

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **MONDAY, JANUARY 22, 2001**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Charles 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 Mick Ohnstad.

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

**MINUTES – January 8th.** APPROVED AS PRINTED.

### **COURTESIES – Combined Campaign**

- Mayor Tooley acknowledged former Councilmember Dick Clark in the audience.
- Boy Scout Troop #2 was introduced. They are the oldest troop in Montana, celebrating their 85<sup>th</sup> anniversary this spring.
- Mayor Tooley introduced representatives of the United Way and Community Shares. He introduced Combined Campaign Chair Bill Cochran, Ron Wenger, Heather Leander, Ted Warren, Susan Frank, Ginnie Burgess, Doris Cole, Darrell Bell and Pat Weber – some staff members from various departments who coordinated the giving campaign in their respective departments. Special recognition was given to the Police Dept for the greatest increase in their level of giving and to the Fire Dept for the greatest dollar contribution in the campaign. The Community Spirit Award for the highest contribution/employee and the highest percentage of participating employees goes to the Library for the third consecutive year.

**PROCLAMATIONS –Mayor Tooley.** **NONE**

**BOARD & COMMISSION REPORTS.** **NONE**

### **ADMINISTRATOR REPORTS – Dennis Taylor.**

- Mr. Taylor noted that he placed on the Council desks a list of bills endorsed by the MLCT to date. He noted he would bring this list to the Council at each meeting, highlighting those that need council attention.
- He noted that an Executive Session would be held immediately following this meeting to advise the City Attorney and the legal team on how to address the lawsuit filed by

MDU and MT Power regarding the right-of-way ordinance fees.

- ITEM K should be withdrawn from consideration because the state had not yet approved the ROW plans. It will be resubmitted for Council action at a later date.

**CONSENT AGENDA:**

**SEPARATIONS: E, I. ITEM K deleted.**

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

- (1) Christopher J. Montague, City/County Planning Board
- (2) Ryan Halpin, Board of Adjustments
- (3) Christine Boyer, Community Development Board

**B. Contract for Professional Services** with Fischer and Associates for Terry Park Sprayground Engineering and Design, \$13,142.82.

**C. Contract for Professional Services** with HKM Engineering to provide consultant services for the parking lot design on the north side of Amend Park, \$15,800.00.

**D. Reimbursement Agreement** with Heights Baptist Church, Lots 7-24, Block 1, Howard Heights Subdivision.

**E. 2001-2005 Transportation Improvement Program (TIP)** for the Billings Urban Transportation Area, recommendation to the Policy Coordinating Committee (PCC).

**F. SID 1350: Pinehurst Road, Glen Eagles Blvd., Lake Hills Dr. street & utility work:**

(1) **Professional services contract** with Engineering, Inc., \$55,217.24.

(2) **Resolution of Intention 01-17655** to create and setting a public hearing date for 2/12/01.

**G. SID 1351: Vaughn Ave. between Hallowell Lane & Stephens Lane street, curb & gutter improvements:**

(1) **Professional services contract** with Interstate Engineering, Inc., \$15,600.00.

(2) **Resolution of Intention 01-17656** create and setting a public hearing date for 2/26/01.

**H. SID 1352: Tamarisk Dr. & Burning Tree Dr. street & utility improvements:**

(1) **Professional services contract** with Morrison-Maierle, Inc., \$48,087.00.

(2) **Resolution of Intention 01-17657** create and setting a public hearing date for 2/12/01.

I. **Resolution 01-17658** adopting revised wastewater Lateral and Trunk Construction Fees, revised Water Main Construction Fee, and adoption of a new Water Transmission Construction Fee.

J. **Resolution 01-17659** setting fees for City-owned parking garages and parking meters; establishing monthly permits for long term parking; authority establishment of lower parking rates for parking meters outside the core of the Central Business District; establish the “Green Meter” project in cooperation with the Downtown Billings Association and direct accounting charges for parking fines and meter revenues and parking enforcement expenses.

~~K. **Resolution** providing for the receipt of bids and the letting of a construction contract for improvements for SID 1346: Streetscape Improvements to North Broadway.~~  
**REMOVED FROM CONSIDERATION.**

L. **Resolution 01-17660** providing for the receipt of bids and the letting of a construction contract for improvements for SID 1347: Lampman Subdivision.

M. **Preliminary Minor Plat** of JPM Subdivision.

N. **Preliminary Minor Plat** of Rimrock West Estates, 4<sup>th</sup> filing.

O. **Final Plat** of Rush Subdivision, 7<sup>th</sup> filing, as amended.

P. **Bills and Payroll.**

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDanel separated Item E. Councilmember McDermott separated Item I. Mayor Tooley reminded the Council that Item K had been deleted. Councilmember Elison moved for approval of the Consent Agenda EXCEPT Items E, I and K, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved. Councilmember Elison moved for approval of Item E, seconded by Councilmember Larson. Councilmember McDanel said he noted that the four projects listed are considered the baseline scenario. “If my recollection is not too fuzzy, a year ago when we looked at these programs, we specifically re-ordered them in order to emphasize priority on the 6<sup>th</sup> Avenue/Bench Blvd connection in the Heights. I see that is now exactly at the bottom of the list and I’m wondering why,” he asked. Scott Walker of the Planning Dept stated that Table 2 on Page 12 regarding the Urban Program. This is the program that prioritizes projects. It shows Airport Road as #1; Shiloh Road as #2, etc. “The Bench Boulevard connection is basically are only prioritized project using Air Quality dollars and

that's why it is at the bottom of that page," he replied. Councilmember McDanel asked if the funding sources specified on Page 19 were "firm" funding sources. Mr. Walker replied they were and confirmed that the 6<sup>th</sup> Avenue/Bench Boulevard connection has \$450,000 budgeted in FY01. On a voice vote, Item E was unanimously approved.

Councilmember Elison moved for approval of Item I, seconded by Councilmember Larson. Councilmember McDermott asked if annexation was still required for receiving City water and sewer. "If it becomes too much of a financial burden; if there is a small parcel that is pretty isolated and a ways away from the boundaries, we can still refuse to annex, right?" asked Councilmember McDermott. Public Utilities Director Carl Christensen replied that was correct. "There would not be any area that would be provided water or wastewater service without coming before the City Council for request for annexation. If the council did not feel it was appropriate to bring that in and annex it and serve the area, they would have the right to deny it," he stated. Councilmember McDermott asked, "if we have to sit and wait for the money to come back to us when we do pay for the big trunks, how are we going to finance it? Are we looking at bonds? Or are we going to use our reserve funds?" Mr. Christensen replied that the money to finance the construction of water and sewer lines would come from user revenues. It will take some "seed money" to start that fund and start extending the lines. "But once we get them out there, money should come back in and after a few years, the money coming back in should be adequate to continue to finance the extension of them in the future," he explained. Councilmember McDermott asked, "if a developer builds a road, who owns it? We own it, don't we if we decide we want to put sewers down that road; it's our road, correct?" Mr. Christensen replied if the road is inside city limits, it would be the City's. Councilmember McDermott asked, "if a developer puts a sewer or water system in, which is inadequate, who would pay to replace that system?" Mr. Christensen said ordinarily the City would require that before the City assumed ownership of water and sewer systems, they would be required to be brought up to standard. Councilmember McDermott asked if the City was taking any measures to control growth so that the water is not wasted, i.e. conservation plan as expansion continues. Mr. Christensen replied that the City's customers use a lot more water in the summer than in the winter. "One of the things we've done is change the rate structure. We used to have a rate structure that had four declining block rates. Basically that meant that as customers used more water in the summer, their rate per unit was less. We've gone to two blocks and as we come before the Council in the work session on February 5<sup>th</sup>, we will be recommending that it go to one block or a flat rate schedule. The purpose of that is that as more water is used in the summer, the rate shouldn't go down. It should at least stay at the same level... We also have a bill insert that is put out every Spring talking about different ways that people can water lawns, encouraging people to water during early morning hours, put in sprinkler systems, etc to conserve water," he stated. 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 and 1/8/01.) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Councilmember Brewster moved to DISAPPROVE the staff recommendation, seconded by Councilmember McDanel. Parks and Recreation Director Don Kearney said two meetings ago (Dec 11, 2000), the Council asked for more information regarding this item. Three different questions were identified – one of those items was what other liquor licenses does the City have. Mr. Kearney said the only other liquor license the City has at this time is at the airport – for the restaurant at the Airport terminal. It has had this license for over 20 years. They have an agreement where they lease that license to the Terrace Restaurant currently and changes from time to time as that tenant changes. The lease agreement requires the City to receive a percentage of revenue off the sale of food and beverages sold at that restaurant.

Mr. Kearney said another question from the prior meeting was 'what is it that allows the sports organizations to sell beer at their locations', which include Cobb Field, Stewart Park and Poly Vista Park where softball is played and North Park with the soft pitch association. The vehicle that allows that to take place is a special permit that they apply to the Montana Department of Revenue for. They are able to do that because of the 'sporting' nature of their events. They must go through review of the local police department prior to submitting that application. He emphasized that it is NOT a city license; it is held by the individual associations.

Mr. Kearney said the final request was a review by the Parks Board. He stated that the Parks Board unanimously approved the submission of the application to the MDOR to include the entire course. "One of the things I wanted to make very clear to the Council was that the application can be submitted for the clubhouse only OR for the clubhouse and the course itself. It's just a matter of how you want to submit it in the application. This application actually calls for the entire course, consistent with what the Board recommended as well," he stated. He also reminded the Council that the Parks Department issues alcohol permits for use in City parks except for Riverfront Park and Swords Park. Out of the balance of the parks, about 125 permits are issued annually. Of these parks, nine are located adjacent to churches; 11 are located adjacent to schools. He indicated that the entire course and clubhouse is situated within 600 feet of a park, a church, and the cemetery.

Jim Powell of Wells Fargo Bank said he is the current president of the Exchange City Golf Club – ECGC, a non-profit corporation charged with the oversight and management of the Par 3 golf course. He said they have had a 25-year relationship with the City. Some of their major accomplishments along the way include: a revenue split from the proceeds of the golf course – 2/3 to the City and 1/3 to the Downtown Exchange Club. The Exchange Club funds can only be used for parks/recreation projects in the community. They have used their share of the proceeds for: Downtown Exchange Club amphitheater at ZooMontana (\$65,000); the pier at Lake Elmo next to the FWP facility (\$9,000); assisted the Junior League of Billings with the playground for all children at Rose Park (\$10,000); and most recently flagpoles and landscaping at Amend Park (\$10,000). Mr. Powell presented Mr. Kearney with a check in the amount of \$30,000 for the Year

2000 distribution of proceeds.

Mr. Powell strongly urged the Council to support the submission of a beer/wine license application – for two reasons: (1) this now fits within the theme of our newly constructed clubhouse – a new 3500 sf clubhouse built with this in mind; (2) it is felt that they could net \$15,000 - \$17,000/year from the sale of alcohol, which would be distributed to both the City and the Downtown Exchange Club to be reinvested throughout the community.

Councilmember McDermott asked about the liability issue of having a license. Mr. Powell replied that with the service of alcoholic beverages, comes risk. "Obviously we would have in place liquor liability insurance ... The Downtown Exchange Club has the beer concession at the grandstand area and have to provide the County and MetraPark with similar insurance -- \$1,000,000 worth. That would certainly be a standard," he stated. Councilmember McDermott clarified that the City would be liability because "we would have the beer and wine license in our name, so that would increase our liability, as compared to the special permit for Cobb Field, for example." City Attorney Brent Brooks added that the City would require that it be named as an additional insured on an endorsement that covers that additional activity.

Councilmember McDermott asked what kind of menu is served at the clubhouse that beer and wine is required. Mr. Powell said historically it has been a "hot dog" type of operation; that may change with the addition of the new director of golf. "By no means would it involve a sit-down type of dinner, but it may expand a little from what is currently served," he stated.

Councilmember Brewster commented that he is opposed to a government entity procuring a liquor license. "I think there are other ways that could happen. I think if people want to drink there, there is a way; they can get a permit to care of them," he stated. Councilmember McDanel said he didn't think the City should be in the business of selling alcohol to the general public. "I think there are enough processes in place to allow someone who wishes to golf and have a beer, to acquire the permit necessary to do that and to exercise that privilege on that course," he stated.

Councilmember McDermott said there is another concern – there are an inordinate number of young people golfing there because it is a small beginner's course. "They will have carloads of teenagers that will come and spend the entire afternoon there – without adult supervision. I just have some real concerns when you open it up with the entire clubhouse and course with those young people out on the course, using it, as well as having the park and church near," she stated.

Mayor Tooley commented that with a beer/wine license comes the authority to put gambling machines in an establishment. He asked if the Council would have to approve this in advance. Mr. Brooks said the Council would NOT have the opportunity to approve the installation of gambling in advance. Councilmember Elison asked whose name would be on the license. Mr. Brooks said it would be the City. Councilmember Elison emphasized that being the case, the City would have all rights over the writing of any lease of that license and that lease could prohibit gambling machines. Mr. Brooks confirmed that statement.

Councilmember Elison said, "a beer and wine license does not require that you

drink when you play golf; it doesn't remove the laws of our land which prevent people underage from drinking; it simply opens up another option for those people who wish to avail themselves of it. I think that \$17,000 that would be raised is a consideration. I also think that if one were to go to the Par 3 on any given day and race around checking out all the golf bags and things, one would probably find alcohol there! Are we liable for the enforcement of the park in that sense? I don't see that this is such a negative thing. Again, we are talking the 600 feet – 600 feet from the clubhouse wouldn't get close to the church or the park (Sacajawea) and it's not like anyone will sit down on the green someplace and have a little keg party. At most it would be golfers driving around with a beer in their cart... People who are running the course have done so for twenty odd years in a very good fashion... and it has generated significant revenue to the City... I think it is a little egotistical of us to sit up here and tell them how to run their golf course. Granted we own it, but they have been running it for us for twenty years with very good effect. If they come in and think the best thing to do to run the golf course is to apply for this beer and wine license, I think we should support it," he stated.

Councilmember McDanel said he didn't think whatever they are proposing to do to increase the revenue of the golf course is necessarily a good idea for the community. "They could open a branch of Shotgun Willies and increase the revenue significantly without increasing the value to the community. The other thing is, I think it's kind of redundant to draw that 600-ft circle around the clubhouse. We are not talking about how close that is to a park; it is a park. It is used as a park; it belongs to the City; it's managed by the Parks Dept. It is not 600 ft from a park, it is a park. Again, I believe the City should not be in the business of selling alcohol period. If we were talking about the airport license today and it were a new license, I'd be saying the same thins about it – the City should not be in the business of selling alcohol," he stated.

Councilmember Larson said he objected to the suggestion that efforts of the Exchange Club and the people operating Par 3 is comparable to operating Shotgun Willies. "I think this is a grave injustice to an organization that has not only operated Par 3 to great effect, but has done a number of things throughout the community and has been a tremendous supporter of a vast number of community organizations. I don't think they had anything like that in mind when they decided to start selling some beer and wine along with their golf course," he stated. Councilmember Ohnstad said he thought what they are trying to do is make Par 3, a beginner's golf course into a small country club. "People who play Par 3 traditionally play a round in about 3 hours. I think after 3 hours, if they want a beer, they can go someplace and have a beer. But there are a lot of young people there. At country clubs, you can actually check out a cooler for yourself when you go around. Here for 3 hours, I think you could play without having a beer," he stated.

Mayor Tooley said he would prefer not to see any gambling at Par 3. He asked what the City could do to prevent gambling machines from going in there. Mr. Brooks said the City could write a lease, "even though the state regulates the gambling portions of these applications. To that extent, you cannot dictate whether or not there is underlying statutory authority. But you could ... by your own separate agreement indicate whether or not that would be allowed. That could be a negotiating point with the ECGC," he stated.

On a roll call on the motion to DISAPPROVE the application submission, the

motion was approved 5-4. Councilmembers voting "yes" were: McDermott, Brewster, McDanel, Tooley, and Johnson. Councilmembers voting "no" were: Iverson, Johnson, Larson and Elison. The submission of the application was denied.

**3. PUBLIC HEARING AND RESOLUTION 01-17661 authorizing the filing of a grant application and the execution of a grant agreement with the Department of Transportation Appropriations Act, 2001 upon receipt of the grant offer. 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 McDermott moved for approval of the staff recommendation, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND SECOND READING ORDINANCE 01-5140 revising Section 24-456 and Section 24-464 of BMCC relating to Parking Meters and to the Fine Schedule for Parking Violations. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Finance Director Bob Keefe said this ordinance coupled with the resolution on the Consent Agenda initiates a number of changes with the parking situation downtown. It increases parking garage fees and meter rates. The ordinance initiates an escalating fine schedule so that violators who receive more than one ticket within a 30-day ticket will pay escalating amounts of fines. The proposal was presented to the Parking Advisory Board and the Downtown Property Owners Committee. Mr. Keefe said the "green meter" project, suggested by the Downtown Billings Association, is also being initiated with these changes.

The public hearing was opened. DAN BERRY OF 835 YELLOWSTONE AVENUE, said he is the chair of the Parking Advisory Board. He said they have worked with staff in drafting the ordinance changes. The changes being recommended come as the result of many meetings, spirited discussion and careful consideration. They are supported by the Downtown Billings Association, the property owners, merchants and the Downtown Partnership – not unanimously, but by the majority. The changes address issues like employee parking in the core taking spaces for shoppers, abuse by a few who are willing to pay unlimited \$2.00 tickets, not allowing enough time for shoppers to actually shop and alienating some shoppers with tickets. The additional revenue generated by these changes will go into the Parking Enterprise Fund and used to create more parking, improve existing parking and seek creative solutions to continue to make parking downtown better. Mr. Berry said without additional funding, these things might not happen. With the increases, the users help pay for the improvements. Other changes such as lower meter rates outside of the downtown core and monthly permits for long-term meters are being considered as well.

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

**5. PUBLIC HEARING AND RESOLUTION 01-17662 ANNEXING: Unplatted portion of the S1/2 of the SW1/4 of Section 17, T1S, R26E, containing approximately 70.387 acres, (Annex 00-05), Howard H. and Rosezella Bohl, owners. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Bruce McCandless of the Planning Dept said a preliminary plat has been submitted on the subject property and is being processed in conjunction with the annexation request. The property currently has one house and several outbuildings located on the SW corner of the property. The rest of the property is vacant. It is presently zoned Highway Commercial and is expected to retain that zoning in the city if it is annexed. It is currently in the Billings Urban Fire Service Area (BUFSA) and would be removed from BUFSA if annexed. It would become part of Ward I if annexed. Staff recommends approval of the annexation subject to two conditions: (1) that an SIA or Development Agreement be entered into prior to the issuance of any building permits and (2) that all of Mullowney Lane adjacent to the property be annexed as well.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Iverson moved for approval of the staff recommendation, seconded by Councilmember Larson. Councilmember McDanel said he was pleased to see the financial comments on the annexation and the benefits of annexation. He noted that the cost to provide services to this piece of land currently exceeds the tax revenue from this land by approximately \$25,000 - \$26,000. "In an era when we are already facing potential deficits, in the future I think it is important to be aware when we annex land, that we annex additional debt to the citizens of Billings," he stated. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND SECOND 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. (Action: approval or disapproval of ordinance on second reading.)**

Planning Director Ramona Mattix informed the Council that they received a letter from the applicant requesting a delay in action on this item to February 12th. She informed the council that they could hold the public hearing tonight however. Ms. Mattix said they would like to enter into a Development Agreement with Mr. Kreitzberg on a temporary easement, noting also they will be meeting with the BBWA Canal representatives to open the discussion to look at another alignment in that area. "The agreement we are trying to reach to is get a temporary easement for 3 – 4 years in order to be able to successfully get an alignment that will actually be constructed," she stated.

The public hearing was opened. RICK LEUTHOLD OF ENGINEERING INC., 1001 SOUTH 24<sup>TH</sup> STREET WEST said he represents Darrell Kreitzberg, the owner on this project. He noted that they agree with all of the issues presented at the last hearing – namely a reversion clause with regard to the zoning from R7000 to R9600 if it is not developed in general conformance with the preliminary plat. He noted they have discussed placement of an easement with a sunset clause and are in general agreement

on that as well. Mr. Leuthold confirmed that they are working on the bike path alignments at this time. They are also preparing a Development Agreement that will be ready for council action at the next meeting.

There were no other speakers. The public hearing was closed. Councilmember Ohnstad moved to delay action to February 12, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND SECOND READING ORDINANCE 01-5141 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 34<sup>th</sup> Street West and Colton Boulevard. Premier Development, Inc., owner; Engineering, Inc., agent. 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 Johnson moved for approval of the ordinance on second reading, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND SPECIAL REVIEW #696: A special review to allow a meat processing and packaging facility (SIC #2013) on Lot 1, Block 1 of Burlington Northern Subdivision, 2<sup>nd</sup> filing, located at 1345 Monad Road. John Decker, owner; Natural Meats Montana, LLC, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Candy Beaudry of the Planning Dept said the property is 2.2 acres in the Burlington Northern Subdivision. The existing building is the vacant Coors Distributing facility. It is approximately 18,000 sf. The operator – Natural Meats of Montana will refit the building with coolers, a processing floor, loading docks, and utilize the existing office space. They will receive chilled and quartered beef carcasses that are killed and rendered off site. There will be no killing or rendering on site. They will package the meat for wholesale operations only with no retail operations on site. Most of the shipping will be done via truck. The railroad spur on the property will not be used. Ms. Beaudry said they expect to generate some waste from the processing, mainly grease, oil and meat particles that will be disposed of in the wastewater system. There are some private sewer lines in the area, however Public Utilities will most likely require an industrial use permit – which will be taken care of during the Building Permit process.

The public hearing was opened. CHRISTIAN MCKAY OF 3048 HIGHWAY 312 said he is the finishing manager and part owner of Natural Meats Montana. He urged the council to approve the zoning commission recommendation. "This is an exciting opportunity for us to bring a value-added agriculture based process to Billings... We expect to employ somewhere in the neighborhood of 27 people. These will be skilled positions that will pay a living wage; there will be no minimum wage positions at our facility," he stated.

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

Councilmember Elison. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND SPECIAL REVIEW #688: A special review to allow the location of a 50' high uncamouflaged cellular antenna on an office building in a Residential Professional zone, located at 1127 Alderson Avenue. Brawner Family Limited Partnership, owner; Qwest Wireless, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said this request as well as the next one (#689) are for antenna facilities that are located on existing buildings. This request is for property located on the north side of Alderson Avenue between 11<sup>th</sup> and 12<sup>th</sup> Streets West. The proposal is to locate two poles that will project ten feet above the existing building, with an antenna housed on top of them. The existing building is 40-feet high. The property is zoned Residential Professional and in these zones towers need to be camouflaged if they are to be allowed outright. These towers are not camouflaged, so that is the reason for the special review. The Zoning Commission is recommending conditional approval, with the following condition: that the facility shall look like the computer-generated photograph submitted with the application materials with no additional appurtenances.

The public hearing was opened. WAYNE ROGERS OF QWEST WIRELESS, 12310 MARIBOU PARKWAY, SPOKANE, WA said they are complying with the current code by not building additional towers and utilizing existing structures. He offered to answer any questions. There were no questions for Mr. Rogers.

OSCAR HEINRICH OF 4210 WELLS PLACE said this is a great example of using an existing structure to place a telecommunications tower. "You don't have to worry about a monopole, a 250 footer. This one and the next one are great ideas. I hope this council approves these to encourage more usage like these," he stated.

RICHARD CLARK OF 1207 25<sup>TH</sup> STREET WEST said he is a member of the Zoning Commission. He said he is not speaking for the commission, but wanted to tell the council the problems they have with the different tower requests coming before the commission and council, asking for a waiver of the 1-mile distance, etc. "With these requests tonight, we were wondering if they could even have come before the Zoning Commission because the building is already there and this one is only a 10-ft tower that is going on top of it. The majority of us were more impressed with this type of installation than we would have been, having to put these huge towers up around the city. But I think we need to work on the ordinance. There are conflicting parts of the ordinance and it is a tough one, because we do seem to quite regularly give a variance to put these towers in. I'm glad to see that you (the Council) is working on this," 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 Brewster said an independent operator has been contacted to give the Council some idea of what systems are appropriate for the area and market and relate it to the economics of how those systems operate, so that the Council has an understanding of what could be done so that the applicants are not unnecessarily burdened but the aesthetics of the community are still protected.

Councilmember Johnson asked if there could be multiples on sites like these. Mr. Bollman said he did not think additional poles could be added – by the nature of the condition set by the council. It might be possible to add an additional antenna on the pole, but not another pole on the building. He noted also that staff is looking at clarifying this portion of the code, so special review for the camouflage issue may no longer be required in the future. Councilmember Iverson asked if it would be better to postpone any decisions on all of these now. She said she favors these types of installations – those on top of existing structures. Councilmember Larson said he did not think it would be fair to postpone them at this time, since they meet all of the current regulations, even if our current regulations are “fuzzy”. Councilmember Brewster said the reason the Council took pause with the other requests was because they were so large and because they asked for some real changes. Councilmember McDanel reminded the Council the only reason this request was before them this evening was because it was not camouflaged. “If they put some tree branches on there essentially, we wouldn’t be having this discussion this evening. I think this is an excellent location and we need to reward businesses for taking the initiative and finding these locations and building these towers in ways that are less obtrusive to our community,” he stated. On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING AND SPECIAL REVIEW #689: A special review to allow the location of a 101' high uncamouflaged cellular antenna on an office building in the Central Business District zone on Lots 19-24, Block 108 of Billings O.T. The subject property is located at 2812 – 1<sup>st</sup> Avenue North. First Citizens Bank, owner; Qwest Wireless, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said this request is for a tower that is proposed to be located on the First Citizens Bank building downtown. This request requires special review because it is not camouflaged and projects above the roofline and exceeds 50 feet in height. There are already existing antenna rays on top of the structure at this time that project above the existing roofline. If this request were approved, these would be raised up 20 feet. The 101-foot total height comes from 81 foot building height and the 20-ft antenna extension. The Zoning Commission recommends approval.

The public hearing was opened. . WAYNE ROGERS OF QWEST WIRELESS, 12310 MARIBOU PARKWAY, SPOKANE, WA asked the council to approve the request and offered to answer any questions. There were no questions for Mr. Rogers.

OSCAR HEINRICH, 4210 WELLS PLACE said he recommended that the Council ask the City Attorney for an opinion on the Telecommunications Act of 1996 because it does handle providers differently than it does “tower” builders. “That would help you guys understand a little bit what the difference between Qwest is and Mesa and Mr. Reger,” he stated.

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

**11. PUBLIC HEARING AND SPECIAL REVIEW #690: A special review to allow the location of an 88' high uncamouflaged cellular antenna on a power pole in a Controlled Industrial zone on Lot 4A, Block 1 of Midland Subdivision, 1<sup>st</sup> filing. The subject property is generally located at the northwest corner of King Avenue West and South 24<sup>th</sup> Street West. King Corner Partners, owner; Qwest Wireless, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said staff is requesting that the Council delay the action on this request until February 12<sup>th</sup>. The reason for the delay is that when the application for the special review was submitted, the underlying property owner had not signed the application. In the interest of timeliness, we continued to move the application through the process, with the understanding that the application would eventually have to be signed. He noted they are still debating whether or not the signature actually has to be done, because of the fact that they are locating the tower on top of a Montana Power pole.

Mr. Bollman said this tower is in the vicinity of the Country Harvest restaurant, with the pole on the corner of that property. The pole is approximately 90% on private property and 10% on the public right-of-way. Ownership needs to be clarified further and it is hoped that will be done by February 12<sup>th</sup>.

The public hearing was opened. . WAYNE ROGERS OF QWEST WIRELESS, 12310 MARIBOU PARKWAY, SPOKANE, WA said they had problem with the continuance.

There were no other speakers. Mayor Tooley said the public hearing would be continued to February 12<sup>th</sup>. Councilmember Brewster moved to delay action on this item to February 12<sup>th</sup>, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

**12. A. PUBLIC HEARING AND SPECIAL REVIEW #691: A special review to allow the location of a 69' high uncamouflaged cellular antenna on a power pole in the Public zone on C/S 833. The subject property is located in Swords Park. City of Billings, owner; Qwest Wireless, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation).**

**B. EASEMENT AGREEMENT between the City of Billings and TW Wireless in Swords Park (to run electricity to a proposed cellular antenna on an existing MPC power pole.) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Zoning Coordinator Jeff Bollman said this request is to allow an antenna on top of an existing power pole. The existing power pole would be replaced with a pole that is 22 feet higher and the antenna mounted on top of it. The subject property is Swords Park. The total height with the new pole and antenna on top of it would be 69 feet high versus the existing height of 42 feet. Because this is in a park, this matter has been reviewed by the Parks Board. The Zoning Commission recommends conditional approval, with the following conditions: (1) the facility shall look like the computer-generated photograph

submitted with the application materials and site drawings as approved by the Parks, Recreation and Public lands Board with no additional appurtenances, and (2) that specific FAA approval, if required, shall be provided to the Planning Department prior to issuance of a building permit

Parks/Recreation Director Don Kearney said this item goes hand in hand with the approval of the special review. They would not recommend approving the easement unless the special review is also approved. The applicant needs to run power and have access to their equipment. The 5-foot easement allows them to run electrical service and utilities to their site and the 12-foot access easement allows access to their equipment. The easement consideration is based on the existing easement in Stewart Park with a cellular tower there.

Councilmember McDermott asked if there are other towers in Swords Park. Mr. Kearney replied there is also an 800 MHz tower there for the City's 800 MHz system.

The public hearing was opened. WAYNE ROGERS OF QWEST WIRELESS, 12310 MARIBOU PARKWAY, SPOKANE, WA offered to answer any questions. There were no questions for Mr. Rogers.

There were no other speakers. The public hearing was closed. Councilmember McDanel moved for the Zoning Commission recommendation on Special Review #691, seconded by Councilmember Elison. On a voice vote, the motion was unanimously approved. Councilmember McDanel moved for approval of the staff recommendation on the easement agreement, seconded by Councilmember Larson. On a voice vote the motion was unanimously approved.

### **LATE ADDITIONS:**

Councilmember Larson moved to add Special Reviews #692 - #695 to the agenda, seconded by Councilmember Johnson. On a voice vote, the motion was approved. Special Reviews #692 - #695 were added as Items 13-16.

Councilmember Larson moved to continue the postponement of Special Reviews #692 - #695 to February 12, seconded by Councilmember Johnson. City Attorney Brent Brooks said in the past the 30-day time limit has been agreed to by the proponent or applicant. In this case, there has been some concern raised by either or both applicants about the 30-day time period. He noted there might be some concern about going 4 days over the 30-day time limit. On a voice vote, the motion was unanimously approved.

**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 delayed on 1/8/01. Staff recommends delaying to 2/12/01. (Action: approval or disapproval of Staff recommendation.)**

SEE MOTION ABOVE. POSTPONEMENT CONTINED TO FEBRUARY 12, 2001.

14. 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 22<sup>nd</sup> Street between 4<sup>th</sup> Avenue North and vacated 5<sup>th</sup> Avenue North, located at 2111 4<sup>th</sup> Avenue North. Quality Concrete Co., owner; Mesa Communications, LLC, agent. Zoning Commission recommends denial. Action delayed on 1/8/01. Staff recommends delaying to 2/12/01. (Action: approval or disapproval of Staff recommendation.)

SEE MOTION ABOVE. POSTPONEMENT CONTINED TO FEBRUARY 12, 2001.

15. 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, 19<sup>th</sup> filing, amended, located at 526 Bernard Street. Mick D. Dimich Sons, owner; Mesa Communications, LLC, agent. Zoning Commission recommends conditional approval. Action delayed on 1/8/01. Staff recommends delaying to 2/12/01. (Action: approval or disapproval of Staff recommendation.)

SEE MOTION ABOVE. POSTPONEMENT CONTINED TO FEBRUARY 12, 2001.

16. 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 ½ 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 delayed on 1/8/01. Staff recommends delaying to 2/12/01. (Action: approval or disapproval of Staff recommendation.).

SEE MOTION ABOVE. POSTPONEMENT CONTINED TO FEBRUARY 12, 2001.

**ADJOURN** – With all business complete, Mayor Tooley adjourned the meeting at 9:10 p.m.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Charles F. Tooley MAYOR

ATTEST:

MINUTES: 1/22/01

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE      City Clerk