

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

February 24, 2003

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

ROLL CALL - Councilmembers present on roll call were: McDermott, Gaghen, Brown, Brewster, Iverson, Kennedy, Poppler, Ohnstad and Jones. Councilmember Larson was excused.

MINUTES – February 10, 2002. Approved as printed.

COURTESIES - NONE

PROCLAMATIONS – Mayor Tooley.

- March 10-16 - Cover the Uninsured Week

BOARD & COMMISSION REPORTS – NONE

ADMINISTRATOR REPORTS – Dennis Taylor.

- Mr. Taylor thanked Councilmember Larry Brewster who joined Jani McCall, lobbyist for the City of Billings, in Helena this past week. He said Councilmember Brewster assisted Ms. McCall during this time when our legislative concerns are at their peak. He added that Councilmember Larson is in Helena today to lend his assistance. Mr. Taylor encouraged the Councilmembers to take a day to do the same and assist the City in furthering our legislative agenda.
- Mr. Taylor advised the Council that Item W, Final Plat of Billings Operations Center Subdivision, should be moved from the Consent Agenda to Item #11 on the Regular Agenda to allow Assistant City Administrator Kristoff Bauer to address a change in the Plat.
- Mr. Taylor said the City of Billings was recognized by the United Way for the high level of contributions from employees. He displayed a plaque that was given to the City for their efforts and thanked Ms. Ramona Mattix, Planning Director, for her efforts in heading up the campaign. He also recognized Bill Cochran, Library Director for his efforts with the same results in the preceding year. He noted that Don Kearney will be chairman of next years campaign. He also thanked the City employees who gave so generously to make the campaign a success.

CONSENT AGENDA:

1. A. **Legislative** Report and direction to Staff. Mayor Tooley asked staff to give

the Legislative Report. City Administrator Dennis Taylor noted that most of the bills are in second reading. He said the bill to watch is SB368, by Representative Bohlinger, revising local government impact fees. This will be tomorrow at 3:00 P.M.

B. Bid Awards:

- (1) **One (1) New Current Model 2003, ¾ ton, Regular Cab, 2WD Pickup with Utility Box.** (Opened 2/18/03). Recommend delaying to 3/10/03.
- (2) **62nd Street West Sewer.** (Opened 2/11/03). Recommend A.M.E. Inc., \$429,793.50.
- (3) **Bid for AIP 24 – Cargo Ramp Slot 3, Billings Logan International Airport.** (Opened 2/11/03). Recommend Empire Sand and Gravel, \$1,288,325.45.
- (4) **Two (2) New Current Model 2003 2WD Backhoe/Loaders.** (Opened 2/18/03). Recommend delaying award to 3/10/03.
- (5) **Parmy Billings Library, Carpet Replacement Project.** (Opened 2/11/03). Recommend Pierce Flooring, \$147,969.00.
- (6) **One (1) New 2003 Current Model Hydraulic Sewer Jet Cleaner System, Truck Mounted for Public Utilities Dept.** (Opened 2/18/03). Recommend delaying to 3/10/03.

C. W.O. 02-09, C.O. #3: Downtown Bike Connector, STPE 1099(30) CN 4507, JTL Group, Inc., \$33,181.10, 0 days.

D. C.O. #2, Landfill Phase I Closure, 21 Construction, Inc., \$2,216.45 decrease, 0 days.

E. W.O. 02-07: Central Avenue Widening, Encroachment Permit from Billings Bench Water Association (BBWA), \$1,030.00.

F. Easement Agreement with Lake Hills Golf Course, Inc., Lake Hills Subdivision, 13th Filing for irrigation crossings.

G. Contract with Montana League of Cities and Towns (MLCT) for purchase of electric power supply.

H. Authorization for grant application to the Montana Board of Crime Control for Stop Violence Against Women Act Funds – RFP #03-7, \$5,253.30.

I. Subordination of Rental Rehabilitation Loan, Carol Beeler, 722 N. 31st St., \$3,000.00.

J. Temporary Street Closure for *Yellowstone Rimrunners* event on March 16, 2003.

K. Temporary Street Closure for Downtown Billings Association's (DBA)

Celtic Celebration, March 15, 2003.

L. Temporary Street Closure for Human Resource Development Council's (HRDC) *St. Patrick's Day Celtic Celebration*, March 15, 2003.

M. Acknowledging receipt of petition #03-02 to annex: Lots 1-8, 11A, Block 1, Zimmerman Trail Subdivision, Steven L. Tostenrud ETAL, petitioners, and setting the public hearing date for 3/10/03.

N. Authorization of sale of Old Maverick Fire Station at 201 S. 30th St., to Old Maverick Fire Station Development Venture, \$68,500, Lots 13-14, Block 166, O.T.

O. Resolution 03-17956 and Agreement authorizing the Transfer of the City's Cable Franchise from AT&T Broadband to Bresnan Communications LLC and repealing Res 02-17862 dated 7/8/02.

P. Resolution 03-17960 relating to a Lease-Purchase Financing with Koch Financial Corporation, approving the terms and conditions of the financing and authorizing the execution of the documentation relating thereto. (re: Billings Operations Center).

Q. Resolution 03-17961 authorizing the opening of an account with S.G. Long & Company and Wells Fargo Investments Correspondent Services regarding the financing functions relating to the recent sale of Tax Increment Refunding Bond Series 2003.

R. Resolution 03-17962 relating to \$8,427,000 Special Improvement District (SID) 1360 (Gable Road) Bonds, authorizing the issuance and calling for the public sale thereof.

S. RE: Special Improvement District (SID) 1363 (Briarwood/Cedar Park Project) Bonds:

- (1) **Resolution 03-17963** authorizing the entering into, execution and delivery of a Commitment Agreement with the Department of Natural Resources and Conservation regarding the sale and delivery of the City's \$516,000 Special Improvement District No. 1363 Bonds (Cedar Park and Briarwood Project), Series 2003A. (re: wastewater project)
- (2) **Resolution 03-17964** authorizing the entering into, execution and delivery of a Commitment Agreement with the Department of Natural Resources and Conservation regarding the sale and delivery of the City's \$818,000 Special Improvement District No. 1363 Bonds (Cedar Park and Briarwood Project), Series 2003B. (re: drinking water project)

T. Second reading ordinance 03-5238 expanding the boundaries of Ward III

to include recently annexed property in Annex #03-01: a tract of land situated in the NE1/4 of Section 23, Township 1S, Range 25E more particularly described as: C/S 1079, Second Amended Plat, Tract 4A, containing 0.0917 acres. Eugene A. and Carol C. Brosovich, owners.

U. Setting a public hearing date for Wastewater Rate Adjustment, public hearing scheduled for 4/14/03.

V. Naming recognition of Amend Park facilities in honor of Pepsi-Cola Bottling Co. of Billings and/or the Dimich family for substantial contributions and approval of the RFP process used.

~~**W. Final Plat of Billings Operations Center Subdivision.**~~ MOVED TO REGULAR AGENDA ITEM #11

X. Final Plat of Chrysalis Acres Subdivision.

Y. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Kennedy separated Item V from the Consent Agenda. Councilmember Jones separated Items N and P from the Consent Agenda. Councilmember Kennedy moved for approval of the Consent Agenda with the exceptions of Items N, P and V and moving Item W to Item #11 of the Regular Agenda, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item N, seconded by Councilmember Brewster. Councilmember Jones said he is concerned with the word "assure" in Item 7 of the Agreement for Conditional Sale of Real Property. He asked if that statement says the City is guaranteeing the zone change. Community Development Manager John Walsh said the City's concern is to have a zoning that is appropriate for the uses of the building. He said that the current Residential Multi-Family zoning is not adequate to meet the needs of the proposed usage. He said it was in the best interest of the City to pursue the zone change. Councilmember Jones noted that he is concerned that the City will be making assurances before going through the zone change process. Mr. Walsh noted that the sale agreement is presently going through legal review and he suggested that we request the legal department change the wording to address Councilmember Jones' concerns. Councilmember Jones made a substitute motion to approve the agreement but instruct the staff to change the wording in Item 7 of the agreement so it does not compel the City to guarantee a zone change, seconded by Councilmember Brewster. City Attorney Brent Brooks suggested that the wording state that the City would cooperate with the buyer in assisting with the zone change to meet the needs of the buyer. He said the legal department could "wordsmith" this item so it indicates that the City is cooperating or facilitating a request for the zone change, but not guaranteeing it. Councilmember Jones said that addresses his concerns. On a voice vote, the substitute motion was unanimously approved.

Councilmember Kennedy moved for approval of Item P, seconded by Councilmember Brewster. Councilmember Jones asked about the \$10 Million dollar figure mentioned in the contract. Administrative Services Director Robert Keefe said the lease-purchase agreement would allow the City to finance up to \$10 Million, but the amount is the \$6.6 Million as approved by Council. It is in effect a line of credit for \$10 Million. City Administrator Dennis Taylor noted that the only action that is requested is what is contained in the memo and any further action would require Council approval.

Councilmember Brown asked if the City would be prepaying the lease payment with this lease-purchase method. Mr. Keefe said the lease amount is funded as of March 3rd and the first payment will be due in September. The funding goes into an escrow account where it can be invested and remains there until invoices for construction are submitted. Our payment will be in arrears. Councilmember Brown asked if the lease states that they own the property. Mr. Keefe said the City owns the land, and they will own the buildings and lease those to the City. In twenty years the buildings can be purchased by the City. Councilmember Brown asked if they can depreciate the property during the life of the lease. Mr. Keefe said he was "not familiar with depreciation" to answer that question. Councilmember Brown asked if the interest on this is tax free. Mr. Keefe said the interest portion of the lease payment that the City will pay is tax free. Councilmember Brown asked what the effective yield of lease would be. Mr. Keefe said the interest rate to the City is 5.14% and he suggested the effective yield would be in "the neighborhood of 7%." On a voice vote, the motion was approved with Councilmembers Brown, McDermott, Jones voting "no".

Councilmember Kennedy moved for approval of Item V, seconded by Councilmember Brewster. Councilmember Kennedy noted that this was the third Request for Proposal in the last month that has had a problem related to it. He said it was not advertised to the public prior to awarding. He asked staff to pay attention to proper bid process. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 03-17957 amending the City Budget for FY 03 to increase the Tax Increment Financing Fund Budget to provide for financing of projects for Yellowstone County, \$90,000. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Administrative Services Director Robert Keefe said the Downtown Billings Partnership has requested \$90,000 of Tax Increment finance money allocated to Yellowstone County. The County will use \$70,000 of that money to demolish the former Western Security Bank Building that is currently used by the Sheriff's Department, \$10,000 to enhance the landscaping for the parking lot, and \$10,000 for the County to participate in a Master Plan for that area.

The public hearing was opened. MIKE SCHAER, 1109 NORTH 32ND STREET, said he is the current President of the Downtown Billings Partnership and is in favor of the budget amendment to transfer the funds to the County. He said that Commissioner James Reno devised this plan to increase parking in the downtown area and ultimately free-up 25 slots in the Park III parking garage, which is the most used parking structure. This will in turn increase the business in the downtown area. He noted the County will participate in paving the lot. He said the Master Plan would encompass the area from 27th

Street to the Senior Center and between 2nd and 4th Avenues. He emphasized that this is a win situation for the Downtown Billings Partnership, Yellowstone County and the downtown area businesses. Councilmember Jones asked if all three County Commissioners supported this plan. Mr. Schaer said Commissioners Reno and Zeigler voted in favor and Commissioner Kennedy was opposed. Councilmember McDermott asked what the condition of the building was. Mr. Schaer said that the building is in very bad shape, with the basement full of mold and he said Commissioner Reno did not think it was fixable. He added it was probably built in the 50's.

There were no further speakers. The public hearing was closed. Councilmember Poppler moved for approval of staff recommendation, seconded by Councilmember McDermott. Councilmember McDermott said she does not like to see buildings torn down in favor of parking, but said if the building is in a state of disrepair, she would be in favor of the proposal.

Councilmember Gaghen noted that the building has had several fires in past years and the renovation has not been successfully completed.

Councilmember Brown asked about the tax status of the building. Mr. Taylor said the building is owned by Yellowstone County and is therefore tax exempt. This proposal would not change the tax status. On a voice vote, the motion was approved with Councilmember Brown voting "no".

3. PUBLIC HEARING AND FIRST READING ORDINANCE revising Chapter 8 of the Billings Montana City Code (BMCC) regarding Cemeteries and repealing Ordinance No. 01-5169. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Parks and Recreation Director Don Kearney said that Cemetery Division staff member Lee Stadtmiller has been in the process of updating the cemetery portion of the City Code. He said most of the issues involved in this revision concern safety and maintenance. He noted that broken or vandalized items become hazards and there are no effective ordinances that authorize the staff to remove those hazards. The proposed revisions would allow staff to contact the gravesite owner or next of kin to obtain authorization to repair broken headstones. He noted that some fences and curbing need to be addressed because they hamper maintenance. He said the City has been involved in the cremains burial since 1981 and added there have been no regulations for 20 years of this past practice. He concluded that the revisions will allow staff to improve the appearance of the cemetery.

Councilmember McDermott asked if this will clean up and improve the older section of the cemetery. Mr. Kearney said "yes". Councilmember Brown asked if the expense of repairing broken vases would be covered by the property owner or the City. Mr. Kearney said the cemetery staff will remove flowers and maintain the general grounds area, but the actual plot is deeded to the property owner and the City relies on them to maintain the plot area. Councilmember Brown asked what the procedure was if the City is unable to contact the property owners. Mr. Kearney said the City often "just takes care of it".

Councilmember Gaghen referred to Section 8-321 regarding cement, walks and trinkets not permitted on the lots and asked if this pertained to the entire cemetery or just the older portion. Mr. Kearney said that involves the entire cemetery. Councilmember

Gaghen expressed concern for one particular ethnic group that uses such trinkets as markers for their loved ones graves and asked if they are allowed. Mr. Kearney said the cemetery staff usually exercises discretion with those types of markers during certain times, but tries to avoid it as much as possible.

Councilmember Poppler asked if the plots are sold with perpetual care that requires the City maintain them. Mr. Kearney said there is a perpetual care charge on most of the cemetery and it is specifically for the care of the grounds, trees, shrubs, plantings and general care of the area. He added when next of kin cannot be located the City will care for those plots. Councilmember Poppler noted that the historical portions should be preserved as much as possible.

Councilmember Jones referred to Section 8-322 regarding fencing and enclosures. He said that the revision does not allow for family input when certain deteriorated fencing or curbing will be removed. Mr. Kearney noted that the problem with the older portion of the cemetery is that there are not good records of address for next of kin. He said the cemetery staff always endeavors to contact family whenever possible and seek their input. Councilmember Jones asked that language be included in this section to address the attempt to contact family at least one time when work needs to be done. Mr. Kearney said that could be done.

Councilmember Jones asked why (i) of Section 8-334 regarding Veteran Sections of the cemetery is being deleted. Mr. Kearney said it was already addressed in Section 8-333 (a) and (b).

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

Councilmember Jones made a substitute motion to approve the revisions and add to Section 8-322 (b) language that one attempt be made to contact the family after the sentence that allows for condemnation and removal of fencing, coping and curbing by the City, seconded by Councilmember Gaghen. Councilmember Brown asked what would be done with any fencing that is removed. Mr. Kearney said if it is bad enough to remove it will be taken to the landfill. On a voice vote, the substitute motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION 03-17958 creating SILMD #279 – Cambridge Subdivision. 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 Jones moved for approval of staff recommendation, seconded by Councilmember Brewster. Councilmember McDermott noted there has been no opposition to the creation of the district. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND SPECIAL REVIEW #735: a special review to allow the location of a 65-ft. high wireless communications facility in a Community Commercial zone on Lots 14-15, Block 1, Centerview Subdivision. The subject property is located at 1306 Central Avenue and contains 12,287 sf. Mathew A. Duray, owner; John Eder, Agent. Zoning Commission recommends conditional

approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this is a special review to allow a 65' high wireless communications facility in a Community Commercial zoning district. The property is located on the southeast corner of Central Avenue and 14th Street West. He said it is part of a parking lot for Connect. The surrounding area is generally zoned Residential. He noted that the requirements state that any tower over 50' in height must be separated from any other tower by one mile. He said there are two towers located within this one-mile radius. The applicant has requested the proposed tower to help take call volume from these two towers because of the large call volume along Central Avenue. The tower that is located at the end of Bernard Street, south of Monad would receive the most benefit, whereas the tower at Grand Avenue and 13th Street West is not constructed to allow co-location. He noted two more 50' towers are just outside the one-mile radius.

Mr. Bollman said the Zoning Commission held a public hearing earlier this month and recommended conditional approval. The conditions are: 1)That the one-(1) mile separation requirement between towers exceeding 50' in height be waived, 2)The development of the compound for the tower shall not make site deficient in required off-street parking, 3)The tower shall not exceed 65' in height, 4)The tower shall be constructed so that it can accommodate at least two -(2) antennae platform levels, and 5)The tower compound shall be enclosed by a 6' wood sight-obscuring fence and landscaping shall be provided as shown on submitted site plan.

Councilmember Kennedy asked who the owner and occupant are of the tower located near Monad Road. Mr. Bollman said the tower was erected by Mesa Communications and the user is Verizon and has room for multiple platforms. Councilmember Kennedy asked about abandonment of towers. Mr. Bollman said there are provisions in the regulations to deal with abandonment of towers.

Councilmember Iverson asked about the height of the tower on Bernard Street. Mr. Bollman said it was approved at 200' or 250', however it may not be constructed to that height. Councilmember Iverson asked if the reasoning behind larger towers is to reduce the number of smaller towers. Mr. Bollman said "yes". Councilmember McDermott noted that she would like to see that someone is responsible for preventing towers from becoming "eyesores and be maintained in a presentable manner".

Councilmember Brewster asked why the proposed tower needs the additional 15".

The public hearing was opened. JOHN EDER, 575 ANDOVER PARK WEST, TUKWILA, WA, responded to Councilmember Brewster's question that a 50' tower was tested by Verizon Wireless and found not to work for their coverage objectives. He said the two towers in the vicinity are over capacity, with a 200% increase in call volume, causing many dropped calls due to increased traffic on Central Avenue. He said there is no way to reconfigure the present antennas to fix this problem. He noted the 65' level gives a negative 75 DBM that permits coverage inside of vehicles and buildings.

Councilmember Jones asked if another unit could be placed on the 200' tower that would help with increased volume. Mr. Eder said a tower in the middle of the existing towers is the only solution. Councilmember Gaghen asked if there would be a time when another tower would be needed due to capacity overload. Mr. Eder said this

tower should be a permanent solution for the foreseeable future. Councilmember Brewster clarified that nothing could be done to the existing towers to handle the volume. Mr. Eder said that was correct. Councilmember Jones asked what the alternative is if the Council does not approve the special review. Mr. Eder said there is no solution, as Verizon would not invest the money in a 50' tower that is a partial solution. The end result is continued problems in that area.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember Brown. Councilmember Poppler asked if there was a public hearing or protest against this special review. She said she has received several phone calls against the proposal. Mr. Bollman said there was a public hearing on February 4th and there was only one person that spoke against the proposal. He added there were two letters of protest received but that did not constitute an overwhelming protest.

Councilmember Iverson said the ordinance that is in place should be the precedent and the Council should not allow special reviews to supercede. On a voice vote, the motion failed 1-9 with Councilmember Brown voting "yes". The item was disapproved.

6. PUBLIC HEARING AND RESOLUTION 03-17959 approving the Zimmerman Trail Urban Planning Study and adding this property to the Urban Planning Area. Planning Board recommends approval. (Action: approval or disapproval of Planning Board recommendation.)

Planning Staff Member Bruce McCandless said the area for this Urban Planning Study is located on top of the Rims east of Zimmerman Trail. He said the area is 29 acres and is zoned Planned Unit Development, with Agricultural Open Space. When the property is annexed it will revert to Residential 9,600 which is single-family residential. He said there are 15 single-family lots in the area. The request of the Council is to adopt a resolution including the area in the Urban Planning Area with subsequent annexation requests. He said the purpose of the planning study is to recognize the impacts to the City from the annexation. This is a planning tool that projects 10 years into the future. He noted that water service is the primary reason for this request. There would be minor effects on transportation as there are only 3 lots to develop. The area is in the BUFSA and developed lots have an assessment for fire protection. He said the Planning Board reviewed this and recommended adoption of the resolution that approves the Zimmerman Trail Urban Planning Study and to add the area to the Urban Planning Area. Mr. McCandless noted that the annexation petition was on the Consent Agenda this evening. Councilmember Jones asked if Highway 3 would still be a State Highway once the proposed annexation includes all of the right-of-way adjacent to private property. Mr. McCandless said it would remain a State highway but would be under the City's jurisdiction for law enforcement and such. The state would continue to plow the highway. Councilmember Jones asked what would happen if the right-of-way was not annexed. Mr. McCandless said there would be issues with the drive approaches. He said the City usually annexes these rights-of-way to avoid jurisdictional disputes, whether it is maintenance, law enforcement activity, or utility permitting.

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

7. PRELIMINARY PLAT of Gardner Subdivision. Planning Board recommends conditional approval of the preliminary plat application. (Action: approval or disapproval of Planning Board recommendation.)

Planning Staff Member Juliet Spaulding said Gardner Subdivision is a minor plat that would create one 14,500 square foot lot on the unplatte portion of the Burlington Northern and Santa Fe Railway right-of-way on the 3500 block of 1st Avenue South. The zoning is Controlled Industrial. She noted there is a 6,500 square foot warehouse on the site. Ms. Spaulding said there are three variance requests. They are:

- A variance from Section 23-601(k), BMCC, which states that the right-of-way width to be dedicated for 1st Avenue South (a principal arterial) shall be 120 feet, or 60-foot half-width.

Staff recommends approval of this variance request, as the entire length of 1st Ave. South is within an 80-foot right-of-way (40-foot half width), and all existing development, including the warehouse on this proposed lot is built around that amount of right-of-way.

- A variance from Section 23-602(a), BMCC, which states that alleys shall be provided in commercial and industrial districts, except that the city-county planning board may waive this requirement where other definite and assured provisions are made for service access, such as off-street loading, unloading and parking consistent with and adequate for the uses proposed.

Staff recommends approval of this variance request due to the location of this site.

- A variance from Section 23-605(d), BMCC, which states that where an arterial street abuts or runs through any portion of any subdivision, the subdivision plan shall provide for lots to back onto the arterial street and provide a one foot wide no-access strip to prevent vehicle access to the arterial street.

Staff recommends approval of this variance request due to the fact that this lot would contain an existing business, and this business fronts on 1st Ave. South. It is not possible to orient this lot and its access point to the rear of the lot, as there is not a street behind it, and the BNSF Railway lies behind it.

Ms. Spaulding said the Planning Board reviewed this application and recommends conditional approval based on the findings of facts. The conditions of approval are:

1. To mitigate potential effects on local services, the following is required:

- a. **Access.** A statement shall be added to the SIA noting that upon further development or redevelopment on the site, or as part of a general street improvement project, curb, gutter and sidewalk installation may be required. Upon installation of these facilities, driveway access to 1st Avenue South shall be limited to a single 40-foot wide driveway, or to two driveways if shared with the adjacent properties. A one-foot controlled

access strip shall be shown on the final plat along the 1st Avenue South frontage.

2. **To bring the subdivision into compliance with state law and local subdivision regulations**, the following is required:
 - a. **Minor Plat additions**. The street address of the existing warehouse shall be shown on the final plat. Also, the zoning shall be indicated as Controlled Industrial.
 - b. **SIA/Waiver wording**. The following statement shall be added to the Subdivision Improvements Agreement (SIA): "Any development or redevelopment of this property is subject to compliance with City of Billings Site Development Ordinance, Fire Code and all applicable City ordinances, rules, regulations and policies."
 - c. In addition, the SIA shall be rewritten to address required variances, all required improvements, appropriate monetary guarantees, and to bring it into conformance with standard City format and wording. The Waiver of Rights to Protest shall also be modified as requested by City Engineering to meet standard City format and wording.
 - d. **Compliance**. The final subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal City Code, and Rules, Regulations, Policies, and Ordinances of the City of Billings, and the Laws and Administrative Rules of the State of Montana.

The City-County Planning Board has prepared the Findings of Fact for the Gardner Subdivision for review and approval by the City Council. These findings are based on information received from the subdivider, their surveyor, City departmental review, and planning staff evaluation. The findings address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Section 23-304(c), BMCC).

Primary Review Criteria [Section 23-304 (c)(1), BMCC; 76-3-608 (3)(c) MCA]

1. Effect on Agriculture

This parcel is within an urban industrial area and will not affect agricultural uses or production.

2. Effect on agricultural water user facilities

The parcel does not have any agricultural water user facilities on it, and will therefore not have an effect on these facilities.

3. Effect on Local Services

Water and Sewer Service. The existing warehouse on the proposed lot already has City water and sanitary sewer services. The City Engineering and Public Utilities Departments did not have any concerns with the current provisions of water and sanitary sewer to the new lot.

Storm Water Drainage. Existing storm drains located along First Avenue South handle storm water surface runoff.

Public Streets and Roads. The proposed lot will front on 1st Avenue South. Because 1st Avenue South is a principal arterial street, a variance is needed from Section 23-605(d), BMCC to take access off of it. Approval of this variance is recommended due to location of the existing building and the railway behind it. 1st Avenue South is a four-lane, paved street within an 80-foot right-of-way. It has storm drains to collect storm water runoff. It also has curb, gutter and sidewalk on the south side of the street, but does not have curb and sidewalk on the north side adjacent to this proposed subdivision. The subdivider have submitted a waiver of the right to protest future upgrades to 1st Avenue South which include, but is not limited to, the installation of street lights, street widening, curbs and gutters, sidewalks, driveways. In addition the subdivider have requested a variance from the Section 23-601(k), BMCC requiring the 60-foot *half-width* dedication for 1st Avenue South, a principal arterial. The current right-of-way *half-width* is 40 feet for the entire length of 1st Avenue South. City Public Works recommends approval of the variance request.

Fire and Police Protection. The Fire Department reviewed the preliminary plat application and had no comments. Street widths, lot access, and fire hydrant location comply with all City of Billings Fire Department requirements. The City Police Department will serve this subdivision and commented that it will have a minimal impact on provisions of police service.

Solid Waste Disposal. The Billings Solid Waste Department will provide solid waste hauling. The Billings Landfill has adequate capacity to provide landfill disposal service.

Schools. This is an industrial subdivision and will not have an impact on schools.

Parks. Parkland dedication is not required for minor subdivisions or industrial subdivisions.

4. Effects on the Natural Environment

The subject parcel is located in an existing urban density industrial area off of a principal arterial street. The effects on the natural environment should be minimal.

5. Effects on Wildlife and Wildlife Habitat

The subject parcel is located in an existing urban density industrial area off of a principal arterial street. The effects on wildlife or wildlife habitat should be minimal.

6. Effects on Public Health and Safety

There are no known natural or man-made hazards located on the proposed subdivision.

B. Conformance with the Yellowstone County Comprehensive Plan, and *Billings Urban Area 2000 Transportation Plan*. [Section 23-304(c)(3) BMCC]

See pages 2 & 3 for a discussion on the conformance with plans.

C. Compliance with the Montana Subdivision and Platting Act and local subdivision regulations. (Chapter 23, BMCC)

The Gardner Subdivision meets the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in 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.

D. Sanitary requirements [Section 23-201, BMCC, Section 23-304(c) (5), BMCC].

Because the subdivision is within a master planning area and municipal facilities for water supply, sewage disposal and solid waste collection are adjacent, it is exempt from Department of Environmental Quality approval.

E. Zoning requirements [Section 23-201, BMCC, Section 23-304(c) (6), BMCC].

The lot will be zoned Controlled Industrial and the existing warehouse located on the lot complies with the lot size, lot coverage and setback requirements for this zoning district.

F. Planned utilities [Section 23-304(c)(7), BMCC, 76-3-608(3)(c), MCA].

Both MDU and Northwestern Energy currently serve the existing warehouse on the lot and they have reviewed the preliminary plat. All existing utility easements will need to be shown on the final plat.

G. Legal and physical access [Section 23-304(c)(8), BMCC, 76-3-608 (3)(d), MCA].

Legal and physical access is available to the subdivision from 1st Avenue South. A variance has been requested from Section 23-605(d), BMCC, which states that vehicle access to arterial streets should be prevented. The access off of 1st Ave. South exists and City Engineering recommends approval of the variance request as long as the access is limited to one 40-foot wide access point, or 2 40-foot access points if shared with neighboring parcels.

CONCLUSIONS OF THE FINDINGS OF FACT

The Planning Department staff has determined that the Gardner Subdivision will not significantly affect agriculture, agricultural water user facilities, local services, the natural

environment, wildlife and wildlife habitat or public safety. In addition the subdivision complies with the 1990 Comprehensive Plan, and the Billings Urban Area 2000 Transportation Plan. Recommended conditions of approval would help to mitigate any potential effects on local services and bring the subdivision into compliance with state law and local subdivision regulations.

Councilmember Brown moved for approval of the Planning Board recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

8. PRELIMINARY PLAT of King's Green Subdivision, 3rd Filing. Planning Board recommends approval of the plat with stated conditions, variance and Findings of Fact. (Action: approval or disapproval of Planning Board recommendation.)

Planning Staff Member Bruce McCandless said this property is located between King Avenue East and I-90. The property is a replat of a portion of King's Green Subdivision, 2nd filing. He said the City owns the property. The zoning is Residential 5,000 and will be used for single-family residential housing. The land is presently vacant. He noted a significant Park dedication along the south boundary used for a buffer between the houses and I-90. The construction will be in phases due to funding for infrastructure. He noted a large storm water basin located on the 26th lot. Mr. McCandless said the subdivider is requesting a variance from Billings Subdivision Regulations Section 23-601(k) that requires 60' street right of way for local access streets. The remainder of the King's Green Subdivision was platted with 54' street rights of way and the subdivider would like to continue this pattern. The Planning Board recommends that this variance be approved. The Planning Board recommends approval of the plat with the following conditions:

1. 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.
2. Subdivider shall comply with all applicable federal, state and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations.

The following are the findings of fact:

The Montana Subdivision and Platting Act requires that the local government assess the subdivision's effect on the primary review criteria specified in MCA 76-3-608. Likewise, subdivisions must meet the provisions of Billings Municipal Code (BMC) 23-304 (c).

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

This subdivision will not affect agriculture or agricultural water users. The land hasn't been used for agriculture for many years.

2. Effect on local services

- a. Utilities – Water and sewer facilities will be extended by the developer to serve this subdivision. Some of the facilities are already in place because of previous subdivision activity and the remaining lines will be installed with this filing. Stormwater piping in a portion of the property was installed when the stormwater detention pond was built and additional piping will be installed in phases. Private utilities will be extended to this property under the companies' operating rules.
- b. Solid waste – The City of Billings will provide solid waste collection and disposal services. The City's landfill has adequate capacity for this waste.
- c. Streets - The subdivider will construct the interior streets consistent with the construction phases. Off-site street improvement costs were contributed with previous filings. The subdivider is requesting a variance from the 60' wide local street requirement to dedicate 54' rights of way to match the street width in the existing subdivision.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #2 located at 28th Street and 5th Avenue South which is approximately 2 miles from this property. 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 main station located at 4th Ave. North and N. 9th St.
- e. Schools – The subdivision is in School District 2. The subdivision residents will attend Ponderosa Elementary, Riverside Middle School and West High School. The district did not respond to a request for comments, so it is assumed that the facilities are adequate to serve the proposed subdivision.
- f. Parks and Recreation – The required parkland dedication is slightly more than 1/2 acre but over 1 acre will be dedicated. The property will be a buffer between the houses and I-90. It will be improved in phase 1 with a walk/bike path, berms and landscaping. A PMD will be created to provide long term maintenance for the area.
- g. MET Transit – The nearest MET service is on King Avenue East, approximately 1/4 mile from this property. The housing density may help to retain or expand MET service.

3. Effect on the natural environment

There should be little impact on the natural environment because the property is part of a rapidly developing area and most of the land's natural features were destroyed years ago. There may be minor increases in air pollution during construction and from

additional vehicle traffic in the area. Erosion control during construction is required by state law.

4. Effect on wildlife and wildlife habitat

There will be little impact on wildlife or wildlife habitat because this land is in the urban area and is probably not used extensively by wildlife. There are no known endangered or threatened species on the property.

5. Effect on the public health, safety and welfare

There are no known health or safety hazards on the property. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties. This and nearby properties have inundated in the past but the stormwater drain and detention pond are designed to reduce the frequency or eliminate that occurrence.

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

An Environmental Assessment was prepared for the original filing. A summary update was provided for this application. No significant environmental effects were identified.

C. Does the subdivision conform to the 1990 Yellowstone County Comprehensive Plan and the Urban Area 2000 Transportation Plan? [BMC 23-304 (c) (3)]

1. Comprehensive Plan:

The subdivision meets the following goals/policies of the comprehensive plan

- a. Safe, energy efficient and sanitary housing. C-6
- b. Capitalize on existing public water supply systems. H-2
- c. Capitalize on existing public sewage systems and improve sewage systems in areas not currently served by public systems. H-4
- d. Encourage and direct urban growth to urban areas and contiguous lands to maintain a strong economy and accomplish a sound transition of agricultural land. I-3
- e. Curb urban sprawl and discourage leapfrog development. K-7

The subdivision does not meet the following goals/policies of the comprehensive plan

None

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. King Avenue East is a minor arterial street but no improvements are required at this time.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. The proposed bike/ped path along the south property line will provide future access to the Ponderosa School. A bike/ped path is planned for installation on King Avenue East.

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 subdivision will use City sanitary sewer, water 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 © (6)]

The property is in the Residential 5000 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) © and BMC 23-304 © (7)]

The subdivision contains public street rights of way and dedicated utility easements that provide adequate space for utility installation.

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 © (8)]

All lots will have access to a public street.

CONCLUSIONS OF FINDING OF FACT

- The overall conclusion of the Findings of Fact is that the proposed King's Green Subdivision 3rd filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision will impact local services and cause some increase in demand for those services. However, when the vacant parcel is developed the

homeowners will pay property taxes and fees that should help to support those services.

- The proposed subdivision conforms to several goals and policies of the 1990 Yellowstone County Comprehensive Plan, Transportation Plan and BikeNet Plan.

The proposed subdivision complies with state and local subdivision regulations, local zoning, sanitary requirements and provides legal and physical access to each parcel.

Mr. McCandless said this is infill development and will provide for affordable housing.

Councilmember Ohnstad asked if basements can be utilized in this area. Mr. McCandless said due to periodic flooding they cannot be used. This is the reason for the storm water retention basin, he added.

Councilmember Brewster moved for approval of the Planning Board recommendation, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

9. PRELIMINARY PLAT of Rush Subdivision, 8th Filing. Planning Board recommends approval of the plat with stated conditions, variance and Findings of Fact. (Action: approval or disapproval of Planning Board recommendation.)

Planning Staff Member Bruce McCandless said this is a replat of a portion of the Rush Subdivision, 6th filing and is located south of Poly Drive along Westfield and Larchwood Streets. He said there are 43 lots being created on 18 acres of land with a zoning of Residential 9,600, single-family residential. The property is presently vacant. Mr. McCandless said the Planning Board is recommending conditional approval, with the conditions as follows:

1. A summary Environmental Assessment shall be submitted by the Subdivider and approved by the Planning Department before final plat approval.
Required by AG Opinion 49-23 until a Growth Policy is adopted by Billings and Yellowstone County.
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 subdivider requests several variances from the subdivision regulations. Subdivision Regulations Section 23-601(k) require 60' rights of way for local streets and 80' rights of way for collector streets. The subdivider is requesting 50' rights of way for local streets Rangeview Drive, Rangeview Court and for Westfield Drive south of Rangeview and 60' right of way for Poly Drive, a collector street. Section 23-601(k) also

requires 37' wide local streets and 49' wide collector streets. The subdivider requests variances to construct 32' wide local streets on Rangeview Drive, Rangeview Court and Westfield Drive south of Rangeview Drive. Section 23-703 requires sidewalk installation on both sides of public streets. The subdivider requests that sidewalk be installed on only one side of Rangeview Drive and no sidewalk on Rangeview Court, Westfield south of Rangeview and adjacent to lots 1A-3A block 14 which are immediately east of the future park. The subdivider dedicated more parkland than required along the Big Ditch which reduced the amount of land available for development and the Hi Line Ditch limits Poly Drive right of way and construction. The subdivider prepared a pedestrian walkway plan that justifies the reduced sidewalk construction. The Planning Board recommends that the variances be approved.

Mr. McCandless noted there is a park dedication and development will occur 9 months after 90% of the lots have building permits issued on them.

The findings of fact are:

The Montana Subdivision and Platting Act requires that the local government assess the subdivision's effect on the primary review criteria specified in MCA 76-3-608. Likewise, subdivisions must meet the provisions of Billings Municipal Code (BMC) 23-304 (c).

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

This subdivision will not affect agriculture or agricultural water users. The land hasn't been used for agriculture for several years. The Hi-Line Ditch that passes north of the property will continue to be used by downstream water users. The Big Ditch that forms the southern boundary of the property will continue to be used by downstream users and occupies an easement on city parkland that was dedicated in previous platting.

2. Effect on local services

a. Utilities – Water and sewer facilities will be extended by the developer to serve this subdivision. Some of the facilities are already in place because of previous subdivision activity and the remaining lines will be installed with this filing. This developer or the developer of Rimrock West Subdivision 5th filing will install Larchwood services and the installer will be reimbursed by the adjacent owner for ½ the cost. Stormwater systems are partially in place and will be expanded with this filing. Private utilities will be extended to this property under the companies' operating rules.

b. Solid waste – The City of Billings will provide solid waste collection and disposal services. The City's landfill has adequate capacity for this waste.

c. Streets - The subdivider will construct the interior streets. Off-site street improvement costs were contributed with previous filings. The subdivider is

requesting a number of variances from the subdivision regulations; to narrow the street right of way to 50' and pavement to 32' on some of the local streets, narrow Poly Drive right of way to 60' and pavement to 37' east of the Hi-Line Ditch, install sidewalk on one side of Rangeview Drive and no sidewalk on the two short cul-de-sacs. The street rights of way and pavement width variances are supported by the developer's dedications of extra parkland and a BikeNet corridor and prior agreements. The sidewalk variance is justified by a pedestrian walkway plan that the subdivider submitted. Public Works reviewed the variance requests and supports them.

- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #3 located at Parkhill and 17th, which is approximately 4 miles from this property. 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 station that is located in the 2500 block of Grand Ave.
- e. Schools – The subdivision is in School District 2. The subdivision residents will attend Arrowhead Elementary, Will James and West. The district did not respond to a request for comments, so it is assumed that the facilities are adequate to serve the proposed subdivision.
- f. Parks and Recreation – The property was initially part of a larger holding that was annexed to the City in 1986. The annexation agreement required park dedication that satisfied the requirements for this subdivision, Rush 6th and 7th filings and Shiloh Point Subdivision. The Rush 6th filing SIA required parkland development when the subdivision reached a certain phase. This SIA modifies the timing so that the park will be developed through a SID after 90% of the building permits have been issued for the combined 6th and 8th filings. A PMD will be formed to maintain the park. The SID and PMD will cover all of Rush 6th, 7th, 8th and Shiloh Point. A small amount of previously dedicated parkland in block 14 will be returned to the subdivider and used to expand lot size in that block.
- g. MET Transit – The nearest MET service is to St. John's Lutheran Home located at Shiloh Road and Rimrock, approximately ½ mile from this property. This subdivision will probably not prompt MET to change routes because the low density development doesn't usually generate enough ridership to warrant service changes.

3. Effect on the natural environment

There should be little impact on the natural environment because the property is part of a rapidly developing area and most of the land's natural features were destroyed years ago. There may be minor increases in air pollution during construction and from additional vehicle traffic in the area. Erosion control during construction is required by state law.

4. Effect on wildlife and wildlife habitat

There will be little impact on wildlife or wildlife habitat because this land is part of a rapidly building housing area and is probably not used extensively by wildlife. There are no known endangered or threatened species on the property. Montana Fish Wildlife and Parks responded to the request for comments but had no specific concerns about the subdivision.

5. Effect on the public health, safety and welfare

There are no known health or safety hazards on the property. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties. The only known nearby potential safety hazards are the two irrigation ditches, which may be hazardous for small children or pets.

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

An Environmental Assessment is required but was not submitted with the preliminary plat application. When the property was platted in the Rush 6th filing it did not require an EA because it was exempted by the Master Plan exclusion. Since this is a re-plat of land that did not require an EA and no adverse environmental effects are anticipated, a summary EA should be submitted before final plat approval.

C. Does the subdivision conform to the 1990 Yellowstone County Comprehensive Plan and the Urban Area 2000 Transportation Plan? [BMC 23-304 (c) (3)]

1. Comprehensive Plan:

The subdivision meets the following goals/policies of the comprehensive plan

- a. Safe, energy efficient and sanitary housing. C-6
- b. Capitalize on existing public water supply systems. H-2
- c. Capitalize on existing public sewage systems and improve sewage systems in areas not currently served by public systems. H-4
- d. Encourage and direct urban growth to urban areas and contiguous lands to maintain a strong economy and accomplish a sound transition of agricultural land. I-3
- e. Curb urban sprawl and discourage leapfrog development. K-7

The subdivision does not meet the following goals/policies of the comprehensive plan

None

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Poly Drive is identified as a local street but west of this property it was built to collector street standards. The street transitions to a local street section where it intersects this subdivision at Westfield. Internal streets to serve the lots will be constructed by the subdivider using a private contract.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. The Big Ditch is shown as a conservation corridor. Since the ditch occupies City property located south of this subdivision, a corridor has been preserved. No immediate improvements are required but a hard-surfaced trail may be constructed in the future.

4. West Billings Plan

The subdivision is not within the West Billing Plan area.

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 subdivision will use City sanitary sewer, water 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 © (6)]

The property is in the Residential 9600 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) © and BMC 23-304 © (7)]

The subdivision contains public street rights of way and dedicated utility easements that provide adequate space for utility installation.

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 © (8)]

All lots will have access to a public street.

CONCLUSIONS OF FINDING OF FACT

- The overall conclusion of the Findings of Fact is that the proposed Rush Subdivision 8th filing does not create any adverse impacts that warrant denial of the subdivision.

- The proposed subdivision will impact local services and cause some increase in demand for those services. However, when the vacant parcel is developed the homeowners will pay property taxes and fees that should help to support those services.
- The proposed subdivision conforms to several goals and policies of the 1990 Yellowstone County Comprehensive Plan and doesn't conflict with the Transportation or BikeNet Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, sanitary requirements and provides legal and physical access to each parcel.

Councilmember Jones asked about sidewalks in the subdivision. Mr. McCandless said there will be no sidewalks on either side of the two short cul-de-sacs, south of Rangeview. There will be sidewalks on one side of Rangeview and within the park. He said the expected number of pedestrians did not warrant sidewalks. Public Works Director Dave Mumford said the City is supportive of sidewalks, but when cul-de-sacs are under 300 feet, the sidewalk expense becomes costly and they become difficult to install. Councilmember Kennedy said that the Council has previously addressed the issue of cul-de-sac sidewalk installation and based the decision on the number of houses as a criteria for sidewalk installation.

Mr. McCandless noted that the "big ditch" runs along the south edge of the property and a portion of the Heritage Trail will be on one side of the ditch. This will provide another east-west route through the subdivision.

Councilmember Iverson moved for approval of the Planning Board recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

10. SECOND READING ORDINANCE 03-5239 providing that the Billings, Montana City Code (BMCC) be amended by providing for the repeal of sections 2-201, and 2-211 through 2-225; and by adding new sections to be numbered 2-201 through 2-207, 2-211 through 2-216, 2-221 through 2-225, and 2-231 through 2-241; establishing: the Mayor and City Councilmembers' compensation, duties, powers, and conduct; the meetings, rules of order, minutes, and rules of procedure; committees; the requirements for ordinances and resolutions, the procedure for adopting and recording same, and effective dates. Staff recommends approval.
(Action: approval or disapproval of Staff recommendation.)

Assistant City Administrator Kristoff Bauer noted that this item was discussed at last week's work session and based on those discussions he created a number of amendments for the sections that were identified as "concerns" by the Council. This memo is on the Councilmembers' desks for reference. He said there was a lack of clear consensus as to whether the changes should be made.

Councilmember Kennedy moved for approval of the staff recommendation, seconded by Councilmember Brewster. Councilmember Brown amended the motion to

strike the word "simple" as it pertains to majority, seconded by Councilmember Brewster. Mr. Bauer said the word simple is just a clarification word. He noted that in the ordinance as proposed the word simple does not exist, therefore Councilmember Brown's motion would remove a word that is not yet there. He said a couple of the proposed amendments would add the word simple. He noted the word is not necessary and could be removed during the amendment process. Councilmember Brown withdrew his motion, and Councilmember Brewster withdrew his second.

Councilmember Kennedy moved to amend Section 2-212 of the proposed ordinance consistent with Amendment A of the February 21st memorandum provided by staff, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved to amend Section 2-213(c) of the proposed ordinance consistent with Amendment B of the February 21st memorandum provided by staff, seconded by Councilmember Brown. Councilmember Kennedy said a minimum quorum of 6 councilmembers could potentially allow 4 votes to approve any agenda items. This allows a small group of people control over many important issues. Councilmember McDermott said she would like to see the Council be consistent and use the term majority throughout.

Councilmember Iverson made a substitute motion to amend Section 2-213(c) of the proposed ordinance consistent with Amendment B of the February 21st memorandum provided by staff with the words "super majority", seconded by Councilmember Kennedy. Councilmember Brewster asked if Councilmember McDermott's motion fails wouldn't we be at the point of the substitute motion? Councilmember Iverson withdrew her motion and Councilmember Kennedy withdrew his second. Councilmember Kennedy said the Council should be ruled by more guidelines to insure that small groups cannot control this body. He said the more the process is slowed down the better the decisions are.

Mayor Tooley noted that the City will not always have this Council and therefore it is important to have a super majority for the consideration of any new piece of business. He said a simple majority is sufficient for reconsiderations in his opinion. Councilmember Brewster said he has a problem with this amendment only because it denies the public the opportunity to comment on a noticed item on our agenda. City Attorney Brent Brooks said that most of the rules were enacted in 1967 and this predates the 1972 constitution, which emphasizes the right of public participation. Councilmember Poppler said she thinks this concern is moot since there are rare occasions when issues are not subject to a public hearing or Council policies. She said she thinks the words super majority should be removed from the entire code and the Council should "go with the majority". On a voice vote, the motion failed with only Councilmembers Brown, McDermott, Poppler voting "yes".

Councilmember Brown moved to amend Section 2-221 of the proposed ordinance consistent with Amendment C of the February 21st memorandum provided by staff with the word "simple" removed, seconded by Councilmember Brewster. Mr. Bauer said a positive vote would allow the Council to suspend their rules with a majority and would then remove the requirement for a super majority to add something to the agenda. If there is a smaller quorum the threshold becomes higher. Councilmember Kennedy asked Mr. Brooks if the majority relates to all Councilmembers or just those present. Mr. Brooks said it refers to a number of 8 Councilmembers and if 7 members were present at the meeting the suspension of rules would not be possible.

Councilmember Jones made a substitute motion to allow suspension of rules except 2-213, seconded by Councilmember Gaghen. Mr. Bauer called attention to Section 2-221, which states the suspension only operates in Section 2-221 and 2-213 could not be suspended by this action. An affirmative vote on the original amendment would not suspend Section 2-213. Councilmember Jones withdrew his substitute motion and Councilmember Gaghen withdrew her second. On a voice vote for the original amendment, the motion was unanimously approved.

Councilmember Kennedy moved to amend Section 2-221(b)(11) of the proposed ordinance consistent with Amendment D of the February 21st memorandum provided by staff and striking the word "simple", seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved to amend Section 2-221(c)(4) of the proposed ordinance consistent with Amendment E of the February 21st memorandum provided by staff, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

Councilmember McDermott asked for clarification of the super majority as it relates to the agenda. Mr. Bauer said it pertains only to adding or removing something from the agenda.

MOVED FROM CONSENT AGENDA ITEM W:

11. FINAL PLAT of Billings Operations Center Subdivision. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Assistant City Administrator Kristoff Bauer said the staff is asking the Council to approve the Billings Operations Center Subdivision that includes five lots. He noted the confusion between the original version and the version before the Council tonight pertains to the inclusion of the ditch. He noted that the original plat showed the ditch in an altered position because there were plans to move the ditch. The ditch company raised concerns about this change. He said it was decided by the staff to move forward with the final plat showing the ditch in its present location and wait for a later opportunity to move it and do a lot line adjustment at that time. This will allow the closure of the lot trade agreement with Mr. Studer. He also noted that there is an agreement regarding the lot trade and the ensuing lot line adjustment that should be considered. The agreement also gives the City more options if the ditch is not moved. Mr. Bauer said the action before the Council is to approve the final plat of the Billings Operations Center Subdivision and authorize the Mayor to execute the agreement amendment. This will allow the agreement between the City and Mr. Studer to move forward and give the City the opportunity to move or not move the ditch and adjust the property in accordance with the decision. Mr. Bauer noted that Lots 1, 2 and 3 would be transferred to Mr. Studer in exchange for Lot 4 in the Cereus Subdivision. Councilmember Poppler moved for approval of the final plat of the Billings Operations Center Subdivision and to authorize the Mayor to execute the necessary documents, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

Council Initiatives --

COUNCILMEMBER JONES moved to increase the threshold to \$2,500 for Bills and Payroll submissions to Council in the weekly packets, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER POPPLER requested that the Council convene a Committee of the Whole Meeting to discuss a transition plan for the pending resignation of City Administrator Dennis Taylor. Mayor Tooley noted that his intention was to have 4 Councilmembers meet and develop a similar plan. Councilmember McDermott noted that it would be best to have all Councilmembers meet initially with the possibility of a committee of four (4) to complete the process. Councilmember Brewster supported Councilmember McDermott's comment because he has concerns he would like to express.

Mr. Taylor said he expects the Eugene City Council considering his new employment to vote in favor of an offer this evening and come to terms of the contract tomorrow. He said he anticipates submitting his letter of recommendation on Tuesday or Wednesday effective March 28, 2003. Mr. Taylor said the work session agenda for March 3rd is light and should allow time to talk about long-term strategy. Councilmember McDermott suggested a special meeting. The Council concluded that it would be the first item on the March 3rd Work Session agenda.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 8:51 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Susan Shuhler, Deputy City Clerk

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