

REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, APRIL 23, 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 and Johnson. Councilmembers Iverson, Ohnstad, Larson and Elison were excused.

MINUTES – April 9th Approved as printed.

COURTESIES – City Administrator Dennis Taylor recognized Freda Schmeiser for 22 years on the job at the Solid Waste Division. She will be retiring on April 27th.

PROCLAMATIONS – Mayor Tooley. Mayor Tooley proclaimed April 22-28 as National Volunteer Week and 2001 as the International Year of Volunteers.

BOARD & COMMISSION REPORTS.

Councilman Jack Johnson announced this weekend is cleanup weekend around the community via the annual Bright and Beautiful event.

Mayor Tooley reminded those present of the City ordinance prohibiting the use of fireworks in the city limits. He noted that many citizens disregard this ordinance -- resulting in a loss of property and risk to the Fire Department and the community. He went on to announce the creation of a Fireworks Committee composed of citizens and staff to review the ordinance and develop a more workable solution to violations with possible enforcement that keeps the protection of the community as an end result. Fire Chief Marv Jochems spoke about the primary goals to raise community awareness of the fireworks ordinance, to review ordinance language for possible changes with emphasis on placing responsibility of minor's violations on the parents, to educate vendors and the public by creating awareness posters to display within the Billings Urban Fire Service Area and warning posters to display at fireworks stands, enforcement of the ordinance with possible confiscation, and developing public service announcements addressing the ordinance and potential fire concerns. Councilmember McDanel emphasized that when private fireworks displays are banned, licensed public displays should be promoted.

ADMINISTRATOR REPORTS – Dennis Taylor.

- Mr. Taylor reported that the Teamsters voted to support the health insurance program plan changes that will be effective July 1 and hoped that Firefighters will reconsider their position.
- He mentioned the work session and public input to draft changes in the West End Plan.
- Mr. Taylor asked Jani McCall, lobbyist for the City of Billings and

Representative Gary Forrester to give their reports on the Legislative Session. His closing comments were about *Senate Bill 242* that he hoped would have been defeated. He said there is still hope that the Governor will veto this bill, noting there seemed to be considerable hostility toward cities in this legislative session.

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(1) Legislative Report – Jani McCall

Jani McCall noted that the Legislative Session ended on Saturday, April 21st and that it was not an easy session for local government. Regulations and control were the theme and it tended to be very anti-government. There were significant gains in several areas. 200 bills with potential impact for the City were narrowed to 80 bills that were tracked. She started with the “losses” first. *Senate Bill 213* was the local option bill that would streamline funding local government. It would have provided a revenue sharing mechanism that would allow 70% to the taxing entity, 30% to revenue sharing region with 20% going to the region around Yellowstone County and 10% to a sub-region, which would be an outlying area of counties on the circumference of the region. This bill lost by one vote. *Senate Bill 242* was the extended jurisdiction bill that would eliminate the extended jurisdiction of 8 communities in the state that have it, which includes Billings. This ends 12/31/2001. It requires a vote of the people in order for the extended jurisdiction to go forward. She mentioned that we are looking to the Governor to veto this bill.

The bills under the “win” column were *Senate Bill 215*, and *216* for full cost accounting for Solid Waste operations of counties and cities. These bills were defeated which was a positive move as it was a costly process and something that was already being done. *Senate Bill 278* was a bill that would have removed exclusive right for cities to have Solid Waste operations. All three bills were killed prior to transmittal date. *Senate Bill 470* would have prohibited extra territorial zoning and subdivision regulations. This bill was also defeated. *House Bill 587* was also stopped which would have established requirements for monetary exaction and fees on subdivisions and developers. Several senate bills were amended including *Senate Bill 151* which prohibited government sale of fitness services. The amended section would have adversely affected services to the public though the parks and recreation programs. *Senate Bill 429*, regarding the local referendum election laws was successfully amended in the House by educating the committee about the issues regarding the right, responsibilities and obligations of local government. This committee voted to remove language that would stop the Right-of-Way ordinance process. It also increased the referendum process time from 30 to 60 days to give more time for gathering signatures on petitions. She summarized several bills that passed and are also considered “wins” in this session. *House Bill 377* which revised qualified tax endowment credits, *House Bill 334* that allows projects to be eligible for water pollution control funds, *Senate Bill 348* which concerned locomotive horn sounding at public crossings and *House Bill 409* which exempts local government healthcare plans from levy caps.

Ms. McCall next focused on the Yellowstone Coalition, a group made up of the City of Billings, Yellowstone County, Billings Chamber of Commerce, Big Sky Economic Development Authority, School District #2, MSU-Billings. This group, met for several months, for the purpose of developing priorities for the community. The four priorities

developed were: 1) a long range building program for MSU-B, 2) a Montana Endowment Tax Credit, 3) reimbursement to local governments for lost revenue, and 4) a local option taxing authority. In closing she focused on *House Bill 124*. It enacted a partnership between state and local governments for entitlement share to local governments, which means more stable revenue. The final compromise was in the growth rate adjustment. It also allows for district court and welfare transfers to the state, a property tax cap and block grants to schools. Ms. McCall noted that she will be submitting a full written report to the council, detailing the actions of the Legislature.

(2) Legislative Report – Representative Gary Forrester

Representative Gary Forrester commented on *Senate Bill 429* saying that the intent was that the fees not be retroactive even though the conference committee agreed that the retroactive payments should be collected by the City. He also mentioned that the most important bill from his perspective was *House Bill 474* that legitimized the deal between Montana Power Company and PPL of Montana. It allows for a rate increase to MPC customers that would be 6 to 6.5 cents per kilowatt-hour, which is up from 2 cents per kilowatt-hour. This will have a major effect on the City and its budget. He also commented on *House Bill 124*, which is the funding mechanism for cities, saying that the legislature and the government of the State of Montana have broken their agreement with cities and counties for funding over and over. He believes that when the State starts to lose money this bill will cease to function.

Councilmember Johnson moved to delete items 1A1 and 1A2 from the Consent Agenda, seconded by Councilmember Bradley. On a voice vote, the motion was unanimously approved. Councilmember Johnson moved to delete item 1J from the Consent Agenda, seconded by Councilmember Bradley. On a voice vote, the motion was unanimously approved. Councilmember Johnson moved to place on the Consent Agenda late additions O1 and O2, seconded by Councilmember Kennedy. On a voice vote the motion was unanimously approved.

CONSENT AGENDA:

1. A. Mayor's Appointments:

- ~~(1) Kendall Merriek, Community Development Board~~
- ~~(2) Jeff Essman, Planning Board – Ward IV~~

B. Bid Awards:

(1) Terry Park Sprayground. (Opened 4/10/01). Recommend Fisher Construction Co., Base bid: \$72,900.00 and Alternate #3: \$5,240.00 for a total of \$78,140.00.

(2) Plant Mix Asphaltic Concrete and ¾” and 1½” Crushed Aggregate. (Opened 4/10/01). Recommend JTL Group Inc., Northern Line Layers and Ostermiller Construction Inc., Term: 12 months.

(3) Bike/Ped Underpass Shiloh Billings: STPE Project 1031(1): 4506. (Opened 4/10/01). Recommend delaying award to 5/14/01.

(4) W.O. 01-02, #1: Developer-Related/Miscellaneous Curb, Gutter and Sidewalk Program. (Opened 4/17/01). Recommend delaying award to 5/14/01.

(5) Electronic Parking Meter Mechanisms. (Opened 4/17/01). Recommend delaying award to 5/14/01.

C. C.O. #2, W.O. 99-01, #1: 1999 Water and Sewer Replacement Project, Go Pro Construction, \$5656.91 and 5 days.

D. Bank Assignment with U.S. Bank on the Williams Enterprise hangar.

E. Amendment to Outdoor Lighting Agreement with Montana Power Company, increase monthly charges by \$154.30/month for seven (7) years.

F. Contract Amendment #2, Household Hazardous Waste Collection Event, Philip Services, \$48,755.00.

G. Lease Agreement with Associated Employers of Montana for office space in Park One, \$29,253.00, term: 6/1/01 to 5/31/02.

H. Contract for Professional Services with Pacific Technologies Inc. (PTI) for development of an Information Technology Strategic Plan Technical Assessment, \$71,330.00.

I. Acknowledge receipt of petition to annex: #01-09, C/S 2991, Tract 1A, Mary Kramer, petitioner/owner and setting a public hearing date for 5/14/01.

~~**J. Acknowledge receipt of petition to vacate:** South 31st Street West from south side of Myrtle Drive to north side of Rosebud Drive, and setting a public hearing date for 5/14/01.~~

K. Setting a public hearing date on a proposed water rate adjustment; public hearing date set for 6/11/01.

L. Downtown Cinco de Mayo/Western Heritage Celebration in downtown area, May 4-5, 100 Block of North Broadway between 1st and 2nd Avenues North.

M. Preliminary approval of Wyndham West Subdivision Unit Ownership.

N. Bills and payroll.

LATE ADDITION:

O. Traffic Safety Grant for Police Dept:

- **(1)** Traffic Safety Bureau Grant #01-04-02-OIT for Police Dept, \$25,000, for evaluation of the 800 MHz system and adding mobile data terminals to the system.
- **(2)** Professional Services Contract with Vegemast Engineering for evaluation of the 800 MHz system and adding mobile data terminals to the system, \$25,000.

(Action: approval or disapproval of Consent Agenda.)

There were no separations of the Consent Agenda. Councilmember Johnson moved for approval of the consent agenda with additions and deletions, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING FOR FY 2001-02 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP PROGRAMS (HOME). (Action: public hearing only; final action on 5/14/01.)

Community Development Department Manager John Walsh introduced the public hearing by saying that CDBG and Home Funding are federally funded programs providing funding sources for communities to address formal housing activities, preserve and revitalize older residential neighborhoods, and promote opportunities for lower income persons. Almost all CDBG activities undertaken by the City are targeted to benefit lower income households or areas. The total CDBG budget is \$1,113,509.00 and the total HOME budget is \$620,717.00 for FY 2001-2002. Last year the CD Board developed a five-year plan for strategies as to how these funds will be spent. This is called the Consolidated Plan and the five main strategies are: 1) Improve the economic conditions of lower income households in Billings by working with non-profit organizations to address lower income needs and undertaking strategies that results in job training and employment opportunities, 2) promote affordable and fair housing city wide, 3) promote the preservation of the existing supply of affordable housing in the community, 4) promote the preservation and community's revitalization of the older neighborhoods, and 5) work as an active partner with non-profits, neighborhood groups and others to address housing and neighborhood needs.

The CDBG schedule for public input as to how this money is spent started with task force input and Community Development budget in March, City Council public hearing this evening and final City Council action on May 14th, with the program year beginning July 1, 2001. Mr. Walsh presented a detailed overhead of the CD Board recommendations for funding with requested amounts and CDBG and HOME amounts noted for each project, grouped as to the corresponding Strategy number. It was noted that there was a 20% cap on the CDBG budget and a 10% cap on the HOME Budget for administrative activities.

PAUL DILORENZO, chairman of the CD Board was pleased to present to the City Council the CD Board recommendations. He explained that the board worked closely with each program requesting funds, interviewing them and reviewing additional documentation. CD Board and Community Development staff worked closely and have similar priorities for the use of the CDBG and HOME fund resources, trying to gear it to the consolidated five-year plan and five strategies. He briefly sited several of the programs and reasons why the funding was or was not recommended.

The public hearing was opened. IAN ELLIOT, NO ADDRESS GIVEN, stated that he supports the Community Development District #7 HRDC Growth through the Arts recommendation. This is a United Way agency that is active in the community and offers

disabled and disadvantaged individuals many artistic outlets.

DIANE WEAVER, NO ADDRESS GIVEN, representing the Billings Healthier Community Coalition that provides free or low cost medications to low income folks, thanked the Council for the past five years of support and urged continued support of this program noting the amount of \$5,000.00 will just maintain the program.

GREG VERSTRAETE, NO ADDRESS GIVEN, from Temporary Teens, a Southside organization that employs low income and at risk youths to work with Southside businesses asked for approval of the CD board recommendations for funding for this year.

JONATHAN PIERCE, NO ADDRESS GIVEN, is executive director for Habitat for Humanity, an ecumenical housing ministry that forms partnerships with volunteers working to eliminate poverty housing worldwide. This organization considers the City of Billings a valuable partner in the mission to build low income housing. He wished to speak in favor of the recommendation of the allocation of funds from the CD Board and asked the City Council to support the recommendation.

REATHA THOMAS, NO ADDRESS GIVEN, executive director for Big Brothers and Big Sisters of Yellowstone, is an agency that creates, fosters and supports mentoring relationships between volunteers and boy and girls. The funds that have been recommended by the CD Board will be used for the recruitment, recognition and retention of the volunteers and the monthly group activities which provided direct services for 300 children last year. She appreciates the funding and the work of the CD Board volunteers.

JUDY BRYNGLESON, NO ADDRESS GIVEN, spoke representing Headstart that is requesting funds for the purchase of North Park Elementary School. Headstart has been located there since 1989 and is central to the families receiving the services there. If the CD Board recommended funds are awarded, they will be over ½ the way to what is needed to purchase the building and make it a permanent site for Headstart. The services, provided to families that are at or below poverty levels, are not duplicated anywhere in the community. She feels that it is a vital part of the social service structure of Billings and encouraged the Council's support.

MIKE MARNIN, NO ADDRESS GIVEN, is director of the Boys and Girls Club of Billings. This club was organized by former Mayor Willard Frasier because of the great need on the Southside for a place for low income kids to go. Half of the kids come from single parent homes and the other half come from families where both parents work. Forty-seven percent of crimes happen between 3 and 8 p.m. and there is a great need to address that issue through this agency, by giving children a place to go after school.

JUDY SCHNEIDER, NO ADDRESS GIVEN, is representing District #7 HRDC agency. She thanked the City of Billings and the CD Board for recommending them for possible funding for the housing counseling program. District #7 is the only HUD certified housing counseling agency in Eastern Montana and Northern Wyoming. The majority of the clients that come to the agency are low income families needing assistance with budgeting, purchasing and rental counseling, foreclosures and reverse mortgages which is at no cost to the client.

GARY WICHMAN, 1103 NO. 19TH STREET, a member of the CDGB Board said he reluctantly comes forward to voice opposition to the \$50,000.00 allocated for Headstart. His contention is that this is an agency that is already over 80% funded by the federal government. He also stated that there seemed to be some controversy regarding the

asking price of \$370,000.00 and final purchase price from School District #2, which is already experiencing budget problems.

HELEN BURRINGTON, NO ADDRESS GIVEN, executive director of Family Services Incorporated, said they are an agency that helps families in emergency situations with grants for food, gas, prescriptions and rent subsidies. She asked the CD Board for \$15,000.00 for rental assistance. Last year 449 families were helped in Billings and the surrounding area with \$96,000.00. She expects this year to need \$98,000.00 to keep families from being evicted. She went on to thank the CD Board for the support that enables them to continue to help families.

DON OLSEN, 2112 FAIRVIEW PLACE, spoke regarding the request for funds to replace the boiler and flue system that is beginning to fail, causing a health concern at the Moss Mansion.

BILL SHAFFER, NO ADDRESS GIVEN, is a resident of the North Park Community and a member of the North Park Task Force. He commented that it makes no sense to take public funds that are used to improve low to moderate income neighborhoods and give those funds to purchase a publicly owned building. He is concerned about the possibility of Headstart reselling the building to a business that is not compatible with the neighborhood and also voiced concern over the vacation of the street in order to allow off street parking.

JAKE ROMERO, 421 S. 33RD STREET, represented Irma House which provides a residence for homeless recovering alcoholics and drug addicts. The money requested is needed to upgrade the housing. There is no federal or state funding for this program. It has been in operation since 1980. He thanked the CD Board for their recommendation.

RODNEY GARCIA, NO ADDRESS GIVEN, is the chairman of the Southside Task Force. He spoke in regard to the computer items in the recommendation. The Task Force has non-profit status. These computers will help to write grants. The requested funds from the CD Board will also help to provide a home for the task force through the acquisition of Al's Tavern and, "thereby turn a negative into a positive on the Southside which in turn improves the City of Billings", he stated. The Southside Task Force helps many underprivileged kids (some not in the southside community) with playground equipment.

There were no other speakers. The public hearing was closed. Mayor Tooley announced that the final action will take place at the next City Council meeting which will be the 14th of May.

The Mayor called a recess at 9:15 p.m. The Mayor resumed the City Council meeting at 9:25 p.m.

3. PUBLIC HEARING AND RESOLUTION 01-17691 VACATING a portion of Buchanan Avenue just east of Nall Avenue. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Acting Public Works Director Brian Borgstadt introduced the public hearing and resolution to vacate the north half of Buchanan Street, a street that was never developed or opened. It butts up against the Interstate so there are no off ramps and it does not have an outlet.

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

4. A. PUBLIC HEARING AND RESOLUTION 01-07692 expanding the Billings Urban Planning Area to include the William D. Pierce property, generally located north of Interstate I-90 between the Shiloh Interchange and Shiloh Road, B. Ronald and Linda K. Pierce Family Trust, owners. Planning Board recommends approval. (Action: approval or disapproval of Planning Board recommendation.)

B. PUBLIC HEARING AND RESOLUTION 01-17693 annexing Tract 1, C/S 3050, (Annex 01-08), G. Ronald and Linda Pierce Family Trust, petitioners. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Candi Beaudry from the Planning Department introduced the public hearing and resolution expanding the urban planning area as a precursor to annexation, zone changes and subsequent subdivision. The property is located north of the interstate between Shiloh Road and the Shiloh Interchange south of Zoo Drive. The County Planning Board recommends approval of the expansion and feels that the city services can be easily and safely extended to the area. Water, sewer and street service construction is currently in progress. Water and sewer construction will be oversized to provide for future development, which will be paid by the developer in exchange for waiving the water and sewer trunk fees. Project engineers identified public improvements that will be required including three signal improvements that will be warranted. Storm water drainage has been considered for this project. All other departments, with the exception of the Police department, feel that they will not be negatively impacted by this development. There will be no adverse effect to agriculture. There are no cultural or historic sites that will be affected. The Pierce Subdivision is currently undergoing plat review and zone change and development will follow as market demands. Funding for the public improvements will be the responsibility of the property owners. The Planning Board recommends approval of the expansion as does the staff.

Mayor Tooley explained that there are two public hearings on this item. Public hearing A to include the property into the Billings Urban Planning area and public hearing B to annex the subject property. The public hearing was opened for both items.

BOB SANDERSON, ENGINEERING INCORORATED, 1001 S. 24TH STREET WEST said he represents Ron and Linda Pierce. He stated that this property will be the new location of Pierce Homes and RV. They will be combining the businesses into a campus style facility, being developed in conjunction with neighboring properties between Shiloh Business Park and this property. The Pierce facility will comprise 27 acres.

RANDY FREECK, SENIOR PROJECT ENGINEER FOR CTA ENGINEERS, the firm that is developing the anchor facility for Ron and Linda Pierce spoke next. He explained that this project will be \$5.3 million worth of construction in the area. They will be developing environmental friendly displays for their combined businesses.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of Item #4A, seconded by Councilmember Bradley. Councilmember Johnson commented on points made by Ms. Beaudry regarding the study and response of the Police Department. He pointed out that the Police Department

indicated the development would result in additional service demands that cannot be met by the department. He said that at this time they do not support this study or future annexation. He states that he will vote for the Pierce expansion and the expansion of the Urban Area, but voiced his disappointment at losing the farm land and hoped that there is careful consideration for the land that is being given up. On a voice vote for Item #4A, the motion was unanimously approved. Councilmember McDermott moved for approval of Item #4B, seconded by Councilmember Bradley. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #679: a zone change from Residential 6000 to Community Commercial on Lots 3-6, Block 2, North Park Subdivision, located at 610 North 14th Street. Gerald and Lucille Hill, owners. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman introduced the zone change located at 610 No. 14th Street. The subject property is currently being used for storage of masonry materials and has been historically used for commercial uses. The plan is to make the zoning fit what the historical use has been. The North Park Task Force supports this zone change.

GERALD HILL, 453 SHAMROCK LANE, said he is the owner of the subject property. This property has historically been used commercially as a concrete block manufacturer as far back as the 1940's and possibly before that. The property has been in commercial use continuously and is used as a masonry storage facility at present. He wants to bring the property into compliance with the zone change.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved to approve the Zoning Commission recommendation, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND SPECIAL REVIEW #699: a special review to allow the location of a beer and wine license with gaming in a Community Commercial zone on Tract A, C/S 2192, located at 1212 Grand Avenue. Patrick Goggins, owner. Zoning Commission makes no recommendation. DRC recommends conditional approval. (Action: approval or disapproval of DRC recommendation.)

Zoning Coordinator Jeff Bollman introduced the special review to allow the location of a beer and wine licensed facility at the strip mall on the south side of Grand Avenue between 12th and 13th Streets West. There is an existing shopping center on this site. There is also a church located on the southeast corner of this subject property on 12th Street West. In this immediate area there have been two special reviews approved that waived the 600' separation. The Big B Bingo Parlor located on the northeast corner of Alderson and 12th does not have (as previously stated), a liquor license, but actually is one of the establishments that is grandfathered in because it existed before the creation of the rules that are in place at present. The DRC forwarded a recommendation of conditional approval. They recommended three conditions: (1) limit the area that was approved for the on-premise consumption of alcohol to the 3,400 square feet that was shown on the site plan; (2) not allow any customer access through the exterior door that faces 12th Street West, only allowing employee or delivery access; and (3) waive the 600' separation. The Zoning Commission vote was split 2 to 2 on this review and therefore they did not forward a recommendation. Mr. Bollman noted the owner has submitted a request to continue this

item until May 29th to allow him a chance to meet with concerned citizens and property owners in the area.

BETTY WADDELL, 925 BURLINGTON, encouraged the Council not to recommend the waiver for several reasons. The 600' foot restriction is there for a reason. Her concerns are for the children who will have access to this facility and who would become addicted to gambling too quickly. The strip mall is a family oriented plaza with grocery and drug stores, craft shops and an ice cream store. There is also no need for this establishment as there are several casinos in the area and plenty of access for those who enjoy that form of entertainment. She noted also that these types of businesses do not bring high paying jobs and usually do not provide benefits.

JOEY GETCHELL, 1235 LANDSCAPE DRIVE requested that the Council not approve this zone change as there are bars and casinos all around the facility and he personally would not like to see another one move in as there is no need for it.

SHERWOOD CHRISTENSEN, NO ADDRESS GIVEN is opposed to granting the zone change or waiver for special review #699 for the following reasons: there would be increased traffic and noise to the neighborhood and it would do nothing to enhance the value of the homes. There are two other issues that should be considered. "First are the 620 plus students of Lewis and Clark Middle School that deserve consideration of the 600' rule being applied by the people in charge. Secondly there is an attempt being made to circumvent BMCC 27-612 regarding retail businesses that should not be allowed to serve alcohol within 600' of schools, park, playground, etc. Lewis and Clark Middle School is less than 600' from this business. This code was written for the purpose of protecting our youngsters," he said. He asked the Council to deny the zone change and not junk the intent and purpose of City Code 27-612, thereby "supporting the 620 plus somebodies at the Middle School."

PETE SACCHI, 1219 12TH STREET WEST, reiterated that Section 27-612 was enacted by wise and caring people to provide a buffer zone for the safety of our children. His concerns centered around the number of DUI convictions recently reported in the paper and the possibility that this would happen in this area due to the establishment of this facility. He stated that it should not be necessary for our children attending school in our city or our state to do so in the vicinity of a casino serving alcohol.

DR. C.R. ELLIS, 1205 12TH STREET WEST, wished to oppose the setting up of the gambling casino. He has been in practice for 42 years and found that young people are easily influenced. He admitted that he smoke and drank at an early age and knows what it is like to be young and vulnerable. He urged the Council not to approve this request.

DARRELL KREITZBERG, 71 25TH STREET WEST, stated that the owners have decided to withdraw their request. Councilmember McDanel asked for a clarification as to whether he wished to withdraw the request or delay. Mr. Kreitzberg said that their final decision was to withdraw the application because of the number of people opposing the special review.

CECIL HAWKINS, NO ADDRESS GIVEN, is the Associate Pastor of Gospel Baptist Church and wanted to take the opportunity to thank Mr. Kreitzberg for thinking about the community. He talked with many people in the community and could not find anyone in favor of this petition. He referred to Gramma's and how that facility evolved

from a nice place to a rough place with changes in clientele. He stated that this is not needed in this neighborhood. He again thanked Mr. Kreizberg for withdrawing his application.

JEFF BENTON, NO ADDRESS GIVEN, is the Pastor of Gospel Baptist Church. He appreciated Mr. Kreizberg's withdrawal of their request and appreciated the community coming together and voicing their opinions concerning this gaming situation.

There were no other speakers. The public hearing was closed. Councilmember McDanel moved to accept the withdrawal of this request, seconded by Brewster. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND FIRST READING ORDINANCE revising BMCC Sections 27-619 and 27-620: providing updated definitions; limiting height and number of antenna support structures in certain zoning districts; allowing a review procedure for proposed antenna support structures on government owned properties; regulating the location, construction, height and co-location requirements of antenna support structures, antennae and wireless communications facilities; requiring antennae support structure separation; and requiring certain application submittal information for wireless communications facilities; (a/k/a wireless communication facility ordinance). Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Candi Beaudry of the Planning Department introduced the ordinance that adds a provision for bonding and for landscaping. At the request of the Aviation Department they have added a provision for FCC and FAA requirements for lighting of antenna. The Zoning Commission recommends approval with a single change in Section G-11 regarding the tower separation requirements by striking the requirements for towers under 200' and keeping everything at 100' unless co-location possibilities on the existing structures do not exist. The staff would like to be put on record that they do not agree with this recommended change and would like the ordinance to be approved as submitted. The staff feels that this is a fair ordinance that increases the option for locating wireless communication facilities by encouraging alternative antenna support structures. Councilmember Johnson asked for verification of the Zoning Commission recommendation that all towers over 50' require a one-mile separation. Ms. Beaudry said that staff does not support that recommendation.

J. R. REGER, 2708 PALM DRIVE, commented that he really likes the new tower ordinance and noted that Ms. Beaudry has done a great job with it. It serves the City of Billings, the communications industry and the tower industry well. He sees one problem with Section G-11 as it stands now in the ordinance. It is regarding the antenna support structure separation provision. It allows 190' towers to be placed every ½ mile. His concerns are with the number of 50' and under towers that can be located in a square mile because there are no regulations for towers 50' and under. He also stated that co-location is not addressed in this provision. His desire is for tower users to co-locate on existing towers instead of building 190' towers every ½ mile. He has drafted new language for this provision and it reads as follows. "All antenna support structures must be located at least one mile from any existing structure unless co-location possibilities on that existing structure do not exist", i.e. carriers must co-locate unless it is impossible and

at that time only can they build a tower. He feels that this provides a suitable infrastructure for all carriers to provide service. He also said that it protects the city from lawsuits, and that it requires carriers to co-locate. It decreases the need for new towers in the city and it eliminates the possibility of 190' towers scattered 1/2 mile away from each other.

JEANNE BENDER, 401 NO. 31ST STREET, said she is an attorney representing a tower builder. She stated that Mr. Reger is a tower builder also. She stated that the second paragraph of Section G-11 very definitely does address co-location and it provides for exceptions to be granted under certain circumstances. Section K-7 has a long list of considerations for co-location, therefore she feels there is no need to revise this ordinance to mandate co-location under any circumstances if there is another tower there. She also commented that she thought 50' towers are regulated elsewhere in the ordinance. She said that this ordinance is a much better draft than the previous ordinance, but remarked that the separation requirements in Section G-11 now apply to approved towers not just existing towers. She strongly urged adoption of the ordinance as drafted by the Planning Department staff.

There were no other speakers. The public hearing was closed. Councilmember Kennedy moved for approval of the Zoning Commission recommendation, seconded by Councilman Johnson. Councilman McDanel offered a substitute motion for approval of the staff recommendation, seconded by Councilmember Bradley. Councilmember Brewster commented that he supports the staff recommendation particularly on Section G-11 for the tower spacing. He stated that the Zoning Commission recommendation creates an unfair advantage for those towers that are located initially, and it doesn't offer an opportunity for any competitive pressure to hold the rates down for co-location. He stated further that it doesn't create a captive market in the one-mile radius, nor offer an alternative that will keep the rates reasonable. For this reason he prefers the staff recommendation. On a voice vote for the substitute motion, the motion was unanimously approved.

ADJOURN – Mayor Tooley adjourned at 10:21 p.m.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Susan Shuhler. Deputy City Clerk