

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## February 9, 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 Larry Brewster.

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

**MINUTES – January 26, 2004**. Approved as printed.

**COURTESIES** -- None

**PROCLAMATIONS – Mayor Tooley**. None

### **BOARD & COMMISSION REPORTS**

- **Historic Preservation Board:** Jolene Rieck, chair of the Yellowstone Historic Preservation Board said the Board was created in 1993 via an Interlocal Agreement between the City of Billings, Yellowstone County, the City of Laurel, and the Crow Tribal Council to promote public interest and preservation of historic and prehistoric sites, structures, objects, buildings and districts by addressing preservation issues at the local level and integrating them into local, state and federal planning and decision-making processes. The board consists of nine members with an interest, competence and knowledge of historic preservation. The board serves to advise key decision makers such as the City Council on development and issues pertaining to historic districts and properties.

- Consultant to the Board – Kevin Kooistra-Manning, Western Heritage Center, spoke briefly about the community projects in which the board has been involved, highlighting the “Bricks and Board”, a project that involved pictures of the downtown areas of Billings and Laurel taken by school children and assembled into posters by CTA Architects. This exhibit will open March 2<sup>nd</sup> at the Western Heritage Center and run for one month. He noted that Historic Preservation Week is held early in May each year, with featured speakers.

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

- Mr. Bauer introduced Christina (Tina) Volek, the City's new Assistant City Administrator. Ms. Volek began her duties today.
- Mr. Bauer noted that additional information regarding a proposal by R. W. Beck to perform a preliminary valuation of the Montana Electric and Gas utility properties of Northwestern Energy Corporation was placed on the desks of the Council this evening. The Council may add this item to the agenda if they wish to take action on this item this evening.

- Mr. Bauer also noted that Item 1N has no recommendation from the Planning Board. It will require a separation from the Consent Agenda for the Council to take separate action on the item.

**LATE ADDITION:**

**DISCUSSION of the R.W. Beck proposal to perform a preliminary valuation of the Montana Electric and Gas Utility Properties of Northwestern Corp.**

Councilmember Iverson moved to add the late addition of the proposal of R. W. Beck as Item 10 to the agenda, seconded by Councilmember Gaghen. Councilmember Brewster noted that this proposal contains information for the City to consider buying his employer's assets, therefore he would abstain from the discussion and voting. Councilmember Jones said the options to add late additions should not be exercised in this case and he does not support the motion. Mayor Tooley explained that the six large cities in Montana have gathered together to engage the services of a consultant to represent them in consideration of this purchase. He noted that the other five cities have approved this action and noted that it is on the February 23<sup>rd</sup> agenda for consideration. He described the proposal by Mr. Beck as a calculated prudent purchase price for the transmission and distribution facility, including long distance and local distribution. Also included are the identified risks, the rate impacts of the risks and the recommendation of the cities, plus a scope of work and cost estimates to perform the due diligence necessary if the terms are accepted. Mayor Tooley said timing is driving early consideration of this issue due to the possible sale of assets as part of the bankruptcy of Northwestern Energy.

Councilmember Brown said he is concerned about the City spending \$15,000 to find out the value of this facility when it is presently not for sale. Mayor Tooley said the sale could be a condition set by the bankruptcy judge.

Councilmember Poppler asked how Mr. Beck was chosen to prepare the proposal. Mayor Tooley said the Montana League of Cities and Towns chose the R. W. Beck Company because they were involved in the previous MEGA bid when those facilities were leaving control of the Montana Power Company. Councilmember McDermott said there has been \$300,000 spent on this consideration already, with the City of Billings contributing almost \$200,000. She asked if there was any usable data that could be obtained from those expenses. City Administrator Kristoff Bauer said there is a lot of data of value and that is why the present cost is so low. Mr. Bauer noted that there has not been a vote on the motion to add this present discussion to the agenda. He added that Alec Hansen of MLCT suggested that this action be taken this evening even though it is scheduled for the Council meeting on February 23<sup>rd</sup>.

Councilmember Jones noted that taking this action this evening precludes the public from addressing this issue and believes it is a bad practice. On a voice vote, the motion failed with Councilmembers Jones, Clark, McDermott, Poppler and Brown voting "no". Councilmember Brewster abstained.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 and #9 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker.)

*(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

NO COMMENTS.

**CONSENT AGENDA:**

**1. A. Bid Awards:**

**(1) Thermal Imager Cameras for Fire Dept.** (Opened 1/27/04).  
Recommend delaying award to 2/23/04.

**B. C.O. #4, South Hills (Briarwood) Water Extension,** COP Construction Co., \$20,000.00.

**C. C.O. #1, Amend Park Parking Lot,** Empire Sand & Gravel, \$16,639.40.

**D. Amendment #3 to Professional Services Contract,** W.O. 00-15: Grand Avenue Widening from 8<sup>th</sup> St. West to 12<sup>th</sup> St. West, Kadmas, Lee & Jackson, \$28,082.00.

**E. Additional Software License Agreement** for in-car report writing and automatic vehicle location technology (AVL), New World Systems, \$237,546.00, term: 1 year.

**F. Contract** for Groundwater & Landfill-Gas Monitoring Services, Maxim Technologies, Inc., \$78,486.00.

**G. Declaring out-of-warranty Ballistic Vests** as surplus property and authorizing the Police Dept. to release the 15 vests to St. Vincent Healthcare.

**H. Agreement to transfer sewer line and easement** from Faith Chapel Intl Church of the Foursquare Gospel (aka Faith Chapel), Tract 1, C/S 2277, for purpose of transferring the sewer line to the City and converting it to a public sewer line.

**I. TWO Encroachment Permits** from Billings Bench Water Association (BBWA) for: (1) the construction of a bridge over the BBWA Canal in Uinta Park Sub. and (2) the installation of an 8-inch diameter buried sewer line under the canal in Uinta Park Sub., \$2,060.00.

**J. Renewal of Misdemeanor Supervision (Probation) Program** through a contract for services with Alternatives, Inc., City's share: \$50,000.00. (Delayed from 1/26/04)

**K. Resolution of Intent 04-18085** to dispose of City-owned property on the 800 Block of S27th and S28 Streets, Lots 1-19, Block 231, O.T. and setting a public hearing date for 3/8/04.

**L. Resolution of Intent 04-18086** to create SID 1361: water, sanitary sewer, storm drain and street improvements on Shiloh Road: Avenue B to Rimrock Road, and setting a public hearing date for 3/8/04.

**M. Second/final reading ordinance 04-5265** providing that the BMCC be amended by adding Sections 18-1001 and 18-1002, prohibiting aggressive solicitation including definition, prohibitions and penalty.

**N. Preliminary Plat Time Extension** for Kreitz Heights Subdivision, 1<sup>st</sup> Filing.

**O. Final Plat for MHC Subdivision**

**P. Bills and Payroll.**

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

Mayor Tooley separated Item N. Councilmember Brown separated Item G. Councilmember McDermott moved for approval of the Consent Agenda with the exceptions of Items G & N, seconded by Councilmember Poppler. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item G of the Consent Agenda, seconded by Councilmember Iverson. Councilmember Brown said he is concerned about the potential for liability by releasing out-of-warranty items to other agencies. Mr. Bauer said St. Vincent Healthcare would be signing a "release of claims" for the ballistic vests. This is a document that has been reviewed by the Legal Staff to insure that this will not create a liability risk for the City. He noted that they would most likely be used for their security personnel in a less dangerous situation than our police officers are confronted with.

Councilmember Jones asked that the wording "failure to use" in the last paragraph be stricken. Mr. Bauer said the intent of the last paragraph is to be as broad a description as possible. This indemnifies the City for every eventuality that could exist, including inappropriate use or failure to use the items. Councilmember Brown asked if the City is doing this because the hospital cannot afford new vests and would the indemnification guarantee protection to the City from a lawsuit. Mr. Bauer said he can never guarantee against what someone may or may not choose to do, but the release of claims requires St. Vincent's Healthcare to defend the City against any liability. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember McDermott moved for approval of Item N of the Consent Agenda, seconded by Councilmember Ruegamer. Mr. Bauer said the motion should include approval or disapproval of the time extension request, because the item does not have a recommendation to approve or disapprove. Councilmember McDermott restated the motion as approval of the time extension for Item N (Kreitz Heights Subdivision, 1<sup>st</sup> filing preliminary plat), seconded by Councilmember Ruegamer. Councilmember Brewster asked if there was a time limit placed on the trail easement along the ditch and property line of this subdivision that parallels the ditch and if the trail easement will continue with the time

extension request. Planning Staff Member Candi Beaudry said that after the preliminary plat was approved the subdivider entered into a Development Agreement that specified that if the trail was not installed by the City within three years, the easement would be removed. She said the Planning Staff is recommending approval of the extension for another year, but the subdivider would have to re-enter into another Development Agreement to allow for the trail easement extension. Councilmember Brewster asked if the motion would need to be amended to include this stipulation. Councilmember McDermott offered a substitute motion to approve the staff recommendation, which is to enter into a new Development Agreement and a time extension for one year, seconded by Councilmember Ruegamer. On a voice vote, the substitute motion was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING on the modification of the City's FY 2005-2008 Capital Improvement Program (CIP). Staff recommends approval of the amendments. (Action: approval or disapproval of Staff recommendation.)**

City Engineer Vern Heisler said there were no changes from the presentation given to the Council at the February 2<sup>nd</sup> Work Session. He said he was the chairman of the Capital Improvement Plan Committee. The other members were Scott Emerick, Dave Ketterling, Marv Jochems, and Robert Keefe. This item represents the modifications to the 2005-2008 Capital Improvement Plan Projects. He said only projects requiring modification that are dependent upon FY 2005 funding are included. Those not dependent on FY 2005 funding will be brought forward next year during the CIP review process.

Mr. Heisler said the process began with project requests submitted by departments to the CIP Committee in October. The Committee reviewed the requests with the City Administrator in December. The Committee recommendations were presented to the Council at the Work Session on February 2<sup>nd</sup>. There is one correction on the CIP report regarding the de-icing area project at the Airport: The \$800,000 funds to be used in FY 2004 should read used in FY 2005. He noted the AIP 25 project was deleted and replaced with five new projects as follows: Library--the code compliance study, the two bond projects in the Parks Department--Cobb Field and the Heights Pool, and the BikeNet Trail in the Planning Department was replaced with the Stewart Park Trail and Gabel Road Trail. He added the Sanitary Sewer and Water Replacement Projects were included with additional funding this year as recommended by Council. The three General Obligation bond projects are included with recommended timelines and costs as well.

Mr. Heisler also noted that the Black Otter Trail reconstruction project (2.8 miles) was not in the CIP. The bike trail is independent of this reconstruction. An engineer prepared a cost estimate for the design and construction of Black Otter Trail totalling \$770,000. General Fund money will have to be used for this project as CTEP and Gas Tax Funds are not eligible. He suggested that a reasonable time to submit that project would be next year.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Staff recommendation,

seconded by Councilmember Iverson. Councilmember McDermott said she would like to have another two weeks to review the proposed changes and have further discussions with the Council and the Staff. Councilmember McDermott made a substitute motion to delay action for two weeks and discuss it again at the next Work Session, seconded by Councilmember Brown. Councilmember Brewster said he was willing to support the modifications tonight, but sees the value of further discussion. Mr. Bauer said the next Work Session can accommodate this item. On a voice vote, the substitute motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION 04-18087 disposing of six (6) City-owned residential lots in Alkali Creek Subdivision, described as Lots 1-6, Block 3, Alkali Creek Sub., 2<sup>nd</sup> filing. 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 Brown moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember Clark asked how the City obtained these lots. Parks and Recreation Director Don Kearney said these were acquired from the County through a tax forfeiture. Councilmember Brewster asked if the money we are going to receive for these lots is reasonably close to fair market value. Mr. Kearney said the appraisal per lot was approximately \$13,000 and the only bid received was for \$7,500/lot. Councilmember Jones said some of the bidders claimed they did not have enough time to submit a bid. He asked if the City would get a different result if it were to re-bid. Mr. Kearney said the potential bidders had two weeks to enter their bids. Mr. Bauer noted that the public notice of the bids was advertised twice, so the information was available for a longer period of time than the two weeks. He noted that some of the potential bidders were concerned about paying a high price for the lots and a high price for the future SID.

Councilmember Brown asked what the zoning is of the lots. Mr. Kearney said they were zoned Residential 9,600. Councilmember McDermott asked if there was an estimate on the cost of the SID. Mr. Kearney said the original estimates were \$20,000 to \$25,000 per lot. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**4. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC Section 8-333 providing conditions when family members may be buried or memorialized on a veteran's grave. 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 Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember McDermott said there has been a lot of emotional discussion in favor of this matter, noting she favors the amendment. Councilmember Poppler asked if this is available only to veterans. Mr. Bauer said this amendment pertains to the veteran's area.

Councilmember Gaghen asked how many veterans are buried each year. Cemetery Superintendent Lee Stadtmiller said 26 veterans were buried last year. Councilmember Ruegamer clarified that the burial of the cremains is the concern of this ordinance. Mr. Stadtmiller said that was correct and added that the ordinance also allows for

memorializing the non-veteran spouse that is buried with the veteran's casket. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently annexed properties described as: Tracts 2A-1, 2A-2 and 3A-1, Amended C/S 1876 (Annex #04-01) 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 Iverson moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Councilmember Jones asked why this annexation was placed in Ward IV and not Ward V. Ms. Beaudry said the Staff makes a recommendation based on adjacent properties. Mr. Bauer noted that there is a typo in the first paragraph of the ordinance placing the annexation in Ward III. Councilmember Jones made a substitute motion to delay this action for two weeks, seconded by Councilmember Clark. On a voice vote, the substitute motion was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION 04-18088 DEANNEXING Tract 2B, C/S 2218. Staff makes no recommendation. (Action: approval or disapproval of deannexation.)**

Planning Staff Member Candi Beaudry said the property to be de-annexed is located south of Briarwood Subdivision. It was annexed in 2002 with Cedar Park and Briarwood. The property is 9.956 acres and zoned Residential 9,600 and currently vacant. The proposed use can only be for one single-family residence and not further subdivided because of private covenants. There were no objections from City departments that reviewed this de-annexation.

Ms. Beaudry said the petitioners asked what the cost of connection to City water would be and became concerned when the estimate totaled \$67,640. The loss of this annexation to the City would be \$1,440.00 from City property tax assessments. The de-annexation would not comply with the growth policy and will have neutral or negligible effects on the goals for contiguous development, affordable housing, housing choice and compatibility with the adjacent neighborhood. Adjacent land is vacant or under very large lot development. The lot is surrounded on three sides by County and on one side by the City. It does not seem likely that further annexation would create a County island of this property because surrounding property is held to the same covenants. Property to the north is owned by a Church and plans for that land are unknown.

Ms. Beaudry said the City has not adopted a de-annexation policy so there were no guidelines for Staff to follow. There is no staff recommendation. Councilmember Boyer asked if there was a precedent for this type of action. Ms. Beaudry said a few de-annexations have come forward, but have later been withdrawn.

Councilmember Brewster asked if the homeowners have any recourse to change the covenants of the lots. Ms. Beaudry said there is always an opportunity to change covenants if everyone subject to them can agree.

Councilmember Ruegamer asked if there was another option available besides de-annexation. Ms. Beaudry said the choices at this time are either approval or disapproval

of the de-annexation. A zone change could be initiated, but would need to go through the regular zone change process.

Councilmember Boyer asked what kind of precedent is being set with approval of this de-annexation. Ms. Beaudry said the covenants are what make this action unique and set the land apart. Mr. Bauer said there are three criteria to consider when de-annexing land under State law. The land must be on the boundary, doing so must be in the best interests of the City and it must not mar the symmetry of the City. He noted that Staff has received calls from several residents who have similar large undeveloped lots and have investigated the de-annexation process. He said he was not aware of any of those lots having similar restrictive covenants. He said if Council approved this de-annexation tonight, he would expect more requests to follow.

The public hearing was opened. STEVE SOLBERG, 3513 PRESTWICK ROAD, said he and his wife own Tract 2B, C/S 2218. He said the property lies on the southern edge of the recent Briarwood annexation. He noted that he originally asked to have his property included in the annexation to benefit from City utilities and services. Because there is no street access to this property, the City may not want to or be able to provide City services, he said. The property tax assessment increased significantly since the annexation, even though it is undeveloped property. For these reasons, he requested that the Council approve the de-annexation of this property. He noted that the adjacent lot and the lots to the south have the same covenants. He said his property came from an organization called Blue Creek Investors and is not connected via covenants to the church property. Mr. Solberg said his access does go through the church land. Mr. Solberg said the covenants were on the land when he bought it and he is not entirely familiar with them. Councilmember Gaghen asked if he was informed that he could de-annex during the annexation process. Mr. Solberg said the Staff inferred "if the annexation did not work out", he could apply for de-annexation.

There were no other speakers. The public hearing was closed. Councilmember Boyer moved to deny the petition for de-annexation, seconded by Councilmember Iverson. Councilmember Brown said the City is putting these people in a position where they are paying taxes on property that may not be eligible for City services and with no way to generate money to pay the taxes because of the covenants. Councilmember McDermott asked if these property owners are receiving a special tax rate for undeveloped property. Ms. Beaudry said this special rate applies to property tax and the assessments, where they have reached the cap and are not paying the maximum amount.

Councilmember Ruegamer said a policy needs to be developed to address the de-annexation process. Mayor Tooley asked when this petitioner can re-apply for de-annexation if this is denied tonight. Mr. Bauer said the petitioner may re-apply at any time, and Ms. Beaudry noted there would be another application fee at that time. Mayor Tooley noted that the Council could approve the motion to deny tonight, develop a policy and then reconsider this de-annexation. Councilmember Jones agreed that a policy is needed but this de-annexation does make sense. Mr. Bauer responded to Councilmember Brown's question about allowing this de-annexation because Staff inferred that it could occur. He said that a recommendation has not been made because there is no de-annexation policy direction to judge this petition favorably or unfavorably. Other recommendations are made based on policies that have been developed and approved by the Council as direction the Staff may take. This does not restrict the Council from taking action, he added.

Councilmember Brewster agreed with Councilmember Jones that this property fits more with properties to the south that are not in the City and noted he would not support the motion. Mayor Tooley said making these decisions without a policy can open the Council to more of the same requests. In answer to Councilmember Poppler's question, Ms. Beaudry said there is a procedure for de-annexation that is outlined by State law. Councilmember Poppler said as long as the Council stays within the guidelines advised by State law, the de-annexation could be allowed. She said if there is a fee for de-annexation and there are guidelines, she would support the de-annexation.

Councilmember Ruegamer made a substitute motion to table this item until a de-annexation policy is approved. The motion was not seconded; the motion failed.

On a roll call vote, the motion to deny the de-annexation failed 5-6 with Councilmembers McDermott, Ruegamer, Iverson, Boyer and Mayor Tooley voting "yes" and Councilmembers Gaghen, Brewster, Brown, Poppler, Clark and Jones voting "no".

Councilmember Brewster moved for approval of the de-annexation, seconded by Councilmember Poppler. Councilmember McDermott said it is problematic when the Council makes decisions that are not based on a policy that is in place. Councilmember Iverson made a substitute motion to delay action for 90 days (or to the nearest available Council Meeting date of 5/10/04) to develop a de-annexation policy for guidelines, seconded by Councilmember Ruegamer. Councilmember Brewster noted that the petitioner would have to pay taxes on this property until the Council can take action in May. He noted there are two ways to make policy: by action and by request. If the Council takes action on this de-annexation, it would "force the hand" for policy development. Councilmember Jones said this case is one where it is not in the best interest of the City to keep this land within the City. Councilmember Gaghen asked if there is a policy to "forgive" taxes during the process of developing a policy. City Attorney Brent Brook said he would have to research that, but he did not think there was. Mr. Bauer noted that taxes are assessed bi-annually and if this is completed before the next assessment, it would not impact the petitioners taxes. Public Works Director Dave Mumford noted that the protest period for taxes has already past. On a roll call vote, the substitute motion failed 5-6 with Councilmembers McDermott, Ruegamer, Iverson, Boyer and Mayor Tooley voting "yes" and Councilmembers Gaghen, Brewster, Brown, Poppler, Clark and Jones voting "no". On a roll call vote, the motion for approval of the de-annexation was approved with Councilmembers Gaghen, Brewster, Brown, Poppler, Clark and Jones voting "yes" and Councilmembers McDermott, Ruegamer, Iverson, Boyer and Mayor Tooley voting "no".

Mayor Tooley called for a break at 8:07 P.M.

The meeting was reconvened at 8:12 P.M.

**7. PUBLIC HEARING AND RESOLUTION 04-18089 CREATING PMD #4019 for the maintenance of park improvements in Rolling Hills Park. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

City Administrator Kristoff Bauer noted there was one valid protest received on the creation of this district. Councilmember Brewster noted that most of the park maintenance districts that have been formed seem costly. He asked if there is an audit of actual costs at some point to see if the estimates are accurate. Mr. Bauer said there are actual

creation costs in the first year that would be more than in the following years. Parks and Recreation Director Don Kearney said actual utility expenses can be directly tracked to each district as well as materials and labor costs for actual time spent.

Councilmember Brown asked if there is another alternative to park maintenance districts in neighborhoods. Mr. Kearney said the neighborhoods could contract for lawn service themselves. He added these volunteer efforts are not always effective. Mr. Bauer reminded the Council that this was one of the parks that was to be sold last year. He said the neighborhood requested that the park not be sold and agreed to maintain the park via a maintenance district.

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

**8. PUBLIC HEARING AND RESOLUTION 04-18090 CREATING PMD #4020 for the maintenance of park improvements in Dokken Park. 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 Clark moved for approval of the Staff recommendation, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

**9. PRELIMINARY PLAT of Midland Subdivision, 3<sup>rd</sup> filing, amended Lot 4-B, Block 3, generally located at 980 S. 24<sup>th</sup> Street West. Staff recommends conditional approval of the plat. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Candi Beaudry said this is a 2.3-acre parcel. The proposal is to allow a two-lot plat. The lot currently contains the Dos Machos Restaurant. The zoning is Controlled Industrial with the proposed use as more commercial development. The findings 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 no effect on agriculture or agricultural water users' facilities. The property was partially developed several years ago and this plat simply splits the vacant portion of the lot from the developed portion. No irrigation facilities are apparent on the property.

**2. Effect on local services**

- a. Utilities – Water and sewer lines and a storm drain are in place in 24ths Street West and in Grant Road, a public access and utility easement. These utilities have sufficient capacity to serve the property and Public Works – Belknap had no comments on the proposed subdivision. The existing plat of amended lot 4-B shows a 25' wide utility easement along the property's west border, while the

proposed re-plat shows a 15' wide easement. If the subdivider desires the narrower easement, he will need to obtain the utility companies' consent to vacate a portion of the easement... Private utilities will provide service to the new lot under their operating procedures.

- b. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - No street dedications or construction are necessary because all work was completed with the original subdivision in 1994. That subdivision approved the public access easement known as Grant Road that will serve both of these lots. A variance from BMCC 23-605(d) is necessary to allow the public access easement on an arterial street.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #5 on South 24<sup>th</sup> Street West. The Fire Department stated that it has no issues with the proposed. 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 on Grand Avenue.
- e. Schools – The subdivision is in the Elysian and School District 2. Since this is commercial property, there should be no direct impact on the schools.
- f. Parks and Recreation – There is no parkland dedication requirement because this is a minor plat and commercial property. There should be no impact on parks and recreation because there won't be any residents in this subdivision.
- g. MET Transit – S. 24<sup>th</sup> Street West is one of MET's routes. This subdivision should not significantly impact MET service.

### 3. Effect on the natural environment

This subdivision should have only minor effects on the natural environment. There will be some short term air and noise pollution during construction activities. However, the property is within an urbanized part of the city and these effects should be small.

### 4. Effect on wildlife and wildlife habitat

This subdivision should not adversely affect wildlife or habitat. The property is within the urbanized area of the city, is vacant and has no unusual or attractive habitat. 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 other 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 of large retail outlets, restaurants and other commercial land uses.*

- b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.

*The proposed development is entirely surrounded by other commercial uses.*

- 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 a landscaped bike/pedestrian trail has been constructed near the property.*

**2. Urban area transportation plan**

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. S. 24<sup>th</sup> Street West is a principal arterial street. No additional improvements are anticipated for this subdivision, but Traffic Accessibility Studies may be required upon lot development. Any improvements recommended by the TAS will be required before building permits are issued.

**3. BikeNet Plan**

The subdivision is also within the jurisdictional area of the BikeNet Plan. No improvements are required for this subdivision.

**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 and these services will be extended to the new lot. 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 is in the Controlled Industrial zoning district and the subdivision conforms to the zoning. Residential development in this zone requires a Special Review.

**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 a public street right of way that provides space for utility installations. With the exception of the 15' easement on the west property line, the easements are acceptable to the utility companies.

**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)]**

Grant Road was previously established as a public access and utility easement that connects these two lots (and others) to 24<sup>th</sup> Street West. A variance is required for lot 4-B-2 because it does not have direct access to a public street.

**CONCLUSIONS OF FINDING OF FACT**

- The overall conclusion of the Findings of Fact is that the proposed Midland Subdivision 3<sup>rd</sup> filing amended lot 4-B, block 3 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 the property and 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.

The recommended conditions are:

1. The plat shall show a 25' utility easement along the west property line of lot 4-B-2 unless a narrower easement is granted by utility companies.  
*Utility easements are required by BMCC Section 23-603. The present plat of amended lot 4-B shows a 25' wide utility easement in this location, while the proposed plat shows a 15' wide easement. The new plat needs to show the same easement or if the subdivider desires a narrower one, the utility companies must agree to vacate a portion of the existing easement.*
2. 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.*

3. 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 variance requests are:

1. A variance from BMCC 23-602 requiring alleys in commercial and industrial districts. The properties are large enough to accommodate deliveries and parking and are covered by reciprocal access easements that ensure free access to all of the property. Public health and safety will not be compromised by granting this variance.
2. A variance from BMCC 23-605(d) requiring no-access to arterial streets. 24<sup>th</sup> Street West is an arterial street, but a single point of access to 24<sup>th</sup> Street West (Grant Road) is preferable to several individual driveways on the street. Public health and safety will not be compromised by granting this variance.
3. A variance from BMCC 23-605(h) that requires public street access for all lots. Lot 4-B-2 will not have dedicated street access but will gain access to a public street through a public access and utility easement that is known as Grant Road. Public health and safety will not be compromised by granting this easement.

Ms. Beaudry said the Planning Staff is recommending conditional approval of the plat including the requested variances. Councilmember Jones moved for approval of the Staff recommendation including the requested variances, seconded by Councilmember Gaghen. Councilmember Clark asked about the proposal and variance regarding Grant Road. Ms. Beaudry said the subdivision that was previously platted did not include a dedicated right-of-way, thus leaving a half street. The Planning Department would like to avoid that situation. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**10. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.  
(Restricted to Non-Agenda Items only; comments limited to 3 minutes per speaker.)**

- JIM ROLLINS, 2751 GREGORY DR. N: said he was a member of the Citizens For Deer Control Committee that presented a deer control petition with 275 signatures to the Council. He noted the Council previously chose not to take action on the deer problem, and he related his personal experiences with safety issues and property damages associated with the urban deer population. He said according to the National Safety Council, in the year 2000, there were 520,000 animal related accidents resulting in 100 deaths and 4,000 injuries to citizens. Mr. Rollins noted the last Legislature gave cities the authority to develop a management plan for controlling deer that would need approval by Fish, Wildlife and Parks. He stated that the deer need to be removed from the

City and cited several methods to accomplish this, such as trapping or the use of hunters.

- EDWARD WORKMAN, 3247 FLORA AVE: also spoke about the deer problem, the safety hazards they present and the potential for an eventual tragedy due to an encounter with a deer or a deer predator. He said the deer population has adopted the City's neighborhoods as their homes. He noted that the legislature adopted HB249 to help cities deal with the animal populations. He said acting now solves a little problem; acting five years from now involves a much larger problem. Mr. Workman urged the Council to recognize HB249 as a tool and to use it to develop a deer control program now, rather than later after a tragedy occurs.
- JULIE VERZUH, 3025 FARNAM ST: said she chairs the Citizens for Deer Control Committee. She outlined her communications with Mayor Tooley and City Administrator Kristoff Bauer and the Department of Fish and Wildlife about the deer population concerns. She noted that a public forum to discuss the problem was arranged with over 50 people attending from many areas of the City. Ms. Verzuh described the forum as an avenue to educate the citizens, which was not successful because the suggestions have been found ineffective. She characterized the problem as basically one where the environment and the ecosystem are out of balance. To solve the problem, balance and effective conservation management needs to be reestablished by control of the deer population. She suggested the State, cities, counties, developers and the citizens work together to find a positive solution.
- JIM VERZUH, 3025 FARNAM ST: said this problem exists in many communities as development increases and extends further and further out in once rural areas. Mr. Verzuh said his Internet search yielded a wealth of information on what other communities are doing – everything from live trapping and relocation, birth control, to bow hunts. He claimed that not all of these solutions are expensive ones. He noted that bow hunting is the method used by the Audubon Society in its Greenwich, CT bird sanctuary where deer damage trees and shrubs to the extent that birds have left the sanctuary. He mentioned several other cities and their costs and solutions. Mr. Verzuh said the best solution for Billings would be to utilize hourly employees, volunteers and community service persons in an effort to reduce the deer population. He urged the City Council to be proactive and develop a management program to submit to Fish, Wildlife & Parks for approval. Mr. Bauer noted that the City would first have to create a management plan for the wildlife and Fish, Wildlife & Parks would have to approve it. He added that HB249 transfers responsibility to the City without transferring resources. It would be more appropriate for the Fish, Wildlife and Parks agency to commit resources they already have – like wildlife biologists, etc. - to develop and administer this kind of plan as they already have the trained personnel to deal with this issue.

## **Council Initiatives**

- COUNCILMEMBER BROWN: Councilmember Brown moved to direct staff to review the sign ordinance and extend the length of time that political signs may be

displayed, seconded by Councilmember Jones. On a voice vote, the motion was unanimously approved.

- **COUNCILMEMBER BOYER**: Councilmember Boyer moved to direct staff to draft a De-Annexation Policy for Council consideration, seconded by Councilmember Poppler. On a voice vote, the motion was unanimously approved.
- **COUNCILMEMBER CLARK**: Councilmember Clark moved to place the contract with A& E Architects for the N. Broadway/4<sup>th</sup> Ave. N project back on the next council agenda for discussion and possible amendment/cancellation, seconded by Councilmember Ruegamer. Councilmember Clark said his motion intends to leave the portion regarding the Library study as is. On a roll call vote, the motion was approved 6-5 with Councilmembers McDermott, Brown, Ruegamer, Poppler, Clark and Jones voting "yes" and Councilmembers Gaghen, Brewster, Iverson, Boyer and Mayor Tooley voting "no".

**ADJOURN** –With all business complete, the Mayor adjourned the meeting at 8:55 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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