

REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, MAY 22, 2000

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Charles 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 Mark Elison.

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

MINUTES – May 8th. The Minutes were approved as printed.

COURTESIES – Asst. City Administrator acknowledged two department heads who will be leaving the City. Kerwin Jensen, the current Planning Director will be leaving the City to take a job in Summit County Utah. Mr. Jensen worked with the city and county as Zoning Coordinator, Senior Planner and most recently the Planning Director.

Parks Director Mike Hink started with the City as a seasonal employee in 1960. He has been Parks/Recreation Director since 1985 and has over 40 years with the City. Mr. Hink will be retiring to Scottsdale, Arizona.

PROCLAMATIONS –Mayor Tooley. **None.**

BOARD & COMMISSION REPORTS – Councilmember Kennedy said this year's Fourth of July fireworks celebration would take place at two sites in Billings: MetraPark and Stewart Park. He reminded the Council that the Gold WingDing event will be here that weekend and spotlights the Kenny Rogers concert. Fireworks will be held afterwards at the Metra as well as the annual display at Stewart Park.

ADMINISTRATOR REPORTS – Bill McGill.

Assistant City Administrator Bill McGill extended an invitation to the Mayor and Council to attend a meeting on the Downtown Multi-Use Redevelopment Project on Wednesday, May 24, 3:00 p.m. in the Montana Bank Building.

Mayor Tooley noted that the applicant – Mr. William Novak has requested withdrawal of his request in ITEM #8.

Mr. McGill noted there was a late addition to the Consent Agenda (ITEM U) for Heights Town Center Right-of-Way and that the recommendation for Item H had changed.

He noted also that a copy of the Addendum to the Preliminary Development Agreement for the Downtown Mixed Use Parking Development had also been placed on

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their desks this evening. This was in conjunction with Item #2 on the Agenda this evening.

CONSENT AGENDA:

1. A. Bid Awards:

- (1) **W.O. 93-19, Montana Avenue Landscaping STPE 1020(12) – Billings.** (Opened 3/28/2000). (Delayed from 4/10/2000, 4/24/2000 & 5/8/2000). Recommend Scott Long Construction, \$336,955.75 and Change Order #1 for -\$86,501.39, contingent upon MDOT approval.
- (2) **Repair of Laminate Surfaces at Airport.** (Opened 5/9/2000). Recommend Wood-Wise Cabinets, Inc., \$19,500.00.
- (3) **One New, Current Model Wheeled Excavator for Solid Waste Division.** (Opened 5/9/2000). Recommend Tri-State Truck and Equipment, Inc., \$135,868.00.
- (4) **Playground Equipment and Playground Site Amenities for 12 Park Playground Projects funded by G.O. Bond Issue approved 11/2/99.** (Opened 5/12/2000). Recommend Dakota Fence Company, Schedule A: \$159,115.00; Schedule B: \$34,343.00 and Schedule C: \$35,407.00.

B. Change Order #1, Water Improvement 2000 Project, COP Construction, \$165,176.25. (For Airport water line to executive hangar area.)

C. Change Order #1, W.O. 98-09: Rose Park Bridge, Edward T. Copps Construction, \$3,227.77.

D. Change Order #1, W.O. 95-14: Lake Elmo Road Improvements, JTL Group, \$55,644.06.

E. Contract for professional services, W.O. 99-13: Storm Drainage Assessment – East End Industrial area, MSE-HKM, Inc., \$34,843.00.

F. Contract for W.O. 99-07: Right-of-Way Acquisition Services, DuBray Land Services, Inc., \$8,575.00, right-of-way acquisition along Lake Elmo Road: Main

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Street to Hilltop Road.

G. Addendum to Lease Agreement with Downtown Billings Association for fenced area in Park One for storage purposes, \$0.00, 2-year extension. (Term: 7/1/00 to 6/30/02.)

H. Acceptance of Right-of-Way Agreements and Warranty Deeds for W.O. 95-08:

- (1) **BID AWARD: W.O. 95-08, Phase I: Shiloh Road & Grand Avenue Intersection Improvements.** (Opened 3/28/2000). (Delayed from 4/10/2000, 4/24/2000 & 5/8/2000). Recommend ~~Gray Construction Company, \$558,623.59~~ rejecting all bids.
- (2) ~~Parcel 21: 9,343 sf in the N/2 of Tract 4, C/S 2702, Yegen Grand Avenue Farms, Inc., \$28,029.00. DELETED.~~
- (3) ~~Parcel 22: 9,490 sf in the N2 of Tract 3A, Amended Tracts 1-8, C/S 2315, Peter Yegen III ETAL, \$28,470.00 DELETED.~~

I. FY 2000-2001 Assessment Rates for Special Improvement Light Maintenance Districts (SILMDs), \$1,023,936.

J. Purchase of HUD owned property under HUD's new DOLLAR HOME Initiative, 324 South 34th Street, \$1.00.

K. Acknowledging receipt of petition to change the name of Baltusrol Road to Black Diamond Road and setting a public hearing date for 6/12/00.

L. Resolution 00- 17567 making FY 1999/2000 Third Quarter budget amendments.

M. SID 1345: Street and Utility improvements in Wentworth Drive:

- (1) Professional Services Contract, Morrison-Maierle, Inc., \$37,773.00
- (2) **Resolution 00-17567** of Intention to Create the District and setting a public hearing date for 6/12/00.

N. Resolution of Intention 00-17569 to create SILMD 272: Forest Park Subdivision, 5th and 6th Filings and setting a public hearing date for 6/12/00.

O. Resolution 00-17570 authorizing the issuance of \$650,000 W.O. 99-02: Broadwater Subdivision Improvements, Phase II bonds, calling for a public sale on 6/12/00 and authorizing the pledge of the revolving fund as security.

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P. Final bond resolution 00-17571 for \$916,000 Special Improvement District Bonds for SID 1340 (Cenex Park Subdivision).

Q. Final bond resolution 00- for \$470,000 Special Improvement District Bonds for SID 1341 (Circle Fifty Subdivision).

R. Resolution 00-17572 transferring \$16,000 Council Contingency Funds to the Community Center for a deficit due to decreased revenues.

S. Final plat of Lake Hills Subdivision, 10th filing.

T. Bills and Payroll.

LATE ADDITION:

U. Acceptance of Right-of-Way along Lake Elmo Drive, Bench Boulevard and Lincoln Lane – as shown on the plat of Heights Town Center.

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

Councilmember Kennedy moved to ADD ITEM U to the Consent Agenda, seconded by Councilmember Johnson. On a voice vote, the motion was approved. Councilmember Elison moved to add the substitute recommendation on ITEM H to the Consent Agenda, seconded by Councilmember Kennedy. On a voice vote, the motion was approved. Councilmember Johnson voted “no”.

Councilmember McDermott separated ITEMS I and R. Councilmember Johnson separated ITEM H. Councilmember Deisz separated ITEMS L and U.

Councilmember Kennedy moved for approval of the Consent Agenda except ITEMS H, I, L, R and U, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of ITEM H, seconded by Councilmember Iverson. Councilmember Johnson said he separated the item to draw attention to the cost and that this was only one intersection along Shiloh Road. Councilmember Bradley asked why the bids were being rejected. Mayor Tooley replied that the final details of the Right-of-Way Agreements had not come together and time was running out to award the contract. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of ITEM I, seconded by Councilmember Iverson. Councilmember McDermott asked what percentage of increase

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these rates represented. Public Works Director Kurt Corey said it varied by districts, with some experiencing increases greater than others did. The increases are necessary for the reserve funds for each district. Councilmember Deisz asked what percentage of the total operation are the reserve funds. Mr. Corey replied it is based on a formula that establishes a reserve fund that would replace 1/3 of the system. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of ITEM L, seconded by Councilmember Iverson. Councilmember Deisz asked what major budget amendments are being made? Finance Director Bob Keefe replied the budget amendments include:

- (1). Increase revenue and expenditure in Fund 249, for the Montana Board of Crime Control regarding two police training grants, \$11,643.00.
- (2). Increase revenue and expenditure in the Public Safety Fund, Fund 150 for off-duty revenue and expenditure for officers hired by outside organizations to work in their off-duty hours, \$27,000.
- (3). Increase expenditure budget in Fund 719, the Police Investigative Equipment Donations to allow expenditure of the cash balance, \$3,000.
- (4). Increase revenue and expenditures in Fund 490, the Parks General Obligation Bonds Fund, \$1,700,000 increase in revenues through the bond sales and \$1,075,000 expenditures for this fiscal year. The balance will be budgeted in the next fiscal year
- (5). Increase revenue and expenditure in Fund 276 for the HUD grant for the Billings Depot, a pass-through grant approved by the Council in January, \$2,000. The revenue increase is \$693,750 and the expenditure increase is the same.
- (6). Increase in Municipal Court, \$25,000 to reflect the revenues due to the recent warrant roundup.

On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of ITEM R, seconded by Councilmember Iverson. Councilmember McDermott said she sees this as a situation where the Yellowstone County Council on Aging and the Parks Department “got into a fight over who was going to have their offices in the Community Center. Neither side won. The Council moved out and the Park Dept does not have the money or the position to move their offices. Since both sides apparently forgot that building is a Community Center and not an office building for either the City or the County-supported programs. The two outcomes we’ve had from this fight are: we have empty, unused space with no rent payments coming into the City and we have a lunch program for seniors that has gone so far downhill that the food is frequently inedible. Believe me, I know because I’ve eaten there sometimes. I think we need to make the park department and the Council on Aging accountable for the problems they’ve caused. I don’t think we need to bail them out. I think our contingency money should be spent elsewhere,” she stated. Mayor Tooley asked staff what the money will go for – the support of the City employee who helps to maintain that facility. Assistant City Administrator Bill McGill said it merely is an accounting change for

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the loss of revenue the City was to receive. Councilmember Johnson asked if it was a delay in accounting – for a term of six months, i.e. a catching up or finalizing bookkeeping. Mayor Tooley reminded the Council that this item came before them two weeks ago. The Council voted not to approve it because they were told that the Yellowstone County Council on Aging would be delivering the correct amount of money they owed to the City the following day. Finance Director Bob Keefe explained there were two issues: (1) the YCCOA owed the City a delinquent rent payment of over \$16,000 – which they did pay on the next day. (2) the other issue was that when the budget was adopted, it anticipated \$44,000 in rental income. They moved out after the budget was adopted and agreed to pay \$27,000. Without some action being taken tonight, the fund will have nearly a \$16,000 deficit.

Councilmember Deisz said he believed what Councilmember McDermott said was true – that there was a fight between the YCCOA and the Parks Dept. and the Council is caught in the middle. He said the money should come from YCCOA and also agreed the food is inedible. Councilmember Johnson said the honest attempts at improving the food program seem to be gradually and continually improving. Councilmember Iverson said the budget must be balanced, no matter who is right and who is wrong. On a voice vote, the motion was approved. Councilmembers McDermott, Deisz and Elison voted “no”.

Councilmember Kennedy moved for approval of ITEM U, seconded by Councilmember Iverson. Councilmember Deisz asked if this right-of-way is coming off that property only. Public Works Director Kurt Corey said in its entirety the right-of-way is coming from the Heights Town Center and no other property owners. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. SITE SELECTION for the Downtown Mixed Use Parking Development and Addendum to the Preliminary Development Agreement to delay action. (Public hearing held 5/8/2000). Mayor and Council recommend delaying action to 6/12/00. (Action: approval or disapproval of recommendation).

Councilmember Iverson moved to delay the action until June 12, seconded by Councilmember Kennedy. Mayor Tooley asked if the change in the contract needs to be approved. City Attorney Brent Brooks said a separate motion needs to be made to change the contract as well. Mayor Tooley as if it made sense for Councilmember Iverson to move to accept the addendum, which in itself delays action until June 12. Mr. Brooks said that could be done to avoid having two motions. Councilmember Iverson restated her motion to approve the addendum to the Preliminary Development Agreement, which would delay action to June 12. Councilmember Kennedy concurred with his second to the restated motion. Councilmember Deisz asked if the revised operating agreement of Newport LLC is

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available. Curtis Wagner of the LLC group said the operating agreement is being revised because of one member's withdrawal from the group. It should be approved and available to the council before the June 12 meeting. On a voice vote, the motion was approved. Councilmember Johnson voted "no".

3. PUBLIC HEARING AND RESOLUTIONS 00-17574A thru 00-17574C changing the names of portions of Wicks Lane, Hilltop Road and Alkali Creek Road. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

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

4. PUBLIC HEARING AND RESOLUTION 00-17575 annexing Tract E, C/S 1011. (Annex #00-02). Premier Development, Ltd. Owner/petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)

Zoning Coordinator Jeff Bollman said the subject property is located at the southeast corner of Colton Boulevard and 34th Street West. It is surrounded on three sides by the existing City limits. The tract would be a continuation of the Wyndham Park Subdivision development further to the west over to 34th Street West. Councilmember Deisz asked what the conditions are. Mr. Bollman said the condition is the standard condition for property that is not subject to subdivision review and that is that a Development Agreement be executed or a Subdivision Improvements Agreement be executed with the property that would specify responsibility for infrastructure improvements.

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

5. PUBLIC HEARING CONTINUED AND SPECIAL REVIEW #669: a special review to allow the placement of an All-Beverage liquor license in a Community Commercial zone on Tracts A1 and A2 of C/S 1136 2nd amended and Tract B of C/S 1136 amended, located at 2520 Central Avenue (former World West Theater). Macerich Rimrock Limited Partnership, owner, Macerich Company, agent. Zoning Commission recommends conditional approval. (DELAYED from 1/10/2000, 2/14/2000, 3/13/2000, 4/10/2000.) (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this request is for the former World West Theater building. He said it is in the northwest corner of the Rimrock Mall property and

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adjoins Stewart Park on the west. The three conditions recommended by the Zoning Commission include: (1) the special review approval shall be limited to a maximum floor area of 10,707 sf, as illustrated on the submitted site plan; (2) the drive approach that is immediately adjacent to the southwest corner of the building shall be closed to improve stacking at the approach from the main parking lot to Stewart Park Drive; 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 DRC did not come to an agreement on recommendations to the Zoning Commission, so made no recommendation.

Councilmember Deisz asked what the average size of the liquor license buildings that the council has been approving. Mr. Bollman replied he did not know exactly, noting he thought this building was probably one of the larger ones. Councilmember Kennedy asked if the parking requirement for a theater is the same as for an establishment with an all-beverage license. Mr. Bollman said he didn't know what the parking requirement is and could look that up later. Councilmember Johnson asked if the street between the existing theater (Windsong) and the former theater is 28th Street and if that drive approach would remain open. Mr. Bollman said there was some discussion about moving that traffic signal, but no decision has been made to do so. Councilmember Johnson said it was his understanding that the mall had set aside dollars to help change the traffic flow and re-educate theater users to go south instead of west after leaving the theater. City Engineer Brian Borgstadt replied that when Windsong Theater was built, they set aside money to remove the signal at that exit. He noted that the bank opposed moving the signal and the issue has been placed on hold. Councilmember Bradley asked if the bank participated in the payment for that signal. Mr. Borgstadt replied he thought the bank had participated in paying for the signal.

The public hearing was opened. KENDALL MERRICK OF 2212 QUINN HAVEN said she is the manager of Rimrock Mall. She conveyed her personal apology for taking "any unnecessary council time on this issue." She said it was their intent to put a quality restaurant in this location and to stand with the restaurant operator at this meeting. But negotiations did not work out. "Our purpose in seeking a special review for this location is to escalate the opening of a restaurant in the former World West building. Negotiating a lease can be a lengthy process, with some leases requiring over a year to complete. Prior approval of this location will allow us to more effectively market the space, resulting in greater interest and ultimately an earlier opening of a restaurant," she stated. This approach is in contrast to their marketing the space as a great space for a restaurant, but they didn't know if a beverage license was possible on the site. "We believe a restaurant is the right and ideal use for this location. Restaurants are in integral part of a shopping center development. They encourage evening traffic and encourage shoppers to remain for longer periods of time. Research shows that lengthened visits translates into greater sales. Therefore all mall merchants can benefit from this type of establishment," she stated. The community gains from an aesthetically upgraded building as well. It would

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also serve to increase employment and encourage new development in an established area, thereby contributing to curbing urban sprawl. Councilmember Deisz asked what has changed in the last five months, after four previous delays. Ms. Merrick said they previously requested the delays because they were working with a particular merchant, who each month would tell them they were going to sign the lease agreement. However, that merchant didn't work out and they do not have a lease in hand. They are seeking approval so that they can market the site as a prospective site for a new restaurant.

MIKE DOCKERY OF THE CROWLEY LAW FIRM said he represents the Macerich Rimrock Limited Partnership, the applicant. Mr. Dockery said this is a somewhat different request than the Council is used to, in that there is no specific tenant at this time. The city code allows a property owner to request special review for property they intend to alter or remodel for uses that include alcoholic beverages. The code also requires a 600-ft separation between this site and schools and parks. He noted that the boundaries were drawn around the entire exterior boundary of Rimrock Mall, meaning that Central Heights Elementary School is clearly on the other side of 24th Street West. There is no reason to believe that this restaurant would affect the school or its current traffic patterns. The site is also adjacent to Stewart Park, a significant portion of which is used for softball/baseball complexes. The retail uses in the mall and Stewart Park have co-existed for a great number of years without any conflict. He said the restaurant at this site should have no impact on the uses at Stewart Park. He noted that the softball association obtains a license each year to sell beer and alcoholic beverages at some of its events, including tournaments. He reminded the council that they have granted the approval of seven prior special reviews for the sale of alcoholic beverages for a number of locations including: CJs, Sidney's and the Sleeping Giant. That doesn't mean the council should necessarily approve this location, but it indicates that development of this site for a restaurant with the sale of alcoholic beverages is compatible. Mr. Dockery said the conditions recommended by the Zoning Commission are acceptable to them. He noted that the gambling issue has come up several times. "I was asked to pass on to this council, that if gambling is an issue, Rimrock Mall is willing to live with the condition imposed by this council that the site cannot be used primarily for gaming or casino purposes. The purpose of this request is to develop a nice restaurant that as an incident sells alcoholic beverages for a dinner and movie night. It is not intended to be a casino and gambling operation," he stated.

MICHELLE SCHULTZ OF 3955 OLYMPIC BOULEVARD said she handles marketing for the mall. She said it is the mall's intention to open a restaurant at this location, not a casino. She said they currently have a sufficient amount of casinos in their development. More casinos would not draw more people to the mall, but the addition of a unique restaurant would. "We believe that drawing customers to the mall is our opportunity and responsibility as the landlord. With population growth of Billings projected at a rate below the national average, it is important for the mall to continually evolve and improve to attract more customers and increase their frequency of visits. This is

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paramount for continued growth and success for the individual businesses in the mall, many of which are locally owned and employ residents of Billings,” she stated. She read a letter from John Weber, a member of the Board of Directors of the Billings Men's Slow-Pitch Softball Association. They did not feel that this business would have a negative impact on the park.

JOHN MOBERLY OF 212 QUIET WATER AVENUE said he is a tenant in the mall. He saw this as an opportunity to increase evening sales. The triangle of movie, shopping and dinner would keep people in the area longer, increasing their sales. He supported the request.

DAVE BEEL OF 2404 AVALON ROAD said he is the owner of Fuddrucker's Express and Orange Julius in the mall. He said he wanted to express his support for the Macerich Company and their request and to voice his excitement about the potential new restaurant. He agreed with Mr. Moberly that evening sales do slack off some and they need more of that entertainment energy “to put them over the edge”. He stated that you can hardly get into CJs on a weekend night. Mr. Moberly noted there are few full-service restaurants that would even consider a site without a liquor license. Unfortunately in Montana, the cost of a liquor license necessitates gambling revenues to offset it. He supports the request, noting that the gambling won't be the primary draw, just a necessary thing to justify the cost of a liquor license. Developing the entertainment center would enhance the mix in the mall as well.

PHIL CARLSON from the Macerich Company in Longmont, Colorado said they are the fourth largest owner and developer of malls in the country. They are unique in that respect to enclosed malls. “We always try to buy existing property and then make them better through redevelopment. We bought Rimrock in 1996, with that same intent. We've made numerous improvements in the mall to date. The review process we are discussing here tonight gives us another opportunity to further develop and improve Rimrock Mall and its value to the community. Our intent is to redevelop the former theater site into a family restaurant. Eating out ... naturally goes hand in hand with movie attendance, a day at the park or shopping time. Many quality restaurants make a substantial part of their profit from their liquor license and we want to make Billings and Rimrock Mall attractive to those merchants as possible. Any use here must meet several diverse criteria: (1) it must be good for the greatest number of customers, (2) it must be good for the mall and the surrounding area and our investors and (3) it must be good for the business owners. All three criteria must be satisfied in order for it to be considered a real success. While a casino would be desired by some customers and likely be profitable for its owners, we do not believe that it would help sufficient synergy with the surrounding area to generate the traffic and sales that we seek in this location. We believe that a stand-alone casino is a destination that is not nearly as likely to promote cross traffic with the neighboring businesses as other uses, primarily a restaurant would. We're convinced that a quality restaurant is the right answer here. It will not only take advantage of the traffic generated

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today by the movie theater and the adjacent mall, but would be strong enough to serve as a customer draw in its own right. The uses go hand-in-hand. Our opportunity here is to create the right fit for the businesses involved and produce results that are greater than the sum of the parts. However, due to the particular nature of Montana law, we need to be able to represent that the site is already approved for the all beverage license application so that prospective tenants have confidence to proceed with the negotiations and then make the application for the license on their own merit," he said. He urged the council to approve their request to help them attract that quality sit-down restaurant.

CONNIE WARDELL OF 1400 POLY DRIVE said a community value is at issue here. The community value is that of no liquor sales within 600 feet of a school or a park. She said there is an ordinance to this effect and if it is no longer a community value to get rid of the ordinance. Otherwise the council should stick to it. "I just get really tired of sitting through these meetings and seeing people come forward and just assume there will be a waiver for the liquor license," she said. There is also a traffic nightmare being created there that no one is addressing.

There were no other speakers. The public hearing was closed. Councilmember Elison moved for approval of the Zoning Commission recommendation, seconded by Councilmember Kennedy. Councilmember Elison said the Council attempted to alter the 600-ft. separation requirement in the past, but it was never completed. In this case, the ordinance doesn't work well because you are talking about a 600 ft radius of the entire Rimrock Mall property, which would include car dealerships on the far southeast corner of that property that are probably 2500 ft from the proposed development. "The school is in a similar situation, well over 600 ft from that location and across 24th Street West. Barriers between the school and the proposed location are so extreme that if you were at the school, you would probably go someplace else rather than there, simply because of the barriers that exist. The park is another issue. It's been noted that liquor is served at the park quite frequently... The potential for a casino there is problematic. It is a problem we continue to deal with because the state has linked gambling and liquor that the two are inseparable in our state – which is a serious problem for all local governments, not something we can do anything about. In this case, I don't have too much fear because we are dealing with a mall, which involves large numbers of interested parties, not merely the owner or operator of this particular property. The lease agreement that would be signed would undoubtedly be designed to protect the current tenants of the mall and its profitability, rather than simply a liquor license that was granted to an individual property with an individual owner who may determine at a future date that their economic benefit is to go to a stand-alone casino. I think the company that we've heard from today, it is in their best interest to avoid putting a casino in that location... I don't see this as adding alcohol in a place we are trying to keep it out; there are other restaurants and liquor licenses that exist within 600 ft of Stewart Park... I think this is an opportunity to bring business into Billings," he stated.

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Councilmember Bradley asked for a clarification on the council's ability to restrict gambling from this site. City Attorney Brent Brooks said the City cannot control the number of gaming machines or the extent of gaming in that facility. "Rimrock Mall can certainly, in a private lease agreement with any particular owner, can do that if they so desire, but we do not have the authority under this special review. The State is very strict with their controls of gambling and they are very cautious about how much control they give to local government," he stated. Councilmember Bradley said he didn't know why the City would want to do that, since the State would have given them that right.

Councilmember Deisz said he opposed the request, primarily because after five months of delaying, "we hear nothing new this evening, from what we could have heard five months ago. They still don't have a tenant and we don't know who we are going to be turning the liquor license over to. It does run with the property and our ordinance says within 600 ft. Mr. Elison, I can agree with you on the school and on the church, but this isn't 600 feet away from the park; it's ten feet away from the park. I think we have an obligation to uphold this part of our city laws. This is also a much larger building site than we have been approving with liquor licenses, i.e. casinos and we still don't know the person or company we will be dealing with. Finally, the traffic in this area is unbelievable. It isn't just one or two days out of the year. Drive over there any day and see how much traffic is parking in that lot right now. It's very congested as it is right now," he stated.

Councilmember McDanel said the sale of alcohol within the park itself is permitted on a year-by-year basis. "If there become problems with that, we can terminate the process of permitting that. It is not the same as granting a liquor license to a property owner, where that license runs with the property for all time. It's interesting to me that so many people who speak, including when we talk amongst ourselves, one of the arguments we make in approving these kinds of things is that we start listing all of our past mistakes. CJs, all the casinos within 600 ft of Stewart Park or within any other school or park in the City. We approved one not long ago on Grand Avenue... some of the arguments I heard from this council were, 'look at all the other casinos along there in the same neighborhood'. What a horrible thing we have sunken to in terms of how we justify what we do, by looking at our past mistakes and hoping to repeat them. Finally a commentary on we as people, as members of this community and as business people. How low we have sunk in that we cannot a family restaurant unless it includes alcohol and gambling," he stated.

Councilmember McDermott said she has consistently voted to uphold the 600 ft separation and she intends to vote to uphold it tonight as well. On a roll call vote, the motion failed on a tie vote. Councilmembers voting "yes" were: Elison, Bradley, Kennedy, Iverson, and Johnson. Councilmembers voting "no" were: McDermott, Deisz, McDanel, Tooley, and Ohnstad. The special review fails.

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

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#659: a zone change from Residential Multi-Family and Residential--15,000 to Community Commercial on Tracts 1-2, C/S 1882, located at 345 Orchard Lane. Tom Craft, owner. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the subject property is located on the east side of Orchard Lane. Surrounding zoning to the north is Controlled Industrial; to the west, south and east is mainly residential zoning districts and public zoning for Optimist Park. He noted there are some non-conforming commercial establishments in residential zones along Orchard Lane. Mr. Bollman said this property has been before the City Council on two previous occasions. Both of those times the DRC and Zoning Commission recommended denial and both times the applications were withdrawn by the applicant. This property is before the Council again tonight because the existing use is an illegal use for the current zoning. A wrecker dispatch facility is located on the property at the present time, housed in an existing structure, applied for and permitted as a residential garage. It does not meet commercial building codes and the site does not meet commercial site development standards. The DRC recommended denial again. The Zoning Commission has however recommended approval because: (1) no one spoke against the application at the Zoning Commission hearing and (2) despite the existing illegal use, they felt it was generally appropriate for this site.

Councilmember McDermott asked about the status of the neighborhood plan for the Southwest Corridor Task Force area. Mr. Bollman said the neighborhood was not ready to do a plan the last time the Planning Dept contacted them.

The public hearing was opened. TOM CRAFT, NO ADDRESS GIVEN, said he is the owner of the property. He said he has a commercial use that would serve as a buffer zone from the other larger commercial uses. Mr. Craft said he lost his lease at 8th and Central a couple of years ago and owns Tom's Towing. He said he is proposing to operate a wrecker and emergency service dispatch service from the facility.

LEON PATTON OF 453 NEWMAN LANE, said he is the chairman of the Southwest Corridor Task Force. Mr. Patton said the task force voted in favor of this request.

There were no other speakers. The public hearing was closed. Councilmember Bradley moved for disapproval of the Zoning Commission recommendation, seconded by Councilmember McDanel. Councilmember McDermott said she wished there was a neighborhood plan in place to rely on. "Without it, I have to rely on the Development Review Committee and support them. They say they cannot support the zone change. I appreciate that the task force has asked for approval of the zone change, but I just feel that it can open ... up to strip commercial and industrial zoning and I just don't think Orchard Lane needs that right now," she stated. Councilmember Deisz said he attended the last meeting of the Southwest Corridor Task Force. "Although we were talking about sewers on Hallowell, a few people did come up and comment about this. I got the feeling from dealing with those people at that meeting that they were in support of this," he stated. On a

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roll call vote, the motion failed 3-7. Councilmembers voting “yes” were: Bradley, McDermott and Ohnstad. Councilmembers voting “no” were: Deisz, McDanel, Kennedy, Tooley, Iverson, Johnson and Elison.

Councilmember Elison moved for approval of the Zoning Commission recommendation, seconded by Councilmember Kennedy. On a voice vote, the motion was approved. Councilmembers Bradley and McDermott voted “no”. The ordinance was approved on first reading.

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #660: a zone change from Community Commercial to Controlled Industrial on Lots 3-12, Block 171 O.T., generally located at the southwest corner of 3rd Avenue South and South 25th Street, Gerald Neumann, Darrell Aldinger and Stephen Stokkee, owners. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the subject property is at the southwest corner of South 25th Street and 3rd Avenue South. It is caddy corner from two previous zone changes from Community Commercial to Controlled Industrial. Many of the uses in this area are highway commercial and controlled industrial uses. The Zoning Commission and DRC are both recommending approval. Councilmember Johnson asked what the intended use is. Mr. Bollman said there are three owners, but one of the potential uses is a shop for a plumbing contractor.

The public hearing was opened. JERRY NEUMANN OF 2609 SELVIG LANE said he is the owner of three lots on the corner. He’s owned them for about fifteen years and has decided to sell them. Biegel Plumbing is interested in purchasing the lots for a small plumbing shop. Steve Stokkee owns three lots on the other end, that he intends to put a shop on for his concrete cutting business. In between them are four lots owned by Darrell Aldinger, who has a plumbing shop on the other half of the same block. These lots are 25 feet wide and lend themselves well to small contractors. They are affordable and the uses are compatible with existing uses in the area. The area needs to be redeveloped and he urged the council to approve the zone change, so they can proceed with their proposal.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the Zoning Commission recommendation, seconded by Councilmember Deisz. On a voice vote, the motion was unanimously approved. The ordinance was approved on first reading.

8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #661: a zone change from Community Commercial to Highway Commercial on Tract 1A of C/S 1456 amended, the center 140 feet of Lot 11 of Sugar Subdivision, C/S 362, Tracts 1-5 of Amended C/S 36 and Lots 3-8, Block 1 of Calhoun Lane Subdivision, located at 4750 Underpass Avenue. GARP Partnership, Novak Partnership and

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William Novak, owners; Kenneth Peterson, agent. Zoning Commission recommends approval. (VALID PROTEST). APPLICANT REQUESTS WITHDRAWAL. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman noted that the owners did submit a letter of withdrawal, so that they can work with the neighborhood and task force to come to some type of agreement on the zone change. Councilmember McDanel asked for a clarification about the owner's request for withdrawal versus a delay. He asked that if the withdrawal is granted and they talk to the neighborhood and task force, they would have to begin the process all over again. Mr. Bollman confirmed that if the withdrawal were accepted, they owners would have to wait four months to reapply. This application would be treated as a new application and go through the formal process all over again. Councilmember McDermott asked if the individuals that signed a valid protest this time would have to sign another valid protest, if the owners withdrew their request and reapplied at a later date. Mr. Bollman confirmed that was correct.

The public hearing was opened. SHARON NOVAK OF 2917 DOREEN DRIVE said she is one of the owners of the owners of the parcel. They are requesting withdrawal at this time. She said they were not able to make it to the Southwest Corridor Task Force meeting at the time this zone change was discussed. "We have come to understand that there has been quite a lot of misinformation concerning the zone change. That is why we decided it would be best to withdraw the request and basically start the process again so that if there is any opposition, it is based on the true facts of the situation and not any misinformation," she stated.

CHUCK BAKER OF 307 SOUTH BILLINGS BOULEVARD said his property – CNC Mobile Home Park adjoins the subject property. "They were under the impression it would come up tonight. I didn't know about this. There are people here tonight that will speak for or against. We are definitely against it. We would like it to come up tonight. I understand their wanting to change. They had the same time to bring this up as we had, to express our opinions. I ask that you listen to this. If you do decide to listen to this, I do have other comments I'd like to make on this, but I won't do that until you decide if you will vote or not," he stated.

ROSELLE RUSSELL OF 147 CALHOUN LANE said she could see this property from her kitchen window where she washes dishes every night. On it right now are trailer homes for sale. "They told us that there is paperwork that they have signed and filed that no body could anything with this property except the stipulations that they wrote down for 25 years. But what is not explained is that if that person they sell it to turns around and sells it to somebody else within one year ... that commercial zoning opens it wide open to anything else. There's nothing the task force or the neighborhood can do about it. Yes, a truck stop could go in because it would be coming right off that South Billings interchange right there. Personally, I don't want a truck stop out in front of my kitchen window. It's difficult. We are in a little triangle right there – a few small houses and a few residents are

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trying to hang on to the residence zoning right there. We are being pushed, squeezed and shoved by businesses. If this commercial zoning comes through, we've pretty well lost it. I can pretty well put my home up for sale," she said.

City Attorney Brent Brooks said it was not his intent to cut the hearing short, "but if you did vote in favor of the withdrawal, there really would be no need for a hearing tonight. I'm just offering that as an alternative resolution to the current matter before you," he stated. Mayor Tooley asked what he was suggesting procedurally. Mr. Brooks said the council has two options: (1) to continue the hearing on the zone change on the merits of the zone change or (2) have a motion and second to grant the withdrawal of the zone change request. The process would then start all over again and if individuals would like to protest again, they could certainly do so again, if it comes up for council action again. Mayor Tooley asked if he was suggesting the public hearing be closed now. Mayor Tooley said he was going to take a break from the public hearing and call on Councilmember Kennedy.

Councilmember Kennedy moved for acceptance of the letter of withdrawal, seconded by Councilmember Iverson. Councilmember Bradley said he didn't think there would be much of a change in the neighborhood view on this parcel, because of the uses that would be allowed on the site. Councilmember McDanel said, "whenever there is an opportunity for a developer and a community to reach some kind of consensus about a use for a piece of property, I think we should give that every opportunity to succeed. Whether it succeeds or not, I don't know. If this motion passes this evening, then we are through with this issue until it comes back through the entire process again – at which time those of you who are still opposed will have more information to come forward and address your concerns with us," he stated. On a voice vote, the motion was approved. Councilmembers Bradley and McDermott voted "no". The request was withdrawn.

9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #662: a zone change from Residential Multi-Family Restricted to Public on Lot 1, Block 1 of West Side Addition, located at 3 Broadwater Avenue. Roman Catholic Bishop of Great Fall, MT, owner; CTA Architects/Engineers, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this zone change was for the existing Central High School at the corner of Broadwater Avenue and Division Street. During the previous special reviews for the parking lot, "we did not look at the school site very much. We were more focused on the special review parking to the west. After those were done and the building permit application came in, it was noticed that our zoning map had an error on it. It actually showed it as being zoned public, when it was not. It is currently zoned Residential Multi-Family Restricted. At that point, in talking with the architect, they had two options – (1) they could do a special review to allow the expansion of the school in an existing

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residential zoning district or (2) they could do a zone change to public, which would allow the expansion outright and allow this use. The recommendation of staff was to go ahead and do the zone change to public. We have tried to encourage these types of institutional uses to be located in a public zoning district, even though it is a private school. It is the most appropriate zoning district for this use. Both the Zoning Commission and DRC are recommending approval," he stated.

The public hearing was opened. KEITH RUPERT OF CTA ARCHITECTS AND ENGINEERS said they are the agents for Billings Central Catholic High School. He said this is the same project they have been before the Council with previously. He thanked Mr. Bollman for making a clear presentation as to the reason they are here again. This land has been in public use for about 100 years, the last 50 of which have been for Billings Central High School. This change simply makes the zoning appropriate for the land's current use.

SISTER ELIZABETH YOUNGS said she is the director of the Billings Catholic Schools. She urged the council to approve the zone change to more appropriately fit the use and to match the map.

There were no other speakers. The public hearing was closed. Councilmember Deisz moved for approval of the Zoning Commission recommendation, seconded by Councilmember McDermott. Councilmember Elison noted he would abstain from voting because of a conflict of interest. On a voice vote, the motion was unanimously approved with one abstention.

10. AUTHORIZATION for the City to participate in the Montana Power Acquisition feasibility study and a RESOLUTION 00-17576 authorizing up to \$10,000 from Council Contingency. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Councilmember McDanel moved for approval of the staff recommendation, seconded by Councilmember Elison. Mayor Tooley said he would like the council to participate in determining the feasibility of acquiring the transmission and distribution facilities of the Montana Power Company, in conjunction with major cities in the State of Montana and the Montana League of Cities and Towns. "The largest cities in Montana and the League want to analyze what it would take in the way of organization and financing to create an entity that would provide public power. If we embark on it, it would be an enormous undertaking. The largest public finance issue in the history of our state. That's why we want to use great care and due diligence to make sure we are aware of all the pros and cons of each step that we take. I've distributed to each of you a memo that indicates how public power has worked in other states. Municipal utilities provide quality service at low rates in the northwest and all across the country... One of the most critical issues in my mind is keeping the ownership of these distribution and transmission facilities in state. To have people that we know and work with right here in Montana being in charge of

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transmission and distribution, is a lot more attractive to me than to have business decisions made from New York City or other distant places. Also, I like the idea of decisions being made for the benefit of Montana ratepayers, instead for the benefit of stockholders. There is a timeline involved here. The Montana Power Company ... is supposed to publish their offering memorandum today. That may have happened, but I cannot confirm that because I didn't check on it. Secondly, if this Council approves, we start Phase I of our process with the various cities chipping in a portion of the cost to put the team together – the legal, accounting, financial and engineering services. What we expect from all of these advisors is a recommendation on whether or not to go forward and submit a non-binding bid. That is Phase I.

“June 16th is the day when Phase I will be completed and we must have our non-binding bid submitted. This bid amount is what we might call the ‘magic number’. The magic number will tell us what we can bid; it will tell us how we can be competitive; and how we can pay off the bonds and still comply with our goal to provide to the ratepayers of Montana quality service at an affordable price.

“The Montana Power Company will review all the bids and this will probably take several weeks. When the Montana Power Company sold their generation facilities, it took about five weeks to review all the bids and identify the finalist. So, once Montana Power Company chooses the final bidders, the cities even if we decide to go ahead, may or may not be chosen as one of the final bidders, then we move to Phase II. This is where the cities will get very serious about reviewing all the properties, generators, pipes, towers, etc.

This is what we call ‘due diligence’; it is extremely involved and will be more expensive. If we go on to Phase II, we will need to come up with a larger amount, which we anticipate will not exceed \$1.00/head/city, in our case, that might approach \$100,000, somewhat less than \$100,000. We will have about 60 days to hire the right consultants to do the due diligence and to submit a final and binding bid. If cities turn out to be the successful bidder for the transmission and distribution systems, the monies that we will have invested to that date will be considered loans and will be repaid to the cities through the bond proceeds.

“So, to wrap this up, I’m asking the City Council to approve an allocation of up to \$10,000 to help begin the process of determining the feasibility of creating a public power entity for Montana,” he stated.

Councilmember Deisz said he had several questions and a few comments as well:

- (1) “Will the new profit corporation be subject to SEC regulations or other federal securities regulations?”
- (2) What is the difference between this purchase and the leveraged buyouts of corporations in the 1980s?
- (3) The sale price of Montana Power is speculated to be as much as \$2 Billion. How can rates be maintained when paying the interest off on this kind of debt?
- (4) If business doesn't go along as planned, will taxpayers of Billings be responsible for much more than the \$1.00/head, i.e. the \$2 Billion worth of bonds? How will

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this affect the bond rating of Billings City Government – G.O. or revenue bonds, which will it be?

- (5) Do you intend to continue avoiding public input or the PSC?
- (6) Will all future decisions on MEGA be made by Dennis Taylor and Chuck Tooley without a vote of the City Council, and
- (7) Why go back 40, 50 or 60 years to the buggy whip day. Montana Power has seen the handwriting on the wall. Bigger companies are merging and are buying out power companies.

“My observations are as follows:

- (1) You will immediately diminish the tax base throughout the State of Montana. This shortfall on tax dollars will have to be made up with either higher property taxes on all remaining taxable properties or higher rates. Which will it be?
- (2) The Mayor suggested in the information that he emailed us that we could get preferential rates from Bonneville Power. Mr. Mayor, I would suggest you research that more fully. Bonneville Power is now close to being maxed out, if it is not already maxed out and with environmental concerns, up to five dams will be closed in the next ten to fifteen years, thus diminishing the capacity of Bonneville Power Administration, not increasing it. And the environmental concerns have to do with the spawning of salmon going up and down the rivers freely.
- (3) What provision is there to be made that there will not be a 4-5% right-of-way fee tacked onto people’s bills, like we do with water and cable TV.
- (4) With deregulation and ownership by the government, there will be no competition to give the consumer the best price.
- (5) This expands government in the wrong way – into the private sector.
- (6) Finally, Mr. Mayor, you should have abstained from voting and discussion on this item, as you have now a conflict of interest, having appointed yourself to this board. You are coming before the City Council this evening and asking for money for that board,” he stated.

Mayor Tooley noted that was a flurry of remarks and questions. “You’ve had some of this information in your hands for a couple of weeks and my memo in your hands for over a week. I wish you would have given me the courtesy of giving me these questions so I’d had the chance to prepare answers,” he stated. Councilmember Deisz said, “you weren’t here last Monday.” Mayor Tooley replied, “Frankly, I’ve got voice mail, email and any number of ways to be gotten in touch with. But, to try to address some of the questions that you raised, (1) we probably will be controlled by the Securities and Exchange Commission, (2) we will be able to make many of the judgements that you are concerned about after the analysis of whether or not this is going to be the right thing for

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cities to do. In regard to taxes, we probably are going to save on federal taxes, but every entity going into the process understands that we need to keep the cities and counties in the State of Montana whole in regard to revenues. So, everyone is agreeing to do payment in lieu of City, State and Local taxes, so that revenues do not decrease for cities and counties in the state,' he stated.

Councilmember Bradley said there would be public input into the process because of the nature of the beast. The Public Service Commission will be involved, simply because, "as these guys make application, my guess is that they will have to concurrently apply to the Public Service Commission to also become an electrical provider. There are regulations set aside currently for that. I'm in favor of it and I'll tell you why. I've been sitting on the process through deregulation and what is going on with the whole thing. What we are looking at facing right now is that in July 2001, we have to make customer choice for all residential customers for the State of Montana. When Montana Power Company sells this off, there isn't going to be anybody to make a choice to! Secondly, there is a moratorium on a rate increase up to the year 2003. But after that period, then the current generator – which is Pennsylvania Power and Light Global Montana, will have the ability to go to the general market and sell its resource to whomever will pay the highest price, which means that residential customers of this State will have to bid up their resource in order to get electrical power. This is just proposed current, and I think once this group starts through and looks at the proforma based on who its consultant would be... they will find that there is going to be and the best interest of the public will be served by making the purchase in this way. That remains to be seen however, but that is my considered opinion," he stated.

Mayor Tooley asked City Attorney Brent Brooks about the concern of his conflict of interest – expressed earlier by Councilmember Deisz. Mr. Brooks said he is assuming the Mayor is representing the City of Billings and acting in the capacity of the mayor and a member of the City Council. "That being the case, I don't see that there is a conflict of interest," he stated. He said as long as he is representing the City Council in his official capacity, he didn't see a conflict.

Councilmember Kennedy said the world as we know it is changing. "We're the largest community in the State of Montana and I think it is imperative that we show a little leadership here," he stated. He then called for the question. Councilmember Iverson seconded the motion. Mayor Tooley reminded everyone that this is not debatable and a 2/3rds vote is needed to accomplish this. On a roll call vote, the motion was approved 9-1. Councilmembers voting "yes" were; Bradley, McDermott, McDanel, Kennedy, Tooley, Iverson, Ohnstad, Johnson and Elison. Councilmember Deisz voted "no". On a voice vote on the main motion, the motion was approved. Councilmember Deisz cast the sole "no" vote.

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ADJOURN – With all business complete, Mayor Tooley adjourned the meeting at 9:29 p.m.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AE City Clerk