

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## March 22, 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 Doris Poppler.

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

**MINUTES – March 8, 2004**. Approved as printed.

**COURTESIES** -- City Administrator Kristoff Bauer noted today was his oldest son, Zaith's 15<sup>th</sup> birthday.

**PROCLAMATIONS – Mayor Tooley.**

- April: FAIR HOUSING MONTH

**BOARD & COMMISSION REPORTS**

- **Planning Board** – Douglas Clark, President of the City/County Planning Board spoke about the history, membership and role of the Board. He stated the Planning Board was created in December of 1984 by resolution of the County Commissioners and Inter-local agreement with the Cities of Billings and Broadview. The City of Laurel decided not to be represented at this time. There are fifteen members of the board that are appointed for a two-year term. Seven members are appointed by the Yellowstone County Commissioners (one from each geographical area), five members are appointed by the Mayor of Billings (one from each Ward), one member is appointed by the County Commissioners through the Soil Conservation District and two ex-officio non-voting members are from the County Superintendent of Schools and School District #2 respectively. Mr. Clark said the Planning Board meetings are scheduled on the 2<sup>nd</sup> and 4<sup>th</sup> Tuesdays of each month. The Planning Board recommends policy on proposed subdivision to the Billings City Council, the County Commissioners and the Town Council of Broadview, reviews zoning and subdivision ordinances and acts as the metropolitan planning organization for the Billings Urban Transportation area. He noted the Board has reviewed 67 preliminary subdivision plats, 15 petitions for annexation into the City of Billings and 112 zoning applications from January 2003 to mid-March 2004. The Board has assisted in the preparation of the Yellowstone County/City of Billings Growth Policy and Neighborhood Plans addressing the Growth Policy in detail. He recapped the actions of the Board over the past year and talked about the various projects and plans in which the Board is actively involved including unanimously passing a resolution to recommend State law be revised to provide local government more authority

concerning the location of future educational facilities. Additionally a motion was passed to invite the local governing bodies of the City Council and County Commissioners to support this resolution. Mr. Clark said the Planning Board strongly believes it is critical that local governments have a role in determining where educational facilities are located to promote sound community planning and insure the efficient delivery of its services.

**ADMINISTRATOR REPORTS – Kristoff Bauer.**

- Mr. Bauer said he and the Mayor had been involved in an emergency preparedness exercise the past two days that involved various emergency simulations. The point of the exercises was to identify problems before an actual emergency occurred, giving the local entities an opportunity to address deficiencies.
- He also noted that the City received notice of the availability of a Homeland Security Grant that was designed to encourage the coordination and communication of emergency responders. Mr. Bauer asked the Council to add Item Z to the agenda tonight regarding an action to accept and approve the matching grant, up to \$70,000.00.
- Mr. Bauer noted that the recommendation on Item B5 had changed. Staff was now recommending rejecting both bids and rebidding the furniture procurement.
- Item F on the agenda contains a clerical error. The amendment is actually with HKM Engineering Inc., not Morrison Maierle, Inc. The amount remains unchanged. Item K includes a revised council memo report that provides additional information only. Item S includes an informational change to the council memo report regarding the award of the contract.
- A corrected document for Item 10 on Parkway Subdivision was placed on the Council's desks this evening, making minor typographical corrections.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #9, #10, #11, 12 and #13 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker.)

TOM NELSON, 1116 MOON VALLEY ROAD, said he is representing his son Chris Nelson of Bozeman who is the owner of the Hart-Albin Building, the Montana Bank Building and other buildings. He urged the Council to approve Item #12, the purchase of SILMD #97 (the Downtown Street Lighting District) from Northwestern Energy. He said this makes good economic sense and would be a good use of taxpayer's dollars.

BRUCE SIMON, 217 CLARK AVENUE, urged the Council to send a notice to cancel the contract with Northwestern Energy to force them to negotiate an accommodation to purchase the light district. He said cancellation of the contract would give the City bargaining power. He asked why Item #13, the most important public policy issue the Council would decide tonight, is not scheduled as a public hearing and open to public comment. He said a public hearing should have been scheduled according to the Montana Constitution. The public should be involved in the advisability of purchasing the power distribution of Northwestern Energy. He said it is wrong that the Council has come

this far without a public hearing and is in violation of the Montana Constitution. He asked the Council to reschedule this issue with a public hearing.

STEVE DOWNS, 2475 VILLAGE LANE, #308, said he would address Consent Item K. He said he is the office manager of Camp, Dresser and McKee, the firm that has been chosen to prepare the West Heights Stormwater Master Plan. He noted the item was delayed to inquire about the appropriate selection of his firm. He noted this company has a long-standing history in Montana having been in Montana for the past twenty years.

WELDON BIRDWELL, 44 YELLOWSTONE AVENUE, said he speaks in favor of the resolution regarding public use of the parks by non-profit organizations. He said the Easter Egg Hunt in South Park issue is a small issue and asked the Council to approve the use of the park for that purpose. Events like these are important to the community.

JIM RONQUILLO, 820 S. 28<sup>TH</sup> STREET, said he is the Vice-Chairman of the Southside Task Force. He said the task force began in 1975. He said he is concerned about the requirements that the task force must obtain a permit and insurance to use the public park for the Easter Egg Hunt. He said this issue needs to be resolved tonight so the task force knows what the requirements are.

BILL SCHAFFER, 824 N. 25<sup>TH</sup> STREET, said he represents the North Side Task Force. He asked why there are different requirements for the Easter Egg Hunt this year as opposed to previous years. He noted that City staff told him they did not know the task force was using the park for this reason in the past. He said the task force was established by Community Development and has a 501 (C) (3) status. Mr. Schaffer said it appears the City does not want to acknowledge their relationship even though the City pays all their expenses.

CHARLIE HAMWEY, 1010 GRAND AVENUE, urged the Council to consider the permit issue and insurance requirement an unnecessary impediment to park use for the community Easter Egg Hunt. The City should support this event.

ALDO ROWE, 202 JACKSON STREET, thanked the entire community for the help his family received during the recent graffiti event concerning their home.

## **CONSENT AGENDA:**

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

	Name	Board/Commission	Term	
			Begins	Ends
1.	Tom Burtchaell	Parking Advisory Board	03/22/04	12/31/06

\*Filling the unexpired term of Lynn Mullowney

### **B. Bid Awards:**

**(1) One Grounds Maintenance Park Tractor.** (Opened 2/24/04). Delayed from 3/22/04. Recommend Billings Equipment Co., \$28,440.00.

**(2) Removal of a City-owned Barn at 3410 Poly Drive.** (Opened 3/9/04). No bids received. Recommend scheduling the barn for demolition.

**(3) Sale of 19 City-owned lots on the 800 Blocks of South 27<sup>th</sup> St. (Lots 1-12) and South 28<sup>th</sup> St. (Lots 13-19), Block 231, O.T.** (Opened 2/27/04). Recommend

sale of Lots 1-12, Block 231, O.T. to Mailing Technical Services (MTS), \$105,000.00.

**(4) Chemicals: Polyaluminum Hydroxychloride Blend.** (Opened 3/9/04). Recommend Brenntag Pacific, Inc., for \$0.255/Lb. for a one-year period with option to renew the contract for up to a total of three years.

**(5) Motor Pool/Administrative Building – Billings Operations Center, Furniture Procurement Project.** (Opened 3/16/04). Recommend ~~to be made at meeting~~ rejecting both bids and rebidding.

**(6) One Portable Community Soundstage.** (Opened 3/9/04). Recommend Century Industries, \$76,829.00.

**C. C.O. #5, Schedule II, 2003 PUD Replacement,** Chief Construction Specialties, \$20,213.05 and 7 calendar days.

**D. C.O. #6, Schedule II, 2003 PUD Replacement,** Chief Construction Specialties, \$3,202.48 and 1 calendar day.

**E. Extension of Parking Security Contract,** D-N-D Security, 1-year extension, term: 5/1/04 to 4/30/05, \$21,900.00.

**F. Amendment #2, Schedule II, 2003 PUD Replacement,** ~~Morrison Maierle, HKM Engineering Inc.~~, \$49,396.00.

**G. Extension of Standard Audit Contract,** Eide Bailly, LLP, 2-year extension, term: 7/1/03 to 6/30/05, \$107,300.00.

**H. Annex #03-05: Approval of annexation agreement,** George Rosenfeld and Eugene A. Brosovich, owners, a portion of Tract 3A, C/S 2317, Amended Tracts 1-3, C/S 2317.

**I. Construction Agreement** between City and Montana Dept of Transportation, 6<sup>th</sup> Avenue N and Wicks Lane Overlay Project, 100% funded by MDT.

**J. Professional Services Contract** for architectural services for the Rose Park Building replacement, High Plains Architects, \$13,100.00.

**K. W.O. 03-20: Contract** for Professional Services, Camp Dresser & McKee Inc., \$99,526.00. (Delayed from 3/8/04).

**L. Approval of updated Investment Policy.**

**M. Authorized Signatories** on RBC Dain Rauscher Account and Piper Jaffray Government Jurisdiction Account.

**N. Agreement** with State Historic Preservation Office to accept an additional \$1,500 in Certified Local Government (CLG) funding under Agreement #MT-03-18226-012.

**O. Subordination of First Time Homebuyer Loans:**

(1) Roger and Lorna Martin, 1346 Broadwater for Lot 13, Block 1, Ross Subdivision, \$3,633.11.

(2) Wayne F. McGovern, 620 N. Broadwater for Lots 36-37, Block 3, Yellowstone Addition, \$5,000.00.

**P. Acknowledge receipt of Annex #04-05 petition:** a 50' x 150' portion of Government Lot 3 in the SE4 of T1S-R26E-S9 (located at 412 Hallowell Lane at the NE corner of Optimist Park) and setting a public hearing date for 4/12/04.

**Q. W.O. 01-06: Arlene Corridor Improvements: Acceptance of Right-of-Way Agreement and Warranty Deed** for the West 20 ft of Tract 3, C/S 1011 Amended, located in the SE4 of Section 34, T1N-R25E, Robert and Cynthia Cover, \$23,994.00.

**R. Resolution 04-18098** creating Special Service District #21 for sanitary sewer services for units 14 and 15, Lot 1, Block 1, Transtech Center Subdivision.

**S. Resolution of Intent 04-18099 to Create SID 1358:** water, sanitary sewer, storm drain, curb and gutter, sidewalk, street widening and street improvements to Lake Hills Drive, Clubhouse Way, Black Diamond Road, Oakmont Road, Pebble Beach Road, Greenbriar Road, Inverness Drive and Broadmoor Drive and setting a public hearing date for 4/12/04.

**T. Resolution of Intent 04-18100 to Create SID 1365:** water, sewer, curb and gutter, and street improvements for Lake Hills Subdivision, 25<sup>th</sup> filing on Lake Heights Drive and setting a public hearing date for 4/12/04.

**U. Resolution 04-18101** establishing a public art policy.

**V. Resolution 04-18102 removing** parking from the north side of Wicks Lane between Cody Drive and St. Andrews Drive.

**W. Resolution 04-18103 designating** 8<sup>th</sup> Avenue South as a "through street" between South 28<sup>th</sup> and South 34<sup>th</sup> Streets.

**X. Final Plat** of Goodman Subdivision, Third filing.

**Y. Bills and Payroll.**

**LATE ADDITION:**

**Z. Acceptance and Approval of Dept. of Homeland Security** – Office of Domestic Preparedness FY 03 State Homeland Security Grant up to \$70,000.00.

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

Councilmember Brewster moved to add the Acceptance of the State Homeland Security Grant as Item "Z" on the Consent Agenda, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved to add the Policy and Fees for use of City Parks to resolve the insurance and permit requirements for non-vender entities as Item #14 on the Regular Agenda, seconded by Councilmember Poppler. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer separated Item J from the Consent Agenda. Councilmember Brewster separated Item V from the Consent Agenda. Councilmember Brown separated Item B3 from the Consent Agenda. Councilmember McDermott separated Items A1 and B5 from the Consent Agenda. Councilmember Clark separated Item B6 from the Consent Agenda. Councilmember Jones separated Item M from the Consent Agenda. Councilmember Ruegamer moved for approval of the Consent Agenda with the exceptions of Items A1, B3, B5, B6, J, M and V, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item A1 of the Consent Agenda, seconded by Councilmember Iverson. Councilmember McDermott noted that Board appointments are normally made twice a year, in January and June unless there is a quorum issue. She asked if there is a quorum problem that requires this appointment. Mayor Tooley replied "yes". On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item B3, seconded by Councilmember Iverson. Councilmember Brown said he understood the Council would be advised of the cost to the City for this property prior to action regarding disposition. He said he has not received that information. Community Development Manager John Walsh said the cost of the 12 lots that are being sold was \$189,996 including the houses that were on the lots at the time. This cost includes acquisition and relocation. City Administrator Kristoff Bauer noted that this information was on the second page of the staff report for this item. Councilmember McDermott asked if the proceeds of this sale are going back into a purchasing account for Community Development. Mr. Walsh said 8 of the 12 lots were purchased through CDBG funding and 4 of the lots were purchased through the Tax Increment Program. The proceeds from the 8 lots would be re-allocated into the Community Development budget process for the coming year. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item B5 (with the revised recommendation to reject all of the bids due to an error in the bid specifications), seconded by Councilmember Iverson. Councilmember McDermott asked for additional information on the breakdown of the furniture being purchased. Councilmember Clark asked what furniture replacement was involved in this bid request. Mr. Bauer said the furniture requirements are due to a change from "hard wall" offices with general office furniture to open area workspace where component modular furniture is required. This allows more flexibility in less space. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item B6, seconded by Councilmember Iverson. Councilmember Clark asked if this replaces the existing soundstage. Mr. Bauer said it is a replacement of existing equipment and is part of the Equipment Replacement Program authorized by Council last year. Councilmember McDermott asked what is happening with the old stage. Parks and Recreation Director

Don Kearney said the old stage will be traded in for a value of \$5,000 to be applied to the price of the new stage. Councilmember McDermott asked what the City charges for the use of the new soundstage. Mr. Kearney said the charge is \$150 for single and \$200 for double. Councilmember Jones asked if the old soundstage was worth keeping if there was a need for two. Mr. Kearney said there are occasions when there is a need for two soundstages but the Equipment Replacement Program does not allow for additional equipment, only replacement equipment. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Ruegamer moved to delay Item J to 4/12/04, seconded by Councilmember Iverson. Councilmember Boyer asked for more information on the delay. Mr. Bauer said the proposed professional contract had not been reviewed by the Legal Department prior to scheduling this item for the agenda. The contract needs to be reviewed and revised into the City's standard contract form. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item M, seconded by Councilmember Iverson. Councilmember Brown asked who is authorized to trade and make decision on these accounts. Deputy City Administrator Bruce McCandless said the two authorized signatories on these accounts are Pat Weber, Financial Services Manager and Kathy Otis, Investment Debt Coordinator. Mr. Bauer noted the City has an Investment Policy that has been approved and adopted by the Council that is used by the City staff when making investment decisions. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item V, seconded by Councilmember Iverson. Councilmember Brewster asked if City staff has verified that the residences on this segment of Wicks Lane have adequate off-street parking. Public Works Director Dave Mumford said the staff has concluded that they do have adequate driveways and garages to accommodate parking. The parking lane removal is needed to allow for a turn lane. Councilmember Brewster expressed concern about some of the uphill driveways and their access problems to Wicks Lane. Councilmember Boyer asked if the citizens on Wicks Lane have been notified of the pending removal of the parking lane. Mr. Mumford said they may not have been notified recently but were notified in the past. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC Sections 24-401, 24-433, 24-1007 and 24-1008 providing clarification as to places where parking is prohibited, fines that can be assessed for certain violations, where a vehicle can be immobilized and providing that moving an immobilized vehicle is a misdemeanor. 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 Brewster. Councilmember Clark asked if the City has the authority to immobilize and tow the vehicle to a secured lot. Parking Supervisor Liz Kampa-Weatherwax said there is a 48-hour time period after

immobilization when the owner may pay their outstanding parking fines and a \$50 immobilization fee. If this is not done within 48 hours, the City has the authority to impound the vehicle. She noted that these language changes would prevent any miscommunications or misunderstandings about immobilization and impoundment. Councilmember Brown asked why there is a need to immobilize the vehicle when it would seem better to impound it and remove it from occupying a parking space. Ms. Kampa-Weatherwax said the impoundment and towing expense would be prohibitive for every vehicle. Immobilization is quick, efficient and works well in most circumstances, whereas removing the vehicle would be costly and time consuming. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION creating SILMD 286 in Chrysalis Acres Subdivision. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

City Administrator Kristoff Bauer said this is a street light maintenance district that contracts with Northwestern Energy at rates regulated by the Public Service Commission. He said the Staff has continued with this action despite other council agenda items concerning cancellation of contracts with Northwestern Energy because a delay on this item (see Item 12) would be time consuming and require re-starting the process at the beginning. If the Council does not want to proceed with a Northwestern Energy contract, it would delay getting lights to this subdivision. Mayor Tooley noted there are some street light maintenance districts that are contracted with Northwestern Energy and some that are operated by the City - depending on their location. Councilmember Boyer asked if City operation was offered as an option to this subdivision. Mr. Mumford said this was not considered because it was decided that the Northwestern Energy option was the quickest and most feasible. It was also not contiguous to the area where other light districts are currently operated by the City. Councilmember Brown asked what the difference was in the costs between Northwestern Energy and the City. Mr. Mumford said the costs with Northwestern Energy were about a third of the costs for the City. Mr. Bauer noted once a contract is executed with Northwestern Energy for this light district it would be 2 years and 9 months before the contract could be canceled if the Council wanted to take another route.

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 Brown. Councilmember Brewster noted that he works for Northwestern Energy and will abstain from discussion and voting on this item. Councilmember McDermott asked the Assistant City Administrator to give a brief background of the street light districts. Assistant City Administrator Tina Volek said there are 151 lighting districts in the City, 50 operated by the City and 101 operated by Northwestern Energy, the successor to Montana Power Company. Mr. Bauer noted the number of fixtures is almost equal between the two entities. Councilmember Clark asked if the City could supply the Council with information regarding the tax implications for the right-of-way property that the street light maintenance district occupies for both the City and Northwestern Energy. Councilmember Clark made a substitute motion to delay to 4/26/04 the creation of SILMD 286 until more information regarding taxes has been

collected from Northwestern Energy, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved with Councilmember Brewster abstaining.

**4. PUBLIC HEARING AND RESOLUTION 04-18104 annexing Tract A-2, C/S 680, K&S Development LLC, petitioners. (Annex #04-03). Staff recommends approval of the public service report, a Waiver of Right to Protest and the resolution annexing. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Wyeth Friday said the proposed annexation is adjacent right-of-way of Lake Elmo Road located at 345 Main Street and is zoned Highway Commercial. The parcel is 8,950 square feet in size with existing uses being a vacant building that is in the process of being dismantled. The proposed use is a new Fast-Break Auto Glass business. He said City departments gave favorable comments in the public service report with no significant impacts to City services. The owners will be responsible for connecting to the City sewer and Heights Water System. The owners have signed a waiver of right to protest any future improvements in the area.

Mr. Friday said the property is directly west and north of the City limits and contains regular boundaries such as Lake Elmo Road, Main Street and Alkali Creek Road. The annexation should not create a decline in services to others in the area and is in the Sphere of Influence. He said the property does not conform to the Annexation Policy in that it is not larger than 10 acres and is not considered a county island. It is planned for a single use development. It meets requirements of the Growth Policy by being contiguous to the City and considered in-fill development. He said the Staff recommendation is for approval of the annexation. Councilmember Brown asked if the waiver of protest stays with the land and does the City require a waiver in every annexation request. City Attorney Brent Brooks said annexations usually occur due to a request by the property owner. They agree to sign a waiver that will stay with the land. This waiver should be included in any future title reports because it is a restriction on the use of the property. Mr. Bauer noted this waiver requirement allows the property owner to defer future improvement costs to a later date.

Councilmember McDermott asked if the billboard on the property meets City code. Zoning Coordinator Jeff Bollman said the billboard does not meet the City's requirements. There is a current lease with the billboard company for this billboard and when that lease expires the billboard would have to conform to City requirements or come down.

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.

**5. PUBLIC HEARING AND SPECIAL REVIEW #753: A special review to allow the location of an All Beverage liquor license and an outdoor patio in a Controlled Industrial zone on Tract B of Certificate of Survey No. 2324. The subject property is located at 5516 Laurel Road. John and Lois Hill, owners; Ernie Dutton, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Wyeth Friday said the property is located at 5516 Laurel Road and is the site of the former Big Sky Campground. He noted there is also a minor preliminary plat for this item on tonight's agenda (see Item 10). The zoning is Controlled

Industrial with Residential 7,000 to the east and Planned Unit Development to the south. The Zoning Commission reviewed this application and affirmed the staff recommendation of conditional approval with the following conditions:

1. The casino, including the restaurant and bar, shall be limited to the proposed Lot 5 of Tract B, Certificate of Survey No. 2324 as shown on the two site plans submitted with this application.
2. The site shall be landscaped as shown in the site plan of the casino submitted with this application, with the addition of two trees on the north side of the casino building along Laurel Road.
3. A 6' high wall or fence shall be placed around the entire outdoor patio. Any gates required by building or fire codes shall be used for exit only from the patio.

The public hearing was opened. GORDIAN KIEDROWSKI, 1807 CAMPUS COURT said he is the owner and operator of the proposed establishment. He offered to answer any questions. There were no questions. There were no other speakers. The public hearing was closed. Councilmember Poppler moved for approval of the Zoning Commission recommendation, seconded by Councilmember Clark. Councilmember McDermott said she spoke with Southwest Corridor Task Force members and they do not have any objections to this request. She noted a prior application for a casino in the truck stop across the street was not approved because of the close proximity to the residential area. This special review request has a better separation from the residential area. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #727: A zone change from Residential-9,600 to Residential-7,000 on Lot 4A, Block 1 of Hancock-Grand Subdivision Amended. The subject property is located at 1749 - 38<sup>th</sup> Street West. Hancock Development, Inc., owner; Engineering, Inc., agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said this special review is located on property at 1749 38<sup>th</sup> Street West. It is approximately a 6-acre parcel. Property to the west is zoned Residential 7,000. He said the Zoning Commission held a public hearing and is recommending approval.

The public hearing was opened. DENNIS RANDALL, ENGINEERING, INC., said they are the agent for this proposal and he would answer any questions from the Council.

CHARLES HAMWAY, 1010 GRAND AVENUE, said he represents Hancock Development, Inc. He said the Residential 7,000 zoning is the best zoning for future development.

MYLES EGAN, 2690 SOUTHRIDGE, urged the Council to approve the zone change to Residential 7,000. He said j & e Construction would like to continue to develop affordable homes in the area. He said there have not been any concerns from the surrounding neighborhood.

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

**7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #728: A zone change from Residential-9,600 to Residential-7,000 and Residential Multi-Family-Restricted on an unplatted portion of NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, T1S, R25E, less Emerick Subdivision and Certificate of Survey No. 1702. The subject property is generally located on the southeast corner of 32<sup>nd</sup> Street West and Central Avenue (portions of proposed Lots 2 and 3 of Summer Ridge Subdivision). The Estate of Pauline and Dennis Emerick, owner; Myles Egan, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Wyeth Friday said this is similar to a zone change request that was before the Council on November 24<sup>th</sup>. This zone change will reflect the proposed lot boundaries of Lots 1, 2 & 3 of Summerridge Subdivision that was approved as a preliminary plat in January of 2004. It is adjusting the line from the Residential 9,600 zoning boundary. He said the Zoning Commission held a public hearing and is recommending approval. There were no protest comments received on this zone change request.

The public hearing was opened. MYLES EGAN, 2690 SOUTHRIDGE, said the lot line change was prompted by Faith Evangelical Church's request to purchase less ground due to monetary reasons. There were no other speakers. The public hearing was closed. Councilmember Jones moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND FIRST READING ORDINANCE adopting the Billings, Montana Extended Tax Increment Finance District Plan and establishing the mechanism for allocation of taxes, commonly known as Tax Increment Financing, within a redevelopment district within the City of Billings. Staff recommends approval. (Action: approval or disapproval of ordinance on first reading.)**

There was no staff report. The public hearing was opened. GREG KRUEGER, 2906 3<sup>rd</sup> AVENUE N, DIRECTOR OF DOWNTOWN BILLINGS PARTNERSHIP, said the City Staff and the DBP have worked together closely to find the best approach to correcting a very serious issue. He said it was thought that this land was in the Tax Increment District. He said this action would benefit the Tax Increment District and the downtown area by allowing CTA Architect's property and proposal to become a part of the TIF. The economic stimulus this will create is far reaching. Mr. Krueger said this is a good plan and he urged the Council to approve the expansion. Councilmember McDermott asked when the error in the map was discovered. Mr. Krueger said it was discovered at an Urban Design Meeting in late October or early November during a discussion of the proposed CTA project. Councilmember McDermott asked who made the commitment for funds to CTA and when was that commitment made. Mr. Krueger said the DBP has not committed any funds from the Partnership. That request will come to the Council.

The public hearing was opened. MIKE TUSS, 1046 N 31<sup>st</sup> STREET, said he represents CTA Architects. He said it was learned on October 22<sup>nd</sup> that the proposed CTA project was not in the Tax Increment District. He said they would not have purchased the property if they had known it was not in the TIF district. He said he sees this as an opportunity instead of an unfortunate mistake. It is good for both CTA and for the

downtown area. He asked for the Council's support on the expansion of the district. He noted that it would have been less expensive to build a new structure on the West End than to renovate the warehouse that was originally on this site.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she is one of many downtown property owners that welcome CTA into the Downtown Property Owners group. This decision however, affects everyone in the existing Tax Increment District as it leaves less money available for other projects. She noted that this error is creating an expansion of a 26-year-old district that has 4 years of life left. What concerns her is the lack of accountability regarding this Tax Increment District. She said the funding seemed to flow to a small number of entities. She does not want to see this continue and would like to see an accounting of all TID funds to date. Ms. Westwood said she wants to see fairness to all applicants.

CHARLES HAMWEY, 1010 GRAND AVENUE, said he represents Ward I on the Planning Board. He said he supports this expansion and the CTA project.

RANDY HAVER, DOWNTOWN ARCHITECT, DEVELOPER AND CHAIRMAN OF THE DOWNTOWN PROPERTY OWNERS COMMITTEE, said there is significant support for the CTA project. He urged the Council to support the expansion of the Tax Increment District, as this will be a great asset to the downtown area.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Mr. Bauer noted that the two maps included in the staff report are not referenced in the ordinance. He is concerned that the maps may be in error. He said the Staff would correct the attachments prior to the second reading of this ordinance. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**9. PRELIMINARY PLAT of Amended Lot 6, Block 2, Circle Fifty Subdivision.  
Staff recommends approval of the requested variance and conditional approval of the plat. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The recommended conditions and variance requests are:

**RECOMMENDED CONDITIONS**

1. The plat shall show a 16-foot utility easement centered on the common lot line between Lots 6A and 6B and Lots 6C and 6D as requested by Montana Dakota Utilities Co.  
*(Recommended by Planning & Community Services; BMCC Section 23-603)*
2. All lots shall have separate water and sanitary sewer services from the street fronting the lot as recommended by Public Works Department, Distribution and Collection Division. These service locations shall be described in #3 of the final Subdivision Improvements Agreement. *(Recommended by PW Distribution & Collection; BMCC Section 23-704 and 23-705)*
3. 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.*

4. 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.*

#### VARIANCE REQUESTED

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. Staff is recommending approval of the variance request.*

The findings of fact are:

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

1. Effect on agriculture and agricultural water users' facilities

This subdivision should have no effect on agriculture or agricultural water users' facilities. The vacant property is not currently used for agriculture and is surrounded on three sides by commercial and residential development. 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 Grand Avenue and in Avenue B. These utilities have sufficient capacity to serve the property. As proposed the four lots would share an existing sanitary sewer service off of Grand Avenue and Lots 6B, 6C and 6D would have individual water services off of Avenue B. Public Works - Distribution and Collection Division (PW) provided comment that each lot will be required to have separate water and sanitary sewer services from the streets fronting the lots. PW also commented that Lot 6D should connect to the line in Grand Ave. for water service. It is recommended as a condition of final plat approval that the water, sanitary sewer and storm drain connections are made as requested by PW.

Private utilities will provide service to the new lots under their operating procedures. Montana Dakota Utilities has requested a 16-foot utility easement be shown on the final plat centered on the common lot lines between Lots 6A & 6B and Lots 6C & 6D. This request has been added as a recommended condition of approval.

- 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 dedication or construction is proposed at this time because all public street work was completed with the original subdivision in 1984. Also at that time, a 30-foot wide access off of Grand Avenue was approved, which will serve the lots. Internal drives will be private, and will be reviewed at the time of site development for each lot. A reciprocal access and utility easement has been provided for the benefit of each lot, so that the internal streets and public utility improvements remain accessible. A variance from BMCC 23-602, which requires the platting of alleys for commercial subdivisions, has been requested. Staff is recommending approval of this variance request.
- 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 had not commented by the time this staff report was written. 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 come from the west station on Grand Avenue.
- e. Schools – The subdivision is in the 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 – Grand Avenue 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. Potential traffic circulation impacts will be reviewed at the time of site development. There are no other obvious threats to public health, safety or welfare.

## **B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC 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? [BMCC 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 and is zoned Community Commercial to function as a commercial node near the Shiloh Road/Grand Avenue intersection.*
- b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County town sites.  
*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.*

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Grand Avenue 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 BMCC 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? [BMCC 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? [BMCC 23-304(c)(6)]**

The property is in the Community Commercial zoning district and the subdivision conforms to the zoning.

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

The preliminary subdivision plat identifies 8-foot utility easements around the perimeter of the subject property except for a segment along the west property line of Lot 6A, where the easement has been rerouted internally to a 12-foot wide easement. Montana Dakota Utilities, Co. has requested one additional 16-foot easement centered on the common lot lines between Lots 6A & 6B, and Lots 6C & 6D. This additional easement is recommended as a condition of approval. The proposed easements, with the added one requested by MDU, are satisfactory to the affected utility providers.

**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 BMCC 23-304(c)(8)]**

Lots 6A & 6D have legal and physical access off of Grand Avenue. Lots 6B & 6C have legal and physical access off of Avenue B.

**CONCLUSIONS OF FINDING OF FACT**

- The proposed Circle Fifty Subdivision, Amended Lot 6, Block 2 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 does not 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 Brewster moved for approval of the Staff recommendation, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**10. PRELIMINARY PLAT of Parkway Subdivision. Staff recommends conditional approval of the plat. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Wyeth Friday noted there is an amended findings of fact that was distributed to the Councilmembers this evening. The revision pertains to the variance requests. He said this is a preliminary minor plat located on the southwest corner of the intersection of Laurel Road and Parkway Lane. The parcel is 5.96 acres in size and is zoned Controlled Industrial. The applicant has requested several variances. The variances are as follows:

1. Variance from the City's Subdivision Ordinance requiring platting of alleys in commercial areas (Section 23-602 (a), BMCC). *Proposed internal road system supports variance. Engineering Division reviewed and agreed with this variance request.*
2. Variance from the City's Subdivision Ordinance requiring a 50-foot half right-of-way for a minor arterial to allow for an additional dedication of 10 feet resulting in a 45-foot half right-of way on Parkway Lane (Section 23-601 (k), BMCC). *Engineering Division reviewed and agreed with this variance request.*
3. Variance from the City's Subdivision Ordinance for the no-access requirements on Parkway Lane to permit the 40-foot right in only approach to Lot 1 and the 40-foot shared approach centered on the lot line between lots 2 and 3 (Section 23-605(d), BMCC). *The Engineering Division will only allow one access along Parkway Lane at the 40-foot shared approach centered between lots 2 and 3 (See Condition 2).*

**RECOMMENDED CONDITIONS**

1. The 1-foot wide No Access Strip must be extended along the full frontage of Lot 5 along Laurel Road. *Requested by the Engineering Division to maintain no access onto Laurel Road from the subdivision.*
2. Only one access along Parkway Lane will be allowed. The access shall be centered on Lots 2 and 3. *Requested by the Engineering Division to manage traffic in the vicinity of the Laurel Road and Parkway Lane Intersection.*
3. In Section 2, Page 2, of the Subdivision Improvements Agreement (SIA), substitute the language regarding a traffic accessibility study with the following: "A traffic accessibility study (TAS) shall be submitted to and approved by the City Traffic Engineer prior to the issuance of any building permits for any development that will exceed an aggregate trip generation of more than 500 trip ends per day for the entire subdivision. An updated TAS may be required for any subsequent lot development that results in significant changes in trip generation or traffic distribution from the assumptions contained in the original TAS." *Requested by the Engineering Division to manage increased traffic generated by the subdivision as it develops.*
4. In Section 7, Page 2, of the SIA, language will be added that states that upon lot development, any deficient curb, gutter or sidewalk will be removed and

replaced fronting the lot being developed. *Requested by the Engineering Division to maintain curb, gutter and sidewalk around the subdivision as development is completed.*

5. In Section 7, Page 2, of the SIA referring to sidewalk construction, language will be added as per BMC, Sec. 23-703 to include construction of 4' boulevard walks on both sides of the interior streets identified on the preliminary plat. These improvements are to be constructed on the frontage of each lot when it is developed. *Requested by the Planning Department to meet the City Subdivision Regulation's requirement for sidewalks along both sides of all streets, and to ensure pedestrian access along the private internal street system.*
6. 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 current rates are charged for all new connections or system extensions.*
7. Water service curb valves and boxes are not to be located in the drive approach/road way. *Requested by City Public Works.*
8. Separate sanitary sewer services that meet city separation requirements must be provided for each lot and indicated on the final plat. *Requested by City Public Works.*
9. Utility easements will be created along the western boundaries of Lot 4 and Lot 5 of the subdivision, along the southern boundaries of Lot 1 and Lot 5, and along the eastern boundaries of Lot 1, 2 and 3. *Requested by MDU.*
10. Minor wording changes may be made in the final documents upon request of City Planning, Public Works, or Engineering 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.*

The final subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal Code, and Rules, Regulations, Policies and Ordinances of the City of Billings, and the Laws and Administrative Rules of the State of Montana. *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 findings of fact 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 and agricultural water users' facilities. The property is in a city area with industrial and commercial activity and no farmland.

2. Effect on local services

- a. Utilities – Water and sewer mains exist on the subdivision's north and south sides and the property has connections to the city water and sewer system. The subdivider is proposing to use existing water service to Lot 1 and the existing sanitary sewer services to Lots 3 and 5 for the new development. The subdivider will extend additional individual water and sewer services to each of the new lots from the mains in Laurel Road and King Avenue East. The subdivider also will install fire lines to serve three fire hydrants on the subdivision as recommended by the City of Billings Fire Department. Charges and system development fees, including franchise fees, need to be based on the rates that are in effect at the time that service is requested.

A preliminary stormwater drainage report describes a stormwater master plan for the subdivision, and the layout of the stormwater system is shown on the preliminary plat. The subdivider will responsible for constructing the improvements identified in the report and shown on the preliminary plat.

Private utility companies will provide service to the subdivision under their operating procedures. MDU requested easements on several lot lines as outlined in Condition 9.

- b. Solid waste – The subdivider has the option of contracting with the City or a private waste hauler for solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - Laurel Road, Parkway Lane and King Avenue East are all developed city streets. The subdivider does intend to dedicate an additional 10' along Parkway Lane and 5' along King Avenue East for sidewalk and street improvements. The subdivider also is proposing to provide a 6' sidewalk easement along Laurel Road. Sidewalks will be constructed along the property on Laurel Road, Parkway Lane and King Avenue East at the time each lot individual lot that fronts each street is developed.
- 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 their central station at 4th Avenue North.
- e. Schools – The subdivision is in School District 2. However, this commercial development will not generate any new students for the district.
- f. Parks and Recreation – There is no parkland dedication requirement because this is a minor plat. The nearest public parks are Streeter Park and Amend Park, which are both east of this subdivision and within one half mile.
- g. MET Transit – MET has two routes that pass this subdivision and would provide service and access to the development 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 affect wildlife or habitat since it is in an industrial area of the city, far from any wildlife habitat or open space.

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, Urban Area 2000 Transportation Plan and BikeNet 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. (Land Use Element, Issue 1, Chapter 3, Page 5)

*The proposed subdivision is consistent with the neighborhood character that includes a mixture of industrial and commercial uses, with some residential development further to the east.*

- b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County town sites. (Land Use Element, Issue 2, Chapter 3, Page 6)

*The proposed development of commercial uses in an area of commercial and industrial uses, and near a principal arterial street, is compatible with the surrounding neighborhoods to the west, north, south and east.*

- c. Contiguous development focused in and around existing population centers separated by open space. (Land Use Element, Issue 4, Chapter 3, Page 6)

*The proposed subdivision is infill development, utilizes existing infrastructure and does not contribute to urban sprawl. There are no open space buffers planned, but the property will have to meet the commercial development landscaping standards through the city's building permit process.*

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Laurel Road is a principal arterial street and King Avenue East is a minor arterial street. The Transportation Plan identifies Laurel Road and portions of King Avenue East as major freight access routes in the area of the subdivision. However, these routes do not

appear to be near capacity. The city also has required in the Subdivision Improvement Agreement language to address any future traffic concerns (See Condition 3).

**3. BikeNet Plan**

The subdivision is also within the jurisdictional area of the BikeNet Plan. The Plan identifies portions of King Avenue East to the east of this subdivision as an on-road or off-road route. There are no bike route plans identified for the King Street East, Laurel Road or Parkway Lane directly around the subdivision and no 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. However, the applicant is requesting three variances from the local Subdivision Regulations. The variances are as follows:

4. Variance from the City's Subdivision Ordinance requiring platting of alleys in commercial areas (Section 23-602 (a), BMCC). *Proposed internal road system supports variance. Engineering Division reviewed and agreed with this variance request.*
5. Variance from the City's Subdivision Ordinance requiring a 50-foot half right-of-way for a minor arterial to allow for an additional dedication of 10 feet resulting in a 45-foot half right-of way on Parkway Lane (Section 23-601 (k), BMCC). *Engineering Division reviewed and agreed with this variance request.*
6. Variance from the City's Subdivision Ordinance for the no-access requirements on Parkway Lane to permit the 40-foot right in only approach to Lot 1 and the 40-foot shared approach centered on the lot line between lots 2 and 3 (Section 23-605(d), BMCC). The Engineering Division will only allow one access along Parkway Lane at the 40-foot shared approach centered between lots 2 and 3 (See Condition 2).

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 is zoned Controlled Industrial. The subdivision and proposed uses conform to the Controlled Industrial zoning classification.

**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 plans to allow utilities to cross the lots with use of a Declaration of Reciprocal Easements to be filed with the final plat. In addition, MDU has requested easements along several lot lines in the subdivision (Condition 9).

**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 five lots have access to Parkway Lane and King Avenue East from the internal street system shown on the preliminary plat.

**CONCLUSIONS OF FINDINGS OF FACT**

- The overall conclusion of the Findings of Fact is that the proposed Parkway 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 Yellowstone County & City of Billings 2003 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 Brown moved for approval of the Staff recommendation, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

**11. RESOLUTION 04-18105 submitting the issue of Local Government Review to the Voters at the June 8, 2004 Primary Election. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember Brown. Councilmember McDermott asked if \$20,000 would be requested for expenses regarding this issue. Mr. Bauer said the expenses would be incurred in June and come out of the FY 2003 budget. Follow-up costs in November would be part of the proposed budget for FY 2004. All of the costs would come from the General Fund. He noted there could be a budget amendment request later in the year for this issue. Mr. Bauer suggested that the Council could ask the voters to approve funding to support independent staff and resources for this commission upon approval in November. Councilmember McDermott said she does not support asking the voters for funding and suggests Council Contingency funding be used to avoid anything that could deter the voters from reviewing the Charter. Councilmember Brewster said the independence of the review committee is important and without the support of additional revenue it would have to be supported with City Staff. That would not make the review an

independent one. He said he supports asking the voters for a funding source. On a voice vote, the motion was unanimously approved.

Mayor Tooley called for a break at 8:50 P.M.  
Mayor Tooley reconvened the meeting at 8:55 P.M.

**12. DIRECTION ON PURCHASE OF STREET LIGHT DISTRICT #97 FROM NORTHWESTERN ENERGY COMPANY. Recommendation to be made at meeting.**  
**(Action: approval or disapproval of Staff recommendation.)**

Assistant City Administrator Tina Volek said the City was notified that the current contract with Northwestern Energy for the downtown lighting district was due to expire on May 23, 2004. Sixty-days notice to Northwestern Energy is required in order to cancel the contract. The property owners in Street Light Maintenance District #97 are unhappy with fees and maintenance in the district and requested that the City consider the cancellation. She said two town hall meetings were held in conjunction with the Downtown Billings Partnership to hear comments from the downtown property owners. A meeting was held with the Downtown Property Owners group to hear their comments. There were 116 Stakeholder surveys distributed with only 19 returned with comments.

Ms. Volek said several City Staff Members, including members from the Legal Department and herself, met with staff from Northwestern Energy Corporation to discuss the possibility of canceling or extending the contract. The initial proposal was to extend the contract for 1 year. Their proposal was for 18 months, but has not been reviewed by their legal staff. The City Staff's recommendation to provide the notice of the cancellation of the current contract with Northwestern Energy for Street Lighting District #97 with the understanding that the City will use the two-month interim to negotiate an 18-month extension. The Staff is in the process of creating a listing of the existing lighting districts and their expiration dates with the assistance of the energy company.

Councilmember Jones asked what was the two-month interim period defined as in the contract. Ms. Volek said the City would use that time to create the 18-month extension and is the required notice period. The property owners have been informed of the possibility that the downtown area could be without lights for a period of time. She noted that if this event occurs, the City intends to provide intermediary lighting on street corners. Some property owners have offered to light their buildings. There would be increased Police patrol in the area during this event. Ms. Volek said Richard Burt of Northwestern Energy has indicated that an agreement could be reached within the two-month time period.

Councilmember Ruegamer asked if Northwestern Energy could sell their assets while they are in bankruptcy. Ms. Volek said it has been Northwestern Energy's position that they are not interested in selling their assets. Additionally they have filed a reorganization plan and if accepted would allow them to continue in operation of the districts that are contracted through the City. However, if the district is sold this would become a moot point. Councilmember Ruegamer expressed concerns that acquisition costs may not be revenue-neutral if the cost is a large amount. He asked if there has been communication about the City buying the assets. Ms. Volek repeated her statement that Northwestern Energy is not interested in selling at this time, therefore, there is no dollar amount attached to those assets. Councilmember Clark asked how many downtown

property owners approached the City with the request to cancel the street lighting district contract. Ms. Volek said the request came via the Partnership. Mr. Krueger verified the request came through the Partnership from the Property Owners Committee during a regular monthly meeting. Mr. Bauer said the recommendation to the Council is to give 60-days notice to Northwestern Energy so there is time to prepare an 18-month extension of the current contract and avoid being locked into a 3-year contract. This time would allow discussion about the terms of the contract and address concerns of the property owners. He said the rates are established by the Public Service Commission and the only change in the rate would come from a different level of service or to cancel the contract and find another provider. He noted that the City itself is not regulated by the Public Service Commission.

Councilmember Boyer asked Rick Burt of Northwestern Energy to respond to the discussion of the sale of the assets or the re-negotiating of the contract. RICK BURT, 580 SUDAN, said he concurs with Mr. Bauer's assessment and noted that an asset sale would have to be approved through the bankruptcy, which is a separate issue. Councilmember Jones asked if it was acceptable for the City to negotiate a new agreement of the current contract. Mr. Burt said it was hoped that an 18-month contract could have been presented at this time, but unavailability of their legal department review did not permit this. It is the intent of Northwestern Energy to follow through with the 18-month extension to give time to address the downtown property owner's issues.

Councilmember Iverson moved for approval of the verbal Staff recommendation to authorize the Mayor to execute a notice to cancel the current three-year contract with the understanding that an 18-month extension is forth coming after review by Northwestern Energy legal staff, seconded by Councilmember Boyer. Councilmember Brewster said he would abstain from voting. Councilmember McDermott said she attended a property owners meeting and understood that their concern was to develop an extension of the contract to allow a negotiating time, therefore she said she supports this motion. Councilmember Jones expressed concern that the City would be faced with a huge bill to purchase the assets of the downtown lighting district and also about the taxes that the City received from the district. On a voice vote, the motion was unanimously approved. Councilmember Brewster abstained.

**13. CONSIDERATION OF INTERLOCAL AGREEMENT to form the Montana Public Power Agency (MPPA) to consider acquiring an electrical transmission and distribution system. Staff recommends approval of a resolution authorizing the Mayor to execute the agreement. (Action: approval or disapproval of Staff recommendation.)**

City Administrator Kristoff Bauer said the two items that are required from the Council this evening are: 1) a resolution authorizing the Mayor to execute the proposed interlocal agreement forming and becoming a member of MPPA and 2) if the interlocal agreement is approved an MPPA Board Member must be designated to participate in the discussions. He noted that this issue has been moving along rapidly and there has not been adequate time for discussion and review of documents.

Mr. Bauer said the MPPA would be a pseudo governmental agency that has delegated authority from member cities. The purpose of the agency is to acquire and operate electric and gas Transmission and Distribution systems in Montana, currently

owned by Northwestern Energy. The governance of MPPA is comprised of up to a 6-member board (original members) from the 6 participating cities. If only 4 cities ratify the agreement MPPA would still be formed and move forward. He said there is a proposal for a broader representation if fully formed with up to 10 board members. Those additional 4 members would be elected from districts outside of the 6 member cities. The Board would make all operational decisions. Any revisions to the Interlocal Agreement would require ratification by a supermajority of the original members.

He said the MPPA's scope of authority would include all necessary powers to acquire the assets and operate a utility, including hiring employees, incurring debt and setting rates. It cannot obligate member cities without their authorization. The debt held in MPPA's name would not impact member cities as it would be a separate authority and would have its own resources and not rely on the member cities in that regard. The MPPA would continue to pay "tax like" assessments as payment in lieu of taxes to current taxing authorities.

Mr. Bauer said the expenses of the MPPA would be split equally among the original members and may be reimbursable should the agency be successful in acquiring entities and incurring debt covered by the rates that are charged. The estimated maximum cost of the bid would be as high as \$25,000 each if there are 4 members and \$17,000 each if there are 6 members. He noted that \$9,000 has been expended in relation to information from the consultant about service in the City of Billings and greater metropolitan area. That would reduce the \$17,000 cost to \$8,000. The cost of the due diligence could be as high as \$100,000 each for 4 members and \$67,000 each for 6 members. Again, the \$9,000 previously committed would reduce the \$67,000 to \$58,000. He noted the source of funding is to be determined after Council approval. Mr. Bauer said preliminary analysis of the question to bid indicates that MPPA could get financing through Citigroup, can make a credible bid, can stabilize the rates with regard to transmission and distribution only and can increase maintenance expenditures over time while paying off the debt incurred by the bid. There is discussion with the board members that is required before moving forward to establish what is an appropriate bid amount and how that proposal can be best structured to the bankruptcy court.

He said Northwestern Energy's business plan is currently being evaluated and there is an exclusive opportunity to negotiate with the bankruptcy court regarding the business plan. The exclusivity time period ends on May 11<sup>th</sup>. He said they have asked for an extension of the time period. During that time period alternate bids can be submitted whereas alternative business plans may not. He noted that at least one other bid is forthcoming from MDU in combination with a number of cooperatives operating in the State of Montana.

Mr. Bauer said the Council's options are to do nothing and MPPA could still be formed as soon as 4 cities approve the agreement. This would leave Billings out as a part of MPPA, with no member on the board, not involved in the bid decision or a more detailed formation of documents. He noted the present document would be revised and refined as the process moves forward and before debt is incurred. Billings would also not be a part of the initial operation decisions. If the bid is successful and the assets are acquired, Billings may be able to have a board member involved with MPPA in the future. The City would however not have the same status as the original board members. Mr. Bauer said the Council could delay action to a date certain with the first possible date being 4/12/04, the

next regular council meeting. There are several MPPA meetings that will fall before the April 12<sup>th</sup> date, which would cause a certain amount of ambiguity as to Billings' status and role in the current process. He said another option is for the Council to act on this item at a Special Meeting on March 29<sup>th</sup> or April 5<sup>th</sup>. The last option is to pass the resolution authorizing the Mayor to execute the agreement and designate the initial MPPA board member. This will clarify Billings' intentions, identifies Billings' representative and provides the ability to participate in research and initial operating decisions related to making the proposal.

Councilmember Jones asked if the Mayor would appoint the initial board member. City Attorney Brent Brooks said he would have to research state law to see if an interlocal agreement would have precedence over the City Charter that gives the Mayor authority to appoint board members. Mayor Tooley noted that the person selected as the board member should be affiliated with the City in some way, either a staff person or an elected official.

Councilmember Poppler expressed her concern about the Council surrendering their authority to one board member that is part of an agency that is outside of the jurisdiction of the City. Mr. Bauer said he would expect that the board member that is selected would do their best to be representative of the City of Billings and the City Council.

Councilmember Clark said the City is considering spending money to develop a bid on assets that are not for sale. Mr. Bauer said there is a real opportunity for some entity to make a proposal, which could be accepted by the bankruptcy court resulting in the transfer of those assets. Councilmember Clark moved to postpone the decision to 4/12/04, seconded by Councilmember Iverson. Councilmember Poppler said the proposed interlocal agreement has unusual and not very specific language and binds the City to many different financial obligations. She said it requires more time to study before any steps are taken. Councilmember Jones asked if the agreement would be revised after Council's approval. Mr. Bauer said the interlocal agreement and the resolution were developed by a law firm hired by the group and would not be revised.

Councilmember McDermott made a substitute motion to approve the resolution agreement, seconded by Councilmember Ruegamer. Councilmember Brewster said he would abstain from the voting. Councilmember Poppler said she is very uncomfortable with signing an agreement that the City Council will have no authority to change and has had so little time to study. On a roll call vote, the substitute motion failed 3-6 with Councilmembers Ruegamer, Iverson and Mayor Tooley voting "yes" and Councilmembers McDermott, Brown, Boyer, Poppler, Clark and Jones voting "no". Councilmember Brewster abstained. On a roll call vote, the original motion to delay to April 12<sup>th</sup> failed 3-6 with Councilmembers Ruegamer, Iverson and Mayor Tooley voting "yes" and Councilmembers McDermott, Brown, Boyer, Poppler, Clark and Jones voting "no". Councilmember Brewster abstained.

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

NONE

**LATE ADDITION:**

**15. DISCUSSION AND DIRECTION on the Policy & Fees for Use of City Parks by Non-Vendor entities.**

Councilmember McDermott moved to allow free public use of parks for events that are not vendor sponsored but are scheduled, sponsored and conducted by local volunteer groups for the explicit purpose of providing the City of Billings with free, enjoyable events and to direct the City Administrator to review the City's insurance policy or policies regarding all uses and report back to the Council before the beginning of the summer recreation season (May 15<sup>th</sup>), and upon approval by the Council this should take effect immediately and remain in place and in writing until Council has approved a permanent written policy to be recommended to the City Council by a Mayor-appointed City Council Committee, seconded by Councilmember Brown. Councilmember Brewster said if someone is not a vendor, they have free use of the park. He said this is the policy the Council has approved.

Mr. Bauer distributed copies of permit applications for the Easter Egg Hunt in 2001 and 2002 by the Friendship House at South Park. This application follows a park use permitting process that has been in place for several years. There is no Council policy but a City practice in place. The purpose of the permit is to provide an opportunity for someone to reserve a park for use and to make sure there is insurance in place to protect participants and sponsoring agencies against any unfortunate event. He noted the City is covered with liability insurance but if a group sponsors an event and does not have insurance themselves, the City through MMIA would go after the sponsors of the event to try and recover any liability expenses. He added that the Concession Policy the Council adopted last year did not overturn the current permit process. He noted that it is the Council's prerogative to change policy and the Staff is available to gather information to assist the Council in doing this.

Councilmember Boyer said a committee was formed at the work session to deal with these issues and it needs to be done quickly. She suggested that the City sponsor the event and take the funds needed out of the Council budget. Councilmember Brewster asked why the Easter Egg Hunt requires a use permit to reserve the park. Mr. Bauer said they could use the park without a permit, but they could not exclude other persons and there would not be liability coverage in case of an accident. Councilmember Clark asked why the City could not sponsor the Egg Hunt through the Task Forces. Mr. Bauer said the Task Forces are not part of the City. Councilmember Iverson said the committee is charged with setting policy and fees with regard to park usage and whatever form they devise to handle these issues should be brought to the Council for approval. Councilmember McDermott said the City has sponsored these events in the past and in the last few weeks that policy has been "lost". She said monies from Community Development Block Grant could be used to protect the task forces in this instance, but it is not a wise use of the funds. She noted the permits are set up for vendor use only and the Easter Egg Hunt in a non-vendor event. Councilmember Brewster asked if a permit allows the permit holder to take over the entire park and block use by the public. Recreation Supervisor Joe Fedin said the Recreation Department rents shelters for specific functions and this has nothing to do with the use permit. This rental covers the function for exclusive use of the shelter for the entire day. He said the use permit process includes scheduling to avoid conflicts of major activities in the same park at the same time and the requirement for the liability insurance. The rule of thumb is if the event is open and advertised for the public to

attend a use permit would be required. He noted City Staff is not patrolling the parks to check on uses, and if someone is injured at an event that does not have liability insurance, the City would be involved in the lawsuit.

Councilmember McDermott said the North Park Easter Egg Hunt is by "invitation only" and is not advertised. Children already in the Park or who come would not be turned away however. She asked if a sign closing the hunt to the invited participants would circumvent the liability insurance need. Mr. Bauer said the City's recommendation is that all the participants best interests are served if they were covered by liability insurance.

Councilmember Poppler made a substitute motion for the City Council to authorize Staff to waive the insurance and permit requirements for the upcoming Easter Egg Hunts sponsored by North Park and South Side Task Forces, with the City to cover the insurance for the events and to direct Staff to work with the City Council to appoint a committee to come up with a written policy that covers these types of uses, seconded by Councilmember Boyer. Councilmember Clark asked if the City buys the insurance policy, could it be one policy that covers both events. City Attorney Brent Brooks said he would have to research this, but noted that it is usual to be able buy a full year coverage that names more than one event on the policy.

Councilmember McDermott said the policy should cover all non-vendor sponsors and not just the task forces. Councilmember Jones said the City already has insurance and should not have to provide a separate policy for this event. Councilmember Clark inquired as to the cost of this policy. Mr. Bauer said the best estimate is somewhere from \$350 to \$1000 per event. Councilmember McDermott called for the question, seconded by Councilmember Brewster. On a voice vote, the motion to stop debate was unanimously approved. On a roll call vote, the substitute motion failed 4-6 with Councilmembers McDermott, Iverson, Boyer, Poppler voting "yes" and Councilmembers Brewster, Brown, Ruegamer, Clark, Jones and Mayor Tooley voting "no".

Councilmember Clark moved to waive the permit fees and insurance requirements for the two permits for the North Park and South Side Task Forces' Easter Egg Hunt events, seconded by Councilmember Ruegamer. Mr. Bauer said this still negatively affects the task forces and anyone who becomes injured. City Attorney Brent Brooks said this motion does not prevent the City from becoming named as a defendant in a lawsuit. Councilmember Brewster said if the City Council does nothing and the task forces hold these events it accomplishes the same thing as this motion does. The same conditions exist. Councilmember Clark withdrew his motion and Councilmember Ruegamer withdrew his second. Councilmember McDermott withdrew her original motion and Councilmember Brown withdrew his second. No action was taken.

## **Council Initiatives**

- NONE

**ADJOURN** –With all business complete, the Mayor adjourned the meeting at 10:35 P.M.

THE CITY OF BILLINGS:

MINUTES: 03/22/04

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

ATTEST:

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