

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **January 26, 2004**

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

**ROLL CALL** – Councilmembers present on roll call were: Gaghen, McDermott, Brewster, Brown, Ruegamer, Iverson, Boyer, Poppler, Clark and Jones.

**MINUTES – January 12, 2004**. Approved as printed.

**COURTESIES** -- NONE

**PROCLAMATIONS – Mayor Tooley**. NONE

### **BOARD & COMMISSION REPORTS**

- **Aviation & Transit Board** – Dick Paasch, chairman of the Aviation and Transit Commission said the airport and transit operations are important parts of the community. The Airport is a major economic contributor to the region, not just the community. It is the largest and busiest airport in the region surrounding us, serving an area of about 400,000 people. It is a self-supporting enterprise fund. 40+ commercial flights/day use the airport. About 1.2 million people pass through the terminal building each year. The Transit system provides bus services six days/week to our citizens. In 2003, the transit buses provided 700,000 rides and drove nearly 1 million miles. The upcoming replacement of the air traffic control tower will cost nearly \$14 million and bring a lot of money into the Billings' economy. The back to school program sponsored by the Transit Division has been well received by the community and has become an annual program.
- Greg Krueger, Director of the Downtown Billings Partnership invited the Council to the Town Meeting tomorrow evening to discuss the future of Downtown Billings. Also discussed will be the projects completed to date and the status of ongoing projects. The meeting will be held in the basement of the Hart Albin Parking Garage and will begin at 6:45 p.m.

### **ADMINISTRATOR REPORTS – Kristoff Bauer.**

- Mr. Bauer said he and the Mayor will be out of the office on Wednesday in Butte to attend a Montana League of Cities and Towns meeting with other municipal officials around the state. One of the issues to be discussed is the Northwestern Energy issue. A report on the meeting's outcome will be provided in the Friday packet.

- He reminded the council that a revised map was provided for Item #2 in last week's Friday packet. This is the map that will be referred to in tonight's presentation.
- A revised copy of the ordinance on aggressive solicitation in Item #4 has been placed on the Council's desks this evening. The copy Council received in their packets was not the most up to date version.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 and 5 ONLY.**

**Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on public hearing items will be heard ONLY during the designated public hearing time on each respective item. )  
(*NOTE: For Items NOT on this agenda, public comment will be taken at the end of the agenda.*) .

NO SPEAKERS

**CONSENT AGENDA:**

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

	Name	Board/Commission	Term	
			Begins	Ends
1.	Paul Cox*	Board of Adjustments	01/01/04	12/31/04
2.	Coleman Rockwell	Exchange City Golf Corporation Board	01/01/04	12/31/06
3.	Todd Harkness	Exchange City Golf Corporation Board	01/01/04	12/31/06
4.	Michael Crummett	Human Relations Commission	01/01/04	12/31/07

\*Paul Cox is serving the unexpired term of Ryan Halpin, term expiration is 12/31/04 not 12/31/07 as stated in the January 12, 2004 memo

B. C.O. #3, W.O. 02-19: City Animal Shelter, General Contractors Construction Co., \$15,949.24 and 7 days.

C. Acceptance of Recreational Trails Grant Agreement for Stewart Park Trail; Fish, Wildlife and Parks (FWP), \$17,300.00.

D. Acceptance of funds from the First Interstate BancSystem Foundation Grant for the Downtown Billings Skate Park, \$2500.00.

E. Addendum to City-County Special Investigations Unit (CCSIU) Agreement with Yellowstone County increasing the funds available for drug investigations.

**F. Renewal of Misdemeanor Supervision (Probation) Program** through a contract for services with Alternatives, Inc., City's share: \$50,000.00.

**G. Online Board/Commission Information Center** and resolution approving a \$1984.00 ~~Council Contingency~~ expenditure.

**H. Acceptance of real property** from Lutheran Church of the Good Shepherd, Lot 2A, Block 1 of Amended plat of Lot 2, Block 1, Schulyer Subdivision, \$0.

**I. Security Access Control System Service Agreement** with Johnson Controls, \$26,726.00.

**J. Resolutions for authorized signatories on US Bank Accounts:**

1. Jury Witness Account	<b>04-18069</b>
2. Court Bond Refund Account	<b>04-18070</b>
3. Health Insurance Account	<b>04-18071</b>
4. Bond/coupon Account	<b>04-18072</b>
5. General Depository Account	<b>04-18073</b>
6. Water Dept. Account	<b>04-18074</b>
7. Payroll Account	<b>04-18075</b>
8. Accounts Payable Account	<b>04-18076</b>
9. Acct #2077	<b>04-18077</b>
10. Acct #2929	<b>04-18078</b>
11. Acct# 2419	<b>04-18079</b>
12. Acct#0208	<b>04-18080</b>
13. Acct# 2575	<b>04-18081</b>

**K. Resolution of Intention 04-18082 to Create PMD #4022:** creating a maintenance district for Lutheran Park – located in Block 2, Vista Heights Subdivision, and setting a public hearing date for 2/23/04.

**L. Resolution of Intention 04-18083 to Expand PMD #4009:** boulevard maintenance in Aspen Grove Subdivision, 4<sup>th</sup> filing, and setting a public hearing date for 2/23/04.

**M. Second/final reading ordinance 04-5262 for Zone Change #723:** A zone change from Controlled Industrial to Highway Commercial on property described as Lot 2, Block 1, Strong Subdivision and located at 1824 King Avenue West.

**N. Second/final reading ordinance 04-5263** expanding the boundaries of Ward III to include recently annexed properties described as: Tracts 1-4, C/S 2064 and Tract 1, C/S 3125 (Annex #03-07).

**O. Second/final reading ordinance 04-5264** expanding the boundaries of Ward V to include recently annexed property described as: Tracts 5A-1 and 5A-2, C/S 1648, 3<sup>rd</sup> Amendment, (Annex #03-09).

**P. Mutual Aid Agreement** with City of Kalispell for law enforcement assistance.

**Q. Accept dedication of the public rights-of-way** on Amended Plat of Lots 16-19, Block 5, Rehberg Ranch Estates Subdivision, 1<sup>st</sup> filing

**R. Bills and Payroll.**

(Action: approval or disapproval of Consent Agenda.)

Councilmember Jones separated Item F from the Consent Agenda. Councilmember Iverson moved for approval of the Consent Agenda with the exception of Item F, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Iverson moved for approval of Item F, seconded by Councilmember Brewster. Councilmember Jones questioned the amount of the contract and the time period, as the staff memo differs from the contract language. City Administrator Kristoff Bauer said the time period changed from one year to six months. He asked that Council move to delay this item so that additional information can be provided to the Councilmembers. David Armstrong of Alternatives, Inc. stated that the fiscal year of the grant began July 1, 2003 and is for a one-year time period. He noted that the contract amount is \$50,000 for the one-year time period. Councilmember Jones moved to add language in the contract stating a one-year time period (7/1/03 – 6/30/04) on page four - item five and page seven - item 12, seconded by Councilmember McDermott. Councilmember Brown asked Mr. Armstrong for clarification of the terms of the contract. Mr. Armstrong said the contract has been on-going for four years is a one-year renewable contract. Councilmember Jones amended his motion to show the beginning date as 7/1/03 in every appropriate place, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

Councilmember Jones amended the contract to provide 30 days written notice instead of 60 days (item ten - page six), seconded by Councilmember Clark. On a voice vote, the amendment was unanimously approved. On a voice vote for the motion as amended, the motion was unanimously approved.

Councilmember Brewster made a substitute motion to delay the contract for two weeks, seconded by Councilmember Boyer. Councilmember Brewster said the Council should only consider a contract with the proposed changes that has been reviewed by the legal staff before the Council approves it. Councilmember Boyer noted that Mr. Armstrong should also review the proposed changes. On a voice vote, the motion was unanimously approved. The item was delayed to 2/9/04.

**REGULAR AGENDA:**

**2. PUBLIC HEARING ON W.O. 03-06: Swords Park Trail, approval of trail route.  
Staff recommends approval of the preferred path alignment identified in the study for this project. (Action: approval or disapproval of Staff recommendation.)**

Staff Engineer Nick Bailey presented the project scope. He said the plan is to design and construct a 10-foot wide multi-use path from North 27th Street to Boot Hill Cemetery, located on City property, but used and managed by the Aviation and Transit Department, with Federal Aviation Administration oversight, as well as the Parks, Recreation and Public Land Department. He noted that the FAA is currently reviewing the proposed land uses, as much of this land is in critical aircraft approach zones and was purchased with Federal Airport Improvement Program funds. He noted the path is coordinated with Airport Road improvements and consistent with Swords Park Master Plan. Mr. Bailey said the path is a major component of BIKENET and the Draft Heritage Trail Plan. It will be bid with both concrete and asphalt surface alternatives. The "pioneered" road cuts would be reclaimed as funding allows.

Mr. Bailey outlined the funding for the path. It includes funds from Congestion Mitigation and Air Quality Discretionary Grant Funding, Recreational Trails Program Grant Funding (Fish Wildlife and Parks) and a Trails General Obligation Bond. The total of the funding sources is \$864,000. The funds would be used for preliminary engineering, construction engineering and actual construction.

He said the completed steps of the preliminary design include: the Cultural Resource Survey, FAA Review initiation, a Public information meeting held in May of 2003, a Public alignment walk-through held in November of 2003, Crow Tribe contact for input on trail selection, Path users consultation, and Airport Road construction coordination. The design was found to be consistent with the Master Plan by both the Parks, Recreation and Public Land Board and the Steering Committee.

Mr. Bailey said the future steps of the preliminary design are: approval of the proposed path alignment (the next step), FAA approval for the land uses, final design, advertisement for and receiving bids and construction. He explained the features of the proposed path alignment from a map handout. He said Staff is requesting approval of the conceptual path alignment, noting that the alignment is not dependent on the Master Plan.

The public hearing was opened. BLAINE POPPLER, 2434 AVENUE B, said the proposed alignment is very confusing but he personally supports the Bike Trail. He said he does not want to see Black Otter Trail lost in this process. He noted that the historical sights along the trail are eligible for inclusion on the National Registry. He requested that other enforcement options be used to prevent damage to the park, including new barriers.

LINDA BYAN, 1959 PHOEBE DRIVE, said she moved to Billings in December of 2003. She said she walks "this vista" and finds it beautiful. She noted there is a lot of vandalism to the park that deters from the beauty, such as graffiti on the sandstone. She said she thinks this is due to vehicle access and supports the separation of a pedestrian walkway.

GLEN MYERS, 1215 MAURINE STREET, said he is the co-chairman of the Swords Park Committee that looked at keeping the Swords Park road open. He noted

the expense could be costly at \$1 Million per mile. He said the City could look at a simpler plan or leave it as is with more damage to come in the future. He asked the Council to be decisive this evening and set limits on how much should be spent. He noted the community does not want to shut off vehicular traffic in its entirety, but the decision must be made to protect the beauty of the trail.

FRANCES HARRIS, THE TERRACE, said she is a native Montanan and lifetime resident of Billings. She reminded the Council that when Mr. Swords gave the land to the City it was for people to enjoy driving through the area. She said that desire should be respected. She suggested that maybe a park not be there and the land returned to the Swords family if the City does not want to respect Mr. Sword's wishes.

JOE WHITE, 26 NORTH 30<sup>TH</sup> STREET, said a bicycle trail is important in this park. He added that there is a need for restroom facilities that should be built before the path. He said vandalism needs to be stemmed and pursued through investigation and prosecution of the offenders.

PATRICK SMITH, 19 BURLINGTON, said he is a frequent user of this part of the Rims, as he likes to bike and hike. He said he does not like the vehicle access that allows 4-wheelers to destroy the park. He noted that he has found discarded appliances and junk in the areas where vehicles have access. Some cars even park on Yellowstone Kelly's grave. The signs and barriers placed to prevent vehicular access are vandalized. The park has great potential, but it has problems as a result of vehicle access. He said he supports closing the park to vehicular access.

VIRGINIA BRYAN, 1041 MOON VALLEY ROAD, said she lives near Alkali Creek and supports the mulit-use trail in Swords Park, walking various sections of the Bike Path from Mary Street to Coulson Park every week. She said that well defined multi-use paths are good for the environment, the wildlife and the users. It helps users stay on the trails and minimize erosion problems. She noted that Mr. Swords gave this generous gift to the City to be its good steward. She added that the community has not kept its commitment. Instead of being a jewel in Billings' crown, Swords Park is an eyesore. She asked the Council to extend the Bike Trail through Swords Park and fulfill the City's responsibilities.

BRUCE LARSON, 16 BENCH BLVD., said the City finally has a plan that will preserve the area. He said he prefers that vehicles not have access to the area. He noted that vehicles have contributed to the vandalism. It is a pristine area and the community needs to keep it that way.

JOY STEVENS, 539 INDIAN TRAIL, asked that the trail be kept open. She said she has lived here all of her life and Black Otter Trail is the first place she takes visitors to show them Billings. She said these are not "pioneer" trails, but vandalism trails and if vandalism is the problem, then it must be dealt with. She said it sets a terrible precedent to go against the wishes of Mr. Swords and close the trail. Ms. Stevens said there are ways to keep the access open, clean up the vandalism, and improve the area.

CAL CUMIN, 907 AVENUE B, COUNTY PARKS ADMINISTRATOR, said this area was a killing site and burial grounds, a holy place for natives before the white men settled here. He asked the Council to think seriously about keeping vehicular traffic out and restoring this area.

MARY WESTWOOD, 2808 MONTANA AVENUE, said Swords Park is a special part of the community that deserves more respect and care. She said the City needs to

keep this area accessible to vehicles, while discouraging 4-wheeler usage. She is concerned that there will not be enough parking for vehicle access. She added that the community has not taken responsibility to preserve and protect this park.

BRIAN KURTH, 2303 LOSEKAMP, said he supports the BIKENET and bike trails, but feels this area should remain open. He said putting up barriers or closing it will not stop off-road vehicles. He noted the road is a pothole mess and the area has not been properly cared for.

LLOYD SWORDS, 413 TERRY, said he is the great-great-grandson of Mr. Swords, the donor. He said he served on the Park Board and the family has always supported the bike path and access, but are concerned about the vandalism. The problem is enforcement as laws are being broken. He added that any closure of the road was to be a temporary closure until a permanent solution could be found to keep the road open and safe. He said Swords Park has become a forgotten park and people "go and tear it up". The City needs to direct some attention to the park again.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation for the preferred alignment, seconded by Councilmember Iverson. Councilmember Poppler amended the motion to approve the Staff recommendation with the condition that Black Otter Trail be kept open to vehicle traffic and the existing road be re-built or repaired to accommodate the existing level of traffic, seconded by Councilmember Brown. Councilmember Brown asked if the \$1 Million per mile figure is accurate. Public Works Director Dave Mumford said this figure seems high and resurfacing only would be less.

Councilmember Brewster said he enjoys driving primitive roads and believes the problem begins when damage to the native area around the road begins to degrade the area. He said simply closing the area doesn't stop the access or the damage. He said he believes the City needs to reclaim the damaged area and preserve the access by vehicles. Re-educating users as to proper usage must also be part of this process.

Councilmember Clark said he agrees with Councilmember Poppler that Black Otter Trail should remain open. Councilmember Boyer said she would like to hear from the Staff about the concerns for maintaining the roads and preventing the vandalism. Parks and Recreation Director Don Kearney said signs and vehicle barriers are problematic due to the solid rock that must be drilled into during installation. Any signs that have been installed have done nothing to stop the vandalism. Boulders as barriers were suggested, but the miles of roads made that impractical. He noted that anywhere along Airport Road is an access point for 4-wheel drive vehicles. The committee suggested that the grade from Airport Road be altered to deter those types of vehicles. Councilmember Boyer said she is shocked at how that historic area has been treated. She said the City needs to step in and do something to preserve this treasure.

Councilmember Brewster asked if closing the asphalt perimeter roads would stop the use of them. Mr. Kearney said it would not. He said education of the public and reclamation of the degraded areas of the park with parking areas strategically placed should direct users to the proper areas for use.

Councilmember Jones asked if there were any citations issued in the last year for driving off road in the area. Mr. Bauer said he did not know, but there probably were not any citations issued. Councilmember Jones said enforcement is the only way to stop the vandalism and misuse of the park. Councilmember Brown said the "antique" trails in

Swords Park were made by two-wheel vehicles tearing around the park for years. He suggested putting "Kellys" (a hump) in those trails to stop usage. He said he supports allowing vehicular traffic access. Councilmember McDermott said the City must control the abuse of a few to keep the Black Otter Trail open for the enjoyment of all. She said she supports Councilmember Poppler's amendment. Mr. Bauer said the City needs some direction from the Council on how to accomplish funding for the repair or rebuilding of Black Otter Trail and a timetable. He noted that funding from the Air Quality grant cannot be used for reconstruction of Black Otter Trail. He said parking lots are included in the current project as part of the park trails system. Mayor Tooley said he would like to have Police Department Staff report back to Council by the next meeting on what it would involve to have effective enforcement in the park (ie manpower needs, costs, etc). Councilmember Boyer expressed concerns that the Police Department is already stretched thin and with the City growing as it has, the challenges would be great to monitor Swords Park Trail.

Councilmember Ruegamer asked for clarification of the amendment. He asked if the amendment would not be accomplished before funding for the reconstruction of Black Otter Trail was secured and would that postpone construction of the bike path. Councilmember Poppler said the purpose of her amendment included approval of the alignment of the bike trail, but not closure of Black Otter Trail. She said Black Otter Trail should also be rebuilt or repaired in the process, but she had not placed a condition as to when that should be done. Councilmember Brewster suggested fencing part of the park to deter vandalism and eliminate access. Mr. Bauer said the direction that Staff needs is whether to allow the City to move forward with the Staff recommendation and look for funding in the future for the reconstruction of Black Otter Trail or to not move forward unless that funding is in place. Councilmember Brewster amended the amended motion to add reconstruction or rebuilding of Black Otter Trail to the Capital Improvements Program process, seconded by Councilmember McDermott. Councilmember Brewster said this would allow that portion of Councilmember Poppler's amendment to be accomplished through the CIP process. On a voice vote, the amendment for Black Otter Trail reconstruction as part of the CIP process was approved with Councilmembers Iverson and Poppler voting "no". On a roll call vote, the amendment to approve the Staff recommendation with the condition that Black Otter Trail remain open to vehicular traffic and the existing road be rebuilt or repaired to accommodate the existing level of traffic was approved 8-3 with Councilmembers Gaghen, McDermott, Brewster, Brown, Ruegamer, Poppler, Clark and Jones voting "yes" and Councilmembers Iverson, Boyer and Mayor Tooley voting "no".

On a voice vote for the motion as amended twice (approve alignment recommended by staff, keep Black Otter Trail open to vehicular traffic and include repair/rebuild of Black Otter Trail in CIP), the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION 04-18084 annexing Tract 2A-1 and Tract 3A-1, C/S 1876 Amended and approving the public services report, King of Glory Lutheran Church, petitioners, (#04-01). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Director Ramona Mattix said this is an annexation petition from the King of Glory Church. The area to be annexed is located at 4125 Grand Avenue and is about 7

acres in size. There are two lots, the church is on one lot and the other lot is vacant and may be taxable. The responses to the public services report were generally favorable with no significant impacts on City services. She said the owner would be responsible for connection to water and sewer. The owner has contributed to the 41<sup>st</sup> Street West construction and will contribute to the Grand Avenue construction. Ms. Mattix said this annexation conforms to several land use goals in the Growth Policy and in the West Billings Plan. It also conforms to most of the goals in the Annexation Policy with the exception of the size. She said the Staff is recommending approval.

The public hearing was opened. KEN HATFIELD, 503 NELSON DRIVE said he is a representative of the King of Glory Church. He asked the Council to approve the annexation and allow connection to City services. There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND FIRST READING ORDINANCE providing that the BMCC be amended by adding Sections 18-1001 and 18-1002, prohibiting aggressive solicitation including definition, prohibitions and penalty. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Staff recommendation, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved. Second and final reading of the ordinance is scheduled for 2/9/04.

**5. PRELIMINARY PLAT of Summer Ridge Subdivision, generally located at the SE corner of 32<sup>nd</sup> St. West and Central Avenue. Staff recommends conditional approval of the plat. (Action: approval or disapproval of Staff recommendation.)**

Planning Director Ramona Mattix said this is a minor subdivision containing four lots that will have a church, a retirement center, and a multi-family apartment complex located southeast of the intersection of 32<sup>nd</sup> Street West and Central Avenue. The plat is 38 acres. There is no park requirement because it is a minor plat. There were no significant impacts in the findings of fact. She said the Staff recommendation is for conditional approval with the conditions being:

1. If the City fails to initiate street improvements on Central Avenue or 32<sup>nd</sup> Street West adjacent to the subdivision by July 1, 2006, the City Engineer may authorize the subdivider to proceed with constructing either or both streets to serve this property.  
*Requested by Public Works so that street improvements to serve this property can be made within a reasonable time period even if the City fails to initiate the street improvement projects.*
2. The subdivider will pay all City utility fees and charges that are in effect at the time he requests and pays for service extensions/connections.  
*Requested by Public Works to ensure that current rates are being charged for all new connections or system extensions.*

3. The subdivider will prepare a stormwater design report for review by the City Engineer before final plat approval. The report shall identify this property's proportionate cost share of any storm drain improvements. The subdivider will make and/or financially secure all storm drainage improvements recommended by the report and approved by the City Engineer.

*Required by BMCC Section 23-706*

4. Utility easements will be created along all common lot lines.

*Requested by MDU and required by BMCC Section 23-603*

5. Minor wording changes may be made in the final documents upon request of the Planning or Public Works Departments to clarify the documents and bring them into standard, acceptable format. The changes are not intended to alter the intent or extent of the documents.

*Standard condition that permits minor changes to the final plat documents without requiring the subdivider to repeat the subdivision review and approval process.*

6. Subdivider shall comply with all applicable federal, state and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations.

*This condition informs the subdivider that all local and state laws and policies apply to the subdivision even if they are not specified in the documents.*

The finding of facts are:

**A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? [BMC 23-304 (c) (1) and MCA 76-3-608 (3) (a)]**

**1. Effect on agriculture and agricultural water users' facilities**

This subdivision will have a small effect on agriculture and agricultural water users' facilities. The property was actively farmed and irrigated until this year. Removing 38 acres of land from agricultural production won't have a perceptible effect on agriculture within the county. Irrigation ditches on the west property line and a portion of the north property line will be abandoned because they serve only this property. An irrigation drain runs along the south property line and it will be abandoned.

**2. Effect on local services**

- a. Utilities – Water and sewer mains exist on the subdivision's perimeter. A water main in Central needs to be extended to the east property line and extended in the public street in the subdivision. Sanitary sewer must be installed in the new public street and it may provide services for properties to the east. If it does not provide this service, a sewer lateral will be constructed in Central Avenue across the entire property frontage or a construction fee will be paid. Charges and fees, including franchise fees, need to be based on the rates that are in effect at the time that service is requested.

Stormwater drains must be constructed in 32<sup>nd</sup> and Central Ave. but since other property owners and the City need to participate in their construction, installation will be deferred until the City initiates the project, probably in 2005 or 2006.

Permanent street improvements would also be delayed until the storm drain is constructed. Interim stormwater management may include on-site retention. A stormwater drainage report and plan should be submitted and approved before final plat approval and the subdivider should be responsible for constructing the improvements identified in the report.

Private utility companies will provide service to the new lot under their operating procedures. MDU requested easements on the common lot lines.

- b. Solid waste – The City will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - Central and 32<sup>nd</sup> will be widened to 64' and 49', respectively. Their construction will be delayed until the City initiates an area-wide improvement project in 2005 or 2006. This property's contribution to the construction costs will be monetarily secured before final plat approval. The interior street will be a standard residential street that will be constructed or secured before final plat approval. Future subdivision of lot 3 will require extending this street into and possibly through the lot into property that lies east of this subdivision.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #5 on 24<sup>th</sup> Street West. Police response will depend upon officer availability and location when a call for service is placed. AMR provides medical care and transport and response would probably come from the west station at 2500 Grand Avenue.
- e. Schools – The subdivision is in School District 2. The District did not respond to a request for comments. Big Sky Elementary School will serve the property. From previous reports, the school is near or at capacity. The District won't directly benefit from higher taxable value on the property.
- f. Parks and Recreation – There is no parkland dedication requirement because this is a minor plat. The nearest public parks are Stewart Park, Millice Park and the small Terra West neighborhood park.
- g. MET Transit – MET has a route on Central Avenue that provides service to this property. The relatively high density housing on lot 2 and the retirement center on lot 4 may increase MET ridership in this area.

### 3. Effect on the natural environment

This subdivision should not create long term environmental impacts. Short term impacts may include noise, dust and run-off during construction.

4. Effect on wildlife and wildlife habitat

This subdivision should not adversely affect wildlife or habitat. The Montana Dept of Fish, Wildlife and Parks commented that this area is frequented by white tail deer that sometimes cause problems for area residents. Fencing and other measures can reduce those impacts. There are no known endangered or threatened species on the property.

5. Effect on the public health, safety and welfare

The subdivision should not negatively affect public health or safety. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties. There are no obvious threats to public health, safety or welfare.

**B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMC 23-304 (c) (1)]**

An Environmental Assessment is not required because this is a minor plat.

**C. Does the subdivision conform to the 2003 Growth Policy and the Urban Area 2000 Transportation Plan? [BMC 23-304 (c) (3)]**

1. Growth Policy

The proposed subdivision conforms to the following land use goals of the *Yellowstone County – City of Billings 2003 Growth Policy*.

- a. Predictable land use decisions that are consistent with neighborhood character and land use patterns.  
*The proposed subdivision is consistent with the neighborhood character that includes a mixture of institutions, commercial property and single and multi-family housing.*
- b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.  
*The proposed development of multi-family residences and institutional uses near the arterial streets is compatible with the neighborhoods to the west and north of the property. The proposed single-family housing area is consistent with properties to the south and east.*
- c. Contiguous development focused in and around existing population centers separated by open space.  
*The proposed subdivision is infill development, utilizes existing infrastructure and does not contribute to urban sprawl. There are no open space buffers planned but when the single-family lot is re-subdivided, a parkland dedication or cash in lieu of land will be required.*
- d. Affordable housing for all income levels dispersed throughout the City and County.

*The mix of housing types and relatively dense housing development that is allowed by the zoning should help to promote more affordable housing.*

**2. Urban area transportation plan**

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. 32<sup>nd</sup> Street West and Central Avenue are principal arterial streets. Both must be upgraded and the subdivider will pay for half-street improvements except where some facilities may provide area-wide benefits.

**3. BikeNet Plan**

The subdivision is also within the jurisdictional area of the BikeNet Plan. The Plan discourages bike traffic on Central. 32<sup>nd</sup> Street West is to be used until more acceptable routes can be developed. A north/south corridor at approximately 30<sup>th</sup> Street West has been preserved through other platting. No immediate improvements are necessary.

**D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMC 23-304 (c) (4)]**

This proposed subdivision meets the requirements of the Montana Subdivision and Platting Act and the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

**E. Does the subdivision conform to sanitary requirements? [BMC 23-304 (c) (5)]**

The property is served by municipal water, sewer, storm drain and solid waste services. All services are approved and regulated by state and federal authorities.

**F. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMC 23-304 (c) (6)]**

The property has three zoning classifications; R-9600, R-7000 and RMF-R. The subdivision and proposed uses conform to the zoning classifications.

**G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMC 23-304 (c) (7)]**

The subdivision adjoins public street rights of way that provides space for utility installations but easements should be required on the common lot lines

**H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and BMC 23-304 (c) (8)]**

All four lots have access to 32<sup>nd</sup> Street West, Central Avenue or the internal public street.

### **CONCLUSIONS OF FINDING OF FACT**

- The overall conclusion of the Findings of Fact is that the proposed Summer Hill Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- There should be little effect on local services because this is an infill proposal and services are already provided to surrounding properties.
- The proposed subdivision conforms to several goals and policies of the 2003 Yellowstone County – City of Billings Growth Policy and doesn't conflict with the Transportation or BikeNet Plans.
- The proposed subdivision complies with state and local subdivision regulations, sanitary requirements, zoning and provides legal and physical access to each parcel.

Councilmember Boyer asked if this was considered in-fill development. Ms. Mattix said there are developed properties to the north and south making this an in-fill development. Councilmember Brewster asked if the streets adjacent to the property would be improved. Ms. Mattix said the petitioner has asked to wait until 2006 to improve the streets according to the City's plan.

Councilmember Poppler moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Councilmember Jones amended the motion to change condition #3 by adding stormwater plan must be reviewed and approved by City Engineer, seconded by Councilmember Brewster. On a voice vote, the amendment was unanimously approved. Councilmember Jones asked what other properties would be required to participate in the stormwater drainage improvements. Mr. Mumford said the adjacent property owners to 32<sup>nd</sup> Street West and Central Avenue would be reviewed to see what their drainage situation is. On a voice vote for the motion as amended, the motion was unanimously approved.

### **6. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** **(Restricted to Non-Agenda Items only; comments limited to 3 minutes per speaker.** **Please sign up on the clipboard located at the back of the Council Chambers.)**

NO SPEAKERS.

### **Council Initiatives**

- **COUNCILMEMBER GAGHEN:** Councilmember Gaghen moved to direct Staff to schedule a public hearing before the Council to give the Deer Control Committee a forum before the Council to speak on the continuing problem with the deer population in the City, seconded by Councilmember Boyer. Councilmember Brewster noted that setting a public hearing generally relates to an action that the Council is prepared to act on. He said he did not think the Council is contemplating an action on this issue. Any speakers that wish to address the Council on this item can do so during the Non-Agenda Public Comment Period at

the end of each agenda. He suggested that they come to the next Council meeting and give their public comment at that time. Councilmember Jones agreed with Councilmember Brewster's comments. He said it is a difficult situation without a workable solution, but the public comment period can provide a forum for their input. Councilmember Boyer asked if some constructive suggestions for solutions to the problem could be sent via the utility statements. Mr. Bauer said the City is working on educational materials that can be distributed to the community. He added the Fish, Wildlife and Parks agency is putting together a forum to address the wildlife problems. On a voice vote, the motion failed.

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 9:05 P.M.

THE CITY OF BILLINGS:

By: \_\_\_\_\_  
Charles F. Tooley MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk