

REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, AUGUST 23, 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 Jan Iverson.

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

MINUTES – The Minutes of the August 9th meeting were approved as printed.

COURTESIES – Police Chief Ron Tussing presented Officer Jeremy House with the meritorious service medal for his outstanding performance in his duties. Chief Tussing noted that he is consistently a high achiever who contributes greatly to the quality of life in the community.

Acting City Administrator Bill McGill said the City wished to recognize those individuals and organizations that worked together to handle the recent train derailment in the downtown area. Due to their efforts, no lives were lost and no significant property loss occurred. Fire Chief Lorren Ballard was called upon to name those participants, which included the following: the Fire Department, the Police Department, the Street Division, the City/County Communications Center, Yellowstone County Disaster & Emergency Services, Conoco Refinery, Exxon Refinery, the Sheriff's Department, Montana Power Company, the Billings Gazette, Montana Dakota Utilities, the Salvation Army, the American Red Cross, Montana Rail Link, the National Weather Service, Channel 2, Channel 8, KBLG Radio, KGHL Radio, American Medical Response, etc. Mayor Tooley presented Chief Ballard with a plaque commending the participants on their courageous and cooperative efforts.

Councilmember Kennedy recognized former Councilmember Dan Farmer in the audience.

BOARD & COMMISSION REPORTS – Councilmember Kennedy reported on the City Administrator Search Process. He said he received an update from the Mercer Group, the firm hired to assist with the selection process, that 91 applications had been received. The applications are from around the country and 2 foreign countries. There are seven applicants from Montana, four of whom are from Billings. The consultant will be reviewing the applications and preparing a group of 15 for consideration by the council.

ADMINISTRATOR REPORTS – **Bill McGill.** There were no Administrator Reports.

CONSENT AGENDA:

1. A. Bid Awards:

(1) **Montana Avenue Landscaping STPE 1020(12) – Billings.** (Opened 8/3/99). Recommend rejecting all bids and rebidding in the winter of 2000.

(2) **Truck Chassis, Tilt Cabs for Solid Waste Division.** (Opened 8/3/99). Recommend Tri-State Equipment, Schedules I, II, III, \$350,490.00

(3) **One New Current Model, Standard Production Model, Four-Wheel Drive, 3 Cubic Yard Front-End Loader for Street/Traffic Division.** (Opened 8/10/99). Recommend Modern Machinery Co., \$97,686.00 w/trade.

(4) **Gasoline and Diesel Fuel Products.** (Opened 8/10/99). Recommend G.M. Petroleum.

(5) **Concessionaires to Operate the Terminal Building Displays for Advertising at Billings Logan International Airport.** (Opened 8/10/99). Recommend delaying award to 9/13/99.

B. Change Order #3, MET Transit Garage Facility Addition. Jones Construction, \$4,980.00.

C. Change Order #3, W.O. 95-10: Grand Avenue Reconstruction. COP Construction, \$141,743.13 and 7 days.

D. Lease of Airport Terminal Space, Elsinor Acquisition Corporation, a wholly owned subsidiary of Aircraft Services International Group, (ASIG), \$3,630.00.

E. Amendment #4 to Professional Services Contract, 1999 Capital Improvements Program, Morrison-Maierle, \$215,869.00.

F. Agreement with Billings Housing Authority to provide one (1) officer in a community-policing role for Housing Authority's housing complexes, \$56,355.00. Term: 9/1/99 through 8/30/2000.

G. Acceptance of Quit Claim Deed from Cenex Harvest States Cooperative for Tract 1B3 of Amended Tract 1B, C/S 738.

H. Contract with the Segal Company for health insurance consulting and actuarial services, \$25,000.

I. Extension of Professional Services Contract for Steven Lehman for the Teamster contract negotiations and future contract administration services for all labor contracts, \$1,977.

J. Authorization of Plumbing Permit Inspection Services for the City of Laurel.

K. Acknowledging receipt of petition to annex #99-04: Lots 11-20, Blocks 14; Lots 1-20, Block 13; Lots 1-10, Block 10; Lots 1, 2, 9, and 10, Block 11; and Lots 9-11, Block 12 of Daniels Subdivision, 2nd filing, George Rosenfeld and Gene Brosovich, petitioners, and setting a public hearing date for 9/13/99.

L Acknowledging receipt of petition to annex #99-05: a portion of Tracts 2 and 3, C/S 3011, Roy & Jock Clause, petitioners and setting a public hearing date for 9/27/99.

M. Subordination of Housing Rehab Loan: Gabriel and Barbara Gutierrez, 520 S 31st Street, \$2500 of \$15,000 deferred loan.

N. Resolution 99-17492 revising the license and adoption fees at the Animal Shelter.

O. SID 1342: Street & Utility Improvements in Lake Hills Sub, 23rd and 24th Filings:

- (1) **Resolution 99-17493** providing for the receiving of bids and the letting of a contract for the construction of improvements and setting a bid opening date for 9/7/99.
- (2) **Resolution 99-17494** authorizing the issuance and calling for the public sale thereof of bonds and setting a sale date for 9/27/99

P SID 1343: Street & Utility Improvements for King Avenue West, S. 32nd Street West, S. 31st Street West, S. 30th Street West, S. 29th Street West, Cel Avenue and Henesta Drive:

- (1) Professional Services Contract for Engineering Services, Engineering, Inc., \$480,062.01.
- (2) **Resolution of Intention to Create 99-17495** the District and setting a public hearing date for 9/13/99.

Q. First reading ordinance amending BMCC by adding Section 18-102: Extension of Billings Police Officer Arrest Jurisdiction, extending police officer arrest jurisdiction to five (5) miles of the Billings city limits and along the line of the water supply of the City of Billings, and setting a public hearing date for 9/13/99.

R. Preliminary Minor Plat of Amended Lots 1 and 2, Block 2, Southgate Subdivision, 2nd. Filing. (Generally located on the south side of Southgate Drive.)

S. Bills and Payroll.

T. LATE ADDITION:

Encumbrance of Corporate Air's leasehold Interest to Norwest Bank for financing the construction of the new postal sort facility.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Johnson moved to ADD Item T to the Consent Agenda, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved to ADD Item 7 to the Regular Agenda, seconded by Councilmember Deisz. On a voice vote, the motion was approved. Councilmember Larson voted "no".

Councilmember Bradley separated Items I, L and Q. Councilmember Deisz separated Items F and J.

Councilmember McDanel moved for approval of the Consent Agenda EXCEPT Items F, I, J, L and Q, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of ITEM F, seconded by Councilmember Larson. Councilmember Deisz asked if the City has just accepted a grant for this item. Police Chief Tussing said this is just a formal acceptance of the contract that is funded via a grant. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of ITEM I, seconded by Councilmember Larson. Councilmember Bradley asked if this contract was for a retainer or on an as-needed basis. Acting City Administrator Bill McGill said it was a retainer. Councilmember Bradley asked if this was consistent with what has been done in the past.

Mr. McGill said this extends the existing contract. Human Resources Director Laura Marshall said in February the council approved a contract with Mr. Lehman to assist with Teamster contract negotiations. She noted that the contract assistance went a little over budget due to the extensive, lengthy conversations with the 9-1-1 employees. The \$1977 covers the overage and the contract acknowledges that from time to time the City may need contract administration services on an hourly basis. Ms. Marshall said she doesn't have any projects on the horizon that she would need to utilize Mr. Lehman's services, but she would like the ability to use his services as issues arise. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of ITEM J, seconded by Councilmember Larson. Councilmember Deisz asked if this was for a set period of time. Public Works Director Kurt Corey said it was for an indeterminate period of time, but it was anticipated to be about 3 to 6 months. The agreement can be terminated by either party at any time. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of ITEM L, seconded by Councilmember Larson. Councilmember Bradley asked if this site was the old Barry O'Leary gravel pit and if the council would be receiving a report on the groundwater problem associated with the site. Zoning Coordinator Jeff Bollman said it was the former Barry O'Leary gravel pit. He said Engineering Inc. is the agent for this petition request.

He said he was not sure if the firm had conducted groundwater tests or has information on that item. Councilmember Bradley said the only reason it was brought up was because of the problems associated with the gravel pit on the west end of town – problems with groundwater and settlement. Like problems have been seen elsewhere around town as well. On a voice vote, the motion was unanimously approved.

Councilmember McDanel moved for approval of ITEM Q, seconded by Councilmember Larson. Councilmember Bradley noted that the police chief just mentioned that he needed more officers, “now you want to extend the jurisdiction. Aren’t you stretched enough?” Police Chief Ron Tussing replied that this ordinance is an attempt to make the department more efficient. There are pockets in the city – like the Metra, which are not in city limits. In the past, an officer has seen someone that has an outstanding warrant out on them, or he knows is a suspect or is committing a crime, and this is taking place on property that is not in city limits. “Rather than waiting for a deputy to come to assist them, they will have the authority to make the arrest and we won’t have to worry about liability issues later,” he said. Chief Tussing said he has spoken with the Sheriff, who indicated he does not intend to abdicate any of his responsibilities outside of the jurisdiction area. Councilmember Bradley said the issue becomes sticky with outlying areas – such as the Crow Indian Reservation, which is 3 miles from city limits and is all under federal jurisdiction. Chief Tussing said the 5 miles is the statutory limit that the legislature has granted for jurisdictional areas. Councilmember Deisz asked, “if we go 4 ½ miles out for our plumbing codes and our jurisdiction of the city, why would you pick 5 miles on this and not the 4 ½ miles?” Chief Tussing said he thought the extended jurisdiction was 4 ½ miles, but the statute was rechecked and the statute says 5 miles. Councilmember Deisz asked if this would allow the officers to go out 5 miles beyond the 4-½ mile jurisdiction. Chief Tussing replied that it would not do that, only 5 miles from the city limits or consistent with the line of water supply in the city, but no more than 5 miles. Councilmember Deisz said his other request has to do with police officers driving their cars outside of city limits. “I understand there was a DUI and a wreck the first part of August in Laurel. Could we get information on that?” he asked. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING FOR SPECIAL REVIEW #664: a special review to allow the placement of two (2) 10-plexes in a Residential 6000 zone on Lot 19, Wolf Subdivision, located at 3011 Boulder Avenue. JoAnn Stevens, owner; Engineering, Inc., agent. Zoning Commission recommends DENIAL. (Action: approval or disapproval of Zoning Commission recommendation.) APPLICANT REQUESTS WITHDRAWAL.

Zoning Coordinator Jeff Bollman noted that the applicant has requested withdrawal of their request. They are proposing to submit a new application for a lesser

density project.

The public hearing was opened. ALAN KIRKWOOD, NO ADDRESS GIVEN, said he and his mother live on Lot 18 of Wolf Subdivision and has watched the area become overpopulated over the years. He said the Stevens have withdrawn their proposal of 20 units, but the 16 units (2 8-plexes, the new proposal) would still be too many units for the area. He hoped the Stevens and the neighborhood could work something else out.

DIANE BURK, NO ADDRESS GIVEN, said she lives across the street from 3011 Boulder Avenue. She noted the units that they want to bring in are not new units or new construction, but 20-year old buildings that will be moved to the site. She said this would not enhance the neighborhood at all.

There were no other speakers. The public hearing was closed. Councilmember Deisz moved for acceptance of the withdrawal letter, seconded by Councilmember Elison. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING FOR SPECIAL REVIEW #665: a special review to allow the placement of an all-beverage liquor license in a Community Commercial zone on Lot 5A1, Block 2 of Descro-Central Subdivision Amended, located at 2545 Central Avenue, Suite D. Qayum Investment Properties, LLC, owner; Ernie Dutton and Philip Keith, agents. Zoning Commission recommends CONDITIONAL APPROVAL. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the subject property is located on the north side of Central Avenue, across Central Avenue from Rimrock Mall. This property did come before the council several months ago for a similar special review, which the council subsequently denied in a 5-5 vote. This property does require waiver of the 600-foot separation requirements because of Stewart Park and a church located on Cook Avenue. The Zoning Commission recommended conditional approval, with the following conditions: (1) this special review approval shall be limited to the 1,400 sf portion of the shopping center, labeled as Suite D on the submitted application materials; and (2) that the 600 ft separation requirement from any school, playground, public park, public recreation area, church or other public building be waived.

The public hearing was opened. GLADYS PHELPS OF 1102 DENWAY PLACE said she is here on behalf of the Splash Page, a business her son owns, that is located next to the proposed casino. The Splash Page is a comic book & games specialty business whose primary customer base consists of children and adolescents. She said they felt it was inappropriate to have a casino next to a business “where parents have become comfortable ... to drop their children off to browse, while parents shop.” She

said there already are other casinos in the immediate 4-block area.

CAROLYN ENNIS OF 3000 WALDEN PLACE said she is a long time member of a grass roots group called "Don't Gamble with the Future", a statewide organization. Ms. Ennis said she supports the council's recent decision to deny the waiver of the 600-ft. separation. "In the big picture, your constituents expect you to support generally agreed upon principles and standards in the community. In this case, what we are expecting you to support are the restrictions of locating casinos and liquor establishments near churches, parks and schools," she said. She said in this case, there are two out of three. Ms. Ennis said it is tempting to please an individual special request, but these casino owners have plenty of other sites in the community to choose from, so a waiver shouldn't be necessary here.

LIL MCBRIDE OF 3103 SYCAMORE LANE said she concurred with Ms. Ennis' remarks. She urged the council to again deny the request this evening, "thereby setting a precedent that your 'no' is 'no' to the liquor license folks that making a request for waivers, that your 'no' is not a 'come again and keep trying and trying.' "

PHIL KEITH, NO ADDRESS GIVEN, introduced his wife Isabel Keith, stating that he is the developer of the proposed Diamond Sams and his wife is the proposed owner. He acknowledged that this is their second attempt, noting that the first time they did not attend the council meeting as he and his wife were out of town and celebrating their 31st wedding anniversary. Mr. Keith said Diamond Sams would be in the same venue as Diamond Jubilee in the Heights – a \$1.7 Million refurbishment of a former facility. He said it has no bar; beer sales are less than 2% of total sales. It has a substantial restaurant however. It is themed around a New York eatery – something like Little Italy. Mr. Keith said Diamond Sams will sell deep pan pizza and submarine sandwiches and will have beer and wine for people who choose to have those beverages. There will not be a bar in place, noting they do not cater to drinkers. He said they cater to people who eat and like to gamble. They are proposing to spend \$450,000 in a 1,400 sf space to remodel it into a nice, inviting atmosphere. Mr. Keith said he currently owns the Lucky Lady Casino near Costco. He spent \$1.8 Million on that project. He emphasized that they are residents of Billings since 1978, pay substantial taxes here, buy groceries and clothes here and belong to the YMCA, adding that they like to be good neighbors.

DARRELL KREITZBERG OF 5832 SAM SNEAD TRAIL said he is a local commercial real estate broker handling sales and leasing and development of shopping centers. Mr. Kreitzberg said that is why strip shopping centers and community centers exist, so that there can be a variety of tenants in them. He said there are casinos in the vicinity, noting in their shopping center – Rimrock Village, there is a casino right next to Show Biz Pizza, where children go all the time. He urged the council to support the request.

MR. KEITH RETURNED TO CONCLUDE HIS REMARKS. He said their company pays over \$800,000 in payroll and substantial property taxes in the

community. Mr. Keith said there are 9 other locations in the surrounding area that currently sell alcohol. He reminded the council that the Zoning Commission has recommended approval of their request.

There were not other speakers. The public hearing was closed. Councilmember Kennedy moved for approval of the Zoning Commission recommendation, seconded by Councilmember Larson. Councilmember Larson said the waiver requirement allows the council to take a look at each specific proposal to review its impact. "I have a difficult time seeing the argument where there is going to be a detrimental impact to either Stewart Park or a church that is physically going to be unable to see this particular restaurant/casino. For us to say that the reason that we are saying no to this is because of the detrimental impact to St. Andrew's Presbyterian Church down the road from something they are physically going to be unable to even see is a bit of a stretch for me. So, one again, we are fighting this whole gaming issue indirectly. If we are opposed to gaming, to these machines in our restaurants, then let's have the nerve to do a couple of things – (1) take it on directly and (2) wean ourselves of the substantial dollars that we are currently using to support our general fund. I think that is going to be a difficult process, but if we are truly opposed to this, to use what I consider to be almost a backhanded approach, I find that very bothersome. We have created a situation where these folks that are buying these licenses are having to make substantial investments. What should be a relatively inexpensive item – a liquor license allowing you to sell beer and wine in an Italian restaurant along with your pizza and spaghetti is now a \$350,000 investment. Because of that, we are creating the economic necessity for people to bring in revenue to finance this. We, as the voters of Montana have created the situation we now say we deplore. If we want to tackle this ... we should look at tackling it directly, not look at this property owner and say no, we are not going to allow you to do this, because we think there is going to be an impact that I think most of us would have a very difficult time making an argument for in this particular instance," he stated. Councilmember Kennedy reminded the council that Stewart Park does sell alcohol for the softball tournaments and there is no direct access to St. Andrew's Presbyterian Church. He said the city currently gets about \$4 Million in revenue from gambling, the equivalent of about 37 mills. "Here is an area where there are numerous licenses and businesses that do deal in alcohol and retail. If not here, then where? We've had sites before us that had no need for the waiver at all and we've had members of this council vote against it, because of the basic problem of what gambling has done to our state and communities. I believe there may be some issues to look at, but we do not need to be holding an individual hostage in this instance," he stated. Councilmember Deisz said he agreed with Councilmember Kennedy that the issue needs to be reviewed, adding that he also had a problem with holding a local person who is a taxpayer, property owner in Billings for 20+ years hostage to that. "I appreciate the people who came and spoke this evening because we had far more input this evening than we did a month ago when this came up – there was no input... The people who would most be affected by this are not here to stand up and say 'no'... Where are they? I have voted against these in the past and have always voted with

the neighborhoods. I have a real problem voting against this one due to the fact that we do not have overwhelming support one way or another from that neighborhood or locality," he stated. Councilmember McDanel said he believed 600 ft is 600 ft. "The issue here is alcohol and gambling; it's not trying to control gambling. I've supported those establishments that have not fallen within the 600 ft radius of schools, parks or churches and I have voted against those that have fallen within 600 ft of schools or parks," he stated. Councilmember Bradley said these people are bearing the brunt of the discussion of issues that should be contained within the council. "We need to take a look at this issue; it is a social issue statewide, something that needs to be taken care of that way," he stated. Councilmember Johnson said he would not support the request because there is still the code requirement of 600-ft separation for schools, parks and churches. He reminded the council that this issue has been discussed by the council on a number of occasions and they need to revisit the issue. "In the mean time, this one or any other one that comes before us that talks about a waiver, I will vote in opposition," he stated. Councilmember McDermott said the 600-ft requirement is the issue here. On a roll call vote, the motion failed 5-6. Councilmembers voting "yes" were: Bradley, Deisz, Kennedy, Elison and Larson. Councilmembers voting "no" were: McDermott, McDanel, Iverson, Tooley, Johnson, and Ohnstad.

4. PUBLIC HEARING AND FIRST READING ORDINANCE amending Sections 27-1004 and 27-1005 BMCC to create a new Entryway Light Industrial Zoning District, including those uses allowed outright or requiring special review, along with the development of standards for this new zoning district. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Director Kerwin Jensen said this ordinance would create a new zoning district for an entryway light industrial zoning district. The County Commission recommended looking at this possibility, as a new entryway is being created with the Shiloh Interchange project. The Commission felt that it needed to set standards and include uses such as truck stops and warehouses, etc. Creating this zoning district is a 3-step process. This is the first step in the process, which will create the standards and getting them into the zoning regulations. The second step will be to adopt a master plan showing where this new zoning district and other entryway zones should be for the Shiloh Interchange. The third step will be actually going through the zone change process to change current zoning districts to the entryway zones.

The public hearing was opened. CHARLES HAMWEY, NO ADDRESS GIVEN, said he is President of the Planning Board. He said this new zoning district would be a great help to the city and county in making the entryways more attractive.

There were no other speakers. The public hearing was closed. Councilmember Iverson moved for approval of the ordinance on first reading, seconded by Councilmember Deisz. Councilmember Deisz asked if jewelry was particularly excluded under the light manufacturing category. Mr. Jensen said he didn't know the answer to that and would have to check on that to see if it was overlooked. Councilmember Elison noted that the development standards as presented referred

only to setbacks and asked if landscaping and other standards were going to be developed and required. Mr. Jensen said the standards would be specific to all entryway zones and may not have been included here. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION 99-17496 ANNEXING #99-03: a portion of Tract 2, C/S 3011, containing 5.46 acres; Roy and Jock Clause, petitioners. Staff recommends approval of the public services report and conditional approval of the annexation. (Action: approval or disapproval of resolution.)

Zoning Coordinator Jeff Bollman said this property came before the council in May 1998. The subject property is approximately 5.50 acres located on the south side of Wicks Lane. It is contiguous with current city limits in this area. It is located on top of the bench that remains from the old Barry O'Leary gravel pit. It can be served by the existing sanitary sewer line located at the corner of Bitterroot and Wicks Lane. Staff recommends the annexation be approved with one condition: that a development agreement or Subdivision Improvements Agreement be entered into between this property owner and the City regarding the development of this property.

Councilmember McDanel asked if the annexation itself triggers the development agreement or the SIA, or the extension of the infrastructure features. Mr. Bollman said development and building on that property would trigger those items. Councilmember Bradley asked what this parcel will be zoned. Mr. Bollman said it is currently R9600 in the county and will remain R9600 in the city. Councilmember Larson asked if the development agreement will need to come back before the council. Mr. Bollman said if the property does not go through a subdivision process and an SIA developed, then a development agreement would be entered into and it would have to come back to the council for approval. Councilmember Deisz asked if the SIA would come back to the council for input. Mr. Bollman explained that the SIA would be part of the subdivision and the subdivision would have to come to the council for approval. Councilmember Deisz said he has two main concerns: (1) who pays for the construction of Wicks Lane down that area and (2) mitigation of groundwater contamination and testing. Mr. Bollman said since Wicks Lane from Bitterroot east is a gravel street, past practice of the Public Works Department has been to require that the developer pave a 30-foot section of the street. As far as the groundwater testing, etc. City Attorney Brent Brooks said that the state DEQ, in the case of a major subdivision, would review that aspect of the project. He said he would have to research the matter of the council's veto power over the state DEQ.

The public hearing was opened. PETE HANSEN OF 1435 WICKS LANE said he is the chairman of the United Residents of East Billings Heights, a 275-member organization. He agreed the area needs to be annexed, but he has some concerns. As a former chair of the Heights Task Force, he was concerned that the task forces are not notified about annexations as they are about zoning. Any change in property standards is of interest to the task forces in the city he said. Mr. Hansen said their organization has always said they would support R9600 zoning in the area. Their concerns are: (1) dispute over ownership of Wicks Lane in that area, (2) the anticipation of considerable in

the area and the narrow bridge in the area posing problems. "We would ask in terms of conditional approval of the annexation, that (1) the developer be required to pave the entire width of Wicks Lane to the end of the annexed area; (2) if curb and gutter become required because of this annexation, the residents to the north not be penalized with an SID for the developers' gain; and (3) imposing a 15 mph speed limit in the area because of school children walking along that street on their way to and from school." Mr. Hansen noted that precedent has already been set for paving the entire street – established on Reda Lane in the vicinity of Lake Elmo Drive.

JOCK CLAUSE OF 1960 WICKS LANE said he is one of the developers of this property. He asked the council to support the development. Annexation will provide a way for them to provide sanitary sewer to the lots within the development. He said it will be an improvement to the area.

ROY CLAUSE, NO ADDRESS GIVEN, said the site is only about 5 acres in size. At R9600 zoning, only about 20 lots would be created. He said the area of the gravel pit that this site lies on in on the top, which has never been mined, so groundwater and pollution problems should be a factor.

NANETTE KUHL OF 1619 WICKS LANE said she is not opposed to the annexation, but is concerned with accessibility to their homes once the sewer excavation work begins. The street is not very wide in that area and all the residents will have to park at the end of the street and walk in to their homes. There is no other access to those homes besides Wicks Lane. Ms. Kuhl said the bridge is a small bridge with a culvert through it and accommodates one car at a time. She said the speed limit would be an extremely beneficial feature.

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

6. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5100 extending the boundaries of Ward II to include recently annexed properties in Annex #99-02: Tracts 1 & 2, C/S 2866; Joy and Lennie Turner, petitioners. Staff recommends approval. (Action: approval or disapproval of ordinance of second reading.)

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

7. DISCUSSION on Showmobile Rental Fees. (McDermott).

Mayor Tooley noted that Ponderosa School is doing a fundraiser and have requested the City waive the normal fees for use of the City's Showmobile, because all the other service providers at the fundraiser are providing their services at no charge. He explained that the issue before the council is whether or not the council should allow a non-profit organization to not pay for the normal fee for the Showmobile. Councilmember McDermott moved to waive fees for use of the Showmobile by non-profit organizations, seconded by Councilmember Bradley. Councilmember Kennedy said that is a noble

idea, but non-profit organizations do not pay property taxes, and the Showmobile is supported by property taxes. "We have huge fire suppression equipment that we use to suppress fires in multiple story buildings. If you look at the multiple story buildings in this town, a lot of them are non-profits. So, to me... this is a huge policy issue that you are tackling. We need to draw the line somewhere and my line is in the sand. I can't do that anymore, for my property taxes to go to those kinds of things," he said. Councilmember Ohnstad asked for a report from the Parks Department. Parks and Recreation Director Mike Hink said every time the Showmobile goes out, it is manned with two people. It takes a minimum of 1-½ hours to take it out and set it up and another 1-½ hours to take it down. The time varies – it may take up to 4 hours, depending on whether it is a single, double or triple stage. Mr. Hink said the charges are: \$150 for a single stage, \$200 for a double stage and \$325 for a triple stage. Average set up stage for the triple stage is about 2 ½ to 3 hours for two people to do that. "To give you a dollar figure on the wear and tear on a 1-ton vehicle, the Showmobile itself and the man hours, you are looking at a minimum fee of \$100+ every time it goes out. It is not a moneymaking deal. We bought that Showmobile in the early 70s for about \$19,000. It has more than recovered its cost. A new Showmobile today runs about \$55,000. We definitely need a new one; this one is archaic because it is not on any hydraulics or automatic in any way..." he said. Councilmember Larson asked if there has been discretion used in charging fees. Mr. Hink said current policy says that every time it goes out, a fee is charged. It has been utilized 29 times this summer. The fee is to recover the cost of operation. Councilmember asked if there was a frequent user discount option. Mr. Hink replied there was not; the fee was consistent each time. Councilmember Elison said he could foresee a lineup of reservations, if nonprofit organizations were allowed free use of the Showmobile. On a voice vote, the motion failed. Councilmember McDermott cast the only "yes" vote.

ADJOURN - With all business complete, Mayor Tooley adjourned the meeting at 9:10 p.m.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AE CITY CLERK

