorm earlier in the year. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of Item 1A(5), seconded by Councilmember Larson. Councilmember Deisz asked if this was the bond that had been approved by voters and if the amount was the full amount of the bond issue including the bicycle trails, which cannot be built at this time. City Administrator Dennis Taylor said the bond issue includes all the park improvements approved by the voters in November as well as trail development. Mr. Taylor said there are several options for trail development along the proposed trail to downtown, as well as other alignments that would be eligible for possible grant money. Councilmember Deisz asked if this item coincided with Item B (Contract with CTA). Mr. Taylor said it did. Councilmember Deisz asked when Council would receive information about which trails can be built based on the fact that the railroad has not given approval for the bike paths. Mr. Taylor said the City is still working on an alignment from the south to the downtown that would not require using railroad right-of-way and that it was felt the project would be funded by grant money from the General Obligation bond as well as CTEP funds, probably not this construction season, but possibly next construction season. Councilmember Deisz asked if that construction would be within the funding sources already approved or if additional funding would be necessary. Mr. Taylor said that it would be within the two funds adopted earlier – bond funds and CTEP funds. He said it would be decided whether estimates would need to be revised after specific engineering information was provided. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of Item B, seconded by Councilmember Larson. Councilmember Deisz said he had requested information regarding the different individuals bidding on this project and had not received that information. He asked for comment on the hourly clerical salary of \$36/hour that was indicated in the contract, who the other bidders were on the project and why CTA was the only firm being awarded the contract. Parks Director Mike Hink said Interstate Engineering and CTA bid on the project. He said Gene Blackwell convened a group of five people to review the two proposals. The committee decided CTA was the best firm for the project. He said they then negotiated with CTA on their original estimate of 16% to 17% of the total project down to 13.4% of the total contract, which is very reasonable for a project that includes 13 parks and 4 parking lots throughout Billings. Mr. Hink said the \$36/hour clerical salary was misconstrued. He said CTA's clerical involves utilizing the computer and computer-generating some of the playgrounds and doing the engineering for the substructure of the playgrounds. He said they were very comfortable with the negotiation

in price from 16.5% down to 13.4%. Councilmember Deisz asked why he did not receive a copy of the RFP and what the difference was between the two bids. Mr. Hink said the RFPs were publicized in the Billings Times and were on the Internet. He said he could not answer why he had not received them. Mr. Hink said they are required by state law to not only advertise the RFPs but also advertise the public meeting to open the proposals, which was also advertised in the Billings Times. Mr. Hink said, "on an RFP you open and select the architectural firm and then you negotiate a price with the architectural firm. If you get a negotiated price that you feel comfortable with, then you go with that price. You never open the price of the second firm. So I cannot tell you what Interstate Engineering offered as their price. We did not open their envelope that contained a price." Councilmember McDermott asked if a councilmember served on the selection committee. Mr. Hink said he was unsure and would try to provide an answer tomorrow. Councilmember McDermott asked who served on the committee for the particular parks to get the improvements. Mr. Hink responded that it was the Park Board and staff. On a voice vote, the motion was approved.

Councilmember McDanel moved for approval of Item G, seconded by Councilmember Larson. Councilmember McDermott said when SID 1344 was originally proposed, Finance Director Nathan Tubergan had indicated that he would assist in looking for alternative funding for the project. City Administrator Dennis Taylor said he was not aware of any alternatives developed by Mr. Tubergan but that it would be looked into to see if there were other alternatives. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. AUTHORIZATION TO NEGOTIATE CONTRACT with South Hills Water and Sewer District (Briarwood) and Cedar Park Subdivision to provide City water service. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

Previous discussion of this item was heard during the COW meeting of the same date. Councilmember McDanel asked what the realistic maximum capacity per day for the current facility was and what affect the proposed expansion would have. Public Utilities Director Carl Chistensen said with the current transmission lines 55 to 60 million gallons per day could be pumped and in order to pump more than the 60 million gallons per day the transmission lines would need to be increased. Councilmember Elison asked how much water the two subdivisions would use on a maximum daily basis. Mr. Christensen said that would be determined by an engineering study. He said it is estimated to be approximately one-half million gallons per day (maximum day demand). Councilmember Elison asked if there were projections for current users daily demand. Mr. Christensen said there has not been a rapid increase of maximum daily demand because of concurrent water conservation. He said the current maximum daily demand is at 43 million and by adding South Hills and Cedar Park the maximum daily use could increase to 44 million gallons per day. Councilmember Elison asked what the life expectancy was for the 50

million gallon per day capacity that was being planned for by 2002. Mr. Christensen said the 50 million gallons per day would probably be sufficient until 2008 or 2010 before another filter would need to be added. Mr. Christensen said one reason they have considered the 50 million gallons per day capacity until 2008 or 2010 is because safe drinking water regulations governed by EPA would require the building of a new treatment plant and new technology would have to be considered. Councilmember Elison asked about the cost of the filters. Mr. Christensen said the first filter installed is the most expensive (approximately \$3.5 million). He said the cost of the membrane filters is decreasing all the time. He also noted that when the first filter is installed, appropriate backwash facilities and other facilities that go along with membrane treatment have to also be installed which contributes to the cost. Councilmember Elison asked if the capacity of one membrane filter was approximately 5 million gallons. Mr. Christensen said that was correct.

Councilmember Bradley asked how it was planned that the water be brought to the subdivisions. Mr. Christensen said the 42-inch water main that runs along King Avenue would need to be brought to the other side of the interstate. He said it was felt that the City should participate in the construction of the water line from the interstate to the river. The exact amount the City would pay would be dependent upon how much the line would be oversized. The reason for oversizing the line would be to serve the area from the interstate to the bridge as it develops. He said it is more practical to participate in the cost of oversizing the line than to construct another line. He said it is fairly standard for the City to participate in that cost. Councilmember Bradley asked if the line would be oversized for additional growth south of the river also. Mr. Christensen said the engineering studies estimate up to 680 lots that would participate in the construction costs of the line, so the capacity would have to be sufficient to serve those 680+ lots.

Councilmember Kennedy moved for approval of staff recommendation, seconded by Councilmember Johnson. Councilmember Larson asked what the process would be for a contract like this being brought back to Council for final review. Mr. Christensen said there are many conditions that would need to be worked out between the parties. He said one requirement would be a definite service area boundary and that boundary could not be expanded without City approval. "We do not want some other entity to have the authority to expand the service area boundary before the facilities are in place to serve that area," he stated. He said there are a number of factors critical to the project. He said they would negotiate and put all conditions in a written document and bring back to Council for review. He said annexation would need to be considered. The area cannot be annexed at the present time because it is not contiguous with the City. The annexation would be required as part of the contract options. City Administrator Dennis Taylor said when the contract comes back for Council approval a public hearing would not be required but could be held if deemed necessary for a contract of this nature to hear testimony from people in the area to be served as well as the rest of the community.

Councilmember McDermott asked if the \$250,000 spent on the project would be recaptured in hookups, etc. Mr. Christensen said the \$250,000 is an approximate figure until the engineering for the project is completed. But the money would be recaptured. He said as the area developed and customers connected to the line, the customers would be charged a construction fee and that would recapture the money spent on the project.

Councilmember Bradley asked what would happen with the existing RSIDs in the area. Mr. Christensen said there is currently one RSID he is aware of in the Cedar Park Subdivision and the RSID would become a water and sewer district. This would allow more opportunity for federal funding to assist with the costs of the district.

Councilmember Johnson asked what the difference would be in service charges for those people outside of Billings receiving city water service compared to those individuals within the city limits. Mr. Christensen said the rate developed for this particular area would be developed through the cost of service to the area. He said a rate expert would be used to develop that rate based on many factors. He said they charge a higher rate of return on their investment for outside city customers than on inside city customers, approximately 4%. The reason is that inside city customers assume the risk of developing and building the system and are entitled to a fairer rate of return on investment. On a voice vote, the motion to approve negotiation of the contract was approved.

3. PUBLIC HEARING AND SPECIAL REVIEW #669: a special review to allow the placement of an all-beverage liquor license in a Community Commercial zone on Tracts A1 and A2 of C/S 1136, 2nd amended and Tract B of C/S 1136 Amended, located at 2520 Central Avenue (former World West Theater), Macerich Rimrock Limited Partnership, owner; Macerich Company, agent. Zoning Commission recommends conditional approval. (Delayed from 1/10/2000 & 2/14/2000). (Action: approval or disapproval of Zoning Commission recommendation).

City Administrator Dennis Taylor said a letter was received from the applicant requesting another 30-day delay. He requested Council's consent to postpone the item for 30 days. Councilmember Ohnstad moved for approval of the delay, seconded by Councilmember Larson. Councilmember Deisz asked if there was a limitation on the number of times an item could be delayed. City Attorney Brent Brooks said according to the Unified Zoning Code Section 27-1503E(5) the application could be delayed for a period not to exceed 30 days. It does not limit the number of 30-day delays. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION #00-17546 authorizing sale of city-owned property described as: Lot 22A, Lake Hills Subdivision, 12th filing. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

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

5. PUBLIC HEARING AND SECOND READING ORDINANCE #00-5113 amending Section 27-310 of the Unified Zoning Code by modifying the 1,000 square foot limitation for detached accessory structures in Residential Zoning. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second reading.)

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

6. PUBLIC HEARING AND SECOND READING ORDINANCE #00-5114 amending Section 27-1502 of the Unified Zoning Code by modifying the provisions for a valid protest of a zone change request to conform with legislative changes made to the Montana Code Annotated. 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 Elison moved for approval of the ordinance on second reading, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

Reconsideration:

Councilmember Deisz moved for reconsideration of Item F of the Consent Agenda, seconded by Councilmember Bradley. On a roll call vote of the motion to reconsider Item F, the motion was approved 7 to 3. Councilmembers voting "yes" were: Deisz, McDanel, Tooley, Johnson, Larson, Bradley and McDermott. Councilmembers voting "no" were: Kennedy, Ohnstad and Elison. Councilmember Deisz moved for approval of Item F, seconded by Councilmember Bradley. Councilmember Deisz asked the amount received for the vacated portion of the property and suggested Councilmember Larson abstain from voting on the issue because it was a direct conflict of interest. Councilmember Larson said that Council was merely acknowledging receipt of the petition to vacate. He did not feel there was a conflict of interest with him merely acknowledging receipt. He said when the item comes before Council for the public hearing, he would certainly abstain from discussion and voting on the issue. Public Works Director Kurt Corey responded to the question regarding the value of the right-of-way to be vacated. He said there is a portion of right-of-way to be vacated and an additional piece of right-of-way to be deeded to the City. The calculation is based on the differentials of square footage and comparable sales value which is \$5/square foot resulting in a net compensation to the City of \$9,000. Councilmember Deisz asked if that was comparable to what has been done in the past. Mr. Corey said that it was. On a voice vote, the motion was unanimously approved.

With all business complete, Mayor Tooley adjourned the meeting at 8:10 p.m.