

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

## **MONDAY, FEBRUARY 12, 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 Mark Elison.

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

**MINUTES – January 22nd. Approved as printed.**

**COURTESIES** -- None

**PROCLAMATIONS –Mayor Tooley.**

Mayor Tooley proclaimed the following:

- (1) February 17 as National Girls and Women in Sports Day and
- (2) February as I Love to Read Month.
- (3)

**BOARD & COMMISSION REPORTS** – None

**ADMINISTRATOR REPORTS – Dennis Taylor.** Mr. Taylor introduced Tom Emerling, the Chairman of the Big Sky Economic Development Authority. Mr. Emerling introduced their new Executive Director John McClure, who replaced former director Jerry Thomas.

### **CONSENT AGENDA:**

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

- (1)     Jeff Mrachek to Exchange City Golf Corporation

B.     **Bid Awards:**

- (1)     **One Current Model Single Axle Truck with Heavy Duty Dump Box; 25,500 GVW Maximum.** (Opened 1/23/01). Recommend Motor Power Equipment Co., \$44,641.00 including 5-year warranty on engine and transmission.
- (2)     **Two Current Model Fifteen to Sixteen-Foot Cutting Width, 2-Rotary Mowers with Diesel Powered Engines and Eighteen MPH**

- Road Speed.** (Opened 1/23/01). Recommend Far West Equipment Distributing Co., \$99,800.00.
- (3) **Stewart Park Pump Station Reconstruction.** (Opened 1/23/01). Recommend Midland Implement Co., \$59,740.27.
- (4) **Marlex 90-Gallon Refuse Containers for Solid Waste Division.** (Opened 1/30/01). Recommend Western Systems & Fabrication, Inc. for \$60.75 each.
- (5) **One Current Model 2001, 50-foot Aerial Personnel Lift Unit with Material Handling Jib for Street/Traffic Division.** (Opened 1/23/01). Recommend Pacific Utility Equipment, \$100,176.00 + trade.

**C. Security Agreement** with E & JK Enterprises, dba Sundown Security for security in the parking garages. \$20,812 for one year with a second year option at same rate.

**D. Contract for Professional Services** with Maxim Technologies, Inc. for environmental monitoring services at the landfill for FY 2001/2002, FY 2002/2003, and FY 2003/2004, \$75,267.00.

**E. Lease** of 216 sf of secured storage space to the Bureau of Land Management (BLM). \$1,076.81/year and a 2-year term.

**F. Acceptance** of FY 2000/2001 Second Quarter (ending 12/31/00) Financial Report.

**G. Adoption** of a Bonded Debt Policy.

**H. Approval** of \$70,000 Tax Increment Fund (TIF) money to the Predevelopment Loan Program, as recommended by the Downtown Billings Partnership.

**I. Approval** of the General Development Criteria for downtown Billings, as presented by the Downtown Billings Partnership.

**J. Approval** of application for annual renewal of the Misdemeanor Supervision Program grant. (Subgrant 99-K20-80365; total grant amount is \$101,106; local match of \$40,442 with \$30,000 from the City and \$10,442 from Alternatives, Inc.)

**K. Acknowledging receipt of a petition** to annex Lots 9-15, Block 18, Lillis Heights Subdivision; various petitioners, Annex #01-03, and setting a public hearing date for 2/26/01.

**L. Acknowledging receipt of a petition** to vacate Lot 11A, Block 2, Normal Subdivision, Sisters of Charity, petitioner, and setting a public hearing date for 2/26/01.

**M. Resolution 01-17663** providing for the receiving of bids and the letting of a contract for the construction of improvements in SID 1348.

**N. Resolution 01-17664** relating to \$2,471,000 Special Improvement District No. 1347 bonds; authorizing the issuance and calling for the public sale thereof.

**O. Resolution 01-17665** relating to \$220,000 Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2001A, for the 2000 Miscellaneous and Developer Related Improvements Project and authorizing the issuance and calling for the public sale thereof.

**P. Preliminary approval of resolution 01-17666** levying and assessing the original costs of W.O. 99-02, #3: the 1999 Developer Related Sidewalk Program, and setting a public hearing date for 2/26/01.

**Q. First reading ordinance** extending the boundaries of Ward 1 to include recently annexed property in Annex #00-05: an unplatted portion of T1S-R26E-S17: S2SW4 LESS C/S 2834 and setting a public hearing date for 2/26/01.

**R. Preliminary minor plat** of amended Lot 12-A, Block 3, Midland Subdivision, 5<sup>th</sup> filing. (Generally located south of King Avenue West and east of 29<sup>th</sup> Street South).

**S. Approval of Condominium Development Agreement** for the Shiloh Estates Condominium project on Lot 1, Block 1, Rush Subdivision, 7<sup>th</sup> filing.

**T. Bills and payroll.**

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

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

Councilmember Iverson moved for approval of Item H, seconded by Councilmember Larson. Councilmember McDermott asked if this allocation was for a specific project or if it was "seed" money for the program. Finance Director Bob Keefe said this money would fund two eligible pre-development loans up to \$35,000 each. The Downtown Development Guidelines included this program for pre-development loans up to \$35,000. He noted that one developer is being considered at this time. On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION 01-17667 creating SID 1350: street and**

**utility improvements to Lake Hills Drive, Glen Eagles Drive and Pinehurst Road. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Public Works Director Kurt Corey said the proposed district is comprised of 26 parcels. The estimated total cost of the proposed improvements is \$569,000, with cash contributions from Ron Hill, owner of most of the properties in the district and Lake Hills Golf Club (\$17,000), leaving an SID bond amount of \$45,000. The balance of properties – 5 lots, not under aggregate ownership are owned by a single individual who has protested the district. The total protest amounts to 21% of the assessable cost, or just under \$120,000. Staff is recommending approval of the district.

The public hearing was opened. RON HILL, NO ADDRESS GIVEN, said he is the majority property owner in the district. He noted that he purchased these parcels and other parcels in the area from private individuals as well as through county tax sales, with the intent of turning them into tax-producing properties with full city services. Mr. Hill said the individual protesting the district has not been interested in selling his vacant lots, thereby eliminating a potential private contract. His land was purchased years ago when city services weren't required and gravel roads were okay in that area. "I think he still believes that gravel roads are okay for city development," he stated. He noted that with development way beyond that level, he feels that a minority should not be allowed to set a precedent by denying a city infill project that is surrounded by existing development and infrastructure. He asked the council to support the project.

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

**3. PUBLIC HEARING AND RESOLUTION 01-17668 creating SID 1352: street and utility improvements to Tamarisk Drive and Burning Tree Drive. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Public Works Director Kurt Corey said the proposed district would extend the phased development of Wentworth Drive. It is comprised of 21 lots, with an estimated cost of \$341,000. The developer – Ken Holler, owns all of the parcels except one. The owner of the remaining single property has submitted a letter of protest to this project. That protest amounts to 5.3% of the assessable cost of the district or approximately an \$18,000 assessment. Staff is recommending approval of the district.

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

**4. PUBLIC HEARING AND RESOLUTION 01-17669 ordering in the improvements of W.O. 01-02, #1: 2001 Miscellaneous/Developer-Related Improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

City Engineer Brian Borgstadt said the Council approved a resolution of intention to

create the program, which put into motion the notification of residents of the requirements for participating in this program. Each resident has received a notice. Staff is recommending proceeding with the program.

Councilmember Larson said they received a petition protesting improvements on Highwood Circle. He asked for clarification on those improvements. Mr. Borgstadt said that portion of the project was a request that came forward to reconstruct Highwood Circle, a short cul de sac street. He said the protest that has been voiced concerns adding some curb and gutter work on a corner lot. It is at the intersection of Highwood and Highwood Circle. "It is our practice when we put these projects into a program that we complete what work is necessary for that property, so that we don't have multiple assessments for a property," he explained. Therefore, the curb and gutter was included even though the residents requested that just the street be reconstructed.

The public hearing was opened. JERRY BAKER OF THE MESSIAH LUTHERAN CHURCH said they received a letter demanding that they install 350 lineal feet of sidewalk along Boulder Avenue, at a cost of \$10,641.00. They are asking to be excused from this requirement. "We are located on Colton Boulevard and Rehberg and Boulder Avenue. When Colton was rebuilt a few years ago, they installed 350 lineal feet of sidewalk without objection because that is an important thoroughfare. A few years after that, the City required them to install sidewalk along Rehberg and this did that – 270 lineal feet. "Last year you told us to sell you a corner of our property to install a stop light at the corner of Rehberg and Colton. Last you reconstructed Colton west of Rehberg so that it was a full street. Now, this year, you are asking that we install another 350 lineal feet of sidewalk. We think that we have done enough. We know it is your policy to have sidewalks everywhere in Billings. But we also know there are a lot of neighborhoods that do not have sidewalk and will never have sidewalks. I think this is one of those neighborhoods," he stated. He said to the north, where Mayflower Congregational Church is located, there is an irrigation ditch, which prevents access. From the East, there are fenced backyards all along, nothing there are 29 homes in this neighborhood. He said they would like to permanently not be required to build a sidewalk so they can preserve the grass along the north side of the property – which is used in spring and fall for youth soccer programs.

ALEX HILSENDAGER OF 3846 PALISADES PARK said he has a business at 1921 1<sup>st</sup> Avenue North and is being asked to install \$15,000 worth of curb, gutter and sidewalk (140 ft). He said he just purchased that land with two curb cuts – as recommended by his parent company – Dollar Rent-a-Car. Mr. Hilsenagger said the sidewalk there is impeccable and would like it eliminated from the program. He noted that when he was building his building he encountered an unknown oil tank, which cost him \$20,000 to remove. He said it's ridiculous to tear up sidewalks that have no defects, just to appease one issue. Mr. Hilsenagger said he was instructed by the City Engineer's office to tear out the two curb cuts and install one large curb cut. He wants his property excused from this program.

WILLARD DALE OF 142 SANTE FE said he is a member of Messiah Lutheran Church. He urged the council to take their property off the project list.

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

Johnson. Councilmember McDermott said she looked at the property at 1921 1<sup>st</sup> Avenue North and said there is not one crack in the sidewalk. "I would hope that the engineers would negotiate with that property owner and not force him to take out everything and replace sidewalk that is perfectly good. I did receive another request on (1110 & 1112) North 22<sup>nd</sup> Street. The complaint I have is that the owner has already made some of the improvements. I would also like the engineers to take a look at that and try to negotiate with that lady also. They are both sitting in the curb, gutter, sidewalk and drive approach section," she stated. Mr. Borgstadt replied that the property on 1<sup>st</sup> Avenue North is in the program as a result of the site development of the property. The drive approach to be replaced is an old-style drive approach with the rounded radius and does not meet city standards. One of the reasons for the city standard is for handicapped accessibility to the sidewalks. The curb and gutter that is to be replaced closes an existing approach. Approaches that are not put in use are closed on a project. We require separation of approaches to prevent traffic problems and a circulation route for the site itself is required. Parking that was required by ordinance prevented these requirements from being met. The proposed improvements allow panels of good sidewalk to remain and the drive approach to be closed as per the site development plan.

Mr. Borgstadt said the property on North 22<sup>nd</sup> Street is a duplex development. He noted that when the duplex was built, the access was moved to the rear of the property. The front drive approach needs to be closed. In addition, there is sidewalk requirement for duplex construction. Councilmember McDermott said the owner reports that she has already provided a new drive approach. She asked Mr. Borgstadt to contact the owner and see what has to be done and what has already been done.

Councilmember Elison moved to amend the motion to remove 2939 Colton Blvd from program and direct staff to review 1110 and 1112 N 22<sup>nd</sup> St. re: improvements already completed and those that remain to be done, seconded by Councilmember Brewster. Councilmember McDanel asked if there were ADA issues associated with the 2939 Colton Blvd property. Mr. Borgstadt said the improvements were noted in a building permit (for an addition to the church two years ago) and could be an issue with someone. Councilmember Elison reminded the Council that if there is no sidewalk in place, the ADA does not require sidewalk to be put in. If it is installed, it requires that it meet certain specifications. Councilmember Johnson asked if this area is on a school route. Mr. Borgstadt said it would become a cueing point for children that are on Boulder Avenue. He said it is a limited neighborhood, but it is a cueing point for children to come out onto Rehberg on their way to the signal at Rehberg and Colton Blvd. Councilmember Larson said using Boulder Avenue as a school route is ludicrous because it looks like a typical street in any third world country – no sidewalks, no curb and gutter, barely even a street at this point. Colton Blvd is one block down and has been greatly improved recently. Councilmember Elison said Boulder School is a primary school – K thru 6. "It doesn't matter how many engineering standards you meet in providing sidewalks, if there is the choice of going down the sidewalk and down the sidewalk to get to Colton Blvd and cutting across the church lot, they are going to cut across the church lot, no matter what kind of sidewalk you put in there. All you have to do is go to any school campus ... and any time there is the choice of doing the right angle around a field or across it, there are ruts worn

into the fields to go across. The practical matter is the sidewalk gets put in ... and never gets used because the kids will still be cutting across the field. It seems an unnecessary expense to put in an infrastructure that will serve no purpose," he stated. On a voice vote on the amended motion, the amendment was unanimously approved. On a voice vote on the motion as amended, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION 01-17670 annexing: Lots 1-3, Block 6, Rush Subdivision, 2<sup>nd</sup> filing, (Annex 00-07). Staff recommends approval of the annexation public services report and the resolution. (Action: approval or disapproval of staff recommendation.)**

Zoning Coordinator Jeff Bollman said this annexation and the next two items are annexations are located along Shiloh Road, but separated by other properties and are therefore technically three separate islands. The subject property is located between Colton Blvd and Parkhill Drive and are wholly surrounded by the City. The property is zoned R-9,600 and would retain that zone classification if they are annexed. None of the uses that would make a property exempt from annexation exist on these lots.

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

**6. PUBLIC HEARING AND RESOLUTION 01-17671 annexing: Lots 5-6, Block 6, Rush Subdivision, 2<sup>nd</sup> filing; Tracts 1-2 of Rush Acreage Tracts Subdivision, Tract 1, C/S 2563 and Tract 1 of C/S 2050; (Annex 00-08). Staff recommends approval of the annexation public services report and the resolution. (Action: approval or disapproval of staff recommendation.)**

Zoning Coordinator Jeff Bollman said this second island is located south of Parkhill Drive. Three single-family houses are located on these lots, as well as Shiloh United Methodist Church. The lot the church is located on is currently zoned Agricultural Open Space and would become R-9,600 if annexed.

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

**7. PUBLIC HEARING AND RESOLUTION 01-17672 annexing: Tract 1A-1, C/S 1876 amended, (Annex 00-09). Staff recommends approval of the annexation public services report and the resolution. (Action: approval or disapproval of staff recommendation.)**

Zoning Coordinator Jeff Bollman said this third island is the southern most island located on the corner of Avenue C and Shiloh Road. It is developed and currently contains Sylvan Nursery. The zoning is currently Community Commercial and would retain that designation if annexed.

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 Larson. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND SECOND READING ORDINANCE FOR ZONE CHANGE #665: a zone change from Residential-9,600 to Residential-7,000 on portions of Tract 1-A and 1-B, C/S 1981, Tract 1, C/S 2539 and the North 85 feet of Lot 1, Block 27, Lake Hills Subdivision, 6<sup>th</sup> filing amended, 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 delayed from 1/22/01. (Action: approval or disapproval of ordinance on second reading.)**

The public hearing was opened. RICK LEUTHOLD OF ENGINEERING INC. said this zone change was delayed while they prepared a Development Agreement with regard to several specific items on the Kreitz Heights preliminary plat. "Since the last time we met, we have toured the site, met with the Billing Bench Water Assn Canal Board and discussed the options of the BikeNet on the east side. They are continuing to work through the BikeNet Coordinator on an agreement there, separate from the Development Agreement," he explained. Mr. Leuthold said he recently presented the development agreement to the Planning Dept and the City Attorney for review. He suggested this item be delayed to the next council meeting to give staff time to review the proposed agreement.

ED HUELICH OF 315 10<sup>TH</sup> AVENUE NORTH said he represents Yellowstone Valley Citizens Council, as chair of the Livable Communities action committee. He said they conditionally support the zone change for the Kreitz Heights Subdivision, although highly dependent on the quality of its design, they generally support higher density development as it increases the potential for neighborhoods that are not dependable on automobiles for every tip or errand. He said it also increases opportunities for pedestrians and cyclists. He said their support is conditional however on the reinstatement of the BikeNet easement on the property. Elimination of the easement has vast implications to the viability of the BikeNet system – which has significant community support. The BikeNet project has threads to their mission, which is to improve the quality of citizens lives, the quality of the environment and the strength of the local economy by applying urban patterns that are cohesive, human scaled, attractive, affordable and that preserve agricultural lands as well as significant natural and cultural landscape features. Removing the option of this property comprises the bike network in the Heights and in the entire community.

CONNIE WARDELL OF 1400 POLY DRIVE asked if the public hearing could be kept open to that the public can comment on the Development Agreement. Mayor Tooley indicated that would be his intention since the applicant requested a continuance.

There were no other speakers. The public hearing is continued to February 26. Councilmember Brewster moved to delay action to February 26<sup>th</sup>, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved. Action delayed and public hearing continued to February 26<sup>th</sup>.

**9. 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, 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 delayed from 1/22/01. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said the agent has requested a delay in action to March 12<sup>th</sup>. He noted they are trying to negotiate a lease with the property owner for the location of the antenna. He noted staff would concur with the request.

The public hearing was opened. There were no speakers. The public hearing was continued to March 12<sup>th</sup>. Councilmember McDanel moved to delay action to March 12<sup>th</sup>, seconded by Councilmember Elison. On a voice vote, the motion was unanimously approved. Action was delayed to and the public hearing was continued to March 12<sup>th</sup>.

**10. 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 from 1/8/01 and 1/22/01. (Action: approval or disapproval of Zoning Commission recommendation.) Applicant requested withdrawal.**

Zoning Coordinator Jeff Bollman offered to answer any questions. There were no questions for Mr. Bollman.

The public hearing was opened. JEAN BENDER, NO ADDRESS GIVEN, said she is the attorney representing Mesa Communications. She indicated that Mesa wishes to withdraw their request.

J.R. REGER OF 2708 PALM DRIVE said he wanted to impress upon the Council the value of co-location, where possible in the community. "If we don't mandate co-location, we could basically open up a Pandora's box of problems and be living in a forest of towers very soon," he stated. He also offered his tower space to Summit at the same price Mesa would charge.

The public hearing was closed. Councilmember Iverson moved for approval of the withdrawal, seconded by Councilmember Elison. On a voice vote, the motion was unanimously approved.

**11. 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 from 1/8/01 and 1/22/01. (Action: approval or disapproval of Zoning Commission recommendation.)**

The public hearing was opened. JEAN BENDER OF 401 NORTH 31<sup>ST</sup> STREET,

said she is the attorney for Mesa Communications. She said this site is within one mile of an existing monopole tower, located to the east of the Yellowstone Art Center. Ms. Bender indicated that Mesa would like approval of this request with the condition that Mesa only built the tower to a height of 180 feet, which will eliminate the necessity for lighting. "If they choose to go higher with the tower, they would come back to the Council and ask for your approval of any additional height," she stated. Councilmember Elison asked about the financial viability of the tower at 180 feet. Ken Staton of Mesa Communications said their anchor tenant has had antenna heights below 180 feet on this site, regardless of whether they were going to build a 250 foot tower or not. "What I would ask you to look at ... is that we are building the height for potential co-location and future tenant growth. I would like to reserve the right to come back before you to extend the tower height, should I get those additional tenants ... At that time you can take into consideration the lighting that going over 250 feet requires, and is it worth it as opposed to seeing other tower applications. As far as the financial viability of building a 180-ft tower, I would build the base section of a 250-ft section, just stop the construction at 180 feet. If I had additional tenants in the future, I would look to come back and extend that height if they needed antenna height above 180 feet," he explained. Councilmember Brewster asked how many tenants could be located at 180 feet. Mr. Staton explained one tenant at precisely 180 feet. But depending on the separation, the antenna spacing is generally 15 feet vertical separation between broadband antennas. A 70-ft obstruction height has been calculated. Councilmember Brewster asked if their site plan meets what is anticipated in the new ordinance proposal. Planning Director Ramona Mattix said she would need to check it specifically for the setbacks, etc.

There were no other speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the special review with the tower to be no more than 180 feet in height, seconded by Councilmember Johnson. On a voice vote, the motion was approved. Councilmember Larson asked if the stipulation of potential for approval of a height up to 250 feet at a later date is a condition the Council can impose at this time. City Attorney Brent Brooks replied that the applicant would have to come back with another special review application to extend the tower from 180 feet to whatever height they feel is necessary to meet the requirements of their potential tenants. He said at this point they would be approving only a 180-ft tower, but there is no guarantee that additional height would be approved at a later date. Councilmember Bradley voted "no".

**12. 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 from 1/8/01 and 1/22/01. (Action: approval or disapproval of Zoning Commission recommendation.)**

The public hearing was opened. KEN STATON OF MESA COMMUNICATIONS, NO ADDRESS GIVEN, said the condition recommended by the Zoning Commission of the tower being a monopole instead of a lattice tower would work for them.

OSCAR HEINRICH OF 4210 WELLS PLACE asked that his January 8<sup>th</sup> and January 22<sup>nd</sup> comments be entered into the record here. JANUARY 8<sup>TH</sup> COMMENTS: Mr. Heinrich 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. JANUARY 22<sup>ND</sup> COMMENTS: There were no comments made on January 22<sup>nd</sup> by Mr. Heinrich.

JEAN BENDER, NO ADDRESS STATED, said she believed the conditions were not correctly stated by Mr. Staton. The condition for this review – recommended by the Zoning Commission, was that it be limited to six antenna levels. She noted that they are agreeable to that condition.

There were no other speakers. The public hearing was closed. Councilmember Johnson moved for approval of the Zoning Commission recommendation of conditional approval, seconded by Councilmember Larson. Councilmember Larson cautioned the Council to be careful in applying a proposed new ordinance to an existing application that met the criteria at the Zoning Commission. Councilmember Elison asked if a 250-foot tower with six antenna levels would be appropriate to include networks of other carriers. Ken Staton of Mesa Communications said in his opinion it would be or else he would not be building a six-carrier tower. "One thing I'd like the Council to understand is that in all of the sites I'm building in Montana, if I only have one antenna on every site I build in Montana, I did not make a very good financial investment in your state. We are trying to place our structures where we think they are the most amenable to attract co-location," he stated. He apologized for the error in conditions and mixing up the two sites. Councilmember Brewster said his comments on the new ordinance were not intended to be a measure of approval on these applications. "The reason I'm concerned about the

offsets is that a tower as tall as 250 feet can get 2 – 3 inches of ice on them. When the weather warms they unload and if they are too close to adjacent structures and the ice comes off the tower, it tends to hit the braces and go farther out. Sometimes those ice pieces can weigh 100 lbs or more... It doesn't happen often here, but often enough that it ought to be a consideration for safety," he stated, noting he wanted them far enough away from streets and adjacent buildings, etc. On a voice vote, the motion was unanimously approved. The special review was approved with the condition(s) recommended by the Zoning Commission.

**13. 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 from 1/8/01 and 1/22/01. (Action: approval or disapproval of Zoning Commission recommendation.)**

The public hearing was opened. JEAN BENDER, NO ADDRESS STATED, said she is the attorney representing Mesa Communications. The conditions recommended by the Zoning Commission – the tower not exceed 180 feet in height, the tower shall be a monopole type structure and the tower shall accommodate at least 5 antenna platforms, are acceptable to them.

OSCAR HEINRICH OF 4210 WELLS PLACE asked that his January 8<sup>th</sup> and January 22<sup>nd</sup> comments be entered into the record here. JANUARY 8<sup>TH</sup> COMMENTS: Mr. Heinrich 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

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tenants/tower, co-location contracts signed with Mesa before the tower is built, require an abandonment bond, etc. JANUARY 22<sup>ND</sup> COMMENTS: There were no comments made on January 22<sup>nd</sup> by Mr. Heinrich.

There were no other speakers. The public hearing was closed. Councilmember Larson moved for approval of the Zoning Commission recommendation (of conditional approval), seconded by Councilmember Johnson. Councilmember Elison said when the public hearings first began, he was also opposed to the 250 foot towers, but having learned more about wireless communication towers and understanding the technical aspects of building a system that can co-locate a large number of antennas, "I believe that it would be in the best interest of our City to have few larger towers, rather than 150 ft or 100 ft towers here and there, everywhere. While I'm not particularly fond of the idea of towers in the city anywhere, I'd much rather see them in the surrounding hillsides. I don't believe that is going to be effective. I think the public does want it... I think the larger and fewer towers is a better way to go," he stated. Councilmember Brewster said he agreed with this concept and is excited about the proposed new ordinance. "It goes a long way to help people who come here to solve their problems of where they can locate a tower," he stated. On a voice vote, the motion (for conditional approval) was unanimously approved.

**ADJOURN** -- With all business complete, Mayor Tooley adjourned the meeting at 8:45 p.m.

## THE CITY OF BILLINGS:

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

**ATTEST:**

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE CITY CLERK