

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

MONDAY, JANUARY 8, 2001

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 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 Mark Kennedy.

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

MINUTES – December 11. The Minutes were approved as printed.

COURTESIES – Finance, Community Development, Police

(1) Finance Director Bob Keefe said the City has been awarded the Certificate of Excellence in Financial Reporting by GFOA. He presented plaques to Jim Hauck and Alene Malloy for their extensive work on the 1999 annual financial report.

(2) Community Development Director John Walsh recognized two outgoing Community Development Board members – Tom Iverson and Jerry Tate. Plaques were presented to both members for their dedicated service.

(3) Police Chief Ron Tussing presented certificates to the following citizens: Lynnell Crandall, accepting for her grandfather Gordon Crandall; Patricia and William Lotgering, and Charles Leikam. The role of these citizens assisted in the apprehension of the individuals responsible for the break-ins and thefts from a number of vehicles in the community.

PROCLAMATIONS – Mayor Tooley. NONE

BOARD & COMMISSION REPORTS. NONE

ADMINISTRATOR REPORTS – Dennis Taylor.

- Mr. Taylor reported on the Big Cities Meeting in Helena last Friday. He noted they discussed two major legislative bills – SB124, called the entitlement bill or the “Big Bill”, which would change the way local government is reimbursed as well as an entitlement program that would make local governments a partner with the state in economic development efforts. It would be a major reform in local government financing. Hearings on this bill will not begin until January 20th so there has been time to analyze the bill. The second bill is SB155 for local option tax and is being carried by Sen. Mike Halligan. He said they also talked

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about the importance of this legislative session to local governments all across the state.

- Mr. Taylor reminded the council of the special work session tomorrow at 4:30 p.m. for pre-budget discussion for FY2002. The meeting will be in the City Hall Conference Room.

CONSENT AGENDA:

1. A. **Mayor's Appointments:**
 - (1) Judy Krause, Animal Control Board
 - (2) Dr. F. Douglas Carr, Board of Health
- B. **Bid Awards:**
 - (1) **One New Current Model 2001, 54,000 GVW Cab & Chassis with Current Model 2600 Gallon Chemical/Flusher Liquid Tank Unit for Street/Traffic Division.** (Opened 11/28/00). Delayed from 12/11/00. Recommend Billings Truck Center, \$86,755.68.
 - (2) **Closed Circuit Television (CCTV) system for Billings Logan International Airport.** (Opened 12/12/00). Recommend Yellowstone Electric Company, \$46,752.00.
- C. **Change Order #1, SID 1340 – Cenex Park Subdivision,** Chief Construction Specialties, Inc., \$5,214.87 increase and 0 days.
- D. **Change Order #2, W.O. 99-06, 20th & King Intersection Reconstruction,** Empire Sand & Gravel Co., Inc., \$2,354.22 increase and 0 days.
- E. **Approval** of Kadrmas, Lee & Jackson to provide Skate Park Architectural Services, \$9,000.00.
- F. **Approval** of changes to City Administrator's Employment Contract.
- G. **Adoption** of City Administrator's Goals & Objectives for 2000-2001.
- H. **Acceptance** of \$1,000,000 Special Purpose Grant from the U.S. Department of Housing & Urban Development (HUD) for improvements to the Billings Depot.
- I. **Right-of-Way Acquisition** for W.O. 96-06, Grand Avenue Widening, 12th Street West to 17th Street West: (Right-of-Way Agreements and Warranty Deeds):
 - (1) **PARCEL 75:** A tract in Lot 6 and S 125 ft of the E 120 ft. of Lot 5,

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Block 1, Partington Park Sub. 6th filing. Dan E. Stockton, Jr., \$0.00

(2) **PARCEL 78:** A tract in Lots 13A to 16, Block 1, Luse Sub., American Pizza Partners, \$0.00

(3) **PARCEL 79:** A tract in Lot 1A, Block 1, Dubs Sub., 1st filing, Ted & Martha Godwin, Trustees, \$0.00

(4) **PARCEL 80:** A tract in Lot 2A, C/S 550, Ted & Martha Godwin, Trustees, \$0.00

(5) **PARCEL 83:** A tract in Lots 19-24, Block 2, Evergreen Sub., Robert Henrickson Trust, \$0.00

(6) **PARCEL 84:** A tract in Lots 13-17, Block 2, Evergreen Sub., Patrick & Hasty, \$0.00

(7) **PARCEL 85:** A tract in Lots 11-12, Block 2, Evergreen Sub., Patrick & Hasty, \$0.00

(8) **PARCEL 86:** A tract in Lots 9-10, Block 2, Evergreen Sub., Craig & Vickie Derry, \$0.00

(9) **PARCEL 88:** A tract in Lots 1-6, Block 2, Evergreen Sub., McDonald Land Company, \$0.00

(10) **PARCEL 92:** A tract in Tr. C, C/S 469, Winchell Enterprises, Inc., \$0.00

(11) **PARCEL 94:** A tract in Tr. 3, C/S 559, School District #2, \$0.00

(12) **PARCEL 95:** A tract in Lot 4, Block 6, Curtis Sub., 3rd filing, Gainans Floral, \$0.00

(13) **PARCEL 100:** A tract in Lots 1-2, Block 1, Curtis Sub., 1st filing, V & M Inc., \$0.00

J. Encroachment Permits:

(1) Casey's/La Soledad (216 & 222 North Broadway)

(2) Travel Café (313 North Broadway)

K. Acknowledging receipt of petition to annex #00-05: unplattoned portion of T1S-R26E-S17: S1/2 SW1/4 (less C/S 2834), Howard H. and Rosezella Bohl, petitioners and setting a public hearing date for 1/22/01.

L. First Reading Ordinance revising Sections 24-456 and 24-464 of BMCC relating to Parking Meters and Fine Schedule for parking violations and setting a public hearing date for 1/22/01.

M. Resolution of Intent 01- 17648 to annex #00-07: Lots 1-3, Block 6 of Rush Subdivision, 2nd filing, and setting a public hearing date for 1/22/01.

N. Resolution of Intent 01-17649 to annex #00-08: Lot 5-6, Block 6 of Rush

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Subdivision, 2nd filing; Tract 1 **& 2** (*Corrected Description*) of Rush Acreage Tracts Subdivision; Tract 1 of C/S 2563 and Tract 1 of C/S 2050, and setting a public hearing date for 1/22/01.

O. Resolution of Intent 01-17650 to annex #00-09: Tract 1A-1 of C/S 1876 Am., and setting a public hearing date for 1/22/01.

P. Resolution of Intent 01-17651 ordering in the construction of improvements for W.O. 01-02, #1 – 2001 Miscellaneous/Developer Related Improvements and setting a public hearing date for 2/12/01.

Q. Resolution 01-17652 temporarily reducing fees established for Building, Electrical, Plumbing and Mechanical permits by 25% from the rates in effect for FY 1998/1999.

R. Final Plat of BN Railside Subdivision.

S. Final Plat of Shiloh Point Subdivision.

T. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.).

Councilmember McDermott separated Item K. Councilmember Bradley moved for approval of the Consent Agenda LESS Item K, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Bradley moved for approval of Item K, seconded by Councilmember Larson. Councilmember McDermott asked how much of this parcel was developed and undeveloped and was there a plan for the undeveloped portion. Zoning Coordinator Jeff Bollman replied that the parcel is 70 acres currently under agricultural production and is currently zoned Highway Commercial, so there are no existing developed uses on it. It is in the process of be replatted however as the future Weil Subdivision, 2nd Filing. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. AUTHORIZATION to submit municipal beer and wine license application to the Montana Department of Revenue for the Par 3 Golf Course. (Delayed from 12/11/00.) Staff recommends delaying action to 1/22/01. (Action: approval or

disapproval of staff recommendation.)

Councilmember Brewster moved for approval of the staff recommendation, seconded by Councilmember Larson. On a voice vote, the motion was approved. Action was delayed to 1/22/01.

3. PUBLIC HEARING AND SECOND READING ORDINANCE establishing residential parking permit districts. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the ordinance on second reading with the following language change: "Section 24-484 (a)(4): Those vehicles registered to or controlled and exclusively used by persons who have resided within the permit district for ten (10) days or less.", seconded by Councilmember Johnson.

Councilmember Elison said he intends to vote against the ordinance because, "the procedure for the establishment of a residential on-street parking district has the requirement that it be signed by the minimum of 85% of the residents in the district, but says nothing about how big that district can be. Item #4 allows that the district ... can be assigned to an area where limiting the parking of vehicles along the public street is necessary to preserve the safety of children and other pedestrians, improve traffic safety, reduce hazardous traffic conditions, and better provide adequate motor vehicle parking for residents of the area and as well as improve the peace, good order, comfort, convenience and welfare of the inhabitants and preserve the character of their residential district through control and reduction of litter, noise and air pollution. Well that includes about every residential street in the entire City that could be improved by limiting the number of vehicles that can be parked along the public street. I don't see any restriction on the creation of residential parking districts anywhere in our community that could get 85% of the residents in the district. Since there is no size limit, that could be 2 neighbors who decide they want a residential parking district in front of their house – that's 1005 of the district, rather than 85. Nothing in the ordinance that says it has to be a block face even...There's nothing in the ordinance ... that specifically relates to enforcement of such an ordinance or such a residential parking district. Finally, I have some philosophical differences in leasing out the public right-of-way in areas where ... residents, representatives of the both hospitals and the university believe that sufficient parking is provided by these organizations. I don't believe the ordinance is workable in its current state and I don't believe it's necessary in any case," he stated.

Councilmember Johnson said he thought it was worthwhile to offer the community the opportunity to try these districts where they are necessary, such as near the high schools, the hospitals and MSU-B. Councilmember Kennedy asked who would be responsible for enforcement. City Administrator Dennis Taylor said it would depend on the neighborhood that creates the district. "The Finance Director talked about the possibility of

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a pilot project in the hospital corridor. We would probably use our parking enforcement personnel that are responsible for the downtown area. Depending on the location of the neighborhood and the resources available, that would be provided for in the permit process that creates the district. In most cases, ... the responsibility would fall on the Police Dept.," he stated. Councilmember Kennedy said this reminds him of the helmet ordinance – ordinances on the books that might be difficult to enforce because of lack of resources.

Councilmember Larson said his concern about the ordinance was the general, across-the-board approach it takes, when there are different problems in different areas of the community. He noted he can understand the concerns of people impacted by major parking generators – the two hospitals, the cancer center, doctors' offices, MSU-Billings, etc. "What I suggested when we originally talked about this was 'let's pick that area and try to see how this works – have a little practice session. But I also get calls from the school areas – which has a whole different implication... But my other concern is Billings Central. Billings Central, with their expansion proposed providing parking to relieve some of the congestion on the streets in that part of town. The neighborhood all showed up ... and told us they did not want those parking lots put in their neighborhood; that they had no problem with the parking. If this ordinance is passed and we end up with a residential parking district in that part of town, Billings Central will have a serious problem. They've already built that facility on the existing parking lot, because that neighborhood said that's what they wanted. Now, that neighborhood is one of the ones ... that is poised to start a push to put into effect this particular ordinance," he stated. He said they should be working with individuals and individual neighborhoods to resolve problems. They could lose control of the matter with such a broad ordinance.

Councilmember Johnson said the ordinance appears broad, but it really is not, "it's a your street type of thing... It bothers me when we begin to think of denying new and possible progressive kind of action ... when we know that around the country such programs are workable... to help alleviate that condition of crowding as we are growing bigger...," he stated. Councilmember Iverson said it was discussed as using the hospital area as a pilot program. She asked what happens if the district doesn't work out and it can't be enforced. Mr. Taylor replied said when the ordinance was first drafted, it was done with the idea that it would be a modest first step. "In some respects we started the discussion with the an idea of a pilot project for a particular area that has this concern, then generalized to begin available to anybody who would petition for this. In the ordinance, it provides that the City Administrator or his designee can terminate a district when it is no longer viable or meeting the needs of the neighborhood... The responsibility inherent in the program is to evaluate it and come back to you if it is not meeting the needs this ordinance was designed to address. It would be a new program for us, since we do not have experience with this in Billings," he stated.

Councilmember Kennedy said he didn't want to rush into something like this with a general approach. He suggested the Parking Advisory Committee be included in this

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project too. Councilmember Kennedy made a substitute motion to delay the ordinance for 90 days (to March 12, 2001) to address the concerns of enforcement, district formation and to resurrect the idea of a pilot program, seconded by Councilmember Elison. On a voice vote, the motion was approved. Councilmembers McDermott, Johnson and Bradley voted "no".

4. PUBLIC HEARING AND RESOLUTION 01-17653 vacating Sapphire Avenue from Hilltop Road to Lily Valley Circle, Heights Baptist Church, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Public Works Director Kurt Corey said the subject property is owned by the Heights Baptist Church. The appraised value of the vacated right-of-way is \$10,700.00. Emergency access issues are to be addressed in a subsequent Development Agreement.

The public hearing was opened. DAN FRY OF 2606 NORTH SHORE PLACE said he was a member of the Heights Baptist Church. He said they have been working diligently for the past two years to develop the property and the street vacation is a vital part of the project. He said the savings they would realize by not developing streets that are not required would go a long way to helping this project become a reality. "It is our desire to be good neighbors and have a building that is an asset to the entire community," he stated.

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

5. PUBLIC HEARING AND RESOLUTION 01-17654 authorizing construction of – W.O. 96-08: 2000 School Route Improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Engineer Brian Borgstadt said the school route program would address the school crossings on Rimrock Road that are now at Arvin and McDonald. The destination of children using these crossings is Poly Drive School. The style of improvements includes a 'pedestrian refuge island', an intermediate place within Rimrock Road for pedestrians to take haven if necessary. It also creates a reduction in the conflicts between traffic and children and prohibits left-turn movements down Arvin Lane. This will dramatically change the circulation that parents delivering their children to school will see. He noted that they found that at Boulder School, this also caused a reduction in traffic speeds as they approach the improvement and expected the same to happen at this location.

Mr. Borgstadt noted that because these improvements are on an arterial street, the majority of the costs are picked up through various City funding programs. One-half of the sidewalk costs will be covered with Gas Tax funding, and the other half will be covered by CTEP funds. The curb and gutter improvements and the islands are also picked up by the City. Storm drains funds are used to address adjustments to storm drain inlets in the

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vicinity of the crossing and the General Fund picks up the cost of wheelchair ramps at the corner when in a non-task force area. The estimated assessments are approximately \$5,000 – to fix landscape that may be partially in the right-of-way now, but will be disturbed with the project. There are only one or two properties that the cost will be assessed against for the landscaping adjustment.

Councilmember McDanel asked what kind of traffic speed reduction could be expected with previous bulbing improvements at intersections. Mr. Borgstadt said about 10-15% reduction in speeds has been experienced at the Boulder School improvement area. Councilmember Larson asked if the \$7500 that is coming from the General Fund was a budgeted expenditure. Mr. Borgstadt replied that it had been budgeted.

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

6. PUBLIC HEARING AND SECOND READING ORDINANCES amending BMCC Sections 6-512, 6-1025, 6-1042 and 22-302 regarding various bond & insurance requirements:

- (1) Ordinance 01-5136 Section 6-512 regarding combination water/sewer bonds
- (2) Ordinance 01-5137 Section 6-1025 regarding relocation/moving bonds and insurance
- (3) Ordinance 01-5138 Section 6-1042 regarding demolition bonds
- (4) Ordinance 01-5139: Section 22-302 regarding excavation bonds and insurance.

Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

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

7. PUBLIC HEARING for adoption of the REVISED Wastewater Lateral and Trunk Construction Fees, REVISED Water Main Construction Fee, and ADOPTION of a new Water Transmission Construction fee. (Action: public hearing only.) PUBLIC HEARING ONLY.

Public Utilities Director Carl Christenson said the Council is being asked to review the construction fees and adjust them to reflect the current construction costs and to fund offsite improvements for water and sewer lines. He noted that they have worked with the community and members of the Planning Board as these would pertain to the West End

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Plan. The review also includes a recommendation to adopt a new water transmission construction fee.

The public hearing was opened. NORMAN MILLS OF 1908 19TH STREET WEST said he was asked by Schneiter Enterprises to speak on this issue. He read a letter from George Schneiter, the principal of Schneiter Enterprises. Mr. Schneiter protested the increases in: wastewater lateral construction fee, water main construction fee, plus a 3% increase for inflation. It was noted that the Schneiter family developed Lake Hills Golf Course and Lake Hills Subdivision in 1956-1958, as well as helped establish the Billings Heights Water District and gave them a lot on St. Andrews Drive for a pumping station. The City annexed the subdivision and Mr. Schneiter protested the annexation. A sewer special improvement district was created and again he protested because of the expense. He did not think it was fair that the property owners paid taxes on all the improvements over the years and now the City wants to impose additional fees on them. Mr. Schneiter insisted the improvements should be paid for from taxes the City collects.

MATT ULAND OF 2218 SPRUCE STREET said he felt it was appropriate to charge new construction these new fees. "If the construction costs are going up and the folks who are building these lots don't foot the bill, I'm sure that everyone else in the City will. I feel the costs have been researched and if they are appropriate, should go through," he stated.

CONNIE WARDELL, NO ADDRESS GIVEN, said that staff had spoken to their realtor committee on this issue and spent quite a bit of time explaining the matter. The realtors feel it is an acceptable proposal.

There were no other speakers. The public hearing was closed. No action was taken this evening. Final action is scheduled for January 22, 2001.

8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#665: a zone change from Residential-9,600 to Residential-7,000 on property
generally located east of the intersection of St. Andrews Drive and Almadin Lane.
Darrell Kreitzberg and Our Savior Evangelical Lutheran Church, owners;
Engineering, Inc., agent. Zoning Commission makes no recommendation. (re:
Kreitz Heights Sub.) (Action: approval or disapproval of ordinance on first reading.)

Zoning Coordinator Jeff Bollman said there is a variety of zoning in the area. This property is approximately 8.5 acres in size and a subdivision plat is being processed concurrently with this zone change. The Zoning Commission split 2-2, so forwarded no recommendation.

The public hearing was opened. RICK LEUTHOLD OF ENGINEERING INC. said the developer on this project is Darrell Kreitzberg. This is a zone change for the proposed Kreitz Heights Subdivision. The zone change will allow for more of a transitional zoning in an area that has a variety of uses around a commercial node. The zoning will impact affordability of the project. R-7000 allows them to place an additional 7 units on the plat, bringing the construction costs/lot down from \$27,600/lot to \$19,200/lot. There is a

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considerable amount of utility work that needs to be done, whether it is developed as R-9600 or R-7000. A traffic study as to the impacts of the intersection of Wicks Lane and St. Andrews Drive has been conducted. Traffic counts were conducted three different times – twice when school was in session and once when it was not. 24-hour automated counts were utilized, as well as on-site visual inspections, monitored turning movements at the location, etc. because they knew this was an issue with the adjacent neighbors. The subdivision is slated to have 26 units in the first phase and would typically not be subject to a traffic accessibility study. The key to a TAS is usually 50 units with 10 trips per day. The traffic counts were based on if the entire vacant area was developed with 42 units all accessing this intersection. Under these criteria, less than 3% of the traffic load of the intersection was attributable to this development. This does not come close to warranting a signal at the intersection, nor does it meet turning movement warrants. The numbers do not bear out the neighbors' perception of overload at this intersection. Mr. Leuthold noted also that a question was raised as to the subdivision's contribution to a future signal there. He noted that the SIA does include language for this subdivision to provide a cash contribution to its level of responsibility to this signal.

Councilmember Brewster asked what types of homes would be built on the subdivision. He noted that some residents are concerned that housing will be similar to that which is being built on the backside of Skyview High School. Mr. Leuthold said the target market is an empty nester, a retired couple or individual looking at a lot with a nice home, but not wanting a large yard to care for.

MADONNA RAU OF 1810 VENUS CIRCLE said she is concerned about the high density of patio homes that will be built. Traffic will be an issue as a result. She is opposed to the zone change, noting that a development should profit the developer but also preserve the character of the neighborhood. They have larger lots and she would like to see the area stay that way. The proposal is only about making more money for themselves, by making smaller lots and building more homes. She wanted to know who would be responsible for paying for the improvements to their street.

FRANK RICHARDSON OF 1822 VENUS CIRCLE said the developer did not even let the neighborhood know what he was planning for the area. He is opposed to the development and noted that the second phase will run past his home. Mr. Richardson said they lost a sale because of the proposal.

ANGELA CIMMINO, 1745 SYLVAN LANE said she supports single family development but is concerned about the problems it will cause in that neighborhood. Increased density will adversely impact the neighborhood. If the zone change is approved, zoning will change from R9600 to R7000 – a residential multi-family zoning. the ditch is a natural barrier that separates this neighborhood from the multi-family neighborhood east of the ditch. The new zoning will stay with the property and the zoning regulations would allow duplex construction. Ms. Cimmino also pointed out that the traffic count map indicated 11,400 trips/day on Wicks Lane and 5,100/day on St. Andrews Drive. This one

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intersection controlled only by a single stop sign at the "T" intersection.

DARRELL KREITZBERG, NO ADDRESS GIVEN, said he is proposing a clean, well-planned infill development project, with curbs, gutters, paved streets, double garages on all the houses. "Our target market is people who don't want large yards, yet have the privacy and convenience of their own homes," he stated. Only 6 lots are 7,000 sf, with the remaining lots ranging from 8,000 – 11,000 sf. He noted that the church supports their project.

JEFF KREITZBERG OF 2325 38TH ST WEST said he would be the builder of the project. He stated that the houses would be of a similar nature to a development recently built in Bozeman.

There were no other speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the ordinance on first reading, seconded by Councilmember Johnson. Councilmember Larson commented that the character of any neighborhood changes when someone else buys up a vacant property and develops it. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#666: a zone change from Residential-6,000 to Neighborhood Commercial on Lots 25 and 26, Block 2 of State Realty Addition, located at 3 Monroe Street. Adam Schaff, owner; Jami Papakalodoukas, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.) REQUEST WITHDRAWN BY AGENT..

Zoning Coordinator Jeff Bollman noted that the applicant has withdrawn his request for a zone change.

The public hearing was opened. RODNEY GARCIA, NO ADDRESS GIVEN, said the request does not fit in with their Neighborhood Plan and asked that the neighborhood be left as it currently is.

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

10. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#667: a zone change from Residential-9,600 to Residential-8,000 on Tract E of C/S 1011, generally located at the southeast corner of 34th Street West and Colton Boulevard. Premier Development, Inc., owner; Engineering, Inc., agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation)

Zoning Coordinator Jeff Bollman said the subject property is currently vacant land. The applicant is proposing to build a 20-unit single-family condominium and the R8000 zoning is necessary for this development. The Zoning Commission voted 5-0 to

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recommend approval of the zone change.

The public hearing was opened. RICK LEUTHOLD OF ENGINEERING INC. asked the council to approve the request and offered to answer any questions.

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

11. PUBLIC HEARING AND SPECIAL REVIEW #685: a special review to allow an outdoor patio in the public right-of-way in the Central Business District zone on the western portion of North Broadway (North 28th Street) right-of-way that is adjacent to Lots 8-10, Block 57 of Billings O.T., located at 216 and 222 North Broadway. City of Billings, owner; Angelina and Patrick Cormier, agents. (re: Casey's Golden Pheasant/La Soledad). Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.).

Zoning Coordinator Jeff Bollman said the proposal is for an outdoor patio and to allow serving alcohol on the outdoor patio. With the bulbout and streetscape project that will be continuing on North Broadway to the edge of this property. The Zoning Commission and Development Review Committee both recommend conditional approval. The conditions are as follows: (1) the area approved for alcohol service shall me limited to the area shown on the submitted site plan; (2) unamplified acoustic guitar and background music from stereo speakers shall be allowed on the proposed patio; (3) the patio area shall remain 'open air' (except for fencing and/or awning) and shall not be enclosed. Any fencing, awning or other encroachments into public right-of-way shall be removed during seasonal periods of non-use. Additionally, the approval of this patio is for a sidewalk level outdoor patio only; (4) due to the serving of alcohol within the public right-of-way, the patio shall be separated from the "open" sidewalk area by a wall, fence, or railing a minimum of 3'-6" high, but not over 5'0" high. The fence or railing style and material shall be consistent with the downtown "kit of parts". All egress from the buildings and patio area must comply with Fire and Building Codes; (5) the operator of the patio shall indemnify and hold the City harmless for the activity that takes place within the public right-of-way. The Permittee or operator of the patio shall provide proof of an insurance policy, issued by a company licensed to do business in the state of Montana, in the amount of \$1,500,000.00 combined single limit, protecting the Permittee and the City from all claims for damages to property and bodily injury, including death, which may arise from products liability and operations under or in connection with the encroachment permit. Such insurance shall name the city as an additional insured and shall provide that the policy shall not terminate or be cancelled prior to the expiration date without 30 days' advance written notice to the City. In addition, the permittee shall indemnify the City against any and all liability, loss or damage that the City may suffer as a result of claims, demands, costs or judgments resulting from activities related to use of the patio area within the public right-of-way; (6) operation of this patio shall

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be allowed only during normal business hours; (7) this special review approval shall only be valid as long as there is a valid encroachment permit issued by the City Engineer's Office; (8) no signage shall be allowed to be placed on our hung from the fence or railing that encloses the patio.

Mr. Bollman said these conditions are the similar to those recommended for the Montana Brewing Company. However, at the Zoning Commission meeting, Angela Cormier requested that unamplified acoustic guitar music be allowed at this location because music is an integral part of their establishment. The Zoning Commission felt this request was appropriate for this location and change condition #2 to allow it. This was a change from what was approved for the brewing company.

Councilmember McDanel asked why the seasonal fencing condition was not being enforced. Mr. Bollman said this would be a matter of code enforcement. He said he didn't know of any complaints, but would have them look into the matter. Councilmember McDanel asked if he was correct in understanding that no enforcement action has been taken because no complaint has been received and it is completely a complaint driven process. Mr. Bollman replied that it would be like all other code requirements.

The public hearing was opened. JESSICA KRAMER, NO ADDRESS GIVEN said she is a landscape designer with Fisher and Associates. They did the landscape design for Montana Brewing Company and will be the landscape designer for the Casey's project as well. She said this project is timed well with the extension of the streetscape project on North Broadway. It is a good thing for downtown revitalization, for the downtown and for customers. The three parking spaces that will be lost due to this project are more than made up by the entire streetscape project that includes the angled parking.

DANNY GRAVES OF 1175 PATRIOT said he agreed that the project enhances the beauty of downtown. But, until the Downtown Planning Commission decides to close off about three blocks of downtown and made a pedestrian mall only, there will be a great safety hazard with having this type of project on a main thoroughfare such as North Broadway.

ANGELINA (ANGIE) CORMIER OF 220 NORTH BROADWAY said they need the project for two reasons: (1) keep people to the downtown area for a little longer; and (2) attract more customers downtown by offering the ambient space. She said with one patio (Montana Brewing Company), it was a destination. With two patios (adding their patio), people can go back and forth between patios and with three patios (adding the Travel Café patio), it is a "happening". The angled parking added 16 parking spaces in the downtown area. The streetscape will also slow down the traffic – something that is good for every business in the streetscape area. The project has been in the planning stage for over a year, will take less than a year to construct and take 15 years to pay for. "We are quite literally banking on the success of this project. I ask for your approval," she stated.

MARY WESTWOOD OF 2808 MONTANA AVENUE, #A, said she supports the bumpout change in landscape of North Broadway. She said all the changes would be

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good for North Broadway – bringing activity onto the street.

PAT CORMIER OF 220 NORTH BROADWAY said the streetscape in the downtown area is a change for the better. "I think with the Montana Avenue and Broadway changes, we've got a place that people will want to come to in the evening," he stated.

CARMEN GUERRO, NO ADDRESS GIVEN, said she is from LaSoledad restaurant, 216 North Broadway. She said she felt this would be beneficial to the downtown and will increase their business and the business of Casey's Golden Pheasant.

ART SCIBELLI, NO ADDRESS GIVEN, said he is with the Downtown Billings Partnership. They support the project because it complements the Downtown Framework Plan and enhances the pedestrian orientation of North 28th Street, complementing the streetscape that will be embarked upon in the next two months. Mr. Scibelli said it could also be a business retention tool for both LaSoledad and Casey's. There is synergy between the Montana Brew Company, Casey's and Travel Café, creating pedestrian orientation in the downtown on 28th Street.

GREG KRUEGER OF 207 NORTH BROADWAY said he is the executive director of the Downtown Billings Association. He said they support this project, as well as the Travel Café and Montana Brew Company patio. They believe it will enhance the pedestrian experience downtown. He said they oppose the idea of a pedestrian mall that closes the street; access is important to any shopping district. By closing numerous blocks, it is not necessarily a good idea and cities all across the nation have opened up their pedestrian malls to some type of thoroughfare. Mr. Krueger said they recently tested a two-lane configuration without turn lanes on North Broadway by adding the angled parking. A survey of the angled parking is currently underway and preliminary results indicate about a 70% approval rate. Mr. Krueger acknowledged that there is probably a safety issue with traffic backing out and eliminating turn lanes, "but we are hoping that safety issue will cause traffic to go to more arterial streets and use North Broadway in the core of downtown, as more of an access to parking and pedestrian experiences," he stated.

There were no other speakers. The public hearing was closed. Councilmember Elison moved for approval of the Zoning Commission recommendation, seconded by Councilmember Larson. Councilmember Ohnstad said the City has an ordinance that states that alcohol establishments cannot locate within 600 feet of a church, etc. "The churches are big players down there. They have a big investment there. The Methodist Church is across the street from some of these. Somebody coming out of the Methodist church can look right down at the patio and go have a beer I guess – that is not a very big thing with Methodists. I really think this is a slap in the church's face and will vote against it," he stated.

Councilmember McDermott said he appreciated Councilmember Ohnstad's remarks, "but I think the train has already left the station; it's already been approved," she stated. Councilmember Larson said the 600-foot separation requires 600-foot separation

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from a church, school or other public building. "One of the proposals that we are looking at addressing is becoming more and more contentious... I have drafted some proposals for Mr. McGill to look at that include an exemption of the downtown area. We would basically turn down virtually every eating establishment and every establishment that serves under a beer/wine or other license in Billings, Montana the downtown area based on this particular 600-foot separation. It is physically impossible to be away from some sort of public building in the downtown area..." he stated.

Councilmember McDermott said she agreed with Councilmember Larson. The downtown business district has no building that is 600 ft away from one of these public buildings: library, churches, schools, daycare, etc. "Because we are making an attempt to make the downtown into an entertainment area, I really would like to see the downtown exempt from the 600 feet," she stated.

Councilmember Ohnstad said there is a big difference between alcohol being sold inside a building and outside on a patio. He cautioned the Council about who else might be lining up for patios, since the door is now open. Councilmember Larson reminded the Council that there is a downtown association who has spent a considerable amount of time looking at these issues and there are some streetscape plans that show a mix between this type of bulbout patio and the diagonal parking. "I am hesitant at this point with the energy I've seen downtown in the last couple of years to look in the face of the people who have come together and stuck together and to say 'no, I disagree; we're not going to support that'... He said the Council needs to continue to support those groups that are trying to revive the downtown.

Councilmember McDanel said the Montana Brew Pub was a pilot of the bulbout patio concept and has been very successful. "Although I talked about enforcement of our agreement with Jeff earlier this evening, it wasn't a derogatory comment toward that philosophy, that design. We need to embrace these kinds of innovative ideas that are coming to us from our downtown and we need to do whatever we can to breathe life back into the downtown community. I think that is happening. When you drive the streets downtown, I think you can begin to see it," he stated.

Councilmember McDermott said the important point is that the Downtown Partnership, the Downtown Business Association, the Downtown property owners all support this project. It also fits into the Broadway Streetscape plan.

Mayor Tooley asked for resolution on one detail – the removal of fencing, etc. during seasonal non-use, asking if it should be date specific or how can it be enforced with the current language. Mr. Bollman replied that a specific date was not included because of the variable seasons in Montana, leaving some flexibility in the dates of operation. He noted that the code enforcement officers need to work with the property owners so that the fencing, etc. is removed during periods of non-use. On a voice vote, the motion (to approve the Zoning Commission recommendation) was approved. Councilmember Ohnstad voted "no". The ordinance was approved on first reading.

12. PUBLIC HEARING AND SPECIAL REVIEW #686: a special review to allow the location of an old Beer and Wine License (with gaming) in a Highway Commercial zone on Lot 1, Block 1 of Dicono Subdivision, located at 523 Hilltop Road. Concept Development Corporation, owner; Felt, Marin, Frazier, Jacobs & Rapkoch, P.C., agent. (re: Village Mart.) Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the request is for a beer/wine license with gaming. This property was before the Council in August 1999 for the same special review. It is within the 600-ft radius of Bench School on Milton Road. The conditions recommended by the Zoning Commission are: (1) this special review approval for on-premise beer and wine consumption shall be limited to the area of the building labeled "food and beverage" on the submitted site plan, which contains 1,242 sf; (2) that the 600 ft separation requirement from any school, playground, public park, public recreation area, church or other public building be waived.

Councilmember Bradley asked when the bingo parlor across the street was approved. Mr. Bollman replied that was approved in August 1997.

The public hearing was opened. KEN FRAZIER OF 208 NORTH BROADWAY said the Council denied this request previously, focusing entirely on the 600-ft limitation between this facility and the school. Bench Elementary is north of the site. The Zoning Commission has twice recommended approval of this request. There is a location immediately west of this site that is a bingo parlor. The Council waived their 600-ft separation in August 1997, reasoning that the separation was met since there was no direct way to get from the school to the site. In between that site and the school there are numerous impediments – commercial businesses, driveways, fencing, trees, car wash, garages, row of residential homes, etc. Children that would want to approach this site would need to go west to Lake Elmo or east to Main Street. It is screened and separated in a way that minimizes adverse effects. "Some of you believe that this is a mistake and that the 600 ft limitation should not be waived at all. Let me say that I doubt that the previous councilpersons believe that they made mistakes or were in any way derelict when they approved some 56 different sites ... They were reasoned and well thought out decisions at they time they were made. Please don't suddenly apply this rule differently on the back of this particular applicant. He's simply doing his best to make a living in this location," he stated.

DANNY GRAVES OF 1175 PATRIOT said he is in favor of the request. Mr. Skewis is a pro-business and pro-community business owner in the Heights. Village Mart is an Eagle Cliffs/Bench Elementary PTA business member. Mr. Graves said three years ago Mr. Skewis owned the lot that currently houses the bingo parlor. "In order to sell his property, the purchaser required that Mr. Skewis obtain a special review to allow alcohol and gambling. The City Council unanimously approved his request, thus allowing Mr.

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Skewis to sell his property. This property is located directly across from Village Mart, which is the same distance to and from Bench Elementary School. In fact, Bench Elementary is not within sight of either business and as previously stated – there is no direct access to it," he stated.

ROGER AHDSTADT OF 2426 MILES AVENUE said he has two concerns: (1) the 600 ft waiver. He said it was his understanding that the waiver was granted under two conditions: it causes undue hardship and it should be in the public interest. He asked the council to consider what undue hardship is caused and how would this be in the public interest. The second concern is the process. "I testified against this waiver on August 28, 1999 and the council did not approve the waiver. Then I testified again when the waiver was reconsidered on September 11, 1999 and the council voted not to reconsider it. I also testified against the waiver at Casey's Golden Pheasant and the council approved that waiver and I had to live with that decision. I had no opportunity to come back and protest that. Yet it seems the owner has the opportunity to come back as many times as they wish to reapply for the waiver. It seems the process is stacked against us, so I would simply ask the council to consider the process as well," he stated.

DONALD HAGEMAN OF 2800 4TH AVENUE NORTH asked the council to disapprove the special review request. He urged the council to reconsider the 600-ft separation ordinance because it has been applied so inconsistently over the years. "It's impossible for us to know where you are going to go with different kinds of businesses. It makes it hard on folks like Mr. Skewis or members of the community to know how you are going to apply the law in different places," he stated.

LOUISE WARNER OF 2139 WHITEWATER CIRCLE said she is against this request because there is a school within the 600 ft area. "It seems to me that the 600 ft area was made for the benefit of people to protect our children and to protect the people. Even if it's been overruled 60 times, that doesn't mean it needs to be overruled again. I think we need to stand up for what we think is the best interest of the people – especially the children in that area," she stated. She urged them to vote no on the request.

DARRELL KREITZBERG OF 71 25TH STREET WEST said he gets involved with casinos and restaurants periodically as a realtor. He noted he is familiar with Mr. Skewis' property. He had excellent access onto Main Street and Hilltop Road. Everything around it is commercial, no neighborhood residential property. "That's the most natural spot in Billings, Montana to have a situation like Mr. Skewis is asking for. I ask you to approve it," he stated.

ROD WILSON OF 422 SHAMROCK said he is a real estate developer and broker. He lives 7 blocks from this location and is very familiar with this piece of property. He said since the bingo parlor was built, there is a storage property with an 8-ft fence around it, providing another barrier. He urged the council to approve the request.

PAT CORMIER OF 220 NORTH BROADWAY said the 600-ft separation comes up again and again. It is designed to protect children. He said places like Pizza Hut and

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Chuck E Cheez sell beer and children are taken to those places. Mr. Cormier urged the council to support the request.

ANGELA CIMMINO OF 1745 SYLVAN LANE said she is a member of the Zoning Commission. She said while she believes the ordinances should be enforced, "in this case this picture is worth a thousand words. I believe it is an exception to the rule. If we are going to endorse and support the businesses of the downtown area, we should support the businesses of the Heights area as well," she stated. She asked the Council to not selectively enforce the ordinance, but provide an equal opportunity so that all businesses can benefit.

DICK SKEWIS, NO ADDRESS GIVEN said he is the applicant and would appreciate the Council's support on this request.

PAUL BIRCH OF 1303 DUBLIC STREET said he is a part time employee of Mr. Skewis. He noted that the gaming area being proposed is separated from the convenience store and dining area and totally away from where any kids would go. He didn't see any problem with this proposal and felt it would be an asset for the Heights.

There were no other speakers. The public hearing was closed.

Councilmember Bradley moved for approval of the Zoning Commission recommendation, seconded by Councilmember Elison. Councilmember McDanel said he knows Mr. Skewis and his business and his dedication to the Heights community. "I'm a little set off by ... one of the best arguments in favor of approving this waiver is a list of 56 times the Council has approved it in some other location. I don't think it is always wise to look to the past to decide how our future should be shaped... I also went back during my tenure on the Council and counted the number of these requests that have appeared before us... There were 27 locations where we either looked at expanded or new liquor licenses, just since January 1998. 16 of those establishments managed to find locations that were not within 600 ft of one of the churches, schools, or public buildings. Of those that needed the waiver, three were within the downtown business district; eight of the requests outside of the downtown business district required a waiver – 5 were approved; 3 were denied. So suddenly the statistics change a little bit when you look at the recent past.

There is a change in our philosophy and our attitudes towards these kinds of businesses and where they are located," he stated. He said when they reviewed this before, the Bench Elementary parent/teacher organization opposed it; the teachers at that school opposed it. These people aren't here this evening because they are disappointed in the process. "They thought when we said no, we meant no. They didn't realize that this could just keep coming back, back and back again until it is approved," he stated. He believed the ordinance was placed on the books to provide a buffer between that the children reside, play, go to school, etc. and these types of establishments urged the council to vote no at this time and focus the council's efforts on revising the ordinance so that businesses know the answer before they get to the council.

Councilmember Brewster said he spent several afternoons when school was out to

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see if any of the kids went up the street and back around to this business and found there were none. He said he would not support gambling, but the issue is whether or not this man has an opportunity to operate his business. He said he felt there are adequate barriers already in place and will support the request. On a voice vote, the motion was approved. Councilmembers McDermott and McDanel voted "no".

COUNCIL TOOK A 5-MINUTE BREAK AT 10:00 P.M. MEETING CALLED BACK TO ORDER AT 10:05 P.M.

13. PUBLIC HEARING AND SPECIAL REVIEW #687: a special review to allow an outdoor patio in the public right-of-way in the Central Business District zone on the eastern portion of North Broadway (North 28th Street) right-of-way that is adjacent to Lots 19 and 20, Block 56 of Billings O.T., located at 313 North Broadway. City of Billings, owner; WAYMO, LLC and Billie Ruff, agents. (re: Travel Café). Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this request is about a block north of the previous request by Casey's Golden Pheasant/LaSoledad. The bulbout proposed is similar to what was done at the Montana Brewing Company and will be done at Casey's. The Zoning Commission recommended conditional approval. The conditions are: (1) the area approved for alcohol service shall me limited to the area shown on the submitted site plan; (2) unamplified acoustic guitar and background music from stereo speakers shall be allowed on the proposed patio; (3) the patio area shall remain 'open air' (except for fencing and/or awning) and shall not be enclosed. Any fencing, awning or other encroachments into public right-of-way shall be removed during seasonal periods of non-use. Additionally, the approval of this patio is for a sidewalk level outdoor patio only; (4) due to the serving of alcohol within the public right-of-way, the patio shall be separated from the "open" sidewalk area by a wall, fence, or railing a minimum of 3'-6" high, but not over 5'0" high. The fence or railing style and material shall be consistent with the downtown "kit of parts". All egress from the buildings and patio area must comply with Fire and Building Codes; (5) the operator of the patio shall indemnify and hold the City harmless for the activity that takes place within the public right-of-way. The Permittee or operator of the patio shall provide proof of an insurance policy, issued by a company licensed to do business in the state of Montana, in the amount of \$1,500,000.00 combined single limit, protecting the Permittee and the City from all claims for damages to property and bodily injury, including death, which may arise from products liability and operations under or in connection with the encroachment permit. Such insurance shall name the city as an additional insured and shall provide that the policy shall not terminate or be cancelled prior to the expiration date without 30 days' advance written notice to the City. In addition, the permittee shall indemnify the City against any and all liability, loss or damage that the City may suffer as a

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result of claims, demands, costs or judgments resulting from activities related to use of the patio area within the public right-of-way; (6) operation of this patio shall be allowed only during normal business hours; (7) this special review approval shall only be valid as long as there is a valid encroachment permit issued by the City Engineer's Office; (8) no signage shall be allowed to be placed on our hung from the fence or railing that encloses the patio.

The public hearing was opened. BILLIE RUFF OF 313 NORTH BROADWAY said she is the owner of the Travel Café. She asked the Council to approve the patio request in conjunction with the streetscape project. She noted it will be an asset to downtown and will benefit the rejuvenation efforts downtown.

ART SCIBELLI OF THE DOWNTOWN PARTNERSHIP said this project complements the downtown Streetscape project and works in harmony with the Downtown Framework Plan in that it encourages pedestrian traffic in the downtown central core.

GREG KRUEGER OF THE DOWNTOWN BILLINGS ASSOCIATION, 207 NORTH BROADWAY said this particular bulbout would be located closer to 4th Avenue North – a main arterial with a considerable amount of traffic. This bulbout will be a gateway to the downtown corridor – which people can see from 4th Avenue North.

MARY WESTWOOD OF 2808 MONTANA AVENUE, #A, said she also supports this project. She noted she finds it exciting that these projects are happening by people who have made a commitment to the downtown.

CONNIE WARDELL OF 1400 POLY DRIVE said every time this happens, a business owner and property owner is making a substantial investment in the downtown. She asked the Council to continue to support such ventures. Ms. Wardell asked why it was necessary to remove the fencing and/or tables from the patios, noting they are nice for the Christmas Stroll and the Holiday Parade.

DON HAGEMAN OF 2800 4TH AVENUE NORTH said he approves of the bulabouts, but objects to alcohol being served across from the front door of his church – Billings First United Methodist. He asked that the Council include a condition that no alcohol would be served on the patio.

ANGELINA (ANGIE) CORMIER OF 220 NORTH BROADWAY said she supports the project. She noted there are two deterrents to unwanted things happening in a neighborhood – lighting and activity. Ms. Cormier said she felt this project would provide these two elements and make the downtown area – where she also resides, a nicer neighborhood.

ANGELA CIMMINO, 1745 SYLVAN LANE said this is an opportunity for the Travel Café to capitalize on attendance at the Alberta Bair Theater events. She urged the Council to support the request and help the downtown businesses.

LOUISE WARNER OF 2139 WHITEWATER CIRCLE said she is opposed to the serving of alcohol on the patio because it is too close to the church and the daycare center.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the Zoning Commission recommendation, seconded by

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Councilmember Larson. Councilmember Ohnstad reminded the Council that this project is getting even closer to schools and churches. These entities are not showing up any longer at the Council meetings because they are unhappy with the Council policy. "The churches are big players downtown. You people are not recognizing them for bringing people downtown. They have huge investments downtown. They also need protection. This patio is right across the street from the entrance to the Methodist Church. I'm going to vote against it," he stated.

Mayor Tooley asked if there is a liquor license on premise. Ms. Ruff said there is no cabaret license on premise; she has not even made the decision yet to apply for one. She noted however, that the location has been approved by the Council for a cabaret license. Mr. Bollman clarified that one of the conditions of the special review approved in 1997 was that they could not serve alcohol on the sidewalk. The request this evening would eliminate that condition and allow alcohol service on the patio. A special review is not required for a patio, unless the applicants desire to serve alcohol on the patio. On a voice vote, the motion was approved. Councilmembers Ohnstad, McDanel and Brewster voted "no".

13. PUBLIC HEARING AND SPECIAL REVIEW #692: a special review to allow the location of a 180 ft high cellular communications tower in a Community Commercial zone on Tract 2 of C/S 1718 amended, located at 1442 Grand Avenue. Bennett Land and Building Co., owner; Mesa Communications, LLC, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.).

Zoning Coordinator Jeff Bollman said the subject property is south of Grand Avenue and east of 15th Street West, with Burger King to the north and a mobile home court to the south. The property currently contains several office buildings, a repair shop and an existing 75-ft cell tower. City ordinance requires that any cell tower over 50 ft in height go through a special review. This tower would be within 1 mile of the existing 75-ft tower onsite and another tower on the 2100 block of Grand Avenue. It does not meet the current setback requirements and would also need to apply for a variance.

The public hearing was opened. JEAN BENDER, ATTORNEY FOR MESA COMMUNICATIONS, 401 NORTH 31ST STREET, asked if they could do a "global" 12-minute presentation for Special Reviews #692, #693, #694 and #695, instead of doing separate 3-minute presentations for each. Councilmember McDanel moved for approval of a 12-minute presentation, seconded by Councilmember Larson. On a voice vote, the motion was approved. Councilmember Bradley voted "no".

Ms. Bender said the four towers proposed this evening are all part of a system being developed by Summit Wireless to provide seamless wireless coverage on the highways and in the towns of Montana. The towers are not being built on speculation; they are carefully designed and engineered for Summit's Montana system. This system will

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ultimately have about 162 towers across the state. Mesa's goal is the same as the goal of the ordinance – to have fewer towers serving more providers. Mesa only makes money if it leases space on its towers to wireless providers. She said they are making their requests because there are not enough existing towers in the City and in the system that are tall enough to provide for the needs of Summit and the nine other carriers that will be coming to the Council with requests for wireless communication towers. Ms. Bender noted there was little opposition to any of the four requests at the previous hearings. "Two of them however are within one mile of another tower and as Jeff explained, the ordinance the way it is written, does not permit towers to be less than a mile apart. You have recently waived that condition for two other applications within the last several months and we will ask you to waive it here, because we think the one-mile restriction doesn't make sense where the existing tower is too short, badly located for the system, not built yet or otherwise unsuitable for the second applicant. There is also a legal question because the existing ordinance with a one-mile separation has the effect of creating an economic monopoly for the first person that gets to you with the application. The ordinance gives that first person the power to freeze out competition entirely if they choose to do so, or charge any rent that they want to charge and the second and third people that come along are forced to either pay what is being asked or to completely redesign their system. For these reasons, we would urge you to waive the one-mile requirement for Mesa and Summit. Two of the towers are not within a mile of another tower and that is not a problem for them," she stated.

KEN STATON OF MESA COMMUNICATIONS, 6400 ARLINGTON BLVD., FALLS CHURCH, VA said before moving into the state of Montana, they did an extensive analysis of all the zoning laws in all jurisdictions and try to locate these facilities where a government entity dictates that it prefers to have them located. He noted that two of their applications have been recommended for approval because they meet all the current zoning laws on wireless communication towers. Mr. Staton said they make no money as a company unless they do co-locate their towers. He emphasized that none of their towers are speculative in nature. Summit Wireless is their anchor tenant on the towers.

MASHAAL AMADIEH, DIRECTOR OF PROJECT MANAGEMENT FOR SUMMIT WIRELESS said their headquarters is in Jackson, MS and their regional office is in Wenatchee, WA. He said they have been licensed by the FCC to provide digital PCS services to the State of Montana. These services will include voice, email and data. Current wireless service in the City of Billings and the state may not seem adequate. "It is Summit Wireless' intent to provide the citizens of Montana a network based upon two principles: a seamless network encompassing all major metropolitan areas and all highways in the state and indoor call quality within the metropolitan areas, enabling the consumer to make and receive calls without any disruption and inconvenience. All of these applications before you have three common denominators: they meet the radio frequency coverage requirements, they are contiguous to adjacent sites which provide the seamless

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service and they are interconnected to each other by microwave network that meets stringent line of sight requirements. Summit, as part of its network will construct a switch in Missoula, numerous stores including two in Billings, offices and other support facilities. Summit will become a major employer and contributor to the growth of the economy of Montana," he stated.

NAZ ABDOUL OF 5059 NORTH RESERVE STREET, MISSOULA, MT said he is the radio frequency engineer for Summit Wireless. He explained the basic workings of a wireless communication network and what seamless coverage is and how it is accomplished. He also showed a map showing the "system" they have proposed with their four applications. Councilmember Elison asked if Mesa was bound to Summit in terms of the co-location sites on the tower. Mr. Staton said that was correct; Summit is just their anchor tenant, which means they will be the first tenant on a tower and would have no say over what other tenants could co-locate on the tower. Councilmember Brewster asked if Summit would get first choice of the antennae location. Mr. Staton said that as anchor tenant, they are designed the elevation they need at each of the sites. He noted that tower location is determined by topography, population density, number of calls at a cell site, etc.

OSCAR HEINRICH JR. OF 4210 WELLS PLACE said his comments apply to all four special reviews for the cellular communications towers -- #692, #693, #694 and #695. He said he does not oppose cellular communication towers, but opposes 250-ft communication towers. As a point of reference, he said the Sheraton Hotel is 250 feet tall and the First Interstate Bank Building is 255 feet tall. "Wireless is not a right; it is a privilege. It's not a given that you will get this. Not everyone has wireless. When the West End Master Plan was being worked on, a survey was done asking people what they would like to see and what they didn't like to see. The survey stated that people didn't like visual clutter – things that ruin the beauty of this valley, such as billboards, tall signs, tall power poles, etc. Imagine what the people are going to say when they start seeing 250-ft tall wireless poles, structures sprouting all over this valley. Currently, six 240-ft towers have already been approved; four possibly tonight. I understand nine more are on the way. That's a lot. That takes us from a Tree City USA to a tower city USA. Is that what we want Billings to be seen as? I personally would rather see a larger amount of 50-ft, 80-ft, even 100-ft wireless poles put up, rather than these 250-ft poles," he said. He emphasized that surrounding buildings and trees would hide the shorter towers when you are farther away. He reminded the Council that the 250-ft towers would have FAA strobe lights on them as well. Mr. Heinrich also pointed out that there is no guarantee that the location of these towers will meet the needs of other wireless communication providers, so they will also ask for a tower. He suggested a visual assessment from various vantagepoints, as well as require the conditions recommended by the Planning Dept. He suggested additional conditions such as requiring at least six tenants/tower, co-location contracts signed with Mesa before the tower is built, require an abandonment bond, etc.

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CONNIE WARDELL OF 1400 POLY DRIVE said it is exciting to see Summit coming to Montana. She said she was concerned about some of the suggestions made. Ms. Wardell urged the Council to think of the tower as a shopping center. "When they built Rimrock Mall, nobody understood about shopping centers. Why are they putting it in that location and should we really let them build until they get at least 4-5 tenants out there? Nobody seemed to understand that when you want to build a shopping center, you put the anchor tenant and you let the rest of them fill in. A cell tower is the same thing. We are moving into where the major urban areas have been for the last 10 years. Now we are going to get there. They've got a solid anchor tenant," she said. Ms. Wardell urged the Council to approve the requests.

J R REGER OF 2708 PALM DRIVE said last month he secured final approval for a co-locatable tower at 2132 Grand Avenue. "This tower is going to be built to accommodate five carriers. Just this morning, we started drilling on this location to begin the building process and the tower will be up very shortly. Two national carriers have already tentatively agreed to locate on the tower and I've also been exchanging emails with Mr. Amadieh of Summit Wireless about co-location. I offered Summit the same price Mesa charges Summit, as quoted to me by Mr. Staton. In fact, this location at 2132 Grand Avenue was Summit Wireless' #1 location in Montana until I told them I was unwilling to sell that location to Mesa. I was told that if I didn't sell my four towers to Mesa they would make special deals with the nine carriers on 160 sites that they own as long as they would not touch my four. It was a threat that was both predatory and vindictive and since then they have applied for towers within a few feet or a ¼ mile of my towers – namely one on 24th and Grand right across from the interstate. They are asking for approval of that tower tomorrow. I'm willing to lease my space to Summit on all my towers for the same price that Mesa is charging them. Why is it they will not co-locate on any towers except for Mesa's? As far as a monopoly goes, I can only accommodate five to six carriers and there are nine of them. I cannot stop anyone else from building towers in this area," he stated.

JIM HINTZ OF 211 LEWIS AVENUE said he represents Summit and works with the Crowley Law Firm in the Transwestern Plaza. Mayor Tooley reminded him that the Summit/Mesa team had already used the 12 minutes allotted to them for their presentation. Mr. Hintz asked to speak as a private citizen in regard to the visual clutter aspect. "Looking over the City today, I noticed towers in a number of locations... I would suggest the Council in accordance with the telecommunications ordinance, that the goal of minimizing the total number of towers will reduce that visual clutter and the towers proposed here will serve that end," he stated.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved to table this special review for 30 days until the first meeting in February to have an opportunity to discuss this in an agenda meeting, seconded by Councilmember Kennedy. Councilmember Larson asked if staff is aware of any time limitations either of these companies is under that would make it mandatory that they have an answer prior to

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that time. Mr. Bollman and Planning Director Ramona Mattix replied they knew of no time requirements. City Administrator Dennis Taylor pointed out that they have set a Committee of the Whole discussion on this issue and the technical issues of cell towers for the second meeting in February. "It may be more appropriate to have a longer timeframe than the first meeting in February," he stated. City Attorney Brent Brooks reminded the Council that the zoning ordinance only allows a maximum of 30-days delay for special reviews.

Councilmember Elison asked if Summit was "so hot to get on line, what's wrong with Mr. Reger's tower that will be up before yours can even get approval?" Mr. Amadieh replied that Summit is co-locating on sites within the State of Montana. He said if they were to consider Mr. Reger's site, it would still necessitate another site. "You have to understand our network. Our design is a design, based on what we think is best. Like any other business, we have financial constraints on the number of sites we have. If I have to add a site here, I may have to take a site away somewhere else. That causes a lot of change in terms of the design," he stated. Councilmember Elison asked how many sites they have co-located on in the City of Billings. Mr. Amadieh replied "none". Councilmember Elison asked how many they looked at co-locating on in the City of Billings.

Mr. Amadieh said they looked at Mr. Reger's site and three other towers, noting that ask Mesa to consider what is already existing – buildings, towers, water tanks, etc.

Councilmember McDanel said if there are no available sites for them to co-locate on in the City of Billings, "what makes you think that other companies are going to be satisfied by the sites that you have selected?" Mr. Staton said one of the towers they considered was the Three Rivers monopole. "The problem is the way the ordinance is written at the time Three Rivers was allowed to build that tower, they weren't allowed to get sufficient height to reach the antennae heights that co-location companies are going to need. That's consistently been the problem with existing structures in place right now, when we evaluated the opportunity for co-location. Why I think our towers now will be suitable for co-location is: (1) we are asking for taller towers and quite honestly you are not going to get coverage if you don't get above the tree lines... The pole that we are building next to in this hearing is a 75-ft pole and the antennae heights need to be higher than that," he explained.

Councilmember Kennedy asked if this is the first time they have encountered this kind of opposition in the state. Mr. Staton replied that it was, noting that they have not yet completed all of their filings in the state. "The more that I hear from you people, the more I feel the hackles backing up on our backs. We have two recommendations for denials and two recommendations for approval. It's looking pretty dicey to me right now at 11:20 p.m. We've been here for three months; we have Committee of the Whole meetings, we have attorneys that are from Billings that can arrange meetings with us. That's what we are asking for – some information. The packet we got tonight was extensive and very good, but I got it tonight at 6:05 p.m.! To me, with 18 items on the agenda, it is very contentious

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right now...," stated Councilmember Kennedy.

Mr. Amadieh stated that time is of the essence, but the point they are trying to make, "is that we would be happy to be a participant in this process, provide you whatever information, more detailed information ... if that is what the council is asking for... From Summit's perspective, time is of the essence. If that is what is required for you all to make a decision, then so be it. But I can't keep saying what concerns us is delay for 30 days, then there's an opportunity for another days, and there's unlimited 30 days. At some point in time we need to ask for a decision. If you are not prepared to do that tonight, we'd like to participate in the process," he stated. Councilmember Larson asked if the Committees of the Whole could be rearranged to accommodate the motion this evening. Mr. Taylor replied that he thought a February 12th Committee of the Whole could be scheduled that would be within the 30-day motion and consistent with the Council's idea to engage the technical experts and allow the county commissioners' comments to occur at that Committee of the Whole on the 12th.

Councilmember Larson asked staff to pass the word to anyone who has an interest in this issue to get the Council timely information as quickly as possible during that 30 days and attempt to talk to the councilmembers individually as many applicants for special reviews often do. On a voice vote on the motion to delay 30 days to the first meeting in February (February 12th), the motion was unanimously approved.

15. PUBLIC HEARING AND SPECIAL REVIEW #693: a special review to allow the location of a 250 ft high cellular communications tower in a Controlled Industrial zone on portions of Lots 13-15, Block 14 of Billings O.T. and vacated North 22nd Street between 4th Avenue North and vacated 5th Avenue North, located at 2111 4th Avenue North. Quality Concrete Co., owner; Mesa Communications, LLC, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)

NOTE: Previous discussion from ITEM #14 applies to this item as well.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember McDanel moved to delay the item for 30 days to the first meeting in February (February 12th), seconded by Councilmember Elison. On a voice motion, the motion was unanimously approved.

16. PUBLIC HEARING AND SPECIAL REVIEW #694: a special review to allow the location of a 250 ft high cellular communications tower in a Controlled Industrial zone on Lot 4, Block 3 of Burlington Northern Subdivision, 19th filing, amended, located at 526 Bernard Street. Mick D. Dimich Sons, owner; Mesa Communications, LLC, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

The public hearing was opened. There were no speakers. The public hearing was

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closed. Councilmember Iverson moved to delay the item for 30 days to the first meeting in February (February 12th), seconded by Councilmember Johnson. Councilmember Larson made a substitute motion to approve the Zoning Commission recommendation, seconded by Councilmember Kennedy. Councilmember Larson pointed out that the Zoning Commission recommended approval of this application and the applicants have met the current criteria of the code. Councilmember McDanel said he agreed, but he believed that some people in the audience might have been misled this evening, believing that all of these items would be delayed. Some individuals may already have left who may have wanted to speak on these items. Mayor Tooley noted that the applicant indicated that this is a designed system with all of these towers working together, "so I'm a little loath to say yes to one part and not to another part," he stated. On a voice motion, the substitute motion failed. On a voice vote on the main motion, the main motion was approved. Councilmember Kennedy voted "no". Action was delayed to February 12, 2001.

17. PUBLIC HEARING AND SPECIAL REVIEW #695: a special review to allow the location of a 250 ft high cellular communications tower in a Highway Commercial zone on the West 1/2 of Lot 7 of Winemiller Subdivision, located at 637 Anchor Street. Billings Heights VFW Post #6774, owner; Mesa Communications, LLC, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ohnstad moved to delay the item for 30 days to the first meeting in February (February 12th), seconded by Councilmember Iverson. Councilmember Elison made a substitute motion to approve the Zoning Commission recommendation, seconded by Councilmember Kennedy. On a roll call vote, the substitute motion failed 3-8. Councilmembers voting "yes" were: Kennedy, Larson and Elison. Councilmembers voting "no" were: Bradley, McDermott, Brewster, McDanel, Tooley, Iverson, Ohnstad, and Johnson. On a voice vote on the main motion, the motion was unanimously approved. Action delayed to February 12, 2001.

18. PRELIMINARY MINOR PLAT OF KREITZ HEIGHTS SUBDIVISION (generally located on the west side of Wicks Lane, east of St. Andrews Drive and bordered on the north by the BBWA). Staff recommends approval. (Action: approval or disapproval of preliminary plat.)

Planning Director Ramona Mattix said this is a 27-lot subdivision, with one lot currently housing a pump station and the remaining 26 intended for single-family units. There are three remaining lots that are recommended as public zoning for open space. There are 12 conditions of approval, three of which deal with the remainder lots of the church and the handicapped crossing; eight address specific design criteria of the subdivision and one is related to the BikeNet easement shown on the plat, that says there

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shall be language in the SIA that addresses materials permitted in the easement. She noted that the Planning Board deleted this easement, so this condition has been removed as one of the recommended conditions.

Councilmember Ohnstad moved for approval of the plat with the inclusion of the BikeNet easement along the BBWA Canal, seconded by Councilmember Johnson. Councilmember Ohnstad said there is a great BikeNet plan to improve bicycle access in the community. "This is one of the first tests as to whether or not we want to be serious about planning. We have no indication that we could ever put this along the canal. We know at this point that we can put it through the subdivision. Nothing has been built out there. Anybody that buys a house will know that this easement is there. This is the proper time to put that easement in there. It is not time to try to put an easement in after somebody owns a house," he stated. Councilmember Kennedy said he has concerns about the SIA language. City Attorney Brent Brooks said, "you are treading on some rather dangerous ground if you require ... that an easement be granted. Now, what you can try to do is negotiate securing of an easement in lieu of ... a cash requirement or the park land donation requirement... I would suggest ... that you explore that opportunity to negotiate securing the easement in lieu of a park dedication requirement or in lieu of a cash donation."

Councilmember Kennedy has shown good faith tonight by changing the zone to allow more units which reduces the costs of the units there, allowing the developer an economic opportunity. "There's some things he wants and some things the neighborhood wants. Are we are allowed to firmly direct staff to negotiate in favor of the BikeNet as well as in favor of an overlay of R-7000, should something go awry with the development, then it becomes moot and goes back to R-9600?" he asked. City Administrator Dennis Taylor added that such direction would need to be given to staff. Councilmember Kennedy made a substitute motion to direct staff to negotiate via the SIA in favor of the BikeNet easement, as well as in favor of an overlay zoning of R-7000, should something go awry with the development, whereby it reverts to the original R-9600, seconded by Councilmember McDanel. Mr. Taylor explained staff could negotiate those issues with the applicant via a Development Agreement, in conjunction with the Subdivision Improvement Agreement (SIA). Councilmember McDermott wanted it strongly stated that the council had two weeks in which to reconsider the action taken this evening and there could be a reconsideration motion by a councilmember from the prevailing side. "I don't want something to happen tomorrow, then the folks to come back in a week and say we've already started. I'd really like some strong wording on that ... and everyone to understand that," she stated. On a voice vote on the substitute motion, the motion was approved. Councilmember Larson voted "no".

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ADJOURN – 11:40 p.m.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE City Clerk