

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

## **October 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 F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Brewster.

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

**MINUTES – October 9th.** Regular Minutes approved as printed; Committee of the Whole Minutes approved as corrected.

### **COURTESIES – Airport**

- Citizen Paul Whiting appeared with a guest from Colombia -- Jesus Maria Ariza is a community leader who is visiting Billings to explore opportunities to develop sister community relationships in Montana. Mr. Ariza is an educator who facilitates workshops on nonviolent conflict resolution, sustainable agricultural methods and literacy. He works through the Program for Peace and Development.
- Airport Director Bruce Putnam introduced Airport & Transit Commission Chair Dick Paasch. Mr. Paasch has dedicated a considerable amount of time in public service to the airport. Mayor Tooley presented Mr. Paasch with a plaque honoring his service to the City's Airport and Transit Commission.
- Former Councilmember and Deputy Mayor Dick Clark, in the audience this evening was recognized and welcomed.

### **PROCLAMATIONS – Mayor Tooley.**

- Make a Difference Day -- October 27<sup>th</sup>.

### **BOARD & COMMISSION REPORTS.**

- Councilmember Johnson noted that the annual awards luncheon for Bright 'N Beautiful would be held this week Thursday – honoring 10 recipients for their beautification efforts.

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

- Mr. Taylor reported that a second Attorney General opinion on SB 242 was received this week, notifying the City that their extended building jurisdiction area expired on 5/1/01 when the Governor signed the legislation, not on 12/31/01 or when the County could establish a new jurisdictional area. Building Code enforcement activities ceased today in the extended jurisdictional area.

This item will be discussed further at the joint City/County meeting later this week. The City is considering joining with other Montana cities in seeking an injunction on this opinion.

- Mr. Taylor noted that joint City/County meetings would be resuming every two months. The next meeting is scheduled for October 25 at 5:30 p.m. in the lower conference room at the Airport.

Mayor Tooley noted that the applicant for Special Review #709 has requested withdrawal of his application. Councilmember Elison moved to accept the withdrawal request, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved. (SEE Item #10)

## **CONSENT AGENDA:**

### **1. A. Bid Awards:**

- (1) **SID 1359 Construction.** (Opened 10/9/01). Recommend COP Construction for Schedule I, \$137,877.00 and H. L. Ostermiller for Schedule II, \$160,187.75.
- (2) **SID 1356 Construction.** (Opens 10/16/01). Recommend delaying award to 11/13/01.

**B. C.O. #1, Schedule I, SID 1347: Sanitary Sewer, water and street improvements in Lampman Sub.,** COP Construction, \$46,387.50 and 0 days.

**C. C. O. #2, South 27<sup>th</sup> Parking Lot,** Flack 'N Flack Construction, Inc., \$5,727.50 and 5 days.

**D. Amendment #6,** Engineering Services contract for Water/Wastewater Capital Improvement Projects dated 2/24/97, Morrison Maierle, Inc., \$275,777.00.

**E. Contract** for Parking Garage Janitorial services, Top Line Services, LLC, \$21,960, 1-year term.

**F. Contract** for Community Center Interior Renovation, Spectrum Group Architects, \$17,920.00.

**G. Contract** for a Space Allocation Study and Market Value Appraisal of city facilities, Olsen Architecture, \$25,000.00.

**H. Contract** for completion of the Analysis of Impediments to Fair Housing Choice and Draft Fair Housing Action Plan, BBC Research & Consulting, \$14,995.00.

**I. Contract** for a Citywide Aquatic Facility Assessment, Ankeny Kell Architects, \$50,000.00.

**J. West End Hangar Ground Lease** with Brian Bross, \$892.50/year for first year with subsequent years adjusted by the CPI-U, Term: 11/0/01 to 10/31/2021.

**K. Easement** for an underground electric powerline in Optimist Park on a strip of land in T1SR26E-S9. SE4, Lot 6; Montana Power Company, \$3,017.00 installation cost.

**L. Pledged securities** of Wells Fargo Bank as collateral for Certificates of Deposit, totaling \$11,500,000.00.

**M. Acceptance of a Quit Claim Deed** on Tract 2A of amended Tract 2, C/S 3011, Roy E. and Jock E. Clause, grantors. (re: Riverview Estates Sub.).

**N. Confirmation of Police Officer:** Brett Kruger.

**O. Resolution 01-17772** relating to \$815,000 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2001D; creating Special Sidewalk, Curb, Gutter and Alley Approach Fund and prescribing covenants of the City for the security of the holders of the bonds.

**P. Resolution 01-17773** providing for the receiving of bids and the letting of a contract for the construction of improvements in SID 1357 and setting a bid opening date for 11/13/01.

**Q. Preliminary plat** of Circle Fifty Subdivision, Lot 1C of Amended Lots 1 and 2, Block 1, Lease Parcel Creation, generally located at the southwest corner of Avenue B and Shiloh Road.

**R. Bills and payroll.**

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

Councilmember Brewster separated ITEM M. Councilmember McDermott separated ITEMS F, G and I. Councilmember Bradley moved for approval of the Consent Agenda except ITEMS F, G, I and M, seconded by Councilmember Elison. On a voice vote, the motion was unanimously approved.

Councilmember Bradley moved for approval of ITEM F, seconded by Councilmember Elison. Councilmember McDermott asked what funds were used to build the existing Community Center. Parks and Recreation Director Don Kearney replied he didn't know the answer to that question, but would check and get back to her. On a voice vote, the motion was unanimously approved.

Councilmember Bradley moved for approval of ITEM G, seconded by Councilmember Kennedy. Councilmember McDermott asked if the space allocation study was for all City buildings. Parks and Recreation Director Don Kearney said all buildings except the Airport, Public Utilities, the recently purchased Galles Building, several other

smaller buildings and several buildings in high traffic areas were included in the study. Councilmember McDermott requested more information on the Galles Building, indicating her interest was based on the proposed skate park use. On a voice vote, the motion was unanimously approved.

Councilmember Bradley moved for approval of ITEM I, seconded by Councilmember Johnson. Councilmember McDermott asked if there would be a public hearing associated with the citywide Aquatic Facility assessment. Parks and Recreation Director Don Kearney said public meetings would be held during the initial fact finding and information-gathering phase, especially in the areas that now have aquatic facilities and in areas that are being proposed for future aquatic facilities. On a voice vote, the motion was approved. Councilmember Elison voted "no".

Councilmember Bradley moved for approval of ITEM M, seconded by Councilmember Brewster. Councilmember Brewster clarified that the Deed was only for ROW and a portion of Wicks Lane within the City. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND SECOND READING ORDINANCE 01-5175 amending Section 22-804 BMCC establishing storm sewer assessment rates for property within various zoning districts and creating an Entryway Light Industrial zone classification. Staff 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 McDermott moved for approval of the staff recommendation, seconded by Councilmember Bradley. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION 01-17774 annexing Tract 1, C/S 2099 and T1S-R25E-S13: NWSWSWNW EXCEPT C/S 2206, C/S 2252, C/S 2155, Corrected C/S 1907, C/S 1445, C/S 2548, C/S 2099 and that part reserved for the main canal of Billings Land and Irrigation Co. by WD recorded in Book V, Page 107; Bottrell Family Investment LLP, petitioner, (#01-16). Staff recommends approval of the public services report and conditional approval of the annexation. (Action: approval or disapproval of staff recommendation.)**

Candi Beaudry from the Planning Dept said this property is located in a county island at the intersection of South 32<sup>nd</sup> Street West and Gabel Road. The petition is consistent with the pending annexation policy that will be discussed later this week (on Thursday night). The petition presents the Council with an opportunity to annex part of a wholly surrounded island, that otherwise would not present itself because the existing land use is agricultural, which does not qualify for the wholly surrounded annexation provision.

Ms. Beaudry said the property is presently zoned Controlled Industrial and surrounded by property also zoned Controlled Industrial. For the most part, the land

use of surrounding properties is consistent with that zoning. She noted is this annexation is approved, the island size would be decreased and remaining properties would qualify for the wholly surrounded annexation provision. Staff has chosen to proceed with this petition at this time to expedite the platting process on this property. The subdivision proposed is for an 18-lot commercial subdivision. Staff recommends approval of the petition for annexation with one condition: that the owner enter into an Annexation Agreement with the City, agreeing to execute either a Development Agreement that specifies infrastructure improvements and provides a financial guarantee for those improvements or if they proceed with the subdivision process, execute a Subdivision Improvement Agreement (SIA) with the City that would also specify the improvements and provide guarantees. She said the reason for this condition is that the owner had previously provided an Annexation Agreement that specified everything that the Subdivision Improvements Agreement had specified in their application. However, staff feels there will be major changes to that SIA, so instead of delaying the annexation because of a future SIA, staff is suggesting that they just include the language in the annexation agreement.

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

**4. PUBLIC HEARING AND RESOLUTION 01-17775 annexing Tract 3A-1, Block 1, Rockwood Subdivision, 2<sup>nd</sup> filing, Bristlecone, Inc., petitioner, (#01-18). Staff recommends approval of the public services report and conditional approval of the annexation. (Action: approval or disapproval of staff recommendation.)**

Bruce McCandless from the Planning Dept said the conditions recommended include: that a Subdivision Improvement Agreement (SIA) or Development Agreement be executed before any building permits are issued and that the adjacent Hesper Road be annexed. The property is located on the south side of Hesper Road and contains about 5.4 acres. It is presently zoned Controlled Industrial and retain that zoning if it is annexed to the City. Department comments were generally supportive, but there were some concerns about extending services beyond where they presently are. The owner – under Subdivision Improvement Agreement or Development Agreement would extend and connect to City water and sewer and they would be fully responsible for the cost of those extensions, unless the Public Utilities Dept shared in some costs. The owners will pay their proportionate share of street widening and future storm sewer that would be necessary to serve the property. The fiscal impact analysis indicated that this property as developed (similar to surrounding properties) would pay taxes and fees that would equal or exceed the cost of providing services to the property.

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

**5. PUBLIC HEARING AND FIRST READING ORDINANCE for Zone Change #684: a zone change from Residential 9600 to Public on Lot 3, Block 1, Normand Estates Addition, located at 2630 Normal Avenue. Montana State University Billings, owner; O.E. Barfield, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said the property is located on the west side of Normal Avenue between Rimrock Road and Poly Drive, across from MSU-Billings. It is owned by MSU-Billings. He noted that when MSU-Billings underwent their campus Master Plan, they did present it to the Council when it was completed. It included the subject property, which was formerly used for a battered spouses home operated by the YWCA. The proposed use by MSU-Billings is a daycare center. At the Zoning Commission meeting, some property owners in the area and some members of the Zoning Commission expressed concern that approval of the zone change would be giving MSU-Billings a “blank check” allowing any type of university use in a public zone. It was emphasized at the meeting that since this property is owned by the State, it is exempt from local land use regulations, so they could put any type of use on the property. Mr. Bollman said MSU-Billings went through a zone change for the family center housing that was constructed on the east side of North 27<sup>th</sup> Street. This is a similar process.

The public hearing was opened. EKKO BARFIELD, NO ADDRESS GIVEN, said he is the Director of Facilities at MSU-Billings. On a map he displayed, he pointed out that this proposal is consistent with the long-term needs represented in their Master Plan. He noted they are sensitive to the neighborhood quality of the area between Virginia Lane and Normal Avenue and the only change they are proposing is to the garage entrance, to assist in allowing handicap access. Councilmember Elison asked if it was true that the City has no authority over what they do with that property. Mr. Barfield noted that has been said that is true, “but we still come up here!”

LEE PETERS OF 4126 AUDUBON WAY, NO ADDRESS GIVEN, said he is the Vice Chancellor for Student Affairs at MSU-Billings. He noted he has been involved in the childcare project for three years. Students have been telling them since 1994 that they need this kind of service. MSU-Billings has a 66% female student population, over half are over 26 years of age, 30% of the students are parents and half of that number are single parents. The child care center close to campus allows them to provide an opportunity for students to have their children in daycare and close to them where they can visit them at lunch time and participate in their care above and beyond what it would be if they were far away from the school. Mr. Peters said they will offer the childcare at market rates, but will have scholarship opportunities for students. The center will care for children that are infants to middle school age.

CATHERINE FELDMAN OF 5427 WALTER HAGEN DRIVE said she has a personal reason for promoting the childcare and development center ever since it was first thought of, because it is very much needed. She said it is important for children to have a safe haven for children when parents find they have to work and also need a better education. She supported her testimony with a personal story about what it means to be child and hear from their parents – “I’ll be back soon.”

KARA BELL OF 4129 JANSMA STREET said she is a non-traditional student at MSU-Billings – 30 years old, a single mother with two children. She said this daycare would greatly benefit her and many other students at MSU-Billings. She noted that she has no relatives in Billings to help her with daycare is difficult. Having a facility where she could take them whenever she had to attend class would be an enormous help.

MR. BARFIELD RETURNED. He asked all the supporters in the audience to rise in support of the proposal.

There were no other speakers. The public hearing was closed. Councilmember Iverson moved for approval of the Zoning Commission recommendation, seconded by Councilmember Bradley. On a voice vote, the motion was unanimously approved. Councilmember Elison thanked MSU-Billings for working with the City on their projects and being a good neighbor. Councilmember Bradley noted that MSU-Billings had a daycare in the past.

**6. PUBLIC HEARING AND SPECIAL REVIEW #710: a special review to allow the location of two (2) additional satellite dishes that exceed 12 ft in diameter in a Neighborhood Commercial zone on Lot 9A, Block 1 of Valley View Acres Sub, Amended, located at 445 South 24<sup>th</sup> Street West. Quorum Broadcasting, owner. Zoning Commission recommends conditional approval. RE: KSVI-TV. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said the property is located on the east side of 24<sup>th</sup> Street West, just south of Monad Road. TV broadcast studios in a Neighborhood Commercial zone desiring to add satellite dishes exceeding 12 feet in diameter must undergo a special review. There are three satellite dishes on the property at this time. They are proposing to add two additional dishes along the south side of the property. The condition recommended is: a building permit be approved prior to the erection of either one of the satellite dishes, to insure compliance with Building Codes, as well as compliance with the site development regulations.

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

**7. PUBLIC HEARING AND SPECIAL REVIEW #711: a special review to allow the location of a public parking lot in the Residential 7000 zone on Lots 1-5 and 15, Block 1, Lillis Subdivision and that portion of Lillis Lane between 24<sup>th</sup> and 25<sup>th</sup> Streets West and on the Prill Parkway that is located east of 24<sup>th</sup> Street West extended north, located at 1108 24<sup>th</sup> Street West. Lutheran Church of the Good Shepherd and City of Billings, owners. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said the subject property is north of Good Shepherd Lutheran Church, encompasses a proposed vacation for a portion of Lillis Lane as well as developing parking along Prill Parkway, which is currently a park strip that runs between Arnold Lane and Lillis Lane. This application has several other

requests that are running concurrent with it – a request to vacate Lillis Lane and a request to the Park Board to allow the use of Prill Parkway for a parking lot and a variance request to allow the church and park department to “trade” land so the church can use the existing Prill Parkway for their parking and the Park Dept would gain the same amount of land on the other side of the park to compensate for loss of this portion of Prill Parkway. The variance was conditionally approved by the Board of Adjustment on October 2<sup>nd</sup>. Mr. Bollman noted the recommended conditions: (1) landscaping be installed according to the submitted site plan and (2) special review approval is contingent upon the successful vacation of Lillis Lane.

Councilmember Elison asked if the Council has to vote on the vacation of Lillis Lane. Mr. Bollman replied they did. Councilmember Elison asked if the Council has to vote on the use of Prill Parkway as a parking lot. Parks and Recreation Director Don Kearney indicated that they would. Councilmember Bradley had some questions about the size of the drain. Mr. Bollman noted the church is aware that they are building over the top of a drain and if there was a need to make repairs or improvements to the drain, the parking lot would have to be torn up for access. Councilmember Bradley said the drain is a low spot in that area and tends to flood.

The public hearing was opened. NEAL MORK OF 4150 AUDUBON WAY said he is the chairman of the church council of the Lutheran Church of the Good Shepherd. He said the church was built in the mid 1950s and the last major addition to the church was in 1970. At that time the church owned land on both sides of 24<sup>th</sup> Street. The land on the east side was sold once the buildings were constructed and is now Gainans and the Teachers Credit Union. Parking reservations were retained in those deeds so the church does have parking there. As 24<sup>th</sup> has become a major arterial street, the parking across 24<sup>th</sup> Street is not recognized by the current city code as meeting their parking requirements. They have looked for parking for quite some time, realizing that parking is one of their most critical needs for the past four years. All the options they looked at involved the neighborhood, so they convened a neighborhood meeting, from which a task force was created, consisting of neighborhood representatives and members of the congregation. Options were reviewed and recommendations were made, which guided them in the formation of their proposal. He said they involved the City from the beginning. Councilmember Bradley asked if their architect discussed the drain with them. Mr. Mork said they had and they also enlisted an engineering firm to evaluate the drain if in fact their proposal is approved. He said they are not aware of flooding problems. Councilmember Elison asked how often the church has critical parking needs. Mr. Mork replied that occurs on most Sundays in the winter and any special service on holidays. He asked the supporters in the audience to stand to show their support.

RICHARD CLARK OF 1207 25<sup>TH</sup> STREET WEST said he supports the proposal. He said on Sunday mornings, 25<sup>th</sup> Street West is completely filled with church parking, as is Lillis Lane. He said it is a good spot for addition of parking because it is the least used part of the park. “By giving up this portion and gaining the portion to the west, the park will actually gain more usable space,” he noted. He said he primarily supported the proposal because it would close Lillis Lane. It is presently used by the kids as the



turnoff to come around past their homes and back out onto Lewis and 24<sup>th</sup> Street West. He said every weekend they pick up litter and listen to revving engines, etc.

JOHN GATES OF 2649 BURLINGTON AVENUE said he echoes the sentiments of Mr. Clark. He said the traffic activity really increases during high school football system and towards graduation. Mr. Gates said they have had their fence vandalized and to clean egg off their cars, so he supports anything that will restrict that traffic.

GREG PULP OF 2706 TREASURE DRIVE said he is also a member of the church council. He submitted a petition containing over 40 signatures of local residents in the area who support their proposal.

GENE WAGNER, NO ADDRESS GIVEN, said he lives on Lillis Lane and knows of no flooding problems in that area, noting he has lived in that area for over 40 years. Mr. Wagner stated that only 3-4 trees would be removed with this proposal. He said the church has been a good neighbor and a good buffer for them. He mentioned another problem that occurs on Lillis Lane at this time. People will park their cars there over the weekends with For Sale signs in them. He also believed closing that portion of Lillis Lane would help reduce crime in the neighborhood.

BARB BURGHAM OF 2158 EL DORADO said she is a member of the church. She said she never even drives into their parking lot on Sunday morning because she feels even if she could find a spot, she'd rather leave it for people older than herself. She does the unsafe thing of parking across 24<sup>th</sup> Street by Gainans and runs across the street. She supported the parking lot proposal for safety reasons.

JIM BAUER OF 1830 ALDERSON said he is the architect from Bauer Group Architects. He noted six new trees would be put in the parcel to the west that the church is purchasing. They will also be extending the irrigation system in that area for the City and will grade and prepare it for lawn. Fence will be extended along the right-of-way to the ditch. Mr. Bauer said 18-21 new trees will be place around the new parking lot area, along with some berm at the west end of the parking lot to help shield headlights, etc.

MR. CLARK RETURNED. He stated that the church chains off the parking lot currently and has been able to keep the kids out of there. Councilmember Kennedy noted Mr. Clark was on the City Council when the no cruising ordinance was enacted. He asked if the ordinance is effective. Mr. Clark replied that it is difficult to enforce and does not seem to be effective in curbing the cruising problem.

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

Mayor Tooley called at 5-minute break at 8:45 p.m. The meeting was called back to order at 8:50 p.m.

**8. PUBLIC HEARING AND SPECIAL REVIEW #712: a special review to allow the expansion of a church in a Residential 9600 zone on Lot 1, Block 1, Rehberg Subdivision, 2<sup>nd</sup> filing, located at 2940 Poly Drive. Mayflower Congregational Church of Billings, owner; CTA Architects/Engineers, agent. Zoning Commission**

**recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said this property is located on the southeast corner of Rehberg Lane and Poly Drive and is the site of the current Mayflower Congregational Church. They are proposing to expand the south and east area of the building with a modest expansion to include a nursery, restroom, etc. It will not increase the number of parking spaces required for the use. The Zoning Commission felt this was an appropriate use at the location.

The public hearing was opened. There were no speakers from the audience. The public hearing was closed. Councilmember Alison moved for approval of the Zoning Commission recommendation, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

**9. RESOLUTION OF INTENTION 01-17776 regarding the City Council's proposed use of any new revenues generated by the right-of-way rental fee – if approved by the voters and upheld by the Montana Supreme Court. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Councilmember Kennedy moved for approval of the staff recommendation, seconded by Councilmember Johnson. Councilmember Alison amended the resolution to include the following changes: \$1,650,000 to public safety operations; \$1,500,000 for Capital project funding; \$250,000 for Park Maintenance levels, \$2,000,000 for Property Tax reduction and the Remainder (of the money collected via ROW rental fees) for structural deficit reduction, seconded by Councilmember Bradley. Councilmember Alison said public safety operations need to be increased in the City; one team is insufficient. Two teams with civilian support plus a public defender are necessary to provide this increased safety. He said the parks are equally important – “you have to get it on both ends. One of the best ways to prevent crime from occurring is to give people something else to do. We’ve proven that with Amend Park, the best \$100,000 we’ve ever invested, regardless of what people said when I was running for re-election. \$250,000 to maintain our parks is going to be a major step in giving the youth of our city something to do... The other thing that is equally important that people in this state have been trying to do effectively for the last 25 years is to reduce the reliance on property taxes. In the Capital project funding of \$1.5 Million, \$1.1 Million is to directly reduce the amount of money that people get hit with in special improvement district costs. That’s a direct reduction in your fees that you pay to the City – i. e. taxes. That’s tax relief you can really feel because those SIDs come and run \$2500 to \$4000 for a single homeowner and if we have reduce those by 35%, we’re talking paying \$875 to \$1400... In addition to that, there’s still the \$2 Million that would still go to direct property tax relief. It’s critical that we own up to the problems we have in public safety and it’s critical that we give money back to the citizens, since they will be paying this anyway in the pass through from utility companies. We have to offer that reduction,” he stated.

Councilmember Bradley said he supported the amendment, specifically in the police staffing. Councilmember Kennedy said he supports the theory of the amendment, but would like to see more come from the property tax side. “We have

said two things when we say it is about the revenue. Where will it go with this ROW rental fee issue. We've talked about reducing property taxes and increasing public safety operations. The other thing I'm worried about is tying the hands of the council down the road, when we need to look at other things such as capital project funding. Hopefully the council in the future will have the ability to stand up and realize that we did this at a time when we thought this is what was important," he stated. He also expressed concern that when you reduce property taxes, it will reduce the mill levy from 69.5 to 52 mills. He said he understood that it is at the behest of the council to raise those mills without having to go back to the voters to ask for the increase. City Administrator Dennis Taylor confirmed that the council could go back to the level that is currently provided for, i.e. the council could raise the mills 17.5 mills without amending the charter. He noted they could ask the voters to raise those mills, but are not required to, as when you are asking them to raise the mills in excess of charter limits. Councilmember Kennedy said that discretion of the Council troubled him because he felt it was the intent of the charter to force the council to explore other forms of revenue and not keep going back to the property owners.

Councilmember Elison said that was why the Capital project funding was a good way to reduce taxes, because those are the SIDs that are charged to people on their property taxes. "This is a way of moving those out of the realm of the mills, so that it is not so easy for future councils to raise the mills – that's my thinking behind that suggestion," he stated. On a voice vote on the amendment, the amendment was unanimously approved.

Councilmember Elison moved to amend the motion further – to strike the words "shall be and" from the resolution, seconded by Councilmember Bradley. On a voice vote the amendment was unanimously approved.

Mayor Tooley called for discussion on the motion as twice amended. Councilmember Kennedy said "sometimes we have great discussions in the agenda meetings and we get to up here and we've rubber stamped what the City Administrator said we did. Well, that isn't true. There has been an awful of very good discussion regarding what Mr. Taylor proposed to us... This council has shown that they want to talk about public safety and property tax relief... What I'm very proud of this council for doing is sticking to this process, because at some point in time, a council will have to go through this process all the way to the Supreme Court and have lined out what it is we decide as a community to do with the funds we say we can raise," he stated. He described it as a well-thought out plan over a long road.

Councilmember McDermott said the bottom line on the property tax reduction is that the City Council and the Mayor have the authority to either make the decision to put it out to the voters or not put it out to the voters, in the event they wanted to increase the mills in the future. Mr. Taylor confirmed that, stating "if you adopt the motion as proposed and amended, you'd be reducing the total mills by 17.5 mills, which would take you from 69.5 mills to 52 mills. Anything above 52 mills is at the Council's discretion. You could choose to ask the voters or not – all the way back to 69.5 mills, our charter limit... We've never had that flexibility, regardless of our charter, until this year when HB124, the major reform of how our revenues flow, not only changed the reimbursements, but also gave us flexibility that hitherto no city had. We were stuck to

keep our mills at the highest level for fear that if we reduced them, it would stay at that reduced level. Now you have some buffer if this motion passes," he stated.

Councilmember Kennedy said that is what the charter talks about -- property taxes need to be set at a certain level and we need to look for other sources to fund the operations of this community. "The council has take a long hard look at this. We've come up with this presentation. I wish we could have done it years ago. We've had gambling revenues for a number of years, we've had some increase in property tax valuation... I do believe this council needs not to let future councils have that ability to fall back on increasing property taxes because we can," he stated. Councilmember Elison said the authority does rest with the council, and can this council tie future council's hands – no. "This is a democratic process. I'm gone December 31<sup>st</sup> after serving 8 years on this council. It's been a pleasure and somebody new will be sitting in this seat. I don't know that I want to tie their hands; I don't know what problems they will face in the next 8 years. I don't believe ... that I have seen any councilperson who took their responsibility to the citizens of Billings lightly, who would raise any fee or any tax on any of their neighbors without seriously considering whether or not there was a service being gained for that individual," he stated. With discussion complete, a voice vote was called. The motion as amended was approved. Councilmembers McDermott and Brewster voted "no".

**10. PUBLIC HEARING AND SPECIAL REVIEW #709: a special review to allow the location of a 230' high cellular communications tower in a Community Commercial zone on Tract 1B-1 of C/S 1435 Amended, located at 210 Black Otter Trail. Black Otter Ventures LLC, owner; Brian Kurth, agent. Zoning Commission recommends denial. Public hearing held and closed on 9/24/01. Action delayed from 9/24/01. (Action: approval or disapproval of Zoning Commission recommendation.) NOTE: APPLICANT REQUESTED WITHDRAWAL. COUNCIL CONCURRED. ITEM WAS WITHDRAWN. SEE ACTION UNDER ADMINISTRATOR REPORTS.**

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 9:15 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
MARITA HEROLD, CMC/AE CITY CLERK