

REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, JULY 26, 1999

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, given by Councilmember Shirley McDermott.

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

MINUTES – The Minutes of the July 12th meeting were approved as printed.

COURTESIES -- Mayor Tooley welcomed council candidates Karl Howard and Danny Graves, members of the audience this evening.

ADMINISTRATOR REPORTS – Bill McGill.

1. **RFQ for Mixed Use Parking Structure.** The Downtown Billings Partnership requested the Mayor appoint one Councilmember to serve on a committee with Nathan Tubergan and Dan Barry to review the RFQs.

CONSENT AGENDA:

1. A. Bid Awards:

(1) **Concessionaire to operate a Public Parking Concession at Billings Logan International Airport.** (Opened 7/20/99). Recommend delaying award until 8/9/99.

B. Change Order #1, W.O. 98-13: Sanitary Sewer in South 29th Street West, COP Construction Company, \$1,278.20 and 0 days.

C. Change Order #1, W.O. 97-11: Arnold Drain Maintenance Project. JTL Group Inc, -\$3,850.00 and 0 days.

D. Change Order #2, W.O. 95-10: Grand Avenue Reconstruction. COP Construction Company, \$16,680.00 and 3 additional days.

E. Change Order #2, SID 1335: South 38th Street West. JTL Group, Inc., \$13,944.75 and 0 days.

F. Large Hangar Ground Lease with Martin Elshire, \$844.90 for first year, Term: 20 years.

G. Contract for facilitator services with Transformation Consulting and Seminars (Terry Radcliffe), \$2500.00 maximum.

H. Vehicle Lease Agreement with Selover Buick for three (3) vehicles for the City/County Special Investigations Unit (CCSIU), \$7,200.00. Term: 7/1/99 to 6/30/2000.

I. RESOLUTION 99-17482 setting the all-purpose mill levy (69.5 mills), the transit mill levy (10 mills), the library mill levy (9.5 mills) and the public safety mill levy (5 mills) for FY 1999/2000.

J. First reading ordinance amending Sections 6-1611 and 6-1622 BMCC regarding floodplain maps and floodplain district establishment and setting a public hearing date for 8/9/99.

K. First reading ordinance changing the boundaries of Ward II to include recently annexed property: (Annex 99-01), a fraction of T1N-R26E-S27: NW4NW4SW4, located at the northeast corner of Main Street and Lake Elmo Drive, and setting a public hearing date for 8/9/99.

L. Payment to Billings Public Schools for the reroofing project at the Lincoln Center, \$20,720.85.

M. Extension of preliminary plat approval on Popelka Industrial Tracts Subdivision, 2nd filing for an additional one year period.

N. Final plat of Popelka Heights View Subdivision. (Generally located at the corner of Wicks Lane and Bench Boulevard).

O. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Item G and Councilmember Bradley separated Item L. Councilmember Bradley moved for approval of the Consent Agenda EXCEPT Items G and L, seconded by Councilmember Larson. On a voice vote the motion was unanimously approved. Councilmember Bradley moved for approval of Item G, seconded by Councilmember Johnson. Councilmember McDermott asked for clarification that the \$2,500 was coming from Council Contingency. Acting City Administrator and the Mayor confirmed that this was correct. On a voice vote the motion was unanimously approved.

Councilmember Bradley moved for approval of Item L, seconded by Councilmember Larson. Councilmember Bradley said that he could not vote in favor of payment for the reroofing project at Lincoln Center because this is the same district that

closed a school in his ward (Ward I). On a voice vote the motion was approved. Councilmembers Bradley, McDermott and Kennedy voted “no”.

REGULAR AGENDA:

2. PROPOSED AMENDMENT OF CITY CHARTER & ISSUANCE OF G.O. BOND

(A) **RESOLUTION 99-17483 referring to city electors a proposed ordinance amending the city charter and ballot language.** Staff recommends approval. (Action: approval or disapproval of the resolution.)

(B) **Public Hearing and Second Reading ORDINANCE 99-5093 amending the city charter of Billings, Montana to provide for a dedicated 2.3 mill levy for operation and maintenance and capital needs of the City swimming pools, and submitting the proposed amendment to the electors of the City.** Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)

(C) **RESOLUTION 99-17484 for the issuance of a \$6,250,000 General Obligation Bond for Heights Recreation Center and City parks.** Staff recommends approval. (Action: approval or disapproval of the resolution.)

RE: RESOLUTION 99-17483

Public Works Director Mike Hink indicated a change in the language on page 4 of the resolution. It currently reads, “vote for the bond issue” and should be changed to read “vote for the charter amendment”. Also “if you are opposed to the bond issue” should read “if you are opposed to the charter amendment.” Councilmember McDanel moved for approval of the staff recommendation for 2(A), seconded by Councilmember Elison. Councilmember Larson said he would be abstaining because of his conflict of interest. On a voice, the motion was unanimously approved.

RE: PUBLIC HEARING AND SECOND READING ORDINANCE 99-5093 AMENDING THE CITY CHARTER

Mr. Hink indicated a change to the ordinance under Section 1.06 - Mill Levy to Operate and Maintain all City Swimming Pools. He said a new line under this section should be added to read “existing section 1.06 shall be renumbered”. In Section 2.00, the words at the end of the first paragraph “which are intended to finance construction, operation and maintenance of all city swimming pools and for certain city park improvements” should be deleted. Those words should be replaced with “relating to the Heights Indoor/Outdoor Recreation and Aquatic Center and other city park-related improvements.”

The public hearing was opened. CRAIG CANFIELD OF 407 CONSTITUTION, said he has been a part of the pool committee that has helped prepare some of the

background work involved with the mill levy. The committee was formed from the Heights Task Force. The purpose of the committee was to evaluate pool alternatives and to develop a plan for construction of a pool in the Heights. He said the committee has developed a realistic plan that will benefit all residents in the City of Billings. The committee surveyed the residents in the Heights to determine their needs, looked at similar facilities in the state and researched construction, operation, and maintenance costs. The survey requested a response for three different alternatives. There was an overwhelming choice for a community center with an aquatic facility. He said the proposed amendment to the mill levy and submitting the proposed amendment to a vote of the people would allow voters to tell the City and Council what is important to them.

DANNY GRAVES OF 1175 PATRIOT spoke in favor of the Heights Community Center. He said a subcommittee of the Heights Task Force developed a survey that showed an overwhelming support for a year-round, multi-purpose facility serving the needs of young and old. He said Castlerock Park offers some unique possibilities for expansion of the park and the new facility. Mr. Graves said the proposed Heights project would cost approximately \$4.3 million dollars if built on land already owned by the City. The Heights Community Center would result in a 3.0 mill increase in property taxes, based on a 20-year general obligation bond of 5%. This equates to a \$100,000 homeowner paying an additional \$12 per year. A 2.0 mill increase to a \$100,000 homeowner equates to an additional \$8 per year and a 5.0 mill increase would equate to an additional \$20 per year, (the price of a tank of gas) he added. He said there are currently 371 homes in the Heights (with an average price of \$110,000). Those 371 homes do not meet demand. The Heights is leading in school enrollment. The Heights has a total school enrollment of 4,146 (27%) versus citywide enrollment of 15,372.

CHERYL GILLAN OF 660 SAPPHIRE AVENUE recapped some of the Heights pool survey results. She said a survey was sent to Heights residents and businesses in the spring of 1998. Approximately 9100 surveys were mailed; 1724 were returned (18.9% return rate). Of the options presented, Option C – a multi-purpose community center received the highest number of votes. It had a #1 ranking of 759 votes, #2 ranking of 164 votes. The second option, which referenced the indoor facility and year-round multi-purpose facility, also received some positive results. She said 394 people listed the indoor facility as #1 choice, 162 people indicated the indoor facility as #2 choice. So the indoor concept combined with the multi-purpose community center indicated a very high return rate of interest from the Heights residents. There were approximately 273 respondents (15%) who thought there was no need for an aquatic facility.

LARRY BREWSTER OF 1216 BABCOCK said Absarokee and Hysham have pools, but the Heights does not. He said he feels the people in the Heights have done their part to help the rest of the community develop these types of facilities. He said although his children are grown, he has grandchildren and he would like for them to be able to enjoy a pool. He encouraged Council's approval.

DUANE DARENFIELD OF 2310 AVENUE B said he believes the Heights should have a pool, but doesn't feel an indoor/outdoor pool and community center is necessary because the city currently has these types of swimming facilities at the YMCA and Rocky Mountain College. He doesn't have a problem helping the Heights residents with a pool, since the Heights residents have helped with the westend pools, South Park pool and Athletic pool. He feels a facility similar to Rose Park would be sufficient.

JIM RENO OF 1141 TOOLE COURT said, "please build the pool." He said he welcomes the opportunity to spend tax dollars to build a pool.

SANDY GRAVES OF 1175 PATRIOT said she was in favor of the recreational complex to be built in the Heights. She said that besides the obvious reasons, the complex would provide an opportunity for fun family togetherness through programs similar to the "Family Activities Night" hosted by PTA in the Heights over the past two years. The complex would provide a place for families to learn together and play together. She encouraged Council's support of the community complex.

JEFF MURPHY OF 1921 ST. ANDREWS said he was speaking on behalf of the Heights Task Force. He said the Heights Task Force was in full support of the proposal submitted by the Heights pool committee and encouraged Council's support of the resolution. The Heights Task Force would like to see the efforts of the pool committee pay off.

MARY BURST OF 1917 SOUTHERN HILLS DRIVE said she is a member of the Heights Task Force and serves on the pool committee. The committee has spent many hours researching the desire of the community for a swimming pool complex and taking into consideration the community recommendation when designing the complex. She said research was also conducted on the type of facility that would best serve Billings and also provide the least financial burden to the taxpayers. She said the community complex, to be located in the Heights, would be an asset and benefit to the City of Billings as a whole, providing a year around aquatic facility and additional gym space for all citizens to use. Because of its multi-purpose use, it would not be limited to just those who like to swim. Ms. Burst said this type of facility is long overdue in the Heights. She said they are not asking Council to approve building the complex in the Heights but simply asking Council to allow the opportunity for the voters to make the decision.

MARY WESTWOOD OF 1432 YELLOWSTONE AVENUE said she was appearing in support of the Heights pool. She said she sees this as an opportunity for our community to become more of a community. She is concerned with the number of issues being presented to the voters. She said a lot of work will need to be done with regard to these issues in order for the entire package to be passed. She is concerned that voters will see the 2.3 mills and the \$6.2 million as an either/or vote. She said it is important that both issues are supported because it is very important the two are passed together. She is concerned that the city may end up with a recreational facility but have to charge such high fees that it would be of no benefit to the citizens. She said it is important for the City to let the voters know exactly what they are getting and what the follow-up costs will be.

DAVE WILLIAMS OF 1217 CALICO said he is an employee of School District No. 2 and schedules swim meets and practices during the winter months. He said it is difficult to find time and space for students to practice, so gym space is another issue that needs to be recognized. He said at present School District 2's gyms are used from 6:30 p.m. until approximately 11:00 p.m. The new facility would include a gymnasium and alleviate some of the pressure of scheduling. He encouraged Council's support for the Heights complex.

There were no other speakers. The public hearing was closed. Councilmember McDanel moved for approval of staff recommendation, seconded by Councilmember Kennedy.

Councilmember Elison said that although the pool is to be built in the Heights it is not a Heights pool, but rather a community recreation center and indoor pool for use by the

entire City of Billings, not just the Heights. He said there is a definite need for a recreational facility in that area. Councilmember McDermott said she truly believes that the Heights needs to have a pool but is concerned with separating the 2.3 mill levy and the \$6.25 million general obligation bond and the fact that one may pass and not the other. She asked why the two items were being considered separately. Councilmember McDanel said it was his request to have the two items separated. He said the average voter turnout for off-year elections over the past 10 years has been 12%. In order to pass a mill levy there needs to be a 25% turnout. He said his concern is that if 24.9% of the people vote in favor of this, by tying the mill levy directly to it, the mill levy would automatically fail. He wants to give this project every opportunity to succeed. "We know we are going to be facing a budget shortfall in the upcoming years. The money for the architectural planning and design for the project is already in contingency with the Parks Department. We could pass this bond issue in November without the mill levy, do the architectural designs and get the plans done (somewhere in the neighborhood of a year) and at the end of that year we will have resolved, or not resolved, our financial situation for the upcoming period of time. At that time, if the mill levy had not passed, Council would need to make a decision as to whether or not the facility could be built and whether the O&M costs could be funded," he stated. He said the pool could not be built without determining the source of operation and maintenance funding. "If the mill levy fails, we will not close the existing pools that are operating at a loss. So to kill this project completely because of lack of defining the source of funding is unfair to this project, to my ward, and to the community as a whole. By separating the two issues, they are both being placed on the ballot and hopefully people will vote for them and there will be a 25% turnout. But if they don't pass, I don't want to see this project die because of a lack of turnout. It gives Council one more opportunity to come up with a funding source to allow continuance of the project," he stated.

Councilmember Ohnstad said the health issue had not yet been mentioned. "Although Lake Elmo is a swimming facility, if mothers are going to let their small children swim they should have a pool to swim in rather than a river situation," he stated.

On a voice vote, the motion was unanimously approved. Councilmember Larson abstained.

RE: RESOLUTION 99-17484 – GENERAL OBLIGATION BOND

Councilmember McDanel moved for approval of the staff recommendation, seconded by Councilmember Deisz. Councilmember McDermott asked about the outdoor portion of the recreation center. Parks Director Mike Hink said initially it would be an indoor aquatic facility, designed in such a way that it could be opened up in the summer time for outdoor deck use, etc. The future design would be to design something outdoors for outdoor use; some type of swimming component that would entice people to stay more than just one hour at the facility. Councilmember McDanel said it is important for everyone to know that there is not a firm design at this point. He said that once an architectural firm is selected it would be their responsibility to go out and see what the community wants to see in an indoor/outdoor facility. The design will be generated based on input from the community to some degree. Councilmember Deisz said the Heights needs and deserves a pool facility. He said he would vote for the general obligation bond but would not vote

to not build the pool if it were approved by the voters. "We will find the operation and maintenance money somehow. I am unwilling to tell the voters that they went ahead and approved this but we don't have the money for this \$4.5 million facility," he stated. He said he thought it was fiscally irresponsible to pass the general obligation bond without the operation and maintenance funding being tied to it. On a voice vote the motion was unanimously approved. Councilmember Larson abstained.

3. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5094 amending BMCC Section 27-601(c) concerning the storage of Trailers and Recreational Vehicles. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Director Kerwin Jensen said on June 14, 1999, Council approved the ordinance on first reading; with no public hearing. The item was then forwarded to the Zoning Commission for a public hearing, which was held on July 6, 1999. The Zoning Commission did support the language of the ordinance. There were five individuals that spoke at the July 6th public hearing. He said the Zoning Commission is recommending approval of the ordinance. Mr. Jensen explained the changes of the proposed regulations. The current standards prohibit RVs over 8' in width or 27' in length from being stored in residential zones. The proposed standard would allow any size RV to be stored in a residential neighborhood. The current standard states that RVs need to be stored in rear yards or if rear yards are inaccessible by way of an alley or some other method, then the RV can be parked in the side yard. The proposed standards would allow parking of the RV essentially anywhere on the property as long as it meets accessory building setbacks. He stated that in most residential neighborhoods this was a 20' setback from the front property line, so the RV would need to be back off the street at least 20' and at least 3' from the side and rear property lines. Additionally, RVs must be parked or stored at least 5' from any window, door or other opening for safety reasons. The current standards require the surface underneath the RV to be gravel, cement or asphalt (some sort of prepared surface). The new language states that the RVs can be parked anywhere on the property – on the back yard lawn, on a dirt pad, on a cement pad or whatever is desirable. Mr. Jensen said the Zoning Commission reviewed the changes and were recommending approval.

The public hearing was opened. TOM ERSKINE OF 2811 TREASURE DRIVE said he is generally in favor of the ordinance. He said he believes the ordinance needs to be changed because many Billings' residents are RV owners and many do not have adequate back yard or side yard parking space. He said RVs are licensed vehicles and he believes they should be treated the same as cars and pickups when it comes to parking. RVs should not be considered secondary structures because they are movable and licensed. He said the 20' setback is more than is needed for public safety and should be changed. He recommended changing the 20' setback to 5'. He suggested a 10' setback from the curb or from the street if there is no curb, or a 5' setback from a sidewalk to make code enforcement easier. He believes the side yard and back yard RV parking requirements are adequate.

CHARLES LEMING OF 1525 18TH STREET WEST said the RV ordinance has been ignored for years. It has only been recently that citations have been issued. He

said there are many people not satisfied with the changes to the ordinance because the changes do not address their concerns. Mr. Leming said he has lived in his home and paid taxes for 48 years. And now that he can afford an RV, the City tells him he can't keep it on his property. He lives on a corner lot and there is no way that he can meet the proposed standards on setbacks. He said there are only 3 things that need to be considered: 1) public safety, 2) RV should be licensed and operable, and 3) RV cannot be used as a residence. He does not see a need for the proposed changes to the ordinance. He believes the ordinance still needs a lot of work.

LARRY LOWMAN OF 2704 YELLOWSTONE AVENUE said he spoke to Council in June of 1997 asking them to pass the ordinance that is currently in place. He said that Council is getting closer to a workable solution. He suggested that the setback be less than the proposed 20' and that there be no restrictions on where the RV could be parked in a property owners yard – to just park the RV safely. He encouraged Council to approve the proposed ordinance with a reduced setback regulation.

DOROTHY LOWMAN OF 2704 YELLOWSTONE AVENUE said there are many parked cars and pickups that cause vision obstructions within the city as well. She said that is much more dangerous than allowing RVs to park in their own driveway with even a 10' setback. She urged Council to approve the ordinance with an amended setback of 10'.

DALE KEEPERS OF 2022 GEORGE STREET said he objects to not being able to park RVs in yards. RVs are registered vehicles and should be given the same consideration as other vehicles. He doesn't feel an ordinance should be able to restrict where he parks his RV. He said a 5' or 10' setback would be more reasonable. He said he is all in favor of safety and common sense as far as other people's rights, privileges and privacy - as long as they don't obstruct him and he doesn't obstruct them. He doesn't feel that the City should be able to tell him where he can park his RV. He said the RV is a registered vehicle, the owner maintains it and pays taxes and upkeep for it. "We should be able to use our property with respect to other people and our own discretion without interference."

ROBERT SCHERR OF 2810 TREASURE DRIVE asked Council to reduce the 20' setback. He said with a 20' setback and having to be 5' from any door or window a 25' RV would require a 50' driveway. He said a 10' setback would be more reasonable.

JOE BURST OF 1917 SOUTHERN HILLS recommended Council accept the proposed ordinance. He said RVs not only present safety issues but also aesthetic issues. He said he agrees that because RVs are registered vehicles and taxes are paid on them that owners should be able to park them where they want on their own property. But he said that a line needs to be drawn somewhere, otherwise there will be people who own semi trucks who feel that they can park them anywhere they wish.

DALE SHERMAN OF 3023 MCBRIDE STREET said he agrees with the proposed ordinance except for the 20' setback requirement. He said the variation of city lots and city street widths prohibits many people from parking in their driveway with the 20' setback rule. He said a 5' or 10' setback would be more adequate and would still take care of the safety issues. He is concerned with RVs that become a neighborhood eyesore and feels that measures should be considered to prevent that from happening.

HAROLD SAPP OF 2105 CLARK AVENUE said he has a problem with the 20' setback. He said the setback should be changed to either 5' or 10'.

ED GILLIG OF 2803 TREASURE DRIVE said camping is not the issue, but safety and property values are real issues. He said he wants the present code enforced so that he can give his property the best value it deserves. He said without enforcement of the current code he has no recourse to improve a bad situation. He said because the decision of what can be parked in the front yard is at the discretion of the people living next door, the face value of his property is affected, which is very important when someone is trying to sell their home. He said he disagrees that just because RVs are licensed that they deserve the same rights and abilities as an automobile. He said the current code has been in place for quite some time and that should be factored in when people consider buying an RV. He said overall he is concerned with the look of the city, the look of neighborhoods, and the protection of property values.

KARL HOWARD, NO ADDRESS GIVEN, said he is from the Southwest Corridor Task Force. He referred to a letter written by Terry Krenz, which stated that the Task Force discussed at length and agreed that the proposed code was appropriate. Storage of RVs in residential areas is not only unsightly but creates a hazard through limited visibility and obstruction of sidewalks. The Task Force feels that the safety of neighborhood residents far outweighs the convenience of RV owners.

KATHY MUNSON OF 2317 GREEN VALLEY DRIVE said she has an RV parked next door in the driveway and when she looks out her bedroom window she can't see the street. She said she prefers the RV be out her bedroom window rather than her front window. She was in favor of the 20' setback rather than the 5' or 10' setback.

There being no other speakers, the public hearing was closed. Councilmember Deisz moved for approval of the Zoning Commission recommendation, seconded by Councilmember Kennedy. Councilmember Kennedy offered an amendment to reduce the setback to 10', seconded by Councilmember Johnson.

Councilmember Larson asked how the 10' setback would be measured. He said he is concerned with the setback being easily enforceable and easily understood. He asked if something could be included in the amendment with regard to setback measurement to make the code enforceable. Planning Director Kerwin Jensen said that all things in zoning are based on property lines. The ordinance as drafted by the City Attorney's office calls for setbacks from property lines. He said in most neighborhoods in Billings the zoning standards require a 20' setback from the front property line. So a code enforcement officer has a pretty good idea where the 20' line is by looking at the placement of the home. Mr. Jensen said measuring from the property line is the only constant standard city-wide. Councilmember Deisz asked Mr. Jensen by factoring in sidewalks and curb and gutter if 5 feet from the property line would be acceptable. Mr. Jensen said what he recommended at the Zoning Commission meeting was 10' behind the property line for clear vision and a safety standpoint. Councilmember Bradley said there are a lot of odd shaped properties in the City of Billings and there are some places that the setback just won't work, whether it be 5' or 20'. Councilmember Elison said he was going to argue against the 10' setback. He said there is more at issue than simply the ability to park in the front yard. Currently the parking of RVs in front yards is completely prohibited. The reason for the accessory building standard is to protect the neighboring landowner. Councilmember Elison said he doesn't feel it's appropriate to put a length restriction on RVs. He said there are many homes in Billings that are set back on the alley. The property owners have no backyard and under current ordinance

they are effectively prohibited from parking an RV any place on their property because all of their property is in front of the house. "It was not my intention to simply say, okay now we're going to allow RVs to be parked in front yards and anywhere and everywhere. It was simply to make a standard that allowed people the usage of their property and yet maintain their neighbor's right to not be burdened by their use of their property. I don't want to get into a situation where we are going out to look at the design of every property or the length of every RV. I did want a situation where we say there is something reasonable to allow you the use of your property to park your RV and at the same time protect your neighbor's rights to have their property usable to them. I think the accessory building setback deals with that," he stated. Councilmember Elison said there has never been a balance between those in favor of RV storage and those that feel RVs should be prohibited from parking in residential areas. He said that the proposed ordinance is a start at obtaining a balance. Councilmember Ohnstad said that it is important that we keep front yards as clean as possible. Councilmember Deisz asked for a clarification that Councilmember Kennedy was making the amendment 10' from the property line. Councilmember Kennedy indicated that was correct. City Attorney Brent Brooks clarified that under Section 27-601(c) the word "or" between *building* and *zoning* should be omitted. On a roll call vote on the amended motion to reduce the setback to 10', the motion failed 2-8. Councilmembers voting "yes" were Kennedy and Larson. Councilmembers voting "no" were McDermott, Bradley, McDanel, Deisz, Tooley, Johnson, Ohnstad and Elison. On a voice vote on the main motion, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #650: a zone change from Residential Multi-Family and Residential 15,000 to Community Commercial on Tracts 1 and 2, C/S 1882, located at 345 Orchard Lane. Tom Craft, owner. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.) Applicant requests WITHDRAWAL.

The public hearing was opened. DAMON OBIE OF 1209 PONDEROSA DRIVE said he was speaking on behalf of the property owner, Tom Craft. He said he wanted to explain the basis for the request for withdrawal. The Zoning Commission has recommended denial for the zone change. During the public hearing at the Zoning Commission meeting, the Zoning Commission did indicate they would likely support the requested change if Tract 2 were omitted. Because it was too late for the application to be changed, the applicant was requesting withdrawal and would resubmit the proposed zone change for only Tract 1. Mr. Obie requested Council grant the request for withdrawal.

RICHARD DEISZ, NO ADDRESS GIVEN, said he was from the Southwest Corridor Task Force. He said this issue is an unresolved issue. The same zone change came before Council a year ago. He said the task force is trying to stop commercial development in the middle of this residential area. He said the task force is not opposed to the operation of the business but rather the location of it.

The public hearing was closed. Councilmember Kennedy moved for approval of the withdrawal, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING FOR SPECIAL REVIEW #662: a special review to allow the placement of a beer and wine license, a microbrewery and an outdoor patio in a Community Commercial zone (former Cattle Company location in Rimrock Mall) on Tracts A1 and A2, C/S 1136 2nd amended, and Tract B, C/S 1136 amended, located at 300 South 24th Street West. The Macerich Company, owner; Town Pump, Inc., agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Director Kerwin Jensen said this special review is located at Rimrock Mall. He pointed out that there are multiple special reviews being requested, one of which is a beer and wine license. The actual location is the former Cattle Company. Part of the proposal is also a request for an outdoor patio to be along the east wall of the mall. Mr. Jensen said when the Cattle Company exercised their liquor license it was grandfathered in. Because it had been more than one year since a liquor license or beer/wine license had been utilized there, the grandfather privilege had expired and now the applicant was required to go through a special review. Mr. Jensen said the Zoning Commission was recommending approval of the special review with four conditions: 1) the area be limited to that shown on the site plan, 2) no amplified music on the patio (only unamplified live music), 3) a 3-foot minimum height wall be built around the patio, and 4) the 600' separation from any park must be waived (because the property is located within 600 feet of Stewart Park).

The public hearing was opened. KENDALL MERRICK OF 3100 WEST MACDONALD said she was the general manager of Rimrock Mall and was speaking on behalf of the mall management team. She said she was pleased to have the opportunity to work with the three Montana based businesses of Sleeping Giant Brewery, Overland Express Restaurant and Lucky Lil's Casino. She said the businesses would create a new and distinct restaurant concept for the Billings community. The opening of the businesses would both strengthen and further diversify the merchant mix in Rimrock Mall. She said they anticipate the quality restaurant concept would be successful and that the current mall merchants would benefit from the additional traffic generated by the business.

JIM PETER OF SLEEPING GIANT BREWERY, HELENA, MONTANA said this was a plan for a brew pub concept operating in about three-quarters of the space previously occupied by the Cattle Company. He said they've seen these concept pubs become very successful and become an asset to the communities in which they operate. He said they are very excited about the project and think it will be a positive addition to westend Billings business. He said he is a native of Billings and excited to be returning and bringing his business to Billings.

ROGER OVIS OF TOWN PUMP INC, BUTTE, MONTANA said they are looking forward to the partnership they envision with Sleeping Giant Brewery, Overland Express and Rimrock Mall. He said they see this as a good opportunity for Billings and the mall. He said approximately 20 employees would be working at the facility.

There were no other speakers. The public hearing was closed. Councilmember Kennedy moved for approval of Special Review #662, seconded by Councilmember Johnson. Councilmember Kennedy commended the three businesses on this project. He said he felt this was a good consortium, that he has seen similar setups all over the state and he wanted to see this go forward. Mayor Tooley said he wanted to remind Council that at the last meeting it was voted not to allow a liquor license and casino within 600 feet of a school or a park. That was for a local person who operates a number of establishments in the community. "I would like you to notice that we have three people who are from out of town, who are attempting to put a business back in Rimrock Mall. I want you to very carefully consider the fairness of the action at the last meeting versus considering this particular waiver of a city ordinance at this meeting," he said.

Councilmember Larson said he did not vote against the last proposed liquor license. He said he's troubled by what he sees as the use of the ordinance to regulate gaming in a way the state of Montana is not choosing to regulate it. "Business people are coming to us, having played by the rules, putting their money on the table and we are using this 600 foot variance now, or at least we did last time, to turn them down. Not because we have a legitimate concern about the impact of the establishment on a church or park or any other facility, but because we think there are too many gaming machines in town. That is not for this Council to decide. The state of Montana regulates gaming and competition regulates how many will be successful. This is infringing on people's rights to operate a legitimate business. If we are opposed to that business then we need to go to the legislature and have the law changed. When these people play by the rules and we use this ordinance to stop them at this level, I think that is inherently unfair to those people. I feel very bad about what we did several weeks ago. I don't feel that was a very good decision. The ordinance was in place for us to stop and ask ourselves whether it would negatively impact a church, school or park. The only reason the ordinance is in effect right now is because the property line of the back end of this building is within 600 feet of a park. There is no way anyone will be able to physically see or be impacted by this particular business. It is on the other side of the mall. We don't measure this from the business, we measure it from the property line. In most of these I've seen lately it's the corner of the property line, not the business, that is close to one of these structures," he stated. He said the ordinance is being used to regulate gaming and is unfair to the business owners.

Councilmember Johnson said the fact this particular ordinance needs to be revisited has been discussed by Council before. He said he hopes it is revisited soon. Councilmember Bradley mentioned that beer is sold and consumed at Stewart Park during baseball games. He said he didn't know how this particular brew pub would negatively effect people in Stewart Park. He said he also had a real problem with the last liquor license that was denied by Council. He said the ordinance does need to be revisited.

Councilmember McDanel said there is an ordinance on the books currently that may need to be revisited but that Council should not just give waiver to that ordinance without consideration. He said he would vote no, not because he wanted the business to fail and not to restrict gambling but because there is an ordinance on the books and it is Council's responsibility to enforce those ordinances. He said until the ordinance was

changed he would continue to vote “no” every time a business of this nature was within 600 feet of a school or park.

Councilmember McDermott said she agreed with Councilmember McDanel and agreed that the ordinance needs to be revisited. Because the ordinance is on the books, the ordinance should be enforced until changes can be made to it. Councilmember Kennedy said that these people have played by the rules and put money into this deal and there is a policy issue that needs to be addressed. “The individuals in this community are being held hostage over this issue that needs to be addressed. Please address the policy off the floor and don’t make policy changes on the floor,” he stated. Councilmember Larson said this ordinance is on the books just as many zoning regulations, but people continually request zone changes. “They are wanting to do things within a neighborhood that is on the books they can’t do, but they are asking to do it anyway. Nobody has ever made the argument that we shouldn’t do it because it is written in the zoning law that they can’t do it. But in this particular case, we are saying because it is written that we have to abide by it. Part of Council’s discretion is to be able to look at zoning requests, special reviews, etc. and decide whether they have met the criteria that addresses Councils’ concerns,” he stated. He said many times there are no physical or visible connections between the business and the park, church or school. He felt that was clearly the fact in this case. He said he wouldn’t eliminate this particular ordinance. He said this is a good ordinance, but it should be reviewed every time a similar business is within 600 feet of a church, park or school. “There are many that have been turned down because they would have an impact. This particular business is not going to have an impact on Stewart Park. I think we need to allow this business to have an opportunity to succeed,” he stated.”

On a roll call vote the motion passed 7 to 3. Councilmembers voting “yes” were: Bradley, Deisz, Kennedy, Johnson, Ohnstad, Elison and Larson. Councilmembers voting “no” were: McDermott, McDanel and Tooley.

6. PUBLIC HEARING FOR SPECIAL REVIEW #663: a special review to allow the expansion of an existing beer and wine license in a Community Commercial zone on Lots 45-50, Block 4, Broadwater Subdivision, located at 1110 Broadwater Avenue. Charles Schmidt, owner; Bill Schrup, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Director Kerwin Jensen said this special review is located at the southwest corner of Broadwater and 11th Street West. It is the current location of the Suds Hut. He said the special review was needed because the applicant wished to expand the floor space by more than 10 percent of the existing business. The Zoning Commission recommended approval with the condition that the approval be limited to the area labeled “gaming area” on the site plan.

Councilmember Johnson asked if there was a change in entrance and exit locations to the property. Mr. Jensen said that entrance and exit to the building would be addressed by building codes. The ingress and egress for vehicles are shown off of Broadwater Avenue. Mr. Jensen said that there had also been some concern about

adequate parking with the new addition and the applicant had been informed that it would need to be addressed before building permits were obtained.

The public hearing was opened. BILL SCHRUP OF 1115 CUSTER said he was speaking in favor of the proposed special review. He said the business had been at its current location for 23 years under the same ownership. He said they were not asking for a change in use of the property but to expand the business slightly to accommodate some remodeling. He said what they initially set up for parking was not approved so they restructured the parking for 21 spaces and were awaiting final approval by the city. With regard to ingress and egress to the property, he said they were working on expanding the curb cuts to allow easier entrance and exit to the property. There was a building on the property that had been torn down and so it was easier to get into and out of the property. It is also planned to close the front entrance and put the entrance on the side of the building, so parking in front would be easier also.

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

7. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC Section 27-700 to create the Montana Avenue Special Sign District as permitted in Section 27-212. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Sign Administrator Gail Kenson said this was a proposal from the property owners along Montana Avenue from 22nd Street to 30th Street. She said their intention was to create signage along Montana Avenue that was compatible and that enhanced the historic nature of the district. Ms. Kenson said the city sign code does permit the creation of a special sign district with the approval of at least 50% of the merchants within the district. To date there are 75% merchants approving the sign district. The creation of the sign district would also create the Montana Avenue Sign Review Committee responsible for the approval of sign permits within the historic area. It would permit signs that are not permitted in other areas of the city. It would require that signs be compatible with the architecture and that signs not cover existing significant architecture of the historic buildings. This would allow the merchants more flexibility and enable them to create the type of signs and character look they wish to have. Ms. Kenson said there were two people within the district who were not in favor and some merchants that have not responded. Councilmember Deisz asked the total number of property owners involved. Ms. Kenson said there were 57 merchants (some merchants are also property owners). She said all merchants and property owners were notified about the creation of the district and that many of the property owners were supportive also. Councilmember Bradley asked if there was any means of enforcement. Ms. Kenson said it would receive the same type of enforcement under the current sign code.

The public hearing was opened. MARK RHESTAD OF 2204 SPRUCE STREET said he was the chairman of the Downtown Historic Preservation Committee. He said the committee worked with the merchants and property owners on Montana Avenue to put the sign district together and was speaking in favor of the sign district and asking for Council's approval. He said Montana Avenue is a very unique asset to Billings and was

one of the largest collections of historic buildings in the city. He said the sign ordinance would improve the district, enhance property values along Montana Avenue and make it a more attractive environment for bringing people downtown.

MARY WESTWOOD OF 1432 YELLOWSTONE AVENUE said she is a board member for the Downtown Billings Partnership, Secretary for Downtown Billings Property Owners and a Montana Avenue property owner. She spoke in support of the sign ordinance and said it allows Montana Avenue to keep its unique look. She applauded the Downtown Historic Preservation Committee on their efforts. She noted that many other downtown property owners are looking at this ordinance as a model for how the rest of downtown can be preserved.

BRENDA DURAND OF 439 GRANDVIEW said she had been the property owners' representative on the committee and that the sign ordinance had been very well received by many property owners. She said this was a very unique district because there is much interest from many merchants and this issue has been discussed at length. She spoke in support of the ordinance as it would allow creative use of signs in the downtown area.

There being no other speakers, the public hearing was closed. Councilmember Johnson moved for approval of the Zoning Commission recommendation, seconded by Councilmember Bradley. Councilmember Johnson expressed his pleasure working with the committee and applauded the efforts of Gail Kenson and the committee. He said the committee had covered all aspects of this sign district and he enjoyed the fact that no billboards would be allowed within the district. Mayor Tooley asked about the placement of sandwich boards on sidewalks. Ms. Kenson said they are not to be placed in the middle of the sidewalk because they create an obstruction. They need to be placed up against the building or close to the curb and have to have at least 5-foot or greater space for pedestrian walking. Mayor Tooley asked if there were problems placing sandwich boards in some areas of downtown and not in others. Ms. Kenson said they are actually permitted in any parcels within the CBD (Central Business District). She said the Montana Avenue Sign District did want to be able to have the sandwich boards as they were used in other parts of downtown. Ms. Kenson said the property owners all carry at least \$1 million liability insurance, having the City of Billings and the State of Montana additionally insured for the placement of those sandwich boards. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5095 FOR ZONE CHANGE #649: a zone change application from Planned Unit Development to Residential Manufactured Home on Tract A of Amended C/S 657, generally located on the south side of King Avenue East, between Jackson Street and Ponderosa Elementary School. F.C. Pierce II, owner. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second reading.)

Planning Director Kerwin Jensen said that there was not a valid protest on the item, therefore only a simple majority vote was required by Council. The public hearing was opened. There being no speakers, the public hearing was closed. Councilmember Elison moved for approval of the ordinance on second reading, seconded by

Councilmember Larson. On a voice vote, the motion was approved. Councilmembers voting "no" were McDermott, Bradley and Deisz.

9. PUBLIC HEARING AND RESOLUTION 99-17485 annexing Tracts 1 and 2, C/S 2866, located at 1402 Lake Elmo Drive, containing 7.756 acres. (Annex #99-02). Joy and Lennie Turner, owners and petitioners. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)

Planning Director Kerwin Jensen said that this was an island annexation. The property is located along the west side of Lake Elmo Drive and south of Wicks Lane. He said the property is zoned Residential Multi-Family. Staff recommends approval of the annexation with the condition that the property owner enter into a development agreement, or in the event the property is subdivided, that there be a subdivision improvement agreement that would include specific language of how the property is to be developed.

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

10. PUBLIC HEARING AND FINAL APPROVAL OF RESOLUTION 99-17472: a resolution levying the initial assessment on SID 9903 for W.O. 95-15: the St. Andrew's Drive Phase II Sidewalk Program. Staff recommends approval. (Action: final approval or disapproval of resolution.)

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

11. SECOND READING ORDINANCE ON ZONE CHANGE #647: a zone change from Residential 6000 to Planned Development with underlying zones of Single Family (Manufactured and Modular Homes) and Residential 6000 (4-plexes) on the S2S2NW4SW4 of Section 23, Township 1 North, Range 26 East, lying west of the old railroad right-of-way, located at 5021 Bench Boulevard. Roy and Betty Clause, owners; Engineering, Inc., agent. Zoning Commission recommends approval. (Public hearing held on 7/12/99. Action delayed from 7/12/99). Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)

Councilmember Deisz asked if there had been a withdrawal of the official protest. City Attorney Brent Brooks said that there had been several written withdrawals but that there is still a valid protest and approval would require 9 councilmembers voting in favor. Senior Planner Dan Miles said there were originally 10 protests: 6 people have removed their protest, 1 person moved from the area, 2 people continue to protest, and one

individual has made no comment. Councilmember Bradley moved for approval of the zone change, seconded by Councilmember Johnson.

Councilmember Larson said that this Council claims to be supportive of in-fill development and virtually every in-fill project that had come before Council in the last 4 years had been denied because of protest from a minority of people surrounding the subject area. He said a "valid" protest doesn't mean the protest is reasonable or right; it simply means enough people in one quadrant protest. "That protest doesn't mean those people are right, it simply means it triggers a higher requirement for Council's consideration. This is an in-fill project, an affordable housing project. Every time there is something that is not a stick built development, there is a protest from the neighborhood," he stated. He said these people have worked hard with the neighborhood to meet the concerns; they've made compromises. "Those are the types of things we say we want developers to do. We want them to work with the neighborhood. They have done that. Our message of wanting to reduce urban sprawl is nothing but talk if we shoot down every single in-fill development that comes in front of us..."

Councilmember Deisz said he disagreed with Councilmember Larson and that Council had not shot down every in-fill project. He said Council had been careful about approving zone changes. He said that when someone purchases a piece of land, they know the underlying zoning and it is not Council's responsibility to change the zones so that a developer can make a buck off the project. "Because a developer buys land and thinks he can get a zone change and make more money on the project is not proof that City Council is against in-fill construction. We have an opportunity and obligation to the existing property owners who have paid taxes and that we protect their neighborhoods when there is a valid protest," he said.

Councilmember McDanel also said he did not feel that Council had shot down every in-fill development. "Not long ago, we looked at one at the end of my street. We approved that, even against tremendous neighborhood outcry." He said Council told Mr. Clause he had a couple weeks to resolve the valid protest and work with the neighbors. He has done that. The people in the neighborhood should have their rights protected. "They have some concern about their property values and their rights being infringed upon. Mr. Clause knew the zoning of the land when he purchased it. He may be forced to live within the bounds of that zone," he stated. Councilmember Kennedy said that development is being driven out of the community by various methods (special reviews, liquor licenses, etc.). "We talk about the need for in-fill development and affordable housing. The average income is approximately half the price of the average price to buy a home in this community. We need to have affordable housing..."

Councilmember Bradley said that trailer parks and affordable housing don't ring together. Putting up manufactured housing and collecting rent monthly is not affordable housing. When someone develops and puts manufactured/modular homes on foundations and sells the property, then that is affordable housing, in-fill and development. Councilmember Bradley said this was a tough decision because he was unsure to how to vote without hearing more argument on the subject first.

Councilmember McDanel asked if there was any hope or expectation that the valid protest could be resolved if Council delayed action for 2 more weeks. Rick Leuthold of Engineering, Inc., said he put together packets of information and distributed them to the people on the petition list. He said there was one property that constituted the valid

protest. Mr. Leuthold said that it has been mentioned to him that the Mackenzies have continued to show a position of denying any type of development behind them. Harvey Dampshen's parcel makes up about 25% or greater of the east quadrant. Mr. Dampshen has indicated that his opposition was based on the development of the property potentially becoming run down and lessening his property value. Mr. Leuthold said that they feel they have done everything they can to satisfy the two parties and have still been unsuccessful with the one property owner that is creating the valid protest. He asked for Council's support and approval or delay of action until all Council members were present.

Councilmember Kennedy asked City Attorney Brent Brooks when the valid protest law would change. Mr. Brooks said October 1, 1999. Mr. Leuthold said he thought the new law would require 25% of the total area or unit ownership around the perimeter of the property and a two-thirds vote of Council members present rather than a three-fourths vote of all Council members if there was a valid protest. Mr. Brooks said he could not recall the specifics of the statute and he did not know if the existing statutes would apply to this application, adding that he would have to research this issue. Councilmember Kennedy made a substitute motion to delay for 2 weeks, seconded by Councilmember Larson. Councilmember Deisz said he felt Council should vote tonight. He said the developer had been given adequate time to change the position. Councilmember Elison said that Council did give the developer adequate time and he had gone out and changed everyone's mind except one property owner, the property owner creating the valid protest. He said that no matter what type of development they came back with, this single property owner could propel this into a valid protest. "There is one individual who is not convinced and that is putting Council in this situation," he said. Councilmember Larson said he agreed and did not know if two more weeks would make a difference in this particular case and that it would change the attitude of people on the Council. He said he would like to see this project go forward but was afraid Council would just be delaying a decision that had already been made. Councilmember Kennedy said the decision he wanted Council to think about was the commitment to in-fill development and affordable housing. On a voice vote of the substitute motion, the motion was approved. Councilmember Deisz voted "no".

ADJOURN – With all business complete, Mayor Tooley adjourned the meeting at 10:05 p.m.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Colleen Schell-Berg DEPUTY CITY CLERK