

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, FEBRUARY 28, 2000

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 Mike Larson.

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

**MINUTES – February 14.** The Minutes were approved as printed.

**COURTESIES** – City Administrator introduced Sandy Welchlin of the Community Services Dept, retiring after 11 years with the City as the Secretary in the Community Services Dept. Mr. Taylor also introduced Roger Kleidl of the Public Utilities Dept after nearly 23 years of service with the City, retiring from the US Navy before coming to the City.

**PROCLAMATIONS –Mayor Tooley.** None.

**BOARD & COMMISSION REPORTS.** – None.

**ADMINISTRATOR REPORTS – Dennis Taylor.** City Administrator Dennis Taylor reported that he has received the resignation of Finance Director Nathan Tubergen. Mr. Tubergen applied for disability retirement benefits, which were approved today. His last active day was today and he will be on sick leave until March 17<sup>th</sup>, his last official day. Controller John Guenther will be the active Finance Director until a replacement is selected and can begin work.

## **CONSENT AGENDA:**

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

- (1) Marianne Hanser as Urban Supervisor for Yellowstone Conservation District Board.
- (2) Leo Wohler to the Airport Commission.

### **B. Bid Awards:**

- (1) **One (1) 2000 Current Model Skid-Steer Loader with Attachments and Trailer for Public Utilities.** (Opened 2/1/2000). (Delayed from 2/14/2000).

**MINUTES: 02/28/2000**

Recommend Tractor & Equipment Company, \$65,350.

(2) **Pumping Improvements – Contract XI (Equipment Procurement) for Public Utilities Department.** (Opened 2/22/2000). Recommend Fairbanks Morse Pump, \$180,622.00.

(3) **BLIA Water System Improvements – 2000.** (Opened 2/22/2000). Recommend delaying award to 3/13/2000.

**C. Amendment #5, Engineering Services Agreement for Airport Improvement Project (AIP) 18,** Morrison Maierle, \$217,326.00, City's match \$21,733.00.

**D. Contract** with Equal Access Consulting of Missoula, Montana to perform an ADA Audit on all City facilities and programs and develop a transition plan to assure compliance with ADA laws and regulations.

**E. Approval** of travel outside Continental U.S. for Kathy Taggart, Identification Supervisor of Billings Police Department and Sgt. George Jensen of the Yellowstone County Sheriff's Office to attend Western Identification Network (WIN) annual conference in Anchorage, Alaska in May 2000.

**F. Subordination** of HOME First Time Home Buyer Loan for Jason B. and Christena Conley, 906 Terry Ave., \$4838.08.

**G. Approval** of Billings Jaycees request for street closures, normal police assistance and a street sweeper for the annual Western Days Parade and events on June 23 and June 24, 2000.

**H. Resolution 00-17541** relating to Second Quarter Budget Amendments for FY 1999-2000.

**I. Supplemental Agreement** regarding Subdivision Improvements Agreement (SIA) for Bergquist Subdivision.

**J. Preliminary Minor Plat** of amended Lot 4, Reimers Park Subdivision (generally located at the north end of Alpine Drive).

**K. Bills and Payroll.**

(Action: approval or disapproval of Consent Agenda.)

Councilmember Deisz separated Item E. Councilmember Larson moved for approval of the Consent Agenda except Item E, seconded by Councilmember Kennedy.

## **MINUTES: 02/28/2000**

On a voice vote, the motion was unanimously approved. Councilmember Larson moved for approval of Item E, seconded by Councilmember Kennedy. Councilmember Deisz asked what the cost was to the City. City Administrator Dennis Taylor replied that the entire trip in being reimbursed by the Western Identification Network and there would be no cost to the City. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. PRESENTATION AND BRIEFING ON CENSUS 2000 by George Wilson, Local Census Office Manager. (Action: presentation only).**

George Wilson of the local census office said his office covers 26 counties in eastern Montana. He said the census is the largest peacetime mobilization in US history and it is dependent on everyone's participation. "Census 2000 will be the information cornerstone for the next century. Millions of dollars of federal, state and local funds will be spent on thousands of projects across the nation ... How and where that money is spent depends on how accurate the census count is. This is your chance to make sure that the new century begins with a complete count of our nation's people – who they are and where they live," he stated. Mr. Wilson said major corporations use census data to determine new locations of retail stores. He said the 1998 estimated population of Billings was 91,750. Using the 1998 estimates, if Billings is undercounted by just 2%, that would represent 1835 people, which means the city could lose an estimated \$302,775/year in federal funds – by just undercounting people by 2%. Using an undercount of 2% for the state of Montana, \$2.9 Million/year in federal funds could be lost. Mr. Wilson said census questionnaires would be delivered by the end of this week to areas in Ward II and places outside of the city. The other areas of the city will start getting their questionnaires on March 15<sup>th</sup>. The Heights area will have door-to-door delivery of their questionnaires, while the rest of the city will receive their materials via the mail.

Mr. Wilson said many people wonder if the information they provide will be safe. He said federal law (Title 13 of the USC) mandates that no one outside of the US Census Bureau can be given any information that would enable to connect your answers with your name or address. Every census employee must take an oath of confidentiality with major penalties if broken. "Not even the president of the US is permitted to look at individual information provided in the Census Bureau. If the president is not allowed to see the information, neither is anyone else outside of the Census Bureau. This means the court of law, the credit bureau, the military, solicitors, police, IRS, FBI, Immigration and welfare agencies are included – no one," he stated. He said the Census Bureau is not interested in hearing that a person is illegally here, everyone is counted.

"Census 2000 is our chance to make sure the new century begins with an accurate

**MINUTES: 02/28/2000**

and complete picture of our community. We ask that you get involved. Census 2000 will be hiring over 2200 census takers in Billings and across Montana. Your contacts, your knowledge, your scan of the community as councilmembers are the keys to an accurate count. Your understanding how decisions on education, health care, job training and business are based on information about children, the elderly, the unemployed or under employed. Our public transportation system and traffic control is based on where people live and work. You can reassure your members that the information collected in the census is protected by law... Remember, everybody counts – no matter their age, race, employment status or income,” he stated.

Mayor Tooley noted that a Complete Count Committee was appointed, made up of citizens from Billings. He asked how that committee is progressing. Mr. Wilson said that committee is probably the strongest one in the state. They had a kickoff event last week at Rimrock Mall.

**3. PUBLIC HEARING AND SECOND READING ORDINANCE 00-5112 adopting Uniform Fire Code, 1997 Edition. (Action: approval or disapproval of ordinance on second reading).**

Fire Marshal Paul Gerber said the State of Montana adopts the Uniform Fire Code and cities have been given the authority to adopt the UFC as well. What the cities adopt cannot be less restrictive than the code adopted by the state, but it can be more restrictive, based on local needs. He noted an example of this is fireworks – illegal inside city limits and legal outside city limits. He said there have been some changes from the previous code, but nothing drastic.

The public hearing was opened. REV. DENNIS DUNN, NO ADDRESS GIVEN, said he thought the fire code was a good idea – uniform or not.

RON GILBERT OF 41 BROADWATER AVE, said he is a service technician at Air Controls and said a fire code is a good idea.

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

**4. BILLINGS CENTRAL CATHOLIC HIGH SCHOOL PUBLIC PARKING LOT**

**A. PUBLIC HEARING AND SITE DEVELOPMENT VARIANCE #00-01: a variance from the Site Development Ordinance, BMCC Section 6-1203(c): Off-Street Parking Requirements; Westside Subdivision, Lot 1, Block 1. Billings Central Catholic High School, petitioner. Staff recommends disapproval. (Action: approval or disapproval of staff recommendation).**

**B. PUBLIC HEARING AND SPECIAL REVIEW #668: a special review to allow the placement of a public parking lot in a Residential Multi-**

**MINUTES: 02/28/2000**

**Family-Restricted zone on Lots 24-31, Block 1 of West Side Addition, located at the southeast corner of Wyoming Avenue and 1<sup>st</sup> Street West. Clifford and Donna Dunn, Fred Grider, Cindy Wong Grider and Vera Brougher Roybal, owners; Roman Catholic Bishop of Great Falls and CTA Architects Engineers, agents. Zoning Commission makes no recommendation. (Delayed from 11/22/99 and 1/24/2000). (Action: approval or disapproval of special review).**

- C. PUBLIC HEARING AND SPECIAL REVIEW #671: a special review to allow the placement of a public parking lot in a Residential Multi-Family-Restricted zone on Lots 18-21, Block 1 of West Side Addition, located at 37, 39 and 41 Broadwater Avenue. Ronald and Katherine Gilbert and Linda Delcamp owners; Roman Catholic Bishop of Great Falls, MT and CTA Architects Engineers, agents. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Director Kerwin Jensen said the staff report this evening would be a "global" report addressing all three of these items. Councilmember Elison announced that he had a direct conflict of interest in these items and would refrain from discussion and voting and join the audience until these items were concluded.

Mr. Jensen said the first parking lot proposal (SR668) is immediately west and adjacent to Central High School. There are presently 4 homes on the property. The zoning in the surrounding area ranges from Community Commercial to the south and Residential 7000 and Residential Multi-Family to the west and north of the subject property. Approximately 75 parking spaces are being requested to relieve some of the parking issues that will be created with the new addition to the school's gymnasium. The property owners are looking at relocating or demolishing four homes on this property and putting a parking lot there instead. The Zoning Commission reviewed this item in November 1999. Staff recommended three conditions: (1) the owner shall pave the alley running north-south between Wyoming and Broadwater Avenues. (2) a 4-foot high sight-obscuring fence shall be placed along the north and south property lines, except in the clear vision triangles. (3) at least five trees shall be located within the landscaped areas located in the parking lot, but shall be outside the required clear vision triangles. The Zoning Commission on a 2-2 vote passed this forward to the Council with no recommendation on this parking lot.

The second special review (SR671) is immediately south of the first proposed parking lot. It is only ½ the size of the property located to the north and could accommodate 34 parking spaces. The Zoning Commission recommended conditional approval, with the conditions being: (1) a 6-foot high sight-obscuring wood fence shall be placed along the north, west and east property lines, except within the clear vision triangles and the pedestrian opening on the north property line and (2) at least five trees shall be

## MINUTES: 02/28/2000

located within the landscaped areas located in the parking lot, but shall be outside of the required clear vision triangles.

Mr. Jensen reminded the council that the special review is preliminary for any type of site development or building permit, the determination of any ingress or egress will need to be determined if and when the special review is approved and when the applicants actually apply for the parking lot permit. He said also that depending on which special review is approved or if neither of them is approved, would directly dictate the number of parking spaces necessary under the variance. Councilmember Tooley asked if the variance should be considered last. Mr. Jensen replied that would be his recommendation.

Building Official Kim Palmieri said staff only looked at parking for the new addition, not what the existing building has. The new addition would require 132 spaces. After the new addition is built, 58 spaces will remain in the existing lot. If neither of the special reviews is approved, there will be a deficit of 74 spaces and a variance would be needed from this requirement. If SR668 (the north lot) is approved, 75 spaces would be provided, plus the 58 remaining spaces that exist now, would total 133 spaces and no variance would be required. If SR671 (the south lot) is approved, 34 spaces would be provided, plus the 58 remaining spaces that exist now, would total 92 spaces – a deficit of 40 parking spaces and a variance would be needed from this requirement. Mr. Palmieri said the staff recommends denial of the variance since minimum parking will not be provided.

Councilmember Larson said a suggestion was made that the school look for parking across Division or Broadwater. He asked if that would meet the current regulations. Mr. Palmieri said the ordinance provides for parking across a major arterial only if both properties are adjacent to traffic control lights. Councilmember Kennedy asked if Central was across the street on the east side of Division, (in the downtown corridor) would this be a necessary process. Mr. Palmieri said the variance would not be required if the property were located in the Central Business District (CBD).

Councilmember Kennedy asked for a staff report on the ingress/egress issue. City Engineer Brian Borgstadt addressed these issues in regard to the parking lot on Broadwater. Councilmember Kennedy said the curb cuts are so close to First Avenue and so close to the alley that is used for access right now. Mr. Borgstadt said there is always the understanding in a special review that the site plan may change. Approval of the special review does not constitute approval of the layout. "The problem we had at Broadwater was providing enough stacking to make the movement during the light switch. There is a dual turn lane there now. The way the parking lot functions today is the turning movements to occur at that outlet. Whether there is one or two accesses here or how that's done, we will look at the effect on Broadwater Avenue. That has not been done at this time. Council has not even approved the concept yet of having the lot there," he explained.

The public hearing was opened. KEITH RUPERT OF CTA ARCHITECTS/ENGINEERS said he is representing Billings Catholic Central High School. He thanked the staff and council for their assistance and patience in dealing with the

## MINUTES: 02/28/2000

complex issues surrounding this request. Mr. Rupert said throughout the process, in addition to trying to meet the needs of the students, they have tried to be sensitive to the needs of the neighborhood and the community. "Change is always difficult. It is difficult for Billings Central as well as the community and the neighborhood. The change must occur if Central High is to continue its legacy of providing high quality alternative education. It has been nearly 50 years since any additions to the Central High campus... Changes are desperately needed for Central to remain viable," he stated. He said their key concerns were about the reduction in parking. These were not driven by Central's desire or the cost of land acquisition. Central is one of the few nonprofit organizations that provides a direct, measurable benefit to the taxpayers – namely the education of 340 high school students at no cost to the public. This saves the taxpayers over \$1.7 Million every year. He emphasized that Central is a significant employer, employing 55 people. Central also serves as a buffer between the existing neighborhood and the high-density downtown area. Central is asking for approval of the special request for 34 new parking spaces off Broadwater Avenue to most responsibly minimize the loss of parking with the new addition.

Central is also asking for approval of a variance from the off-street parking requirements of 14 spaces for the net loss from the spaces being built over and 21 spaces to accommodate the addition of 120 bleacher/gymnasium seats. "If these requests are approved, Central is prepared to withdraw its special request to allow new parking. We ask you to vote yes for both the Broadwater special review and the parking variance," he stated.

SR. ELIZABETH YOUNGS, DIRECTOR OF BILLINGS CATHOLIC SCHOOLS said they have an opportunity to expand and renovate their gym. "The mission of the Billings Catholic Schools is to educate the total child. We offer a rigorous academic program and we have a strong religious component. We offer an amazing range in quality of fine arts in our school. To round out that offering – to educate the whole child, we have a competitive sports and activity program. Our activities at the junior and high school levels are important for a number of reasons. One is colleges look at a student's participation in various activities when considering scholarship qualifications. College bound people and their parents are not likely to choose a high school that does not offer a variety of opportunities when they know they are college bound. Research shows that students involved in athletics, clubs and organizations have less probability of being involved in drugs and other undesirable behaviors. Thirdly, the ability to work as a team is evaluated for leadership and productive citizenship. Fourth, participation in competitive activities, especially sports, keeps the school in the public eye. That's critical for the vitality of a school like ours, where families select an alternative to the public schools," she stated. Sr. Youngs said the gym is used from early morning until late at night. Expansion of the gym would eliminate the early hour and late night use of the gym, enhancing the safety and health of their students. She said this is a once-in-a-lifetime opportunity for the school and she asked the council to approve the variance.

BRIAN COSTELLO, NO ADDRESS GIVEN, said he is a teacher/coach at Central High School. He said the school has learned to do more with less and still educate the

## MINUTES: 02/28/2000

children very well – perhaps with less resources than the public schools. He said a typical day for a student might begin at 5:30 am to attend a morning practice, going through a tough day at school in a rigorous academic environment, then practice after school at 6 PM or later. Mr. Costello said their gym is used from 5:30 am until 9:30 PM. He urged the council to approve the variance.

MICHAEL LOWE OF 2323 WEST 32<sup>ND</sup> STREET said he is a representative of the student body at Central High School. He said the student body is very much in favor of this proposal and are directly affected by it. The student body is not only very much involved in athletics, but volunteer projects as well and other extracurricular activities – all of which make Central a good school and Central students exemplary in the community. “All of these activities force us to use cars and they force us to need places to park and force us to be very busy students. This is what the entire proposal is about and this is why you need to approve the variance in addition to the parking lot. We need to have the places to park and those places to park are taken away in part by the gym addition. The variance and addition to the parking lot would combine to alleviate the parking problem that exists at Central and that will be created by the expansion of the gym,” he said. Many proposals have been suggested – some of which are not reasonable. He said forcing students to walk across a busy street is not reasonable or safe for the students.

GINA SHERMAN OF 124 WYOMING said she was distraught about the proposal for a parking lot on Wyoming. “When I look at an ordinance and what an ordinance is for, it’s for the people and to protect the people and to make the community a nicer place to live for everybody and balance needs. I can see the school’s need to expand the gym and I think a lot of people here would really support that. I don’t think the parking lot on Wyoming is our first choice and I know it sounds really nice to have a parking lot and everybody thinks that would be really convenient. But that’s a historic neighborhood. When you look at the house we bought – it’s a 5-bedroom house for \$50,000. I don’t have to tell you what kind of shape it was in. The floors creak, things are old. We live in it because we like the historic area. What I am saying is that we put up with a little less convenience for a historic area,” she stated. She said they are asking the people who use that area to walk an extra couple of blocks. “Could we just look at what all the people want? You’re here to represent the people. I hear everybody saying having a parking lot on Wyoming is not your first choice. I have not heard anyone here say it is the first choice. I would just like to remind you to please listen to what the people are saying,” she stated.

JOAN RYDER AND MERITH RYDER, NO ADDRESS GIVEN said they are speaking as concerned parents of students at Billings Central. She said it is an asset to the community, but it is an old facility. “A generous donation has been given to Billings Central for the sole purpose of upgrading and expanding our gymnasium. With this expansion, we can offer more to the Billings Central students... Practices can be held at a reasonable time. We won’t be sending our kids at 5:30 in the morning or getting them home at 10:00 o’clock at night... Tonight we ask you for your support so that we can move forward with this project,” stated Ms. Ryder. Mr. Ryder said they understand the parking



## MINUTES: 02/28/2000

problem at Billings Central and the neighbors have been very patient over the years. The Building Committee has looked at several options to handle the parking. The option that seems to be most acceptable to a majority of the neighbors is the parking lot on Broadwater. "We would be in favor of that, if that's what everyone would like. Our first proposal was to do the one on Wyoming. We changed that to meet what we felt the neighborhood wanted. Which way we go in and out of the parking lot is not important to us. We can go either way," he stated. He asked supporters of the Broadwater parking lot to stand up in the audience. He urged the council to support the special review.

PAULA DUFFY OF 107 WYOMING said many of her neighbors work downtown. Since last October residents have opposed the parking lot proposal on Wyoming. "Street parking is an annoyance, but it certainly isn't a major problem. We all have said we can live with street parking, but not with tearing down houses for parking lots. I ask the council to approve a variance for street parking. If the City's solution to street parking is to raze an entire block, then will the City consider tearing down houses around Senior, the Moss Mansion, and City parks to accommodate off-street parking? I ask the council to oppose a parking lot on Wyoming. A lot of Wyoming would negatively impact the residential character of the neighborhood and the resale value of property. It would demolish the housing for 7 to 10 renters and demolish a daycare center that serves special needs students. The Central Terry Task Force, the Billings Preservation Society and the neighborhood residents oppose the lot. If the council approves the lot, it sends the message that downtown neighborhoods are not worth saving. If the council approves this lot, it clearly states that parking spaces are more important than living spaces," she stated. She said the Central Terry Neighborhood Plan states that protecting and preserving a neighborhood's character and quality of life is important. She asked the council to make sure that all possible parking lot options are considered before making a decision.

BOB HARRIS OF 40 YELLOWSTONE said he and his wife have lived at that address for 24 years and during that time have seen significant improvements in the neighborhood. He complemented Central in looking at solutions and seeking a win-win solution. "I think they have turned stones over and evaluated different plans. My wife and I both support the variance. Although the numbers may not look as good as one may think, I believe that the lost parking is about equal to the gained parking on the parking lot on Broadwater. I don't believe the improvements at the gymnasium are going to result in significantly more parking problems than exist today. Therefore I believe the proposal actually represents a status quo on the parking as it is today. We do not support the Wyoming parking lot. It will devalue the property value in the neighborhood and increase the noise in the neighborhood. It will be a visual intrusion in the neighborhood and allow commercial intrusion into the neighborhood," he stated.

LINDA THOMPSON OF 110 YELLOWSTONE said she supports Central's request for a variance and opposes the Wyoming parking lot. She quoted from a poem by John Donne, "no man is an island, entire itself. Every man is a piece of the continent, a part of the main..." If Central High turns the four houses on Wyoming Avenue into black top, the

## MINUTES: 02/28/2000

bell tolls for my neighborhood, and that affects all of us. This historic district is a priceless gem in the center of Billings. What we have westend developers cannot imitate – inviting sidewalks, quaint streetlights, the propensity of front porches, large trees as well as a cultural and socio-economic diversity found no where else in Billings. The loss of these four homes, their residents, and their associated landscaping brings an irreversible commercialization to the area. The neighborhood strongly objects to such an encroachment as observed by the Zoning Commission when 16 of us testified against Central's proposed parking lot. The bell also tolls for those 8 families who would lose their home as a result of the Wyoming parking lot. Where will they go? As City councilmembers, you are aware of the lack of affordable housing in Billings, especially close to downtown... A lack of affordable housing negatively affects families with small children and doesn't that in turn affect each of us here, because we too are involved in mankind?" She said she would rather have the high school students park in front of her home, than have part of the neighborhood destroyed and families displaced. She urged the council to consider the variance to allow Central more time to develop a plan for a long-term solution to their parking problem.

WELDON BIRDWELL OF 44 YELLOWSTONE said he favors the Broadwater proposal and the variance. "As was pointed out by one of the neighbors, essentially we are talking about a no net change circumstance here. If you do approve Central's expansion, there would be in effect virtually no net loss parking; it's merely a matter of meeting the codes – codes required of Central which perhaps have not been required of Senior and some of the other schools in the community," he stated. He said the neighborhood still opposes the Wyoming proposal, but would support the Broadwater proposal. "If by chance you do what we don't want and go with the Wyoming proposal, I would ask that some requirements be imposed that stop signs be installed on 1<sup>st</sup> Street West. We have a dismal problem with traffic there. Undoubtedly, if you concentrate parking in one spot, it will just exacerbate the existing problem. Also, the large mature trees proposed to be removed and replaced with 4 saplings. We would ask that be opposed as well. Please acknowledge the wishes of the neighbors that live there day in an day out and understand the issues," he stated.

STEVE MACKEY OF 24 YELLOWSTONE said he opposes the Wyoming parking lot. He noted that he has seen what appears to be a consensus developing between the proponents and opponents on a compromise proposal for a parking lot on Broadwater. He asked the council to consider the special review for the lot on Broadwater and the variance. Mr. Mackey said he feels the people in the neighborhood are acting in good faith and trying to reach a compromise and consensus solution. The neighborhood is a historic one and they feel deeply about the encroachment of a parking lot. As an attorney, he has often advised his clients that mediation means settlement and settlement means compromise. "The worst compromise is often better than a win in the best-fought battle," he stated. He said there is opportunity to adopt a plan than is acceptable to everyone involved.

JIM HARTUNG OF 620 BURLINGTON said he does not want to see structures

## MINUTES: 02/28/2000

demolished on taxpaying residential property to build a tax-exempt parking lot. "Good neighbors communicate with each other. I am unaware that anyone in the neighborhood got the letter from the Building Committee that the City Council received. The communication has pretty much been a one-way street with the neighborhood talking to people at Central and not really able to get much communication back. To set a precedent it would be nice to have communication go both ways," he stated. He suggested that other solutions be explored for the busy students. Mr. Hartung suggested a solution might be to simply extend the Central Business District boundaries and leave all the houses standing. "Just by granting a variance that will not require them to meet that number of parking spaces. Why tear down any houses, why move any residents from our neighborhood? Maybe you can think outside of the box and treat this as defacto Central Business District and not have to tear down any houses... Mr. Hartung said in the neighborhood plan, Central is viewed as an amenity in the neighborhood, a useful addition and we enjoy having it there. This addition that they want to build to their gymnasium will be a benefit to them and the city as a whole. I just don't think it is necessary to tear down houses that pay taxes to the city in order to create a tax-exempt parking lot," he stated.

ANN CLANCY OF 111 WYOMING said she is directly impacted by the proposal, living kiddy corner from where the parking lot would be. She is a resident of a very unique historic district in Billings. "This is a confusing issue for many of us residents directly impacted by it. We've been presented with only two options: a parking lot on Wyoming or a parking lot on the Broadwater side, neither of which would really impact the daily parking problem we have now. The same people will park in front of my house that have always parked there for the last 15 years I've lived there. There will be no change. Let me remind you that this is only to provide additional parking for sports events, which occur occasionally and usually in the evening... I'm not opposed to the variance, but I am opposed to having only these two options for parking lots, which are not going to change my situation at all," she stated. She said they are being asked to choose the lesser of two evils and suggested the council ask for other solutions before making a permanent decision.

JEAN NYRE OF 205 WYOMING said the council needs to figure out a way that Central can proceed with its remodel project and give them additional time to deal with the parking problem and come up with a better solution. "The two proposals that I have seen for parking are bad proposals. They show lack of planning, they totally ignore the impact that will happen and the spin-off effects in the neighborhood... Everyone I've talked to has different alternatives... I've been trying to meet with a Central representative since November to go back and explore all options. Ms. Nyre said the issue of traffic needs to be addressed wherever Central plans on parking – whether its land away from that block or on that block. There is also an issue of safety for the students, noting she did not see any pedestrian walkway planned.

RON CONNOLLY OF 37 WYOMING said he is opposed to the parking lot on Wyoming. "First off, I feel like I've been in the middle of a shotgun wedding for the last six

## MINUTES: 02/28/2000

months... I think the neighborhood has spoken very loudly against the proposed (Wyoming) lot through a signed petition... I think no matter where you have the lot, there's going to be traffic coming out... What it boils down to is what are we going to do about it," he said. He said the neighborhood want to keep its neighborhood integrity without commercial intrusion.

SUSANNE REIMER OF 39 WYOMING said the city and the neighborhood want to preserve the livability of a historic downtown neighborhood. The city wants to maintain its property tax base and decrease urban sprawl. The neighborhood wants to maintain its property values as well as a safe, vital environment to live in. "When you tear down these existing homes, you are whittling away at a fragile old neighborhood. Whittling away from the Broadwater side is slightly less offensive than from the Wyoming side, because you are coming from the commercial side into the neighborhood, opposed to from within the neighborhood out. You are choosing the lesser of two evils... Central also needs to maintain this neighborhood for the safety of its students... I support the variance and am not crazy about tearing down any homes, but if you have to do so, I'd much prefer they be on Broadwater," she stated.

BILL COLE, NO ADDRESS GIVEN, said he represents Marie Rose Browning, the owner of 35 Broadwater. They oppose Special Review #671, the Broadwater option. He asked the council to reject that proposal based on procedural reasons. "There is a woman here who is an island. She is caught in the middle of this proposal for the Broadwater option. This is not a win-win situation; it is a major lose situation for Mrs. Browning. She's uniquely impacted. It's like being asked to live in a tollbooth on the New Jersey turnpike. If 671 is approved, she will end up in a small house with a major traffic flow by a group of high school students ... Her only link to a residential link to a residential neighborhood that her family has occupied for 50 years is that peninsula of houses that comes down from the west. If all of a sudden she is cut off from that, she is going to be in this sea of asphalt... Legally, there are some major procedural problems with what happened at the Zoning Commission... This council must have a valid recommendation from the Zoning Commission; you do not have that at this point. From our perspective, the only option that this council has is to reject #671 on procedural reasons... The procedural things are not technicalities; they are very important procedures that are necessary to protect the input by the public," he stated. He asked the Council not to forget Mrs. Browning in that tollbooth on that New Jersey turnpike.

MARIE ROSE BROWING, NO ADDRESS GIVEN, said her parents bought that house 50 years ago when they retired from their ranch in Carbon County. She said she went to grade school and high school in Belfry, Montana and then to the University of Montana. "When my parents lived there, I returned often. I was very close to them and loved them very much. When I go back to the house, it's a duplex, and I rent out the west side to a young lady who has been there 5 years. It's an old historic house. I don't mind looking over at Central. When I come back here ... this is my hideaway. It's a place that nurtures me; my values were formed here, they are reasserted here... I don't want this all

## MINUTES: 02/28/2000

denied to me. I keep the apartment exactly inside the way my parents had it," she said. She said if you take these out, there will be more encroachment into the neighborhood and it will no longer be safe or sightly and will impact the Wyoming side.

EMIL ORLANDO OF 104 WYOMING AVENUE said he opposes exits at 1<sup>st</sup> Street West and Wyoming. He said his parents raised 10 children in Billings, and most of those children still live in Billings. He has lived in his home for 50 years and has experienced significant traffic problems. He said tearing down the two houses on Wyoming would only promote two more exits onto that street that will only increase the traffic problems that already exist.

LINDA DELCAMP, NO ADDRESS GIVEN, said she owns 37 and 39 Broadwater. She said she understands Mrs. Browning's position and sympathizes with her, but this is the first time that she has seen Mrs. Browning. Ms. Delcamp said she has lived there 6 years. She said the front yard has never been maintained on the Browning property and the front door of the side she claims she lives in has been boarded up all this time. "As to her sentiment that 'no man is an island', she lives in Rio Valley, CA; it's a duplex, one-half of which is boarded up. I hope you vote for the Broadwater option and the variance," she said.

ANDY SHERMAN OF 124 WYOMING said, "I'm starting to get the impression that this parking lot is like a bad smell. The Catholic school doesn't want it, they want to move it closer to the neighborhood. We're in the neighborhood and we don't want it, so let's move it on Broadwater. The people on Broadwater don't want it; I'm waiting for someone to say 'let's get Mickey to take the parking lot'. I'm just kind of confused at this point. When we first started this ordeal, we were told it was a parking problem with the neighbors -- our neighborhood was the problem, basically we complained so the parking lot was being built for that. The rumor mill then started working that it really wasn't about that, it was really about the gymnasium. I guess I'm looking at it now and if it is for the expansion of the gymnasium, I think it is within your power to grant the variance. Do we really need any parking lot? We are looking at an infinite amount of parking on the street to the west and north..." he said. Mr. Sherman said there are some other alternatives that should be explored to limit the student-generated traffic. He said this seems to be a "knee jerk" reaction to the requests.

RON GILBERT OF 41 BROADWATER said, "if this guy is confused, you ought to try living at 41 Broadwater. I'm all for it. The school has bent over backwards, they do need to expand. They were given a donation and now is their time. The landowners are not opposed to it and I think they should go for it," he stated.

JOELLEN ESTESON, PRINCIPAL AT CENTRAL HIGH SCHOOL said she needs to rise in support of the students at Central. "I would like to say to all of our neighbors, there has never been a student in my high school who has walked into my office to say that they mind walking any distance from where they have parked. The students are fit at Billings Central Catholic High School and they have never complained about having to walk, no matter how much the weather was against them. May I also say that I log very

## MINUTES: 02/28/2000

few complaints from the neighbors about our students who are parking there. I felt I need to say that because I keep hearing about how these kids are so lazy and that they don't want to walk. Please cease and desist from that; they are doing fine," she stated.

ZIGGY ZIEGLER OF 3040 HOLLOW TREE ROAD said he is a supporter of the parochial school system. He asked the council to support the variance and SR#671 (Broadwater parking lot). He said the county commissioners rely on a lot of information that is given to them by the City/County Planning Dept. "Some of you folks have graced us with your presence across the street when we've had issues of concern regarding the county, and I thought I would return the favor and appear before you this evening. I suggest that we break ground now that we start building now, that we get this project now. The summer is quickly approaching and there will be a new school year starting in September. It is only because of the graciousness of a benefactor that came forward to support this project, is why we are all here tonight," he stated. He urged the council to move this project forward.

KYLE HEISER, NO ADDRESS GIVEN, said he is a senior at Central High School. He said he doesn't mind walking a few blocks because it gives him a chance to talk to people. He said more parking would be great, but it doesn't really matter.

MS. NYRE RETURNED. She said the property at Central has also lacked maintenance and upkeep – a long-standing problem discussed at the neighborhood meeting in November. She said she has tried to talk to the Central representatives about this problem and the only response she got was that they don't have the money to do anything about it at this time. "I feel this is short sighted to allow Central to have additional property when they don't have the money or plans to keep that property up. Their enrollment is down by 30 students. I have tried to communicate to them that an attractive campus and facility is to their benefit as well by attracting more students," she stated. She said the council would do Central and the neighborhood a big favor if they tell Central to go back and work with the neighbors and come back with a plan for expanded parking. "If that plan requires special review, Central needs to show that the neighborhood people were involved and that the plan addresses traffic, safety and won't have a negative impact on the neighborhood. They have as much to lose from bad planning as the rest of us," she stated.

MR. COLE RETURNED. He stated that in the event SR#671 is approved, he would ask that additional conditions be required: extend the proposed fence along the north part of Mrs. Browning's boundary to shield her property from alleyway traffic and to install lighting that is acceptable to any immediate neighbors, i.e. downward directed lighting, cut-off lighting, so there is not expanded lighting throughout the neighborhood. And third, someone mentioned garbage on Mrs. Browning's property. "That's because of the students and passers-by who throw things on the property. That problem will be made worse here so there should be some commitment from Central to police that property on some mutually agreeable schedule. In conclusion, it's our perspective that this council has no option but to deny SR#671 because of procedural problems. In addition, where does

## MINUTES: 02/28/2000

that lead to, with the council approving the variance but neither of the special reviews, some of the speakers have spoken 'let the chips fall where they may'; let some time go by, see what kind of alternatives come to the floor with a little more time. Mrs. Browning wants to be a good neighbor, but being a good neighbor doesn't mean you have to be swallowed by your neighbors and that's what is being asked – to put all the weight of all the problems with these options on one person and that just isn't fair," he stated.

MR. CONNOLLY RETURNED. He said he really has mixed feelings about this issue. He supports the variance, but isn't sure about the Broadwater lot. He urged the council to do what is best for everyone.

There were no other speakers. The public hearing was closed. Mayor Tooley called a brief recess at 9:20 p.m. The meeting was called back to order at 9:25 p.m.

Councilmember Kennedy moved for approval of SR#671 (ITEM "C" re: Broadwater lot), seconded by Councilmember Larson. Councilmember Kennedy said, "what we have here is a situation likened to the game of hearts or spades, you want to make sure you lead with the right hand or right card here. Listening to some of the testimony tonight I heard the word 'consensus' and I think that is what we always strive for, particularly in a community like this old neighborhood. I used to live in this neighborhood myself and I was very protective of it when I lived there and I'm still protective of it. Mr. Connolly talked about the improvements to the houses in the neighborhood, but Central is trying to make some improvements as well to remain in that community. I think they have found out from this process ... that they are indeed a very welcome member of that community... The problem we have is creep – the development creep from Broadwater. I have some concerns about the egress there on Broadwater. I don't know if they have discussed vacating alleys in the block to maybe look at solving more of their parking problems. I do like the conditions that have been put upon them, but I want to see some extra conditions regarding how the lighting will be shielded, paving of both alleyways and maybe some discussion about the vacation of those alleyways, i.e. more of a long-term approach, than just 'Wyoming didn't work, so let's find something else.' I would encourage the council to follow suit," he stated.

Councilmember Larson said the Zoning Commission recommended two conditions and suggested two additional conditions be added: (1) fence on the north and alley portion of the adjoining property and (2) the lighting cutoff. Councilmember Kennedy said if the egresses onto Broadwater don't happen, the plan is incomplete. "I want to see something come back to us to allow us to look at possible access through the alley system, discussion of taking control of that alley themselves. There's more that needs to be put on here in the way of conditions before I want to see it put forth. I do not want to see any more access onto Broadwater," he said. Mayor Tooley asked if the Council would have an opportunity to add more conditions at a later time. City Attorney Brent Brooks replied they would not have that opportunity at this time. Mayor Tooley noted that there was some staff discussion about the curbcuts onto Broadwater and that they may not be allowed in the final plan and asked some conditions had to be made now and those in regard to the curbcuts could be reserved for later. Mr. Brooks says the application says that there may

## MINUTES: 02/28/2000

be some building comment limitations and that is a separate process from the special review. City Engineer Brian Borgstadt said the special review the council is considering right now is only for land use and the concept of putting a parking lot on that land; it is not necessarily that exact plan (or how the parking lot is placed on the land) that is being approved tonight. Councilmember Kennedy said that is his exception to this item noting, "we're here at this public hearing and they see this plan, this diagram, and then when it's done, those egresses are on Broadwater, and that's misleading." City Administrator Dennis Taylor added that if that is a condition that is critical to passing this special review, this would be the only time that you would be able to put that condition on this special review, should the council pass the special review.

Councilmember Kennedy amended his motion to include the additional conditions of: (1) access to Broadwater will not be allow, but some other source of access will be found; (2) the cut away lighting; (3) landscaping; and (4) fencing on the north side on the adjacent property at 35 Broadwater. Councilmember Larson, who seconded the previous motion concurred. Councilmember Bradley said he sat down with Sister and "conspired against the lions" on this one. "It would have worked with just a plain variance. One of the issues that we did bring up when we talked about briefly and hasn't come up in the discussion and that was to give up Community Park across the street for additional parking. It is city owned and it didn't get very far because I don't think there will be much public support, but it is an alternative. I think Mr. Hartung's comments about encroachment into the neighborhood, whenever you start putting up parking lots, it always seems to be a demand for more and that's exactly what takes place. You increase that and start looking for more and more and more. It's unfortunate the way things are currently with Dahl's parking lot basically and removal of that particular house, although there is some agreement currently on the table as far as off hour use is concerned," he stated. Additional parking at St. Pat's and Fratt could be used for off-hour parking for sporting events. He noted that this will be an ongoing problem and other alternatives will need to be reviewed in the future.

Councilmember Deisz said he disagreed with Councilmember Kennedy and said this solution is not a long term one – very short sighted and short term. "I would prefer also that we had gone in order of our agenda this evening and approved the variance. We've heard from the students, the neighbors, they don't mind the cars being parked on their streets now. There won't be any difference for most of those people that are within two blocks of this school with this being passed just as a variance and no additional parking lot at this time. I will vote against SR671 but also ask that the City Attorney make comments or references to the letter, which we all received, from Mr. Cole," he stated. Councilmember Ohnstad said the council needs to be careful with SR671. It is a neighborhood issue and "we have got a thing called the medical corridor and they are very covetous about going across 27<sup>th</sup> Street to the east into the North Park area. If you look at Division Street and you go a little bit farther north, American Lutheran Church bought a whole block and wanted to put a retirement home in. They were refused and had to sell



## MINUTES: 02/28/2000

the property at a loss. If you go down a little bit to the Moss Mansion. We had a retreat this weekend. They would like to have some more parking, but they feel that the neighborhood looks at them as the entryway to a neighborhood. If they started buying properties to the east of them for parking, it would ruin the neighborhood and the integrity of things. I think we can go ahead and pass the variance and give Central some time to find some other solutions," he said. Councilmember Johnson referred to the Central Terry Park Neighborhood Plan that was adopted in August 1999. He read a section of the introduction that stated, "the neighborhood is predominantly residential in character with pockets of commercial uses. This area represents a valuable housing source for many different groups of people – ranging from families just starting out to the elderly. It is centrally located, close enough to the downtown area to be within walking and biking distance. The major goal of the task force ... is to maintain the residential character of the neighborhood and at the same time redevelop Broadwater, Montana and Central Avenues. The task force continues to concentrate on neighborhood preservation and improvements," he stated. He noted he will oppose both parking lots but would support the variance. Councilmember McDermott said she considers SR668 and SR671 to be stop gap measures. "I think if we pass either or both of them, it's not going to encourage long-term development of the parking facilities. I want to some long-term development and the neighborhood involved in that," she said. Councilmember Kennedy said he switched the order because staff asked him to do so, "because they don't know that the variance will say. If we vote on the variance first, we have to go back and readjust it," he stated.

With discussion complete, Mayor Tooley called for a roll call vote (on the motion to conditionally approve SR671). The motion failed 5-5. Councilmembers voting "yes" were: Bradley, Kennedy, Tooley, Iverson and Larson. Councilmembers voting "no" were: McDermott, Deisz, McDanel, Ohnstad, and Johnson. Councilmember Elison abstained from discussion and voting due to a conflict of interest.

Councilmember Kennedy moved for denial of SR668, seconded by Councilmember Deisz. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of the variance, seconded by Councilmember Iverson. City Administrator Dennis Taylor pointed out that this is a project that is a work in progress. "Granting the variance (recommended for denial at the 40 space level on SR671), makes it even harder for the staff to recommend anything but denial until there is long term solution to parking, which may include some of the suggestions talked about tonight – ways the students might manage traffic, different ways that there may be cross-parking agreements, better organization of the solution than you have tonight. I would ask you to consider that this is premature to grant a variance. There will be no incentive for anyone to work toward a solution once the variance is adopted. What you will achieve is you'll get a building permit and the construction can go forward, but like it has been prior to the construction, the traffic issues in and around the schools and in and around that neighborhood – which are difficult now, despite the testimony tonight ... and it will only be made worse by granting the variance without a longer term

## MINUTES: 02/28/2000

solution or some incentive to get that solution in place,” he stated.

Councilmember Deisz asked City Attorney Brent Brooks if there is something he proposed to help mitigate this problem if the council approves the variance this evening. Mr. Brooks said staff needs some direction on the number of parking stalls on the variance.

Councilmember Deisz asked if he recommended the variance be delayed. Mr. Brooks said that is an option. Councilmember Kennedy said staff indicated that the parking would be decreased by 74 spaces. City Engineer Brian Borgstadt said that is the number of spaces the council is considering right now. Councilmember Kennedy restated his motion to include the information that if no other special review were approved, a variance for 74 spaces would be required, seconded by Councilmember McDanel. Councilmember McDanel said he believed the school wishes to be a good neighbor and the neighbors who live in the neighborhood want to be good neighbors. “I believe that as traffic problems increase and parking problems continue and the school gets more and more complaints from those residents – that they cannot back out of their driveways or they can’t get into their driveways or they can’t park in front of their own homes, as those things happen naturally, the school and the neighbors will work together to resolve those problems,” he stated. He added that passing the variance tonight gives the school the opportunity to grow and expand and be a vital part of the downtown and at the same time, gives them an opportunity and time to work with the neighbors and to be good neighbors from both sides.

Councilmember Larson said, “the minute we grant this variance, it’s a variance and they can walk away from here tonight and not have to be concerned with this. The only thing that we are going to be able to do is to say ‘this council by passing this is making a good faith effort to cooperate with Billings Central and their expansion plans’ and sending the message that we hope that they will make a good faith effort to work with the neighborhood voluntarily – because that will be their option, and come back to the staff with some recommendations on how to deal with this on a long term basis,” he stated. He reminded the council that if they approve the variance tonight, they will be “sending them out of here tonight without any legal requirement to address the parking issue. The only thing they do have is a moral and ethical issue to do that.” With no further discussion, Mayor Tooley called for a voice vote. The motion to approve the variance was approved. Mayor Tooley voted “no”.

### **5. PUBLIC HEARING AND FIRST READING ORDINANCE amending Section 27-306 of the Unified Zoning Code to allow dance studios and martial arts instruction in Residential Professional and Neighborhood Commercial zones. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on first reading.)**

Planning Director Kerwin Jensen said this is a housekeeping item that amends the Zoning Ordinance to allow martial arts studios and dance schools in the Residential Professional and Neighborhood Commercial zones. The department has received a number of requests along this line and initiated a zoning ordinance amendment. Staff feels

## **MINUTES: 02/28/2000**

that both of these uses are non-retail uses and are mainly service-oriented uses. These are generally the type of uses found in the Residential Professional and Neighborhood Commercial zones. Uses typically are offices, funeral homes, banks, schools and churches. This ordinance amendment was approved by the County Commissioners at their meeting last Friday.

Councilmember Deisz asked if there is a building size requirement included in the amendment. Mr. Jensen replied there was no building size requirement at this time. Councilmember Deisz asked if a size requirement should be included. Mr. Jensen said the other uses in those zoning districts do not have size restrictions and thus a size requirement was not considered for this amendment. Councilmember Deisz said he has a problem giving carte blanc to any size school that wants to open up in a neighborhood – “we’re talking about parking problems here again.” City Attorney Brent Brooks said adding a size requirement would be a substantial modification of the proposed amendment and would need to be referred back to the Zoning Commission.

Councilmember McDermott said she wasn’t sure having no size restrictions in a Residential Professional zone is a good idea. Councilmember Kennedy asked what the turnaround time would be to send this item back to the Zoning Commission to include a size restriction. Mr. Jensen said advertisement would need to be done at least 15 days in advance of the Zoning Commission meeting. “You are probably looking at the first part of April before we could get this back to the Zoning Commission, which would then be your second meeting in April that the council would be able to review this,” stated Mr. Jensen. Councilmember Kennedy asked if this was a pressing issue. Mr. Jensen replied it was not, only a housekeeping issue.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Bradley moved for approval of the ordinance on first reading, seconded by Councilmember Elison. Councilmember Deisz made a substitute motion to send this ordinance back to the Zoning Commission for either a special review condition or size restrictions, seconded by Councilmember McDermott. Councilmember Elison said this “is an onerous burden on people. I think Residential Professional in most cases sets its own size and are usually developed as office malls and usually vacant space within. I think it would be unlikely that someone would seek out vacant Residential Professional space to build a large dance studio...,” he said. Councilmember Deisz said he didn’t see a problem delaying it and having the Zoning Commission take a second look at the ordinance, since the council raised the issue. Councilmember Kennedy said the Unified Zoning Code does have some differences between the county and the city. “Manufactured housing comes to mind, off the top of my head. I would suggest that we send it back, tell them our concerns. These are two different animals here,” he stated. On a voice vote on the substitute motion, the motion was approved. Councilmembers voting “no” were Johnson, Larson and Elison.

## **6. PUBLIC HEARING AND FIRST READING ORDINANCE amending Section 27-**

