

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## July 23, 2001

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Deputy Mayor Michael A. Larson called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Deputy Mayor, followed by the Invocation, which was given by Councilmember Iverson.

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

**MINUTES – July 9th.** Approved as printed.

**COURTESIES – NONE**

**PROCLAMATIONS – Mayor Tooley.** Deputy Mayor Larson introduced Mike Moran of the Boys and Girls Club. Mr. Moran noted that the Kids Day effort is sponsored by the Boys and Girls Clubs of America, the YMCAs, the 4-Hs and Kids Peace organizations to emphasize the importance of spending quality time with children. Deputy Mayor Larson proclaimed August 5<sup>th</sup> as NATIONAL KIDS DAY in Billings.

**BOARD & COMMISSION REPORTS.** Councilmember Kennedy said this Sunday ZooMontana and Wendy's of Montana are sponsoring a Wendy's Kids Day at Zoo Montana with many activities planned for the afternoon. He asked for Council volunteers for the watermelon eating contest and the pie-judging contest at this event.

**ADMINISTRATOR REPORTS – Dennis Taylor.** Mr. Taylor noted that the City received its taxable valuation from the Department of Revenue last week. The budget was prepared based on a 3% projected increase in taxable valuation. The actual increase was however only 1.05%. He noted that this problem continues to add to the problem of General Fund deficits.

### **CONSENT AGENDA:**

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

(1) **W.O. 01-03, Contract #2: 2001 Street Maintenance.** (Opened 7/10/01). Recommend JTL Group Inc., \$334,229.68.

(2) **SID 1351: Vaughn Avenue Street Improvements.** (Opened 7/10/01). Recommend Flack N Flack Construction, \$72,869.50.

(3) **SID 1355: Greenbriar Road Sewer/Street Improvements.** (Opened 7/10/01). Recommend Western Municipal for Schedule I Utilities, \$102,000.00 and Empire Sand & Gravel Company for Schedule II Streets, \$184,925.50.

(4) **Janitorial Service for 302 Edwards Building.** (Opened 7/10/01). Recommend R & M Services, \$19,560.00, 1 year to 6/30/02.

(5) **T-Hangar Taxi Lane Construction for Billings Logan International Airport.** (Opened 7/17/01). Recommend JCT Construction, \$41,950.00.

**B. C.O. #1, W.O. 01-03, Contract #1: 2001 Street Maintenance**, JTL Group, Inc., +\$35,817.36 and no additional time.

**C. C.O. #1, Billings Depot Passenger Station**, Fisher Construction, +\$16,581.00 and no additional time.

**D. Airline Operating Permit** with Great Lakes Aviation for freight/mail hauling, \$12,000/year annual landing fee revenues.

**E. Contract Extension** of Transportation Contract with Montana Department of Public Health and Human Services – Developmental Disabilities Division for paratransit service, 1-year extension to 6/30/02, \$161,039 for FY 2001-02.

**F. Right-of-Way Acquisition for W.O. 99-07: Lake Elmo Drive Improvements, Main Street to Hansen Lane.**

- (1) Right-of Way Agreement for PARCEL #6: A tract located in Tract 5, of Amended plat of Tracts 1b and 2, C/S 1012 containing 22,990 sf.
- (2) Warranty Deed from Michelotti, Sawyers & Nordquist Mortuary Inc., \$48,739.00

**G. Acknowledging receipt of petition to annex** a portion of Tract 1, C/S 2373, (Annex #01-12), Leonard & June Hobby, owners, and setting a public hearing date for 8/13/01.

**H. Acknowledging receipt of petition to annex** the S2N2SW4NE4NE4 of Section 27, T1N-R26E, (Annex #01-13), Bill Dunlap, owner, and setting a public hearing date for 8/13/01.

**I. SID 1356: Water, storm drain, curb, gutter and street improvements at King Avenue West from BBWA Canal bridge to/including intersection of S. 31<sup>st</sup> St. West:**

- (1) Professional services agreement with Engineering Inc., \$187,800.00.
- (2) Resolution of Intention 01-17721 to Create District and setting a public hearing date for 8/13/01.

**J. Bills and payroll.**

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

There were no separations of the Consent Agenda. Councilmember Bradley moved for approval of the Consent Agenda, seconded by Councilmember Elison. On a voice vote, the Consent Agenda was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION 01-17722 vacating South 30<sup>th</sup> Street West between King Avenue West and Cel Avenue and a portion of Cel Avenue west of South 30<sup>th</sup> Street West to the west property lines of Lot 2, Block 5 and Lot 3, Block 4, Midland Subdivision, 6<sup>th</sup> filing, United Industries Inc., petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Acting City Engineer Bill Morgan said the request is to vacate Cel Avenue (on King Avenue West) just west of the BBWA Canal. He noted that Item I on the Consent Agenda this evening is the special improvement district that will provide infrastructure improvements along King Avenue West. The original subdivision plat was platted in 1997. It was basically a large undeveloped tract and still remains an undeveloped tract with lot lines. By council policy, "if the City of Billings and petitioner mutually agree that vacating a public right-of-way is appropriate and the public has no cost basis in the right-of-way, staff may recommend that the right-of-way be returned to the adjacent property owner at no cost." There is therefore no cost exchange on this vacation. This area is presently undergoing a replatting process via Menholt Subdivision. It will contain an allowance for an access easement for traffic along Cel Avenue to circulate back onto King Avenue West.

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 01-17723 annexing Tract 1 and 3C of Amended Tract 3, C/S 1834; (#01-10), Charles Zimmerman, Jr., ETAL, petitioner. Staff recommends conditional approval. (Action: approval or disapproval staff recommendation.)**

Bruce McCandless of the Planning Dept noted his presentation would be a joint presentation for this item and Item #4 below. These are two petitioned annexations. Staff recommends approving the public services report and to conditionally approve the annexation requests. The two recommended conditions are: (1) either a Subdivision Improvement Agreement or a Development Agreement be executed prior to the issuance of any building permits for either property and (2) the adjacent streets will be annexed as well. In the case of Annex #01-11, the streets would be portions of Rimrock Road, 54<sup>th</sup> Street West and Molt Road. These three blocks contain approximately 19 acres. The owners are Aviara Inc, ETAL (6 property owners) and is located east of Molt Road at approximately 62<sup>nd</sup> Street West and north of Rimrock Road. It is currently zoned Residential 9600 and would retain that zoning when annexed. It is vacant and has been subdivided, but is unimproved. It is not contiguous to current City boundaries.

Mr. McCandless noted that the next item – Annex #01-10 contains two tracts in a certificate of survey, containing approximately 48.50 acres. Charles Zimmerman Jr is the owner of the property, which is located west of 50<sup>th</sup> Street West and north of Rimrock Road. It is presently zoned Residential 9600 and would retain that zoning when annexed. It is presently used for agricultural uses, grain production and pasture.

He noted that three City departments (i.e. Police, Fire and Public Works) expressed concern about their ability to provide general City services, while others expressed no concerns. Water and sewer services would need to be extended to one of the annexed areas. New facilities would be constructed and financed by the Public Utilities Dept with

repayment coming from trunk fees that would be collected as the property is developed. Street and stormwater improvements – timing and finance are less certain.

The public hearing was opened. JOHN STEWART OF ENGINEERING INC., 1001 S. 24<sup>TH</sup> STREET WEST said their office represents ten different landowners in the West End area that will be requesting annexation. The parcels in Items 3 and 4 are the first two parcels to come forward for annexation. They are first because their land area is already contained in the boundaries of the Urban Planning Area, while the remaining parcels are having a combined urban planning study done in preparation of coming into the urban planning area. He noted also that the Public Utilities Dept requested the study area to be expanded down to King Avenue West, Shiloh Road up to 56<sup>th</sup> Street West. Mr. Stewart said they concur with the conditions and staff's recommendation and asked the Council to approve the annexations. Councilmember Elison asked if the Yellowstone Country Club development would become a wholly surrounded island when all of these parcels collectively are annexed. Mr. Stewart replied he thought it would be nearly wholly surrounded.

JAKE KORELL OF 2702 HOOVER AVENUE said he represents Charles Zimmerman. He urged the Council to approve the annexation. There is a sale pending the annexation. Mr. Korell said they feel the parcels and the proposed development meet the West End Master Plan requirements. If they are not annexed, the alternative is to subdivide into 1-acre tracts with septic systems.

BILL COLE OF 5420 BOBBY JONES BOULEVARD said there is a larger land use issue in this area and that is access to the Rims. The City has two natural features – the river and the rims. He noted that a lot of public access to the Rims has already been lost. He asked that as the development comes on line in this area, that the City Council be aware of the need to work hard with developers and community groups to gain some degree public access to the face of the Rims – through park dedication, obligations for subdivisions, public/private donations or through some sort of open space mill levy, which is part of the West End Plan.

STERLING STARR OF 3713 TOMMY ARMOUR CIRCLE said he represents the Yellowstone Country Club Estates Owners Association Annexation Committee. He noted that both of these parcels (Items 3 and 4) are on both sides of Yellowstone Country Club Estates. Mr. Starr said the owner of the properties met with the owners of Yellowstone Club Estates to explain his intent to develop the property to the west and why he needed the water and sewer of the City to develop. His intent was to convince the owners of Yellowstone Club Estates to request annexation, so that they would provide the continuity between all the properties. Mr. Starr said the feedback of the owners of Yellowstone Club Estates was: (1) concern that the City would annex their subdivision to get tax money to pay for providing the services to the other developers around them and (2) the cost of 7 cents/sf plus the \$845.00 sewer hookup fees for the City sewer would amount to about \$2000/lot for annexation of the subdivision. It seems like a high price for annexation, when they just spent \$2000/lot for resurfacing all of their streets. (3) It is perceived that the City really doesn't have the resources to provide services to this area at a level comparable to what the City provides to the rest of the city. So it didn't appear there was any benefit to annex. (4) There was also concern that the development at 62<sup>nd</sup> Street was going to be relatively high density to what is currently in the area and the owners didn't think it was appropriate. Mr. Starr didn't finish his testimony at this time and was asked to come back

after all others had a chance to speak.

BRUCE CARLSON OF 5532 BOBBY JONES BOULEVARD said he is a landowner in the area and is a resident of Yellowstone Club Estates. He supports annexation because it will allow for the orderly development of West Billings and the expansion of services at densities of one house/acre. It will prevent the 1-acre parcel development with wells and septic systems and not further impact the groundwater levels and groundwater quality in that area. Mr. Carlson asked the Council to approve the annexation in hopes of encouraging the people in the Yellowstone Country Club to ask the City to annex them. He said the septic ponds smell, are algae covered, overflow, contain carp and partially treated sewage that flows into the entire Cove Drainage area. The septic tanks overflow into the Cove Ditch irrigation system, which further pollutes the whole irrigation system as it flows east out of the Yellowstone Country Club area. The septic ponds were originally permitted to handle 21 million gallons of sewage. There are two ponds there – in violation of the existing permit. The liners are 20+ years old and cracked, thereby allowing the sewage to seep into the groundwater system in the area. He urged the Council to annex the area and encourage the Yellowstone Country Club area to annex as well.

STERLING STARR RETURNED. Mr. Starr said it seems to be a foregone conclusion that the Yellowstone Club Estates will be annexed; the question is when and how and with what services. He said they feel the “surround and conquer” approach is being employed in this instance. Mr. Starr said if the owners of that subdivision could see the benefits of annexation, they may be more inclined to request it. If a plan for services was offered and the high initial charges for annexation were eliminated, the residents might support annexation.

JOHN STEWART RETURNED. Mr. Stewart said he wanted to clarify that the Yellowstone Club Estates was not part of the current urban planning study area because it already is in the Urban Planning Area boundaries.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the staff recommendation, seconded by Councilmember McDanel. Councilmember Bradley asked how many total acres are encompassed in the areas of the ten property owners they are working with for annexation. Mr. Stewart replied approximately 840 acres.

Councilmember Iverson amended the motion to add a condition to include the Public Works Dept recommendation that a maintenance association be established (that would assess itself for maintaining inadequate facilities until they can be constructed or reconstructed to City standards if it becomes necessary), seconded by Councilmember Kennedy. Councilmember Elison noted the City does not have a maintenance association policy in place, and questioned how would such be created, assessed, etc. Councilmember McDanel said any inadequate infrastructure is probably already in existence there and would not be part of new development; new development would be to City codes and standards. On a voice vote on the amendment, the amendment failed unanimously.

Discussion resumed on the main motion. Councilmember Elison said he is leery of this because they are creating a City island away from any adjacent parts of the City. Public Works and Police have stepped up and indicated service delivery concerns. He said if all of the parcels of the ten property owners that are wanting eventual annexation are annexed, the City needs an annexation policy. It needs to be done in a sequential

order that adds lands that adjacent to the City so that services can be sequentially expanded to the west in an organized manner. He didn't like the idea of "leapfrogging" out there and annexing this "little chunk of turf." Councilmember McDanel noted this area is in the 4 ½-mile extended jurisdiction for police coverage and is already in the Billings Urban Fire Service Area (BUFSA). "So in reality we are already providing those services to that area," he stated.

Councilmember Bradley said without an annexation policy, this is like "having to herd a bunch of cats". Deputy Mayor Larson said the natural development of this community is aggressively heading in this direction and has been for some time. There are two ways to look at it: (1) either manage the growth in even a haphazard way or (2) not manage it at all. He said he would rather be proactive in this regard. "Growth is going to occur and it is either going to be under our guidance and our standards or someone else's. We always seem to be the ones at the end of the day providing the services. I would rather be in on the front end than the back end," he stated.

On a roll call vote on the main motion, the motion was approved 8-1. Councilmembers voting "yes" were: Bradley, McDermott, Brewster, McDanel, Kennedy, Iverson, Ohnstad, and Larson. Councilmember Elison voted "no"

**4. PUBLIC HEARING AND RESOLUTION 01-17724 annexing Blocks 17-19, Yellowstone Club Estates, 5<sup>th</sup> filing, (#01-11), Charles Zimmerman, Jr., ETAL, petitioner. Staff recommends conditional approval. (Action: approval or disapproval staff recommendation.)**

The public hearing was opened. DENNIS BUSCHER OF 3317 AVENUE F said he is the president of Aviar Inc., the owner of 21 lots in the area. He said there are currently few lots in Yellowstone Club Estates that have all the services to them, yet 28% of the country club members have homes in this subdivision. Mr. Buscher said this is a great area to develop and most people in that area are in favor of annexation. Many of the residents have owned property there for 20 years and have been waiting for annexation. Many of the residents received water in the 1970s and signed a waiver of protest at that time. The Yellowstone County Club owns 55 lots and is considering annexation as well. He urged the Council to think about the individuals who want to develop property now and the country club that wants to upgrade their golf course as well.

FRED KAZMIERSKI OF 2316 SHILOH ROAD said he is a member of the Yellowstone Country Club and would like to move out to that area. He said there seems to be a good plan to develop the west side of that area and he urged the council to approve this request for the sake of orderly development.

DAVID PAYNE OF 382 ARNOLD PALMER DRIVE said he is supportive of the annexation request. It is in conformance with the West End Plan as well. Mr. Payne said it would allow them to "corral the cats that we are trying to curb" and give them the ability to work and be proactive in their developments. The property assessments for developed properties will be higher than the \$175,000 margin, as it is a high-end development. It is a win-win situation for the City and the proposed area.

STERLING STARR OF 3713 TOMMY ARMOUR CIRCLE said Billings Urban Fire Service (BUFSA) protection is currently provided to the area, but it is not adequate and not the response time that people in the City receive. What is needed is a plan for

adequate city services to this area – especially police and fire protection. He suggested that a higher approval rate of the residents would be forthcoming if such a plan was available and the one-time costs of a couple of thousand dollars/lot could be reduced since water infrastructure was already in place.

There were no other speakers. The public hearing was closed. Councilmember McDanel moved for approval of the staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was approved. Councilmember Alison voted “no”.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #682: A zone change from Residential Multi-Family to Residential Manufactured Home on Lot 21 of the Amended Plat of Lot 11 of Kuhlman Subdivision, generally located on the south side of Kuhlman Drive, east of Lake Elmo Drive, Geraldine Nolan, owner; Donald Myers, Sr., agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Director Ramona Mattix said there are already other manufactured homes in the area and the proposed zoning actually decreases the allowed density from a duplex to a single family home. The Zoning Commission recommended approval on a 4-0 vote.

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

**6. PUBLIC HEARING AND SPECIAL REVIEW #702: A special review to allow the location of a 250’ high cellular communications tower in a Community Commercial zone on Lot 3, Block 1 of Circle Fifty Subdivision, located at 1430 Country Manor Boulevard. Ask, Inc., owner; Mesa Communications Group, LLC, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Director Ramona Mattix said the application meets the 1-mile separation requirement of the existing code and is not directly adjacent to residential property. It would meet the requirements of both the existing code and the proposed codes for cell towers to be discussed later this evening in Item 9. Ms. Mattix said the Development Review Committee voted to approve this application with the following conditions: (1) the tower not be over 180 feet in height; (2) that the tower be a monopole and (3) that it have five platform levels to accommodate at least five carriers. She stated that they found that FAA regulations state that a red light that is on continuously is required if a tower is 149 feet or lower. If the tower is 150 feet or above, it must have a white strobe light on it. The 200-foot level requires the applicant to file with the FAA and the FAA has jurisdiction over those antennas. The Zoning Commission reversed the DRC recommendation and recommended denial of the application for two major reasons: (1) they felt there may be a decrease in property values and (2) adverse impacts such as sound created by this tower was not mitigated or addressed by the applicant.

Councilmember McDaniel asked about the sound impacts – whether it was wind noise. Ms. Mattix said the Zoning Commission alluded to some kind of high-pitched sound associated with generators connected to them in case of power failures. She said the applicant has not proposed to provide any landscaping on the site and the Council would need to add this condition.

The public hearing was opened. KEN STATTON OF 6400 ARLINGTON BOULEVARD, FALLS CHURCH, VA said he represents Mesa Communications. He noted they are willing to amend their application to meet the staff's conditions regarding height, landscaping, etc.

MISCHAL AMADEUM, 300 EXPRESS LANE, MISSOULA, MT, said he is director of Summit Wireless. Summit Wireless had retained the services of Mesa to build its infrastructure in the states of Montana, Wyoming and Idaho. He noted that Summit does not use generators at all.

BRETT SIMPSON OF 1891 COUNTRY MANOR BOULEVARD said he vehemently opposes this application. He noted he circulated a petition in his neighborhood and turned it in at the meeting. He said it was 100% in favor of denying the application. The only individuals who did not sign the petition were those that were not home at the time or were on vacation but that have called him since. He said he purchased his home in 1998, the first home in the subdivision. Mr. Simpson said he appeared before the council previously concerning a bar on the corner to the entrance of the subdivision – which the council approved. He noted they now also have two high-rise apartment buildings adjacent to this location, with many children in them. There is a veterinary clinic in the neighborhood as well. Mr. Simpson argued that there are other towers in the vicinity that would take care of the coverage issue – on Grand Avenue, on Broadwater/48<sup>th</sup> Street West, etc. He said there are many children in this area and even with a fence around the tower, they will try and crawl up the tower. Mr. Simpson said he believed their property values would be negatively affected by this tower. He noted he was at the Zoning Commission meeting and the question was raised about locating this tower down the street further where there is already a power plant substation. He noted that the Commissioners turned them down at that location, and that they have been turned down everywhere else. “I respectfully ask this body ... to listen to the public that live in the area ... There comes a point in time where things



must end. Just because somebody else at that Planning Board meeting said maybe we should fall on the grenade of the public's interest, I would gladly fall on a grenade if we were in wartime and a foreign country to protect our rights, but not what I decided to buy as where I decided to live. I respectfully ask and demand that you seriously consider this before you decide to put up ... a tower in our neighborhood. Listen to the constituents that live there ... and deny this petition," he stated.

MARY STEINERT OF 3939 PARKHILL DRIVE said they have serious concerns about what is going on. "First of all, when we bought our property, we thought we were buying into a nice subdivision – not a blinking light, red or whatever color it might be... We would like the subdivision to remain as it was presented to us. I do understand that progress is progress. Red Lodge just turned down two towers in their area because the tourists might not like them. They only have to visit. We are going to have to live with this. We are also concerned about our property values. We would like to work with these people to find a more suitable location," she stated. Ms. Steinert also said she would like to see a new ordinance for a broader notification area, noting that they found out by accident.

ROSELLA ROTH, NO ADDRESS GIVEN, said they own the veterinary clinic in the neighborhood. They are concerned that the high frequency noise from the tower would harm the animals in their clinic. They have 22 kennels in their facility and they do board animals. They are not opposed to cell phones, etc. but they would rather not have this tower directly behind them.

PETER HELLAND OF 1781 COUNTRY MANOR BOULEVARD said this structure doesn't fit the character of the neighborhood. It is a family-oriented, residential neighborhood that just got a beautiful park. It has some commercial development at the front of the subdivision. He emphasized there has to be some other place that this tower can fit into. He asked the Council to please support the neighborhood and deny the tower application.

OSCAR HEINRICH OF 4210 WELLS PLACE said he is not against cell towers, only against 250-ft cell towers. He said Mesa is a provider, not a carrier and you can deny them without any problem against the city. "This will be another 'build it and they will come' tower. They have one renter; that's it. 250-ft tower and one renter; it doesn't seem right. Start thinking about requiring at least 30% signed leases before they can build. It's one way to prevent the mentality of 'built it and they will come'" he stated.

DONNA RILEY OF 3953 PARKHILL DRIVE said she would be able to look out her picture window and onto the proposed tower. She said she did not want this tower as a view and also expressed concern about the negative effect it would have on her property values.

ERIC JACOBSEN OF 1861 COUNTRY MANOR BOULEVARD said he represents his family and his neighborhood. He noted this is not just a neighborhood issue, but a city issue as well. The towers are "atrocious and don't do anything aesthetically for our city. We are trying to keep the City a great place to live and I hate to see these things go up," he stated. If the proliferation of towers continues, the city will look like a pincushion he said. He urged the Council to support the Zoning Commission's recommendation for denial.

CAROL HAGENSON OF 1641 COUNTRY MANOR BOULEVARD said she is about as close as you can get to the proposed tower and is concerned about the kids

and animals in the area, as well as the value of their property. Ms. Hagenson said they are absolutely opposed to the tower and ask that it be relocated elsewhere.

ERIC JOHNSON OF 1998 TANNER LANE said he is also against the tower. They are unsightly. He noted he is worried about the microwave technology and the lack of adequate studies on it in terms of long-term health effects. He urged the Council to deny the request for the tower.

FRANK SHANDLEY OF 3854 PARKHILL DRIVE said the towers are ugly even if they are only 50 feet high. "There has to be somewhere else to put them," he said. Mr. Shandley said he is also concerned about what it will do to the value of his property. He urged the Council to "please feel for the neighbors and deny the request".

LEE QUILLOG OF 3855 PARKHILL DRIVE said he is opposed to the tower, adding that these towers are big-time business! "Every 2.25 seconds a customer becomes a consumer of wireless technology. The problem is not going to go away. It is a problem for City Councils all across the nation right now," he stated. The surrounding parcels of land are still rural, with wheat, corn and beet fields and a tower in this vicinity will become the focal point of attention. He noted that a few years ago, the big concern was signs along Grand Avenue. He said he would hate to see this carried forward with the construction of steel towers blanketing the city. He urged the Council to deny the request.

RICH BUKSCH OF 2051 COUNTRY MANOR BOULEVARD said there is no way to landscape 250 feet or 150 feet tall. He said he would like the Council to ask how close this guy lives to the cell tower that he is going to build or wants to build.

DOUG MILLER OF 1931 TANNER LANE said he doesn't support the tower, agreeing with all the other comments made this evening. He felt there had to be a more suitable location for that tower than in the proposed neighborhood.

STEVE BOMAR OF 3844 PARKHILL DRIVE said he signed a petition against the proposed tower. He asked people in the audience who oppose the tower to stand for the Council, noting this is just a small number of residents opposed to the tower.

KEN STATTON RETURNED. He said he would be willing to reduce the height of the tower from 250 feet so that it will not require lighting, per FAA regulations. Mr. Statton noted that the issues of health of people and animals, the output, safety of children were brought up this evening. He offered to hold a public forum at a local hotel to provide public information/education on the wireless technology, if the Council would agree to delay action for 30 days. Councilmember Bradley asked what the high pitched noise is. Mr. Statton said that studies have shown that the RF output on a tower site is less than a microwave oven. He said he wasn't sure what the high-pitched hum was that someone referred to. If it were the sound from a motorized generator, then this would not be a problem for his tower because they have no plans to use a generator at that facility. Councilmember Brewster said he thought what residents were worried about was the noise that the mounts caused when the wind blows over them. He noted that he has been on at least a hundred towers and most of them make a lot of noise, particularly in high winds.

BRETT SIMPSON RETURNED. He said he would like to see this matter resolved this evening, so all the homeowners don't have to come back here again to protect their interests. He reminded the Council that it would not just be Mesa on that tower; it will be five or six different contractors on the tower. Mr. Simpson said the

constituents who took the time to show up this evening live here and in that area. The applicant is from out of state. He asked the Council to "stop this".

TODD TOBIAS OF 3959 FAIRMEADOW DRIVE said this tower would be suitable for an industrial area, noting their neighborhood is a residential area. He said he understands growth, etc. and added that this is not just a cell phone issue. It is an issue that is going to be an eyesore to the neighborhood and the community. He emphasized again that the Council has heard from the neighborhood and they don't want the tower there.

MISCHAL AMADEUM RETURNED. He said Mesa's offer to do a public forum is admirable, noting there is ample evidence and information and literature on the technology in terms of noise pollution, impact on property values, visual impacts etc. The wireless revolution is coming through Montana and concerns wireless Internet, wireless data communication, etc. He said it would help promote the economy and welfare of the citizens of Montana. He urged the Council to consider Mesa's offer to provide a public information forum.

FRANK SHANDLEY RETURNED. He clarified that the high pitched noise that was referred to earlier does not come from generators. It comes from the rectifiers that charge the batteries, noting they are notorious for high-pitched squeals. Almost every cell site has rectifiers on it, with the number depending on how many companies locate on a tower. Because of the frequency, dogs are more sensitive and receptive to that noise.

ALAN DANIEL OF 3054 AVENUE F said he is a flooring contractor in Billings. He said he altered the plans of his four-bedroom home to include two large decks off the back of his home to look out into the Beartooth and Pryor Mountains. He said he put a lot of sweat equity into his home and has three young children. He wants to be able to sit on those decks and enjoy the view of the mountains and wants to be able to maintain the resale value of this home when he sells it. He said the primary reason he built at this location was the equity and value of the home and the potential for increase in both due to the view and location. He said he vehemently opposes the tower.

There were no other speakers. Councilmember Iverson moved for approval of the Zoning Commission recommendation (i.e. denial) seconded by Councilmember Elison. Councilmember Kennedy said he has heard many of the issues expressed this evening expressed at other public hearings – i.e. NIMBYs (not in my backyards), etc. He reiterated that a couple of years ago when the veterinary clinic was put in that area, the neighbors were opposing that. Now they are in favor of it and they are all a part of the neighborhood. "It's very frustrating to sit up here for a long period of time and listen to how these neighborhoods do grow. Constituents change out there... I do have two cell towers that I can view from the deck in my backyard, but they are outside of my jurisdiction, outside of my constituency, outside of my neighborhood. This is the price we pay in this community. Mr. Larson has used the Walmart analogy many times and how much we don't seem to like Walmart. But look at the parking lot. Now look at the cell phones in people's hands and in people's cars are you are driving down the street. This is reality here for the Council. We have a very difficult time dealing with this issue... I'm very happy that this is a good turnout to at least help advertise that we have an issue as a community here," he stated. Councilmember Kennedy made a substitute

motion to allow for a 30-day delay (to August 27<sup>th</sup>) to allow Mr. Statton to state his facts about lights, sound, etc., seconded by councilmember McDanel.

Councilmember Elison said he understands the need for the towers but didn't think this area is right for a tower because of its residential nature. He noted that the new ordinance later on the agenda has as one of its purposes – the encouragement of locating towers in non-residential areas and in areas of the community where the adverse impacts are minimal. Councilmember Elison said, "obviously this particular tower has the greatest adverse impact on its local community of any that we have considered... This is the largest number of individuals from the adjacent community to come down in opposition." He added this doesn't look like a good place to put a tower.

Councilmember Brewster said he agreed with Councilmember Kennedy. He noted that all the noise issues from towers could be mitigated. He said many of the issues raised are not appropriate, but he did feel this location was not an appropriate place for a tower. He noted that he didn't think Mr. Statton would convince anyone to change their mind about the tower by holding a public forum.

Councilmember McDermott said she did not support the delay because there are a tremendous number of neighbors here this evening, expecting a decision this evening. Asking them to come back again in 30 days could pose an unnecessary burden on them.

On a roll call vote on the substitute motion, the motion failed 3-6. Councilmembers voting "yes" were: McDanel, Kennedy and Larson. Councilmembers voting "no" were: Bradley, McDermott, Brewster, Iverson, Ohnstad, and Elison.

Discussion resumed on the main motion. Councilmember McDanel commented that many of us utilize cell technology, digital technology, and wireless technology in our daily lives. "Most of the testimony we heard this evening is exactly the same testimony we hear on any number of issues. It boils down to we all want that technology, but we want the infrastructure that supports that technology in someone else's neighborhood. This may not be the best place for a tower; we may be able to find a better location for towers. But I want you to remember that if you want the technology, we have to support the infrastructure ... and we have to decide whose neighborhood it will go in," he stated.

Deputy Mayor Larson said it would have been nice to consider all the issues brought up this evening when the Council was discussing the general rules and code that the Council was trying to construct to address this issue, when they were talking about this issue in general. He noted that when the Council was discussing this issue (cell towers) in general, they did it to an empty room, with very little comment from the public. "I appreciate that you can be angry with us because of the standards we set, but I would also appreciate that if you have an issue that you are passionate about, that you come to some of these meetings we have – meetings we offer to the public ... We sat here night after night and we only heard from the cell phone providers, the tower construction people, the amateur radio guys, but not from the public at large... We know we want the technology. We have a choice – we either put up a lot of small towers or we put up a few big ones," he stated. He invited the audience to stay for the discussion on Item 9 later this evening. On a voice vote on the main motion, the motion was approved. Councilmembers McDanel and McDermott voted "no". The tower request was denied.

**7. PUBLIC HEARING AND SPECIAL REVIEW #703: A special review to allow the location of an All Beverage Liquor license in a Community Commercial zone on Tract B of Certificate of Survey 1136 Amended, located at approximately 300 South 24<sup>th</sup> Street West. Mercantile Kansas City, Inc., owner; J.P.M., Inc. and Engineering, Inc., agents. Zoning Commission recommends conditional approval. re: Tiara, the Crown Jewel. (Note: former Montgomery Ward Auto/Tire Center Building). (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Director Ramona Mattix said the DRC recommended approval of the request and the Zoning Commission recommended conditional approval on a 4-0 vote. The conditions recommended by the Zoning Commission are: (1) the approval for this special review only covers the former Montgomery Ward Auto and Tire Center Building, which is located on proposed Lot 2 of JPM Subdivision; (2) that an overall parking analysis of the entire mall site be submitted to and approved by the Building and Engineering Divisions prior to the issuance of any building permits to ensure that this property, along with Rimrock Mall remain in compliance with the off-street parking requirements; and (3) that the 600-ft separation requirement from any school, playground, public park, public recreation area, church or other public building be waived.

The public hearing was opened. KOTTE KINTLEY OF JACKSON, MURDOGH, GRANT & ACKERLY in Helena said she represents both the developer and licensee for the proposed establishment. She noted that the distance from the property line to the school is 664 feet. There are two barriers east of the building – the mini mall and a residential area that she hoped the Council would take into consideration with respect to the waiver. She noted that this establishment represents a new concept for Billings. It will be called The Tiara. It's not just a restaurant or retail space or a coffee shop. It's all in one – two levels, village-style. It will also offer banquet rooms with its own sound system so that these rooms could be rented for special occasions. She noted it would also provide a positive economic impact for Billings, providing at least 56 new jobs, an increase in property taxes, increased payroll, etc.

There were no other speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the Zoning Commission recommendation, seconded by Councilmember Elison. On a voice the motion was approved. Councilmembers McDanel and McDermott voted "no".

**8. PUBLIC HEARING AND SPECIAL REVIEW #704: A special review to allow the location of a Beer and Wine license (without gaming) in a Community Commercial zone on Lots 20-21, Block 1 of Murn-Morrow Subdivision, located at 1720 Grand Avenue. Mayflower of China, Inc., owner; Felt, Martin, Frazier, Jacobs and Rapkoch, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Director Ramona Mattix said the Mayflower Restaurant operated under an all-beverage liquor license. It was nonconforming and required special review. The owners sold that license and requested a beer/wine license instead. Ms. Mattix noted that is what this application is about. The DRC and Zoning Commission both recommend approval.

The public hearing was opened. KEN FRAZIER OF 208 NORTH BROADWAY, SUITE 313, said this is a unique situation. He noted the Mayflower restaurant has been at this location since 1984, the previous establishment selling alcoholic beverages and had been at the same location since 1974. No special review had ever been granted for the use; it had been grandfathered in because these establishments were in business before there were special review requirements. The Mayflower operated this restaurant and sold alcoholic beverages until 1999, when it decided to sell its alcoholic beverage license, intending to purchase instead a restaurant beer/wine license a/k/a a cabaret license. The sale was completed in January 1999. The State Legislature changed the statute and required that anyone who was selling a retail alcoholic beverage license must wait one year before they can purchase a restaurant beer/wine license. The owners did not know that a special review had never been done on this location that they had operated as a legal nonconforming use all those years. When they ceased that nonconforming use for a period of a year, they needed to then comply with the City's special review requirements. He noted there would be no change to the facility or the location. The owners are simply seeking a special review to allow them to sell beer and wine only with no casino. Similar businesses exist on Grand Avenue and there is no 600-foot separation waiver requirement.

There were no other speakers. The public hearing was closed. Councilmember Elison moved for approval of the Zoning Commission recommendation, seconded by Councilmember Iverson. Councilmember Kennedy said he would abstain from voting because he is a property owner across the street from this establishment. On a voice vote, the motion was unanimously approved, with Councilmember Kennedy abstaining.

**9. PUBLIC HEARING AND FIRST READING ORDINANCES providing that the Billings, Montana City Code (BMCC) be amended to revise Sections 27-305: District regulations, residential uses; 27-306: District regulations: commercial and industrial uses; 27-619: Standards for amateur radio antenna support structures, and 27-620: Standards for wireless communication facilities AND adding a new section to the Billings, Montana City Code, Section 27-621: regulating the siting of broadcast facilities. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Candi Beaudry of the Planning Department said there are five sections of City Code that are recommended for revision and adoption of a new section. Section 619 regulating amateur radio antenna support structures has been before the Council previously. It was denied at the previous second reading because staff wanted to go back and revisit the effects of the ordinance on radio and television broadcasters. Section 619 has changed since the Council has last seen it. An applicability section has been added, at the request of the amateur radio operators. It exempts existing amateur radio facilities, grandfathering in existing facilities. Amateur radio antennas greater than 100 feet are required to undergo special review; those under 100 feet are allowed in most districts.

Ms. Beaudry said Section 620 has also changed from the previous time. The tower separation section has changed from a separation distance of ½ mile for towers 50-200 feet in height. The Zoning Commission recommended that this requirement be

eliminated and remain with a 1-mile separation for all towers over 50 feet. The ordinance also allows for alternatives to building towers. Where there are areas that would not allow another tower, there are options to co-locate, to construct alternative antenna support structures, add roof mounted antennas, etc. The alternative structures would not require special review. Ms. Beaudry says the other change also addresses the findings of District Court as of this past Friday, in a lawsuit Mesa v. County Commissioners, in that the review period for special review has been shortened, as has the period for construction and the number of extensions allowed. Previously all of those items combined would total three years. The combined time period has been condensed to 1 ½ years so that someone cannot have special review approval and essentially “lock up” a site. She said the ordinance is also very clear that these regulations would apply to approved as well as existing structures.

Section 621 is the new section on regulating radio and television broadcast facilities. The broadcasting industry previously pointed out some unintended consequences of the wireless communication facility ordinance that negatively affected radio and television broadcast industry. Representatives of that industry were invited to a public meeting and workshop and were fortunate to work with knowledgeable people who were willing to assist with drafting new ordinance language that met both the City’s objectives and their needs as well. This section closely mirrors Section 620, but has significant differences between wireless communication facilities and broadcast facilities. Broadcast facilities are typically located in higher elevations, not in the valley. They also are usually located in remote areas and are not amenable to co-location because of their frequency requirements. AM transmitters have a ground radial system that is part of the transmitting network, which causes concerns for fencing and landscaping these facilities. The Zoning Commission has recommended approval of the staff recommendations – with certain changes based on comments from the industry. The only addition that staff would recommend is exempting radio and television structures from landscaping requirements when located in an Agricultural-Open Space zoning district. She noted that the County Commissioners will be adopting this addition and added that it is difficult to maintain landscaping in the remote agricultural locations. Even a perimeter fence of evergreens would require irrigation and most places do not have access to irrigation.

Sections 305 and 306 are matrices of the permitted and uses requiring special review in all districts. This ordinance really tries to encourage alternative approaches to towers as well.

The public hearing was opened. BOB RIGHTMIRE OF 839 PARKHILL DRIVE said he is an amateur radio operator. He said he worked on this ordinance with the Planning Dept staff, noting that the regulations for amateur radio operators are ones they can live with. He supports the three separate sections to reflect the engineering and technical aspects of the media and industries.

TERRY WHITESIDE OF 372 ZION CIRCLE said he is an amateur radio operator also. He complimented Ms. Beaudry, the Zoning Commission and the broadcasters for their work on the ordinances. He said he supports the amateur and broadcasters sections of the proposed ordinances.

MARTY WALLIS, NO ADDRESS GIVEN said he is general manager of KTVQ-TV and noted that the broadcast section of the proposed ordinance meets their needs.

He expressed his appreciation for the opportunity to work with staff on the proposed ordinance.

MISCHAL AMADEUM OF MISSOULA, MT said he represents Summit. He noted that the 1-mile radius is an arbitrary number and could and might put the Council in an unenviable position at some time, where an application complies with the zoning code but is adjacent to, near by or within a residential neighborhood. The other issue he pointed out is that involving using existing buildings for alternative structures. He said Billings is predominantly a low-rise community. Those buildings with more than one or two stories and not residential are government type structures – schools, water tanks, ballfields, etc. He reiterated that they approached the Water Dept in Billings about a structure on one of their tanks and they were not interested. Mr. Amadeum said he would encourage the Council to require the other functions within the city structure to be more receptive to these requests. He said they would be very receptive to working with entities to locate alternative structures on existing buildings. He said it is up to them to provide the service and they will put forth the effort and expense to make the systems work for the local entities.

JOHN WEBER, 203 3<sup>RD</sup> AVENUE NORTH said he is the Chief Engineer of KTVQ-TV. He thanked the Council for denying the first “go-round” on these new regulations several months ago. It gave the broadcast community an opportunity to work with Ms. Beaudry and the Planning staff to craft an ordinance that meets the City’s and industry’s needs. The regulations are ones that everyone can live with he noted, and they support the proposed regulations.

MARK HULLER, 2045 OVERLAND AVENUE, said he is the Chief Engineer of KULR-TV. He said he supports the ordinance as drafted by the Planning staff. He added that the lack of landscaping requirements for Agricultural-Open Spaces is a matter of landscaping being a fire issue. Mr. Huller said they take serious steps to keep the towers and guide wires clear of any vegetation. He noted the reason for that is that lightning could travel down guide wires and cause fires. Even a mild grass fire could weaken the guide wires for their towers, so they keep the areas around the wires and towers cleared.

DON HOLTZEIMER OF 4705 ALKALI CREEK ROAD said he supports the proposed rules and regulations generated by the Planning Dept. He also thanked the Zoning Commission for its support as well.

OSCAR HEINRICH OF 4210 WELLS PLACE said he supports the new rules and regulations. He thanked the Planning Staff, the amateur radio operators and the broadcasters for working together and compromising to create a set of regulations that everyone could live with. He said the City should start asking the cell tower providers if they have looked at everything in the area before attempting to build another tower. He urged the Council to approve the ordinances.

KEN STATTON, 6400 ARLINGTON BOULEVARD, FALLS CHURCH, VA said he represents Mesa Communications. He said he appreciated the efforts of the staff to reach a compromise solution. He said he specializes in leasing antenna space so he has the interest of all the cellular companies, the broadcasters, the LMB companies, the SMR companies, the paging companies, and the two-way companies – if they have a wireless infrastructure, “I have an interest in leasing them some antenna space. Reference was made earlier in the evening to the court decision that was handed down



last Friday, of which I was involved in the suit, where we filed against Yellowstone County. The caution I would give you when you consider this ordinance – if you look at the application that we had before you tonight that we were denied on, we are compliant with the new ordinance as well, technically. That doesn't mean that the people that stand up and voice opposition to it – that you don't have to listen to them. What I will tell you is the separation requirements that you do have in your ordinance I can take exception to and I would make an argument that if you deny me based on that, you are creating a monopolistic intent to the carriers that currently have towers built. As a company that just built seven new towers, I applaud you for doing that. However, I think you are leaving yourself open for grounds to have that overturned. We used an expeditious manner in the courts and went and got our decision Friday because we'd made a distinction between existing and proposed towers and I will tell you that unlike what was said tonight, I can make the same argument against an existing tower if you are going to deny me the ability to build when a competitor had the right to do that. I would ask you to consider that separation limit... I would suggest that you have your attorneys look at that and would suggest that maybe what you put in your ordinance is a requirement for co-location, to accommodate your goals as opposed to a specific mile separation creating a monopolistic environment for existing carriers," he stated.

J. R. REGER OF 2708 PALM DRIVE said he has spoken to the Planning Dept staff at length regarding the tower separation clause. He noted that Ms. Beaudry was insistent on keeping the governing body's right to waive the one-mile separation IF there was no co-location possibilities or if it was found that no existing or approved antenna support structure within the required separation distance would be suitable for the carriers. He said the one-mile separation requirement doesn't promote large tower building, just fewer towers.

There were no other speakers. The public hearing was closed. Councilmember Bradley moved for approval of the Zoning Commission recommendation AND including the staff recommendation of including the exemption from landscaping requirements for radio and broadcast facilities located in Agricultural-Open Space zones, seconded by Councilmember Kennedy. On a voice vote, the motion was approved. Councilmember Brewster voted "no".

**ADJOURN** – With all business completed, the meeting was adjourned at 10:11 p.m.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Michael A. Larson                      DEPUTY MAYOR

ATTEST:

MINUTES: 7/23/01

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