

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

## **April 28, 2003**

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 Mike Larson.

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

**MINUTES – April 14, 2002.** APPROVED as printed.

### **COURTESIES – Yellowstone Licensed Beverage Association. (Fire Dept)**

- Asst. Fire Chief Paul Gerber said the Yellowstone Licensed Beverage Association would present the Fire Department a check to purchase new fire helmets. YBLA President Doug Jensen presented the Fire Department a check for \$18,000. Battalion Chief John Staley thanked Mr. Jensen for their check to purchase the new helmets. These helmets are a safer style of helmet, called the New York style helmet, paying tribute to New York firefighters who lost their lives in the line of duty on September 11th. The YLBA will also be sponsoring a public fireworks display for the community this July 4<sup>th</sup>.
- Councilmember Gaghen introduced an exchange student majoring in government, Sue Haung from Seoul, Korea.

### **PROCLAMATIONS – Mayor Tooley.**

- **DAYS OF REMEMBRANCE: April 27 thru May 4**
- **GOODWILL INDUSTRIES WEEK: May 4-10**

### **BOARD & COMMISSION REPORTS – NONE**

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

- HB 94 regulating public meetings and public comments at public meetings was included in the Friday packet. The City Attorney has concluded that it is applicable to Council meetings. The bill allows local governments to establish procedures for receiving public comment. Mr. Bauer asked that this item be added to the agenda this evening. Mayor Tooley noted that this bill was signed into law by Governor Martz and applies to local governments as well as state agencies and he called for a motion to instruct the staff to develop procedures related to this bill. Councilmember Brewster moved to add "Public Comment" as Item 15 to the agenda, seconded by Councilmember Brown. On a voice vote, the motion was approved. Councilmember Kennedy voted "no".

**CONSENT AGENDA:**

1. A. ~~Legislative Report and direction to Staff.~~
- B. **Bid Awards:**
  - (1) **North Park Playground Improvements.** (Opened 4/8/2003). (Delayed from 4/14/03). Recommend Good Earthwork Landscaping, Inc., \$63,785.00.
  - (2) **Rose Park Parking Lot Improvements Project.** (Opens 4/22/2003). Recommend delaying award until 5/12/03.
  - (3) **AIP 23 to include Schedule I: Security Lobby Renovation and Snack Bar Renovation.** (Opens 4/15/03). Recommend Hardy Construction, \$376,000.00.
- C. **Contract for Parking Garage Security**, D-N-D Security, \$21,900.00, term: 1 year with second year option.
- D. **Tax Increment Financing (TIF) Grant** to Walkers, Inc., for gap financing of the Securities Building project at N27th Street and 1<sup>st</sup> Avenue North, \$350,666.
- E. **Budget Line Item Transfer** within Tax Increment Financing Fund for street banners on Montana Avenue, \$30,000.
- F. **Pledged Collateral** on Certificate of Deposit and US Bank repurchase Account.
- G. **W.O. 02-23: Midland Road Improvements**, approval of Quit Claim Deed and transfer of private use approach (located in Tract 1B of C/S 1446 Amended) back to Montana Dept. of Transportation.
- H. **Resolution of Intention 03-17976** to Create SILMD 278 for streetlights along King Avenue West between South 31<sup>st</sup> Street West and the BBWA Canal, and setting a public hearing for 5/27/03.
- I. **Purchase** of the Planning, Zoning and Code Enforcement modules from H.T.E., at a one-time cost of \$46,075.00 and the yearly maintenance cost of \$6,700.00.
- J. **Final Plat** of the Amended West ½ of Lot 4, Wolf Subdivision.
- K. **Final Plat** of Uinta Park Subdivision.
- L. **Bills and Payroll.**

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

Councilmember Brown separated Items E and I from the Consent Agenda. Councilmember Kennedy moved for approval of the Consent Agenda with the exceptions of Items E and I, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item E of the Consent Agenda, seconded by Councilmember Larson. Councilmember Brown asked what the purpose of the banners was that requires this transfer of funds. Administrative Services Director Robert Keefe said the banners installed on the light poles are intended to provide a decorative and festive atmosphere to Montana Avenue. Councilmember McDermott asked Mr. Greg Krueger to give a report. Mr. Krueger introduced Jennifer Henry who has worked on the banner project. Mr. Krueger said the Montana Property Owners Committee requested this action and the property owners intend to amend the Park Maintenance District to include seasonal banners and installation of those banners that identify this portion of Montana Avenue as a historic district. He said the budget line item would allow for purchase of the equipment that will allow attachment of the banners to the light poles. The banners will be maintained by the property owners. He noted that the brackets would allow for advertising the different events that occur in the historic district, such as "Depot Days". Councilmember Poppler asked if the City's sign code gives the historic district special consideration for the banners. Mr. Krueger said these banners would comply with the sign code and does not give the historic district unfair advantage. He noted there is a separate sign code for the historic district. Councilmember Jones said that since the maintenance district has not been formed as yet, this action is "putting the cart before the horse". He said he would like to see the maintenance district put in place prior to transferring the funds. Mr. Krueger said the banner project will not go forward and no funds will be expended unless all of the property owners agree to an amendment to the Park Maintenance District. On a voice vote, the motion was approved with Councilmembers Brown and Jones voting "no".

Councilmember Kennedy moved for approval of Item I of the Consent Agenda, seconded by Councilmember Larson. Councilmember Brown asked what the cost is of the manual system versus this module update for the Planning and Code Enforcement portion of the H T E system. Mr. Bauer said the intention of this update is to increase the efficiency of the code enforcement operation and provide better integration with other H.T. E. modules. Councilmember Brewster said one of the biggest complaints is that Code Enforcement Officers are unable "to get to all of the problems". He asked how this would improve efficiency. Planning Director Ramona Mattix said this system allows Code Enforcement Officers to input information faster and obtain property ownership and location information quicker, rather than the manual options of physically locating them on maps or through the County GIS system. On a voice vote, the motion was approved with Councilmember Brown voting "no".

## **REGULAR AGENDA:**

- 2. PUBLIC HEARING relating to the proposed allocation of FY 2003-2004 CDBG and HOME funds. Council action scheduled for May 12. (Action: public hearing only).**

Community Development Manager John Walsh said the CDBG and HOME funding programs are designed to provide economic opportunities to low-income households to obtain affordable housing and to provide for neighborhood revitalization. He said the City is receiving \$866,000 from the Federal government for CDBG funding. He noted that CDBG funds differ from HOME funds in that it includes neighborhood activities as well as affordable housing activities. The HOME program is strictly an affordable housing program. He said the City is currently operating under a 5-Year Consolidated Plan for the allocation of CDBG and HOME resources. This plan includes the following five strategies for the use of these resources in the community:

1. To improve the economic conditions of lower income households in the community.
2. To promote affordable housing and fair housing citywide.
3. To promote the preservation of the existing supply of affordable housing in the community.
4. To promote the preservation and revitalization of the community's older neighborhoods, where the affordable housing stock is located.
5. To work as an active partner with nonprofits and neighborhood groups and others to address housing, community, and neighborhood needs.

Mr. Walsh said Strategy #1 is accomplished by working with non-profit organizations to help address the human service needs of lower income residents and working with economic development and non-profit agencies to undertake strategies that result in employment opportunities for lower income households.

Mr. Walsh said Strategy #2 is achieved by promoting home ownership, encouraging the development of new affordable single-family, multi-family and special needs housing and supporting activities that increase the awareness of fair housing in the community.

Mr. Walsh said Strategy #3 is achieved by providing affordable financing to allow low and moderate-income homeowners to perform needed repairs to their homes and to encourage rehabilitation of affordable multi-family units in the community.

Mr. Walsh said Strategy #4 is accomplished by upgrading the housing stock, developing vacant or substandard properties, provide funding for amenities and infrastructure and empowering residents of lower income neighborhoods to work together to address needs and respond to opportunities.

Mr. Walsh said Strategy #5 is accomplished by working with the Neighborhood Task Forces, the Affordable Housing Task Force, the Adjacent Neighborhood Committee and the Native American Homeownership Partnership.

Mr. Walsh outlined the process for the allocation of the CDBG and HOME funds as follows: 1) applications to the program were available December 5, 2002 and due the end of January 2003, 2) Task Force input occurred during February and March of 2003, 3) Community Development Board Budget Hearings were held on March 20<sup>th</sup> and 21<sup>st</sup>, 4) City Council Public Hearing is being held on April 28<sup>th</sup>, 5) City Council action will be on May 12<sup>th</sup> and 6) Program Year will begin July 1, 2003. He thanked several members of the board in the audience for their work and dedication to this project.

Mr. Walsh summarized the Public Service Activities (Strategy #1) requests and recommendation as follows:

	Organizations	Amount Requested	CD Board Recommendation
Public Service Activities	Billings Chapter Prevention of Elder Abuse	\$10,000	\$9,500
	Billings Food Bank	\$18,000	\$16,000
	Billings Healthy Community Coalition	\$10,000	\$9,500
	Billings Police Department	\$10,000	\$0
	Boys & Girls Club of Billings & Yellowstone County	\$5,000	\$4,000
	Family Service, Inc.	\$25,000	\$17,000
	Friendship House - Summer Enrichment	\$12,000	\$9,000
	HRDC - Families Saving for Tomorrow	\$7,500	\$0
	HRDC - Growth Thru Art	\$15,000	\$10,000
	KIDS After School Program	\$12,000	\$6,000
	KIDS Summer Program	\$6,000	\$3,000
	Parents Let's Unite for Kids	\$25,000	\$2,500
	Senior Helping Hands Program, Inc.	\$25,000	\$18,000
	Southgate COP Shop	\$6,000	\$6,000
	Temporary Teens, Inc.	\$3,500	\$2,000
	Tumbleweed Runaway Program, Inc.	\$18,000	\$15,050
	Young Families Early Head Start	\$20,000	\$10,000
	YWCA of Billings Children's/Women's Services	\$2,400	\$2,000
	YWCA Gateway House	\$14,700	\$10,000
Econ Dev	BSEDA	\$10,000	\$10,000

He noted that the grant funds requested by the Police Department of \$24,667 were still available at the time of the recommendations so the Board did not recommend funding for this year. He also noted that the request from HRDC was a new program.

Mr. Walsh described the Affordable Housing Activities (Strategies #2 & #3) requests and recommendations as follows:

	2003-2004 Request	CD Board Recommendations	
		CDBG Funds	HOME Funds
Afford-able Housing Activities	Housing Rehabilitation Loan Program	\$350,000	\$300,000
	Minor Home Repair Program	\$100,000	\$100,000
	Rental Rehabilitation Program	\$40,000	\$40,000
	HOME/CDBG Affordable Housing Support	\$464,700	\$50,000
	HOME First Time Home Buyer Program	\$100,000	\$100,000
	Set-Aside for CHDOs	\$75,300	\$84,703
	Living Independently for Today & Tomorrow	\$28,000	\$15,000
	Yellowstone County Council on Aging	\$5,000	\$5,000

He noted that the \$84,703 set aside for CHDOs is a requirement as the recipient of the HOME funding; 15% of the funds must be committed to non-profit organizations that participate in affordable housing.

Mr. Walsh described the Neighborhood Projects (Strategy #4) requests and recommendations as follows:

		2003-2004 Request	CD Board Recommendations	
			CDBG Funds	HOME Funds
Neighborhood Projects	CDBG Demolition Program	\$20,000		
	Property Management	\$12,000	\$12,000	
	Special Assessment Grants	\$50,000	\$50,000	
	Tree Trimming, Planting, & Removal	\$20,000	\$15,000	
	UST Fields Pilot Project	\$50,000	\$25,000	
	Head Start - Kitchen Renovation	\$22,000		
Park Improvements	PRPL Central Park	\$8,000		
	PRPL North Park	\$7,500	\$7,500	
	PRPL North Park	\$2,500	\$2,500	
	PRPL Pioneer Park	\$20,000	\$10,000	
	PRPL South Park	\$7,000	\$7,000	

Mr. Walsh described the Administrative Planning and Fair Housing provision that applies to Strategy #5 as follows:

		2003-2004 Request	CD Board Recommendations	
			CDBG Funds	HOME Funds
Admin / Planning / Fair Housing	CDBG Administration	\$175,000	\$175,000	
	HOME Administration	\$60,000		\$60,000
	Professional Services	\$20,000		
	Task Force Enhancement	\$5,000		
	Yellowstone Historic Preservation Board	\$8,500	\$7,500	
	Community Housing Resource Board	\$20,000	\$15,000	
	Unprogrammed	N/A	\$10,698	\$22,944

He noted there is no funding available for Professional Services and for Task Force enhancements.

Councilmember McDermott referred to the Strategy #4 item c that provides direct subsidy to the City curb, gutter and sidewalk programs undertaken in lower income neighborhoods. She asked what the criteria are for approving or qualifying for those funds. Mr. Walsh said this comes from the 5-year plan and was created in May of 2000. He said the City uses CDBG funds to fund subsidies for corner lots in low-income areas.

He said the Public Works Department has requested funds for these programs in the past, but for the past two years there has been no funding for those activities and no program to do so. Councilmember Brewster asked what happens to funding requests that require General Fund match that don't get funded during the budget process. Mr. Walsh said if it is part of the Block Grant fund then it is left for a year to see if matching funds are available from the next year's budget.

Community Development Board Chairman Aldo Rowe thanked the members of the Community Development Board and the Task Force Members for their hard work and participation. He also thanked Councilmembers Gaghen and McDermott for their support and helpful experience.

He reviewed the process that the Board used to screen the application requests. Each Board Member was assigned to a particular organization where they investigate the requests and interview the members of the organization, reporting back to the full Community Development Board. He added that neighborhood Task Forces also play a big part in the process. They are asked to prioritize a list of program requests that are particular to their areas. After the public hearings in March the Community Development Board met for 6 hours on April 3<sup>rd</sup> to review the entire process and develop the recommendations. Mr. Rowe said the recommendations represents a consensus of the entire CD Board. They followed the 5 strategies previously noted, staying consistent with their recommendations to adequately fund the requesting agencies with the guidelines of the 5-year Consolidated Plan. He said preserving existing housing and developing new affordable housing is the primary goal of the CD Board.

Mr. Rowe noted that the Board spent some time discussing the request from Headstart. In the end, the Board decided not to fund Headstart because of the significant amount of federal funding that they already receive. He added that the Board felt that the funds should be committed more toward housing and neighborhood improvement. He also noted, as did Mr. Walsh, that the Police Department had funds left from their previous funding, so the Board encouraged them to use those funds so they could be considered next year. In summary, he said approximately \$150,000 in public services funding was provided to 17 excellent projects. Councilmember McDermott asked how the Board measures the way the \$10,000 funding to BSEDA is used to support low income areas. Mr. Rowe said this was determined by listening to the report on how the funds to BSEDA were used last year. He offered to provide the Council with particular information and evidence.

The public hearing was opened. RUSS BROWN, PROJECT DIRECTOR FOR COMMUNITY HOUSING RESOURCE BOARD (CHRB) thanked the CDBG Board and the City staff for their efforts even though they did not receive the requested amount. He thanked the Board for the amount that was recommended.

BRUCE EBERLE AND REBECCA DONALDSON, BOARD MEMBERS WITH YOUNG FAMILIES FOR EARLY HEADSTART thanked the CD Board for their support and recommendation for funding. He asked for the Council's affirmative decision on the recommendation.

MARY KELLY, DEVELOPMENT DIRECTOR FOR FAMILY SERVICES, INC. thanked everyone for their support and efforts. She said the funding has made a huge difference to Family Services, Inc. clients who need help with housing costs. Most of

the clients are employed but when an emergency arises these families are forced into a crisis situation. She thanked the Board for their consideration and recommendation.

There were no other speakers. The public hearing was closed. Mayor Tooley noted that the vote on this item would be taken at the May 12<sup>th</sup> meeting.

**3. PUBLIC HEARING AND RESOLUTION 03-17977 ORDERING IN IMPROVEMENTS UNDER W.O. 03-02, #1: Miscellaneous/Developer-Related Improvements. Staff recommends approval. (Action: approval or disapproval of Staff recommendation).**

Public Works Staff Engineer John Nowak said this is an annual project to deal with recent development or Subdivision improvement requirements. Sometimes this deals with questions from the developer or with improvements not completed properly by the developer. This program also deals with miscellaneous repairs scattered throughout the community. He said many of these repairs are complaint driven, from staff recommendation or by property owner's request.

Mr. Nowak said Street Maintenance Funds are used for curb and gutter repair. PAVER Funds are used for ADA ramp construction ahead of annual overlay projects and any street restorations that are required. Gas tax revenues are used for ADA ramp construction on arterial streets. General Funds are used for tree removal and replacement, alley approach reconstruction and corner lot subsidy with the longer frontage being funded and the shorter frontage assessed to the property owner. He noted that they try to save as many trees as possible and offer to replace every tree they have to remove. Community Development Block Grant Funds are used to support General Funds in low to moderate-income areas. Storm Drain Funds are used to replace defective valley gutters and substandard inlets and storm drain piping.

Mr. Nowak said direct property assessments are used for sidewalk repair or new sidewalk installation, drive approach repair or new installation, new installation of curb and gutter, service walk repair and landscaping.

Mr. Nowak said repair costs have increased over the years because of the volume of complaints. Curb and gutter complaints have increased because of the new policy of using Street Maintenance funds for curb and gutter repair. He added that construction costs have increased due to inflation and higher cost of materials. The result of this is that some repairs will not fit into the project budget and must be prioritized. This causes the backlog of repair work to grow. He noted that \$150,000 of curb and gutter repair requests was received this year and there is a backlog from 2002 of \$50,000 in requests and the available funding for the program is \$50,000. The result is that not all complaints can be addressed and the backlog will continue to grow.

Mr. Nowak said of the total estimated construction costs of \$628,125 only \$475,000 will be from assessments to property owners. The funds that were mentioned before help to defray some of that total cost. The 2003 project will have as many complaints addressed as possible. The project will be bid with additive schedules to ensure the construction project awarded fits the budget.

Councilmember McDermott asked where the \$9,000 CDBG funding is being used and what the criteria are for use. Mr. Nowak said those funds are being used as defined by the Community Development Department in specific areas. He confirmed that it would

be used exclusively in the corner lot program. He noted that the \$9,000 is from a previous request and has been carried forward.

Councilmember Brown asked about a curb and gutter repair on a center lot being part of this program. Mr. Nowak said it would apply and noted that the repair on a center lot sometimes will not solve the problem but actually complicate the situation when the other lots are repaired. Councilmember Brown asked if an entire block has no curb and gutter, could this lot be included in an SID to install it. Mr. Nowak said they could be included in the curb and gutter program as new construction that will be 100% assessed to the adjacent property owners. Councilmember Brown said he is referring to a property owner who wants to install curb and gutter and has been prevented because other property owners do not want to pay for the cost of the improvements and fear it will cause a run off problem for the neighbors. Mr. Nowak said there is a state law that says the City cannot build an improvement that will direct run-off to another property or to create a problem for another property. The City cannot proceed with completion of the improvements without approval from the other property owners. Mr. Bauer requested that additional information for this lot be submitted to the staff so that a correct assessment of this particular situation can be addressed.

The public hearing was opened. STAN SWENSON, 4512 ELK DRIVE, thanked the City for providing this program. He said it would assist him greatly. He noted that he is being assessed \$2,000 per corner to replace storm sewer inlets that work fine. He said he feels this is a City property improvement that the City should be responsible for. He also noted that the administration fees on his contract are 25% not 10% as stated in the presentation. Mr. Nowak said he would review the inlet concern addressed by Mr. Swenson and report back to him. He said that the 25% fee is made up of several different fees and that what the property owners have received to date is an estimate only. The assessment is the actual cost of the construction. He added that the estimate must be high because by state statute. The project cannot go forward if the actual assessments are greater than the assessment total in the resolution.

DON FRENCH, 3704 HAYDEN DRIVE, said his street was one of the slides displayed that was missing sidewalk, curb and gutter. He said he is opposed to improvements done for appearance sake. He said his assessment was in excess of \$8,150. He said he is opposed to these improvements unless it is shown that they are a safety hazard or a drainage concern.

BILL WRIGHTSON, 3712 HAYDEN DRIVE, said he is a neighbor of the French's and is opposed to this sidewalk improvement as well. He said there is a worse problem on Poly Drive where sidewalks are missing and the improvements are needed more. There are only 6 houses on Hayden Drive that have missing improvements.

KATHERINE CHIOUTSIS, 3719 HAYDEN DRIVE, said she lives on the opposite side of the street of the previous speakers. She said she does want a sidewalk even if it is for appearance sake. She and other neighbors on the north side of the street are in favor of the improvements.

There were no other speakers. The public hearing was closed. Councilmember Poppler moved for approval of the staff recommendation, seconded by Councilmember Larson. Councilmember Larson said he is concerned with the group of people that oppose the improvements. He suggested that the staff review the situation and work with the neighbors towards a favorable solution for everyone.

Councilmember Brown asked if residents couldn't get improvements on the property even if they desire them. Public Works Director Dave Mumford said it is possible to accommodate a resident if they want to pay for the improvements and the City can accommodate them. The only time it is not encouraged is when the improvement must be torn out when the rest of the improvements are installed at a later date. There is another way to work out this type of situation. Councilmember McDermott noted that the residents on 22<sup>nd</sup> Street worked together to get the improvements approved and that project is now included in the School Sidewalk improvements program.

Councilmember Kennedy asked how to approach the Hayden Drive portion of the improvements. Mr. Nowak said the Council could ask that the properties be physically removed from the resolution ordering the improvements. He said he does not recall another time when the staff has been given permission to exclude certain property. The Council typically includes or excludes properties, he said. Mr. Bauer asked for clarity as to what the Council would like the staff to achieve after having conversations with the individuals involved. Councilmember Larson suggested that the Council approve the improvements to the Hayden Drive properties with direction to the staff to resolve the opposition or to exclude the Hayden Drive properties this evening. Councilmember Poppler asked if there is assistance to homeowners of middle income that are hit hard with these types of assessments that are for aesthetic reasons only. Mayor Tooley said there are already subsidies that pay for approximately 1/3 of the project. Mr. Bauer said the sidewalk program is not just for aesthetic reasons but also for pedestrian safety and for drainage. If there is no curb and gutter the moisture that gets under the street will deteriorate it much faster.

Councilmember Larson amended the motion by removing the Hayden Drive properties pending a report from staff, seconded by Councilmember McDermott. On a voice vote, the motion to amend was unanimously approved. On a voice vote for the motion as amended, the motion was unanimously approved.

**4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**  
**#711: a zone change from Residential 9600 (R9600) to Planned Development (PD-6), with an underlying zoning of Neighborhood Commercial on property located at 907 Poly Drive and described as C/S 1601, Tract 2. (re: Poet Street Market property). Zoning Commission has no recommendation. Planning Staff recommends approval. (Action: approval or disapproval of Staff recommendation).**

Zoning Coordinator Jeff Bollman said this is a zone change from Residential 9,600 to Planned Development located at the northwest corner of Wisconsin Street and Poly Drive. The property is almost totally surrounded by Residential 9,600 zoning. The existing land use is the Poet Street Market, a retail center. He said the Zoning Commission held a public hearing and their vote to approve was split 2-2, so they are not forwarding a recommendation. He said the Planning Staff has recommended approval to allow flexibility to accommodate uses that the Planning Department felt were compatible with the neighborhood without a special review request. Mr. Bollman noted there was a valid protest (equaling 7 lots) on the zone change and will require 2/3 vote of the Council or 8 voting members.

Councilmember Gaghen asked how many special reviews have taken place at this location. Mr. Bollman said he did not recall there were any because several of the previous uses have been compatible. He noted there has not been a great turn over of tenants so there has not been a need for special reviews. Councilmember Poppler asked if the new owner has stated what uses he wanted included. Mr. Bollman said the uses are stated in the Planned Development Agreement, which include retail, office and service uses and is spelled out in the Standard Industrial Classification Manual that is included in the agreement. Councilmember Poppler asked if the surrounding residents will have a chance to protest later if they do not like the uses that are placed there. Mr. Bollman said if the use were an allowed use, there would not be an opportunity for the neighbors to protest. Councilmember Kennedy noted that the agreement is a confusing document. Councilmember McDermott said she feels the special review process is an advantage to the neighborhood because it requires the owner to go through the process each time a change in usage is made. She said she does not think the change from Residential 9,600 to a Planned Development zoning is an advantage for the surrounding residents.

The public hearing was opened. JOHNEY ROYER, 1741 COUNTRY MANOR BLVD., said he bought the building in 1996 and put about \$57,000 into the property. He said his goal was to improve the property so that he could replace tenants when he lost them. He said there was a list of 35 different businesses that could replace other businesses and the surrounding neighbors has not complained about any of the choices during meetings with them. He has also asked the tenants that have truck traffic to be considerate to the neighborhood with regard to the traffic. He also presented the Council with letters from former and present tenants who support the zone change. He said this change would not affect property values or the tax base. He also noted that he has limited the store hours in the interest of the surrounding residents. Mr. Royer also said that the neighborhood was sufficiently notified about the zone change request with signs and meetings.

WANDA WALKER, 925 POLY DRIVE, said she has lived in the neighborhood for 17 years. She said Poly Drive is a residential area and if there is any non-conforming use it is a commercial use. She said she thinks the property will be sold to a developer as soon as the zoning is changed. She said she did not think "grand fathering" in uses gives permission to transfer to another use; "just that you are allowed to exist as you did". She said the neighborhood does not want to lose the right to have special reviews. She said she likes her neighborhood the way it is now.

JUDY BOOGMAN, 930 HARVARD AVENUE, said she lives on the street behind Poly Drive. She said she worries about this zone change because of other similar residential neighborhoods that have declined due to a mix of businesses. She said she is a business owner and is for any business that is well planned with proper parking and traffic flow. She said she is interested in protecting the integrity of the neighborhood. She noted that this subject business came into being 56 years ago to fill a need in the neighborhood that does not exist now. She asked the Council to consider keeping the property zoning as it is and don't open the property to additional uses. She said the uses in the zone change are too broad and vague and the special review process is necessary.

LENNY DUBERSTEIN, 925 POLY DRIVE, said he is against the zone change. He said he supports the current business and wants the right to review any change in that use. He said he is concerned about the risk in the future that could affect property values due to changes in the tenants. He said he is also concerned about a new owner and any new tenants that could change the complexion of the whole community. He said this is a community that supports community and wants it to remain as it is.

SUSAN GREGORY, 946 HARVARD AVENUE, said she is against the zone change. She said she has lived in the neighborhood for 13 years. The existing business has an impact on the residents of Harvard Avenue because they use it as a primary delivery route. She urged the Council not to change the zoning. She said the neighborhood feels they have the right to a special review when uses change.

CHELSEA PENDRY, 120 WEST YELLOWSTONE, said she lived for 10 years on Poly Drive. She said there are very few neighborhoods like the Poly Drive area that she would live in Billings. She said she likes the neighborhood and the businesses that are there now. She said she feels the neighbors have the right to comment on the uses for that property.

LEAH DONOVAN, 1025 POLY DRIVE, said she has lived in the neighborhood for 20 years and it is the only place in Billings she would live. She said she has a problem with what the current owner is not telling the neighborhood. She said there are too many unanswered questions. She said she is against the zone change.

PAUL ROPER, 946 HARVARD AVENUE, said he has lived there for 13 years. He said the commercial property is an anomaly; it stands out from the residential and does not enhance the community. He said it is not the Council's job to protect the property developer's investment. He said he feels this is a disguise to protect an investment.

DEIDRE MASTRIANNI, 1012 POLY DRIVE, said she has lived on Poly Drive since 1975. She said it is the most beautiful street left in Billings. She said she would not like to see Poly Drive become a big commercial avenue. She said she is against the zone change and asked the Council not to approve it.

MIKE DONOVAN, 1025 POLY DRIVE, said he has resided in the Poly Drive area for about 23 years. He said the subject property is the only commercial property from Rocky Mtn. College to MSU-B. He said Poly Drive is strictly a residential street and should be left in the hands of the neighbors that have to live there. He said he wants this property to remain Neighborhood-Commercial.

RON ELKIN, 940 POLY DRIVE, said he supports the zone change and Mr. Royer. He said it is an economic hardship if a tenant is not replaced within 90 days. He said the 35 possible uses are far less objectionable with a lesser impact on traffic than what is currently there. He said Mr. Royer would eliminate any use that the neighborhood objects to. He said the concern about what will happen 5 or 10 years in the future is not a valid concern. He said he does not agree that the special review process is good for this property. He said it takes 90 days to go through a special review and that could impact the finances of the owner.

There were no other speakers. The public hearing was closed. Councilmember Ohnstad moved to disapprove the staff recommendation for zone change #711, seconded by Councilmember Gaghen. Mayor Tooley said the owner's request is not an illogical request. He said the owner has asked for a zone change with a specific

restricted list of allowed uses in a Planned Development, which separates it and places much greater restrictions than does Neighborhood Commercial. He said he does not see a compelling community interest though to change the zoning and suggested that the owner go back to the neighborhood and explain the proposal in greater detail.

Interim City Administrator Kristoff Bauer said this is an example of a non-conforming use that is problematic for the Council and the community. He said the City is working to bring some alternatives. He said the Council should not look at the applicant but rather the proposal and the use. Councilmember Ohnstad noted that during his tenure on the Council he has seen many conflicts with zoning and misunderstanding with neighborhoods. On a voice vote, the motion to disapprove the zone change was approved with Councilmember Brewster voting "no".

The Mayor called for a five-minute recess at 8:40 PM.

The Mayor reconvened the Council Meeting at 8:45 PM.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**  
**#713: a zone change from Residential 7,000 (R7000) to Residential 6,000 (R6000)**  
**on property described as Lot 6, Block 2, Meadowlark Subdivision, located at 338**  
**Sharron Lane. Zoning Commission recommends approval. (Action: approval or**  
**disapproval of Staff recommendation).**

Planning Staff Member Bruce McCandless said this is a zone change from Residential 7,000 to Residential 6,000 on property located at 338 Sharron Lane. He said the area supports a transition from Residential 7,000, which is single-family residential, to Residential 6,000 and Residential Manufactured Home which are a more dense residential neighborhood, to a commercial use at the arterial street. The lot is about 15,500 square feet. He said the present zoning would permit the construction of 2 single-family homes or a single two-family home. The request would allow for a denser development. He said the Zoning Commission is recommending approval of the zone change because it is a good in-fill development project and makes use of the existing infrastructure and also because the use is consistent with the surrounding zoning and land use. He noted that the traffic impacts are minor.

Councilmember Brewster asked whether a 4 or 8-plex could be built there. Mr. McCandless said the Residential 6,000 zoning permits 1 and 2 family dwellings and 3 to 10-plexes with a special review. He said there is enough square footage in this property to allow up to a 7-plex, but it would require a special review. The maximum density the owner could build without a special review would be 2 duplexes. Councilmember Brewster said he is concerned that this development appears to be one that would be without a yard and be pretty crowded.

The public hearing was opened. JOHN HAMON, 35 S CRESTWOOD, said he is the owner of the property. He said he intends to build on 33% of the lot, leaving 67% for the yard use. He said he proposes to build 2 low profile duplexes and create affordable housing with a nice setting including trees. He noted that a petition is being circulated to develop an SID in the area to pave the streets and install curb and gutter. He said he supports making the area a better place to live. Councilmember Brewster asked what the square footage of the building would be. Mr. Hamon said each duplex would be 1,000 square feet.

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

**6. PUBLIC HEARING FOR SPECIAL REVIEW #736: a special review to allow the location of a veterinary clinic with boarding in a Community Commercial zone on property located at 1420 and 1414-10<sup>th</sup> Street West and described as Tracts A & B of a tract of land situated in the W2SE4SW4 of Section 31, Township 1 North, Range 26 East. 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 veterinary clinic in a Community Commercial zone. The property is located on the southeast corner of Avenue B and 10<sup>th</sup> Street West. The area around and including the property is zoned Community Commercial. On the north side of Avenue B is zoned Residential 6,000 and across 10<sup>th</sup> Street West is zoned Neighborhood Commercial with some Multi-Family Residential. The site is approximately 12,000 square feet. He said there is an existing veterinary clinic on the north portion of this property and an existing single-family dwelling on the south portion. This single-family dwelling will be removed if the application is approved.

Mr. Bollman said the Zoning Commission held a public hearing on April 1<sup>st</sup> and recommends conditional approval with the following conditions:

1. No boarding of animals shall be allowed outside the main building.
2. Any building used for animal boarding shall be constructed of permanent building materials that have been approved via a City building permit.
3. Use hours for any outdoor exercise area shall be limited to 8:00 a.m. to 6:00 p.m.
4. If an outdoor exercise area is constructed, it shall be fenced with a six- (6) foot high sight-obscuring fence utilizing solid wood or vinyl fencing material.

Mr. Bollman said these are conditions that are similar to other conditions imposed on similar applications and are intended to mitigate any impacts this use may have on the residential uses nearby.

The public hearing was opened. KEN BROWN, 1925 RIMROCK ROAD, said he is the applicant. He said he started the existing animal clinic 22 years ago. He said he started doing surgery for other veterinarians 20 years ago and that part of his practice has outgrown the facility. He explained he is proposing to build a surgical center in the new addition. He asked that the Council reconsider the third condition because of a very active student program he has, where high school students help with animals before and after their school hours. He also noted that animals recovering from spinal trauma need to have more flexible and longer hours to relieve themselves. He said it is not uncommon for him to be there late at night to help the animals during this important rehabilitation time. He said there is no ordinance in the City that prevents pet owners from taking their animals out for relief walks early in the morning and late at night. He assured the Council that he would have respect for the neighbors when allowing the students and animals to be in the outdoor exercise area outside of the recommended hours. Councilmember Jones asked Dr. Brown what the appropriate hours should be. Dr. Brown said that 6 A.M. is a reasonable start time and approximately 9 or 10 P.M. a good ending time. He said

he has always used discretion and has never had a complaint from the neighbors due to noise from the facility. He said the dogs are let out one at a time with supervision. He added that most of the patients are heavily sedated from the surgeries. He clarified that he is not a boarding facility for healthy animals.

TONY HALE, 1007 AVENUE B, said she has lived near Dr. Brown's facility for 6 years and has not experienced any noise problems from the facility. She said he is very considerate of the neighborhood. She said she appreciates the care he gives the animals. She also said she does not see any problems with extending the hours for the outdoor exercise area.

There were no other speakers. The public hearing was closed. Councilmember Larson moved for approval of the Zoning Commission recommendation with the exception of condition #3, seconded by Councilmember Kennedy.

Councilmember Larson said he excluded condition #3 because he thought that could be more appropriately left to the attending physician's discretion. Mr. Bauer again cautioned the Council not to make a decision based on the current owner's situation. He said if any future tenant changed the way he performed his business the Council would be bound by the decisions made for a different owner and situation. Councilmember Kennedy said the special review will run with the property and he would like to see an amendment to allow some sort of restrictions or guidelines to avoid potential problems with barking dogs at all hours.

Councilmember Jones amended the motion to allow the hours of condition #3 to be extended from 6A.M. to 8 P.M., seconded by Councilmember Poppler. On a voice vote, the amended motion was unanimously approved. Councilmember Jones amended the motion to require an animal in the outside area to be attended by clinic staff after 8 P.M., seconded by Councilmember Kennedy. Councilmember Brown asked who would police this facility. Mr. Bauer replied Code Enforcement would provide the enforcement. Councilmember Gaghen asked Dr. Brown if these amendments would affect his student program. Dr. Brown replied "no", adding the amendments sounded good. On a voice vote, the second amended motion was unanimously approved. On a voice vote for the motion as amended (with two amendments), the motion was unanimously approved.

**7. PUBLIC HEARING FOR SPECIAL REVIEW #737: a special review to allow a sandblasting operation in a Controlled Industrial zone at 420 North 17<sup>th</sup> Street. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation).**

Zoning Coordinator Jeff Bollman said this special review would allow a sandblasting operation in a Controlled Industrial zone located 420 North 17<sup>th</sup> Street. He said the predominate zoning in the area is Controlled Industrial. He said the Zoning Commission is recommending conditional approval with the following conditions:

1. The applicant shall apply for and obtain a building permit for the steel and membrane structure in front of the permanent building within 6 months of approval of the special review. This application may also include a review of the ventilation system of the existing building if it will be used for painting.
2. The applicant shall comply with all requirements of state and federal regulations, codes and statutes regarding the operation of the sandblasting business including but not limited to regulations administered by the

Yellowstone County Air Pollution Control Board, the Montana Department of Environmental Quality, the U.S. EPA and OSHA.

3. All sandblasting conducted on the property shall be conducted within an enclosed building. An enclosed building includes both the existing building and the membrane structure on the subject site.
4. The applicant shall maintain the property so as to minimize dust including but not limited to spraying down exterior ground, paved or unpaved, with water or other dust control measures as recommended.

Councilmember Brewster asked if this facility complies with all City, County, State and Federal regulations. Mr. Bollman said he did not know if the facility was in compliance with all agencies. He noted that there was a complaint filed against this property with the Yellowstone Air Pollution Authority. Councilmember Brewster asked how it is determined that they are in compliance. Mr. Bollman said this application came from a complaint about a sandblasting operation and it was found to have a zoning violation. He stated if the special review were approved, the City would work with Air Pollution Control to ascertain what permitting process or special regulations to assure compliance would be required for the operation. Mr. Bauer said the special review would provide additional impetus for them to make sure they are in compliance. Councilmember McDermott said this is one of three sandblasting operations that are not in compliance because they are sandblasting out in the open, contributing to a health hazard. She said some criteria should be established to regulate this.

Councilmember Jones asked what is required to obtain a permit for the structure in condition #1. Mr. Bollman said they would have to comply with the building codes and go through the building permit process. He said he does not think the building meets building codes as it is now. Councilmember Gaghen said she is concerned about the health hazards that exist with this type of situation.

The public hearing was opened. RAY FRENCH, said he is the owner of French's Sandblasting and Painting. He said he has spent 6 months trying to comply with conditions from the Yellowstone County Air Pollution Authority, the State DEQ and the Zoning Department with the temporary structure that is presently under review. He said he has a report from soil samples taken at Empire Steel (which is near his facility) and it was found not to have hazardous material in it. The purpose of the temporary membrane structure was to continue the sandblasting operation while going through the review process. It was proposed by the State DEQ. He said there is no hazardous material when "it hits the ground" and no air-borne dust that leaves the temporary building. He said the Building Department limited the painting inside of the building and they are complying with that limitation. He said this area has been an industrial zoned area for years. Councilmember Jones asked about the substance that looks like silica surrounding the building. Mr. French said this was there when the building was "put up" and it was agreed, through the Building Department that he would clean it up. He noted there is nothing illegal about sandblasting.

NORM HYATT, 1003 POLY DRIVE, said he is the owner of the building at 1707 4<sup>th</sup> Avenue North, the Keller Supply building. He said his concern is not to shut the operation down, but that it is operating properly. He said the pictures that he sent the Council illustrates the serious concerns he has about the building structure and the sand that is lying on the ground. He said he wants to see this operation done properly and that there

will be no liabilities due to improper operation. He asked the Council to address these issues and make sure the business is operating properly.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved to deny the special review, seconded by Councilmember Gaghen. Councilmember McDermott said she does not have a lot of confidence in the compliance issue for all of the sandblasting businesses in that area. She said she has a letter from the Montana Department of Environmental Quality that says there are problems and if the owners don't resolve the problems they will. Councilmember Brewster asked if the City is satisfied that through the permitting process the sandblasting material will be contained. Mr. Bauer said what would be guaranteed is that there will be a structure that is safe and conforms to building regulations. He said he is not sure the building codes will insure that the structure is impermeable or will contain the dust. Councilmember Brewster asked who would advise the Council that there are sufficient safeguards to aid in compliance for these types of businesses. Mr. Bauer said the difficulty is there is split jurisdiction and the City is not in control of whether this business is operating properly. The City has to rely on the County and State agencies to make a determination that they are in compliance of regulations. The City does not have the expertise or the staff to determine whether they are compliant.

Councilmember Larson make a substitute motion to approve the Zoning Commission recommendation including the recommended conditions, seconded by Councilmember Kennedy. Councilmember Larson said if the conditions are met this would be the best controlled sandblasting operation in the area. He said the Council must separate this operation from the others that are not following these conditions. Councilmember Kennedy noted that the special review does not constitute approval of any other permit. He said the staff report notes "compliance with all local, state and federal codes is required, including obtaining City building and sign permits if applicable. This application is for a special review as noted above and no other request is being considered with this application. The use and development of the property must generally be in accordance with the submitted site plan". He said the City should take the lead in approving this special review and all the other agencies will need to add their separate approval. Councilmember McDermott said French's Sandblasting and Painting operation is not in compliance because of the temporary structure and the drifts of sand all over their lot. She said if this special review is approved she suggested that all of the sandblasting operations in that neighborhood be reviewed for compliance. She is concerned that a good wind can propel the residue into residential areas and the City has an obligation to protect those residents. Councilmember Jones asked why 6 months is needed for approval. Mr. Bauer said it is a "best guess estimate" to bring the operation into compliance. Public Works Director Dave Mumford said if site plans are in good order the time period could be less than 30 days to get a building permit. Councilmember Kennedy said the 6 months time frame could occur with all of the other approvals from different agencies that are required. Councilmember Gaghen asked how long Mr. French has been in business at that location. Mr. French said less than a year. On a voice vote, the substitute motion was approved with Councilmembers McDermott and Gaghen voting "no".

**8. PUBLIC HEARING FOR SPECIAL REVIEW #738: a special review to allow a 4-plex in a Residential 6000 zone at 742 Avenue B. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation).**

Planning Staff Member Bruce McCandless said the property is almost 12,000 square feet in size and is located on 742 Avenue B. The request is for approval of a 4-plex within a Residential 6,000 zone. This zoning permits 1 and 2 family dwellings, but anything from a 3 to 10-plex requires a special review. The Zoning Commission held a public hearing and is unanimously recommending conditional approval with the conditions being:

1. Install a 6' sight obscuring fence or wall along the east and west property lines. Install a 6' sight obscuring fence or wall or a continuous hedge of equal height along the south property line, or as shown on the site plan, to screen the housing units from the commercial use that is south of the property.
2. Install at least four (4) trees, 2" caliper and 8' tall minimum, evenly spaced within the front yard setback to break the outline of the front building face and reduce the visual impact of the building on surrounding single family homes.

Mr. McCandless said there was one opponent who spoke at the Zoning Commission hearing and he said the primary concerns were parking, traffic and the building being out of scale with the surrounding uses.

The public hearing was opened. ERNIE SZILLAT, 961 GOLD DUST CIRCLE, said he is the owner of the property. He said each unit would be two bedroom s to avoid impacting the number of residents in the area. He said all of the parking would be on the backside of the structure with guest parking on the street side. He noted that each unit would have a garage with the potential for 3 extra parking spaces nearby.

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

**9. PUBLIC HEARING AND RESOLUTION 03-17978 annexing Tract 1, C/S 2085, Cornerstone Community Church, petitioners, (Annex #03-03). Staff recommends approval of the public services report and the resolution annexing the property. (Action: approval or disapproval of Staff recommendation).**

Planning Staff Member Bruce McCandless said this is a request to annex a 10-acre tract of ground at 4525 Grand Avenue. The owner is Cornerstone Community Church. He said the present zoning is Agricultural Open Space and would convert to Residential 9,600 if the property is annexed. There are two structures on the property, one is a church and the other is a private school operated by the church. He said there are no proposed changes to the use of the property. There is a concurrent Subdivision Application that will come before the Council on May 12<sup>th</sup>, if the annexation is approved.

Mr. McCandless said there were no objections from City departments about the annexation. He noted there is a request from the County that approximately 1/3 mile of Grand Avenue from the existing city limits to the property be included in the annexation. There are no significant impacts to City services with the water and sewer lines available. Mr. McCandless said this would be a tax-exempt property so no financial impact report

was prepared. The only revenue would be from the services provided to the property and the appropriate utility connection fees. He said the annexation does comply with the Comprehensive Plan however it is not infill development and no development plans are proposed. The same situation exists with the West Billings Plan and the Annexation Policy -- conforming to some of the policies but it is not contiguous to the City or a cost-effective annexation. He said the primary reason for this annexation is the proposal by the Council that the annexation policy be amended to include annexation for properties that are adjacent to or within 500 feet of existing water and sewer lines.

Mr. McCandless said the staff recommendation is for approval of the public services report and the resolution annexing this property with the following conditions:

1. Annex all of the adjacent Grand Avenue street right-of-way
2. Require an annexation agreement that guarantees the following:
  - a. Require parking lot and driveway paving within one year of annexation.
  - b. Require a development agreement or subdivision improvement agreement before additional development on the property that outlines specific infrastructure requirements and financial security to guarantee their construction.

He noted there is a Subdivision Improvement Agreement in process. Councilmember Poppler asked what the advantage is to the City to annex a non-contiguous portion of Grand Avenue and this property. Mr. McCandless said it would be to allow for additional customers to the city services that have been installed. Mr. Bauer said this assists the payback of the utilities fund for the installation of the City services to the Ironwood Subdivision. Councilmember Larson noted that the property would pay for all services assessments with the exceptions of General Property Taxes or General Obligation Bonds.

The public hearing was opened. PASTOR DWAYNE SENN, 3838 N TANGER LANE, said he is the pastor of Cornerstone Community Church and superintendent of the Billings Christian School with approximately 181 students. He said the church and school installed the appropriate connection stubs for water and sewer in anticipation of future connection to the water and sewer lines that were recently installed in their area. He said they are eager to be annexed and a part of the community. He said there is a need to know whether they should go ahead with septic plans or will be able to take advantage of the utilities that are adjacent to their property.

PAUL WAGNER, PRINCIPAL OF BILLINGS CHRISTIAN CHURCH, said the school will be expanding but there are no plans to subdivide or add any additional buildings to the property. He said their desire is to connect to the existing water and sewer lines rather than install additional septic for the expansion. He asked the Council to approve the annexation. Councilmember Kennedy asked if the septic systems are working properly at this time. Mr. Wagner said the existing buildings have working septic systems, but the expansion will require additional water and septic. He said the lay of the land could present problems for any future septic installation.

There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of the staff recommendation, seconded by Councilmember Brewster. Councilmember McDermott asked for a further explanation of the necessary policy changes. Mr. Bauer said a proposal with the DEQ would require a sign-off from the City for any property to install a septic system that is within 500 feet of existing City water

and sewer line. He said the City could deny this request and force existing properties to annex and ultimately assist in funding the existing infrastructure that is adjacent to their property through connection fees. The Annexation Policy could then be amended to require that properties within that 500 feet be required to be annexed. This would give the Council a veto of any proposed development in the County that occurs within 500 feet of existing infrastructure.

Councilmember Brown asked who would be responsible for maintaining the street between the city limits and this property. Mr. Bauer said there are discussions in progress on how to collaborate with the County on maintaining roads in those situations. Unless the Council wants to be aggressive and annex the adjacent streets there will always be the question of shared maintenance. Councilmember Jones said he does not like the idea that this is leapfrog development; by the same time it makes sense to make the services available to properties that are adjacent to this infrastructure.

Councilmember Kennedy amended the motion to postpone the annexation until the staff comes forward with the proposed amendment to the annexation policy, seconded by Councilmember Gaghen. Councilmember Poppler said she is concerned about "leaving the church hanging" with this motion. She said they need to determine which way to proceed with their expansion. Councilmember Larson said he thinks this will be leapfrog development for a short period of time because of the rapid development in the area. He said he is not sure a policy change is necessary to annex this property at this time. Councilmember Iverson said she agreed that the Council needs to give the Church an answer to their petition and let them complete their plans for expansion. Councilmember McDermott noted that this property is within the sphere of influence and that is an important factor.

Councilmember Kennedy withdrew his amendment and Councilmember Gaghen withdrew her second.

On a voice vote for the original motion, the motion was unanimously approved.

**10. CONTINUED PUBLIC HEARING AND RESOLUTION adopting Cost-of-Service Wastewater Rate Schedule Adjustments. Public Utilities Board and Staff recommend approval of Alternative "B" with Schedule I, IA, II, and III. (Public hearing held 4/14/03). (Action: approval or disapproval of Public Utilities Board recommendation).**

Interim City Administrator Kristoff Bauer said there are three proposals contained in the Wastewater Rate Schedule Adjustments. The three proposals are: 1) a Uniform Rate (attachment "C"), 2) a Cost-Of-Service with 4 rate classes (attachment "A") and 3) a Cost-Of-Service with 3 rate classes (attachment "B"). He said based on the work session, the staff looked at changes to the Cost-of-Service with three rate classes, which most of the Council preferred, the Out-of-City surcharge and the Ultraviolet (UV) system. The proposal for the Out-of-City surcharge includes a surcharge of 5 to 10%. He said the focus would be for a 10% surcharge and to delete the Ultraviolet system.

Mr. Bauer said the customer classes include Residential/Commercial-Domestic and Commercial-High. He stated the revenue requirements with the Ultraviolet system and without. He noted that the capital requirement is reduced by \$200,000 by eliminating the UV system. He stated the revenue by the four customer classes within the following categories: 1) 5% with UV, 2) 10% with UV, 3) 5% without UV and 4) 10% without UV.

He said the "outside city" customer class contains 19 customers and the changes within the categories are marginal. Increasing it to 10% does not have a great impact on the rates. There is a reduction with respect to the "without UV" categories. He said the residential customers cover approximately ½ of the revenue requirement and the rest is commercial.

Mr. Bauer said the major capital expense would be replacement of the Head Works building at \$4 Million and replacement of the Chlorine Gas System with an Ultraviolet Disinfection System for \$2 Million. He said the reason for the UV system is safety. The current facility is located near the Metra Park facility and a release of chlorine gas and the right wind could create a catastrophic event. It is a significant trend in the industry to go to the UV disinfection and it may become a requirement at a later date. On the other side, there is a lack of analysis of the impact on operational costs of UV as it is usually a higher cost.

He said the Head Works Building really needs improvement. The facility was built in the 1940s and has reached its acceptable life with some damage and equipment failures. It is in a very corrosive environment and showing its wear in a significant way. Several functions are manual and once it is automated and improved, it should become more sanitary, less labor intensive, and it should have a long life. The problem is it is a big expense.

Mr. Bauer said the Cost-of-Service rate impact with 10% Out-of-City surcharge and with UV is 3% more than without the UV. The Out-of-City surcharge would affect 19 commercial customers with no "high strength" customers included. Switching from a fixed rate to a percentage (based on volume) will give most customers a reduction in their rate even with the surcharge. The two high volume customers will see an increase of 15% to 20%. This method is much easier to administer and relates to volume, so higher volume customers see an increase. This has an insignificant impact on other rates.

He said the next step is the conclusion of the public hearing on the proposal. Council options are: 1) delay action until the May 12<sup>th</sup> Council meeting and direct staff to revise the recommendations, 2) adopt one of the three resolutions presented, or 3) amend a resolution consistent with the staff recommendations and then adopt it. He said the recommendation is to amend Resolution alternative "B" and the staff will update the resolution with the staff recommendations. He said the recommendation is the Cost-of-Service with three rate classes with the 10% surcharge and deferring the UV. He noted that an analysis of the UV could be done and presented for consideration in 2005.

The public hearing was continued. There were no speakers. The public hearing was closed. Councilmember Brewster moved to delay the staff recommendation, seconded by Councilmember Larson. Councilmember Brewster said he would like to take two weeks to digest the information presented before taking action. Councilmember Ohnstad asked how Lockwood residents fit into this proposal. Mr. Bauer said if they were customers they would pay the 10% surcharge. On a voice vote, the motion was unanimously approved. Action was delayed to May 12<sup>th</sup>.

**11. PRELIMINARY PLAT OF REBECCA ESTATES SUBDIVISION. Planning Board recommends conditional approval. (Action: approval or disapproval of Planning Board recommendation).**

Planning Staff Member Bruce McCandless said this is a preliminary plat located north of Newman School on Newman Lane. It is 3.9 acres in size, is zoned Residential 7,000 and is presently vacant. The proposal is to divide the property into 17 lots and allow for single-family dwelling construction. He said the Planning Board held a public hearing and is recommending conditional approval with the following conditions:

1. A storm drain system must be constructed in accordance with a storm drain report approved by the City Engineers Office. (BMCC Section 23-706; recommended by City Engineering).
2. The drivable street surface of the cul-de-sac turnaround shall have radius of 43.5 feet. It shall be shown on the final plat and constructed with this radius. Also, an additional fire hydrant shall be shown on the final plat at the northeast corner of Lot 15 and installed or otherwise guaranteed prior to final plat approval. (BMCC Section 23-601(k) and City Fire Code; recommended by City Fire).
3. The abandoned ditch on the south property line shall be filled in prior to final plat approval. (Recommended by City-County Planning Board).
4. Minor wording changes may be made in the SIA and final documents upon request of the Planning or Public Works Departments to clarify the documents and bring them into standard, acceptable format.
5. 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.

Mr. McCandless said the subdivider has said the storm drain would be built north of Newman Lane and connected at Mitchell. The subdivider has agreed with all of the conditions, he noted. Councilmember McDermott asked if any on-site drainage is being planned. Mr. McCandless replied "no".

The City-County Planning Board has prepared the Findings of Fact for the Rebecca Estates 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).

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

**1. Effect on Agriculture**

This parcel is in a developed urban area. It should not have a significant impact on agriculture.

**2. Effect on agricultural water user facilities**

The parcel does not have any active agricultural water user facilities on it, and therefore will not affect these facilities. There is an abandoned ditch (a portion of the Grey Eagle Ditch) partially on the southern property line. This ditch is no longer in use and has no downstream users. The City-County Planning Board

recommends that this abandoned ditch be filled in and leveled prior to final plat approval.

### **3. Effect on Local Services**

- **Water and Sewer Service.** An 8-inch City sanitary sewer line exists in the Newman Lane right of way and the developers will be responsible for extending the line up Rebecca Place to serve the lots in this subdivision. A City water line exists in Ruth Avenue, just adjacent to the northeast corner of this subdivision and the developers will extend an 8-inch line along the Newman Lane frontage and up Rebecca Place. All extensions of sanitary sewer and water lines shall be installed in accordance with the design standards, specifications, rules and regulations of the City of Billings.
- **Storm Water Drainage.** A storm water drain system must be constructed in accordance with a storm drain report approved by City Engineering, prior to final plat approval. The developers have proposed to construct a new storm drain line in Newman Lane to connect to an existing line in Mitchell Lane, two blocks to the north. There are no existing storm drains located in Newman Lane.
- **Public Streets and Roads.** Newman Lane runs adjacent to the eastern boundary of this property and it and Rebecca Place will provide access to these 17 lots. The portion of Newman Lane fronting this property is currently a one-way under-developed street. The developer will be responsible for constructing the adjacent Newman Lane as a 30-foot wide paved street with curb, gutter and sidewalk on the west side of the street. The developer will also be responsible for constructing Rebecca Place, a paved local cul-de-sac street, to a width of 37 feet back-of-curb to back-of-curb with curb, gutter and sidewalks on both sides of the street.
- **Fire and Police Protection.** The City of Billings Fire Department reviewed the preliminary plat application and noted that the cul-de-sac drivable surface radius shown is only 40 feet. City Subdivision and Fire Codes note that a minimum radius of 43.5 feet is required. This has been added as a condition of approval. Also, two fire hydrants are required for this subdivision—one at the beginning of Rebecca Place on the northeast corner of Lot 15, and one at the base of the cul-de-sac bulb on the common lot line for Lots 9 & 10. The first referenced hydrant is not shown on the current preliminary plat and will need to be installed and also appear on the final plat. Street widths, lot access, and fire hydrant location shall comply with all Fire Department requirements. The City Police Department will serve this subdivision and had no concerns with the proposal.
- **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.** Elementary-aged school children will be served by Newman School, which is directly adjacent to this property. Middle school students will be served by Riverside

Middle School and high school students will be served by Billings Senior High or West High. School District #2 Administration commented that the enrollment levels in elementary schools in this area are among the lowest and that no problems with overcrowding were anticipated. They also stated that they would like to see sidewalks provided from this new subdivision to the adjacent Newman school.

- **Parks.** Required parkland dedication will be met by cash in lieu of land dedication. Amend Park is in close proximity, across South Billings Boulevard, from the proposed subdivision.

#### **4. Effects on the Natural Environment**

The subject parcel is located within an existing residential area. There are no endangered or rare species inhabiting the site. The effects on the natural environment should be minimal.

#### **5. Effects on Wildlife and Wildlife Habitat**

The subject parcel is located within an existing residential area. There are no endangered or rare species inhabiting the site. 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. Environmental Assessment [Section 23-304(c)(2), BMCC; 76-3-210(1), MCA]**

An Environmental Assessment was waived for this subdivision under Section 23-1101(h) when this subdivision was first brought in for review in October of 2001.

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

#### **1. 1990 Yellowstone Comprehensive Plan**

The proposed subdivision conforms to the following goals and policies of the *1990 Yellowstone County Comprehensive Plan*:

**a. Protect against the encroachment of incompatible or related uses. (K-5)**  
*The proposed subdivision is in an area that has existing residential development of similar density and the proposed lots are compatible with their surroundings and would meet the zoning requirements of the R-7000 zone.*

**b. Curb urban sprawl and discourage leapfrog development. (K-7)**  
*This subdivision is a logical extension of the existing development pattern in an area served by municipal water and sewer services.*

**c. Encourage and direct urban growth to urban infill areas and contiguous lands to maintain a strong economy and accomplish a sound transition of agricultural land. (I-3)**

*The proposed subdivision will provide seventeen addition residential lots in an area directly adjacent to urban density development. Also it is proposed to be an affordable housing development, provide additional housing opportunities to low to moderate-income families.*

**d. Capitalize on the use of existing public sewage systems and improve sewage systems in areas not currently served by public systems. (H-4)**

*The proposed lots would be served by city water and wastewater services.*

**e. Adequate housing supply for all income levels. (C-1)**

*This development is proposed to provide affordable housing opportunities.*

**2. Billings Urban Area 2000 Transportation Plan and BikeNet**

The proposed subdivision is consistent with the Transportation Plan and BikeNet.

**D. Compliance with the Montana Subdivision and Platting Act and local subdivision regulations. [Chapter 23, BMCC]**

The Rebecca Estates Subdivision meets the requirements of the Montana Subdivision and Platting Act and when the conditions of approval are met it will conform 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.

**E. 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.

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

The parcel is zoned R-7000 and proposed subdivision lot sizes will meet this zoning requirement. Structure setbacks and lot coverage will be reviewed at the time of building permit review.

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

MDU and Northwestern Energy will serve the new dwellings on the proposed lots. They have reviewed the preliminary plat and have approved of the proposed 8-foot utility easements shown on the plat.

**H. 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 Newman Lane and Rebecca Place.

**CONCLUSIONS OF THE FINDINGS OF FACT**

The Planning Department staff has determined that the Rebecca Estates 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.

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

**12. PRELIMINARY PLAT OF MIDLAND SUBDIVISION, 5<sup>th</sup> Filing, Amending Lot 13, Block 3. Planning Board recommends conditional approval of the plat and approval of the Findings of Fact. (Action: approval or disapproval of Planning Board recommendation).**

Planning Staff Member Bruce McCandless said this property is located south of the Big Bear and Home Depot Retail Outlets. The proposal is to split the 13 acres into 7 commercial lots that would be zoned Controlled Industrial. There are very few effects on agriculture and City services, he said. There is a recommended variance to allow alley requirements to be bypassed. He said the Planning Board is recommending conditional approval, with the conditions as follows:

1. A storm drain system must be constructed in accordance with a storm drain report approved by the City Engineers Office. (BMCC Section 23-706) The storm drainage lines, manholes, inlets and service lines will be maintained as provided in Section 5.1 (h) of the Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements as previously filed for Midland Subdivision.

*Requested by Public Works*

2. The drivable street surface area of the Grant Road access easement and the extension of South 25<sup>th</sup> Street West shall be 49 feet (back of curb to back of curb) with a center turn lane. Standard curb and gutter and boulevard sidewalks shall be constructed on the Grant Road extension and South 25<sup>th</sup> Street West extension. The Grant Road access easement shall be 70 feet in width. The design thickness of the pavement shall be submitted to and approved by the City Engineer. (BMCC Section 23-601(k))

3. Minor wording changes may be made in the SIA and final documents upon request of the Planning or Public Works Departments to clarify the documents and bring them into standard, acceptable format.

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

4. 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.

*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**

This parcel is in a developed urban area. It should not have a significant impact on agriculture. The parcel does have an agricultural water user facility on it (a 21 inch irrigation pipe). This is a lateral of the Canyon Creek Ditch and did serve property as far east as South Billings Boulevard. As part of SID 1354, shareholders were either satisfied monetarily or by drilled wells and the lateral is no longer needed. The head gate structure will be removed as part of the construction of SID 1360 and therefore will not affect agricultural water user facilities. The pipe will be removed at the discretion of the individual lot owners.

**2. Effect on local services**

- a. Utilities -- Eight inch City sanitary sewer lines exist in South 25<sup>th</sup> Street West and the Grant Road extension and the developer will be responsible for extending these lines to serve the lots in this subdivision. A 12-inch City water main exists in South 25<sup>th</sup> Street West and an 8-inch water main exists in the Grant Road extension. The developers will extend a 12-inch water main through the subdivision and connect these two existing water mains. An existing 6-inch domestic water service from South 24<sup>th</sup> Street West will be destroyed and the 8-inch fire line will be modified by removing it from the existing vault and placing it in the street right-of-way and the access easement area. All extensions of sanitary sewer and water lines shall be installed in accordance with the design standards, specifications, rules and regulations of the City of Billings. Storm water runoff shall be contained using a combination of surface drainage and curbs and gutters that shall connect to an existing storm drain line in the Grant Road extension. The storm drain line in the Grant Road extension and South 25<sup>th</sup> Street West will be private and maintained as provided in the covenants and restrictions filed for Midland Subdivision, 5<sup>th</sup> filing. The developer will construct the storm drainage facilities in accordance with the provisions of the Stormwater Management Manual and as approved by the City Engineer. The developer will file with the final plat a Waiver of Rights to Protest the creation of a SID in relation to the construction of certain improvements including streets, curbs, gutters, sewer and water lines, street lights, street light energy, street light maintenance, sidewalks, storm drainage system that may be related to the subdivision.

- b. Solid waste – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets -- South 25<sup>th</sup> Street West runs up to the southern end of the property and a public access easement of Grant Road runs between lots 4A and 4B up to the eastern boundary of this property. Extensions of these two roads will provide access to these seven (7) lots. The developer will be responsible for constructing these two extensions to local access standards for commercial property. The Grant Road public access easement will remain privately owned and maintained. The developer will also be responsible for constructing boulevard sidewalks on South 25<sup>th</sup> Street West up to the intersection with Grant Road.
- d. Emergency services – The City of Billings Fire Department reviewed the preliminary plat application and noted that addressed for the proposed lots will need to be approved by their department. Fire hydrants will be provided on 300-foot intervals along both roads. Street widths, lot access, and fire hydrant location comply with all Fire Department requirements. The City Police Department will serve this subdivision and had no concerns with the proposal
- e. Schools – No residential development is allowed by right under Controlled Industrial zoning and therefore this subdivision should have no impact on schools.
- f. Parks and Recreation – No parkland is required for this subdivision and no easements or access is required for any planned bikeways or trails.
- g. MET Transit – One MET route uses South 24<sup>th</sup> Street west although no stops are scheduled along this route south of King Ave West. It is unlikely that transit services will be necessary for this commercial development.

### 3. Effect on the natural environment

The subject parcel is located within a densely developed commercial area. All lots will be served by public sewer and water. There are no known habitats for threatened or endangered species, there are no natural water systems within the subdivision and underground utilities can be constructed above the groundwater table. The effects on the natural environment should be minimal.

### 4. Effect on wildlife and wildlife habitat

The subject parcel is located within a densely developed urban area. The effects on wildlife or wildlife habitat should be minimal.

### 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.

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

An Environmental Assessment was submitted for this subdivision under Section 23-1101 for review in February of 2003. The assessment is in compliance with the code requirements and indicated there will be no significant environmental impact from this subdivision.

**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. Protect against the encroachment of incompatible or related uses. (K-5)
- b. Curb urban sprawl and discourage leapfrog development. (K-7)
- c. Encourage and direct urban growth to urban infill areas and contiguous lands to maintain a strong economy and accomplish a sound transition of agricultural land. (I-3)
- d. Capitalize on the use of existing public sewage systems and improve sewage systems in areas not currently served by public systems. (H-4)

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

None

**2. Urban area transportation plan**

The proposed subdivision is consistent with the Transportation Plan and BikeNet.

**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 service and City solid waste collection and disposal 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 Controlled Industrial zoning 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, access easements and dedicated utility easements that provide adequate space for existing and proposed facilities.

**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 Midland 5<sup>th</sup> filing amending Lot 13 of Block 3 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 commercial properties 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 Kennedy moved for approval of Planning Board recommendation, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

**13. PRELIMINARY PLAT OF ASPEN GATEWAY SUBDIVISION. Planning Board recommends conditional approval of the plat and approval of the Findings of Fact. (Action: approval or disapproval of Planning Board recommendation).**

Planning Staff Member Bruce McCandless said this will be known as Lot 1 of the Cherry Creek Estates Subdivision, when that subdivision is recorded. There is a gravel pit below the subject property and an irrigation ditch that crosses the property. There is a proposal to construct an internal street that would connect with Bitterroot Drive and Wicks Lane would be improved at the time of development of the property. He said it is a little less than 10 acres with 33 residential lots with some lots in the Residential 7,000 zoning and accommodating duplexes. The surrounding zoning is Residential 7,000 with some Residential 9,600 and Manufactured Housing.

Mr. McCandless said there are two street width variances recommended by Staff. There is a possibility of a third variance because of the sight distance problem on Bitterroot that could come to the Council in the final plat stage. A variance from Section 23-601(k) allowing a 50' local street right of way for Street "A" and a 40' half right of way for Bitterroot Drive. The standard requirement is 60' for local streets and 60' half right of way for a principal arterial street. Staff supports this variance because 50' of right-of-way, plus 5' fire hydrant and street light easements on each side of the street, provides sufficient right-of-way for constructing and maintaining local streets. Staff supports the second variance because 40' half right-of-way on Bitterroot is as wide as or wider than rights-of-way that were dedicated in nearby subdivisions. The variances will not have an adverse effect on public health or safety.

Mr. McCandless said there was substantial input during the public hearing conducted by the Planning Board. There were concerns about de-watering when utilities are placed causing problems for some of the irrigation wells in the area. There were concerns voiced about the elementary school that children in this subdivision would be assigned to. There is to be a cash-in-lieu of parkland payment that would be used for acquisition and development of a park. The Planning Board recommends conditional approval with the conditions as follows:

1. Owner shall construct or financially secure all improvements associated with Lot 1 Cherry Creek Estates before recording the final plat.  
*The condition will minimize the effects on local services and it is required by Cherry Creek Estates Subdivision Improvement Agreement and BMC 23-801*
2. Subdivider will coordinate with the US Post Office for location of mailboxes or other delivery facilities that do not encroach upon the proposed curbside walk on Wicks Lane and Bitterroot Drive.  
*The condition will minimize the effects on local services, it is requested by Public Works and required by the ADA*
3. The SIA will be amended to state that the amounts of the trunk sewer construction and franchise fees will be determined at the time when the extension applications are submitted to PUD.  
*The condition will minimize the effects on local service and is requested by PUD to conform the SIA to the standard format.*
4. The SIA will be amended to indicate that the fair market value of land will be determined by appraisal or recent purchase price for the purpose of calculating the amount of cash in lieu of parkland.  
*The condition will minimize the effects on local services and it is requested by Planning and PRPL to establish a consistent method of determining land value when cash in lieu of parkland is donated by the Subdivider.*
5. If there is a sight distance problem at the intersection of "Street A" and Bitterroot Drive as determined by City engineering, the problem will be mitigated to the City's satisfaction or "Street A" will be constructed as a cul-de-sac from Wicks Lane and will be constructed with a 37' back of curb to back of curb street section and at least 20' wide emergency access and utility easement from the cul-de-sac to Bitterroot Drive.  
*To minimize the effects on local services and protect public safety and requested by Public Works.*

6. The subdivider will submit a utility trench dewatering plan prepared by a licensed professional which must be approved by City Engineering prior to final plat approval. Subdivider will be totally and solely responsible for the dewatering plan, construction and the effects of dewatering. The subdivider will clarify and identify responsibility/liability for damages that may occur from the construction activity. The subdivider will indemnify the City for any damages; indemnification to be approved by the City Attorney.  
*To minimize the effects on the natural environment, and it is requested by Public Works, area property owners and Planning Board to identify and mitigate the effects of dewatering utility trenches.*
7. 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.*
8. 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.*

Mr. McCandless noted that condition #1 could become a problem if the Cherry Creek Estates Plat is not filed at the time of the approval for this plat. In that event, the documentation must be reviewed to be sure that all the required improvements are included as Lot 1 improvements. Condition #5 relates to the sight distance concerns and could be mitigated by building up the street and removing the bridge, but this situation must be addressed. The 6<sup>th</sup> condition pertains to the de-watering aspect, if that becomes required.

The findings of facts are:

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

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

This subdivision will have little effect on agriculture and agricultural water users. The property is crossed by a BBWA supply ditch, therefore the ditch can't be abandoned. It will remain in place along a lot line and will continue to serve downstream users until irrigation is terminated in the future. The subdivider will have to assure the BBWA that any changes to the ditch will meet water users' operational needs. The land hasn't been used for agricultural purposes for many years, other than possibly for pasture.

**2. Effect on local services**

- a. Utilities – Water and sewer facilities will be extended by the developer to serve this subdivision. The property is partially in the Heights Water District, which will supply the needed domestic water through a water line that is in Wicks Lane. The subdivider will have to petition the water district to include all of the property within the district. Sanitary sewer will be constructed by the subdivider and connected to the existing line in Bitterroot Drive. 4 lots on the east end of the subdivision will have to pump sewage to the new gravity line in Wick Lane. Stormwater will be discharged to a trunk line in Wicks Lane and a pipeline will be extended in Bitterroot to the south line of the subdivision. 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. The City's landfill has adequate capacity for this waste.
- c. Streets - The subdivider will construct Wicks Lane according to the requirements contained in the Cherry Creek Estates Subdivision SIA. Curb, gutter, sidewalk and 30' of pavement will be built. The subdivider will build the internal Street "A" and Bitterroot Drive to the south end of the subdivision during Phase II construction. Bitterroot Drive is a principal arterial street and would normally need 60' half right of way dedication. 40' is acceptable in this case because 40' is wider than nearby rights of way and there will still be an 80' from centerline building setback requirement. The setback will ensure that if additional right of way is needed in the future that no buildings will be adversely affected. There may be a sight distance problem at the Street A and Bitterroot Drive intersection due to an irrigation canal bridge that is south of the intersection. If that problem is confirmed by City engineering the subdivider will need to mitigate the hazard. This may be accomplished by raising the roadway at the intersection, removing the bridge and piping the irrigation water or other options may be available. Another possible remedy would be to terminate Street A within the subdivision property and not have it connect to Bitterroot. If that alternative is chosen the street should be widened to the standard city width and at least 20' wide utility (water) and emergency access/exit easement from the cul-de-sac to Bitterroot.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #6 located at Wicks Lane and St. Andrews, which is approximately 3 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 that is located on 4<sup>th</sup> Avenue North near Main Street.
- e. Schools – The subdivision is in School District 2. This is one of the areas that was affected by the School District's closure of Beartooth Elementary School. Children from this area presently attend Bitterroot but the District says that students from this subdivision will not attend Bitterroot because the school is at capacity.

Students will be assigned to an elementary school when they apply for admission. Older students will attend Castle Rock Middle School and Sky View High School.

f. Parks and Recreation – Because this is a major plat the subdivider must dedicate parkland or cash in lieu of parkland. This subdivider prefers to donate cash and this is acceptable to the PRPL Department. The cash amount should be determined by using the purchase price or an appraisal to establish the land value.

g. MET Transit – Two MET routes use Bitterroot Drive, so service is immediately available. The predicted low-density development will probably not cause MET to expand its service. However, the adjacent Cherry Creek Estates Manufactured Home Park will be higher density and may cause some MET route or schedule changes.

### 3. Effect on the natural environment

There should be a small effect on the natural environment. 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. No streams, lakes or reservoirs will be altered by the subdivision but stormwater runoff could impact the Yellowstone River water quality if it isn't managed properly. Stormwater runoff is regulated by City and state authorities. Underground utilities will be installed in Wicks Lane. Some of the residents on the north side of the street use water wells for irrigation or domestic supply. If the utility trenches have to be dewatered during construction due to high groundwater, it is possible that the activity will affect shallow wells. A dewatering plan and mitigation should be prepared before construction begins.

### 4. Effect on wildlife and wildlife habitat

There will be a small effect on wildlife and its habitat. The land is near the river and has many trees and other wildlife cover. The land will be disturbed and some of the mature trees will probably be removed during development. 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 comments on 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.

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

An Environmental Assessment prepared and approved for the Cherry Creek Estates Subdivision. No significant adverse 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. Encourage a variety of housing types and/or styles within proposed housing developments. C-2
- b. Safe, energy efficient and sanitary housing. C-6
- c. Capitalize on existing public water supply systems. H-2
- d. Capitalize on existing public sewage systems and improve sewage systems in areas not currently served by public systems. H-4
- e. 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
- f. 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. Bitterroot Drive is a principal arterial street and 40' of right of way is dedicated. The street will be improved during Phase II construction. Wicks Lane is a collector street and it will be improved with 30' of pavement in the initial development.

**3. BikeNet Plan**

The subdivision is also within the jurisdictional area of the BikeNet Plan. Bitterroot and Wicks are designated as arterial district connectors. Future improvements may be made but none are required at this time.

**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 service and City solid waste collection and disposal services. The Heights Water District will supply domestic water to the property. 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 7000 and Residential 9600 zoning districts 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 and irrigation easements that provide adequate space for existing and proposed facilities.

**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 Aspen Gateway Subdivision 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 Brewster asked when the determination on the sight distance problem would be made -- before construction or at the final plat stage. Mr. McCandless said it would be simultaneously; they can't file the final plat until there are construction documents that are approved by the Engineering Department. Councilmember Brewster asked if the developer would have to sign some kind of agreement that covers any liability of the adjacent property owners during the de-watering process. Mr. McCandless said it has not been determined how that will be worked out.

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

**14. PRELIMINARY PLAT OF WESTERN SUGAR COOPERATIVE SUBDIVISION.**  
Staff recommends conditional approval of the plat. (Action: approval or disapproval of Staff recommendation).

There was no staff presentation. The following information is included from the written Staff report to Council.

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

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

This subdivision will have no effect on agriculture or agricultural water users' facilities. The property is not farmed but does process agricultural products. The subdivision should not change that function.

**2. Effect on local services**

- a. Utilities – Water, sewer and storm drain facilities are in place in State Avenue. The buildings and lots are connected to those facilities. Private utilities serve the property and didn't request additional easements.
- b. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - Both State Avenue and Sugar Avenue are minor arterial streets. The standard right of way width is 100' or 50' half right of way. Both streets are platted at 30' wide, so additional dedication is required. City Engineering is agreeable to partial dedication, requiring only 40' half width. If approved, this will require a variance from the subdivision requirements. If the rights of way are dedicated it will put some of the existing buildings in the public rights of way. This should be acknowledged in the SIA and an encroachment permit obtained that will, in part, indemnify the City from damages resulting from building damage or other losses. There are a number of driveways onto the streets. This violates subdivision regulations because arterial streets are supposed to carry traffic from one point to another and driveways interfere with that objective. A variance for existing driveways should be obtained and any future ones should require permission from City Engineering.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #2 located at S. 28<sup>th</sup> and 6<sup>th</sup> Ave. South, which is approximately ½ mile from this property. The Fire Department stated that it has no issues with the proposed subdivision. 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 that is located on 4<sup>th</sup> Avenue North and North 7<sup>th</sup> Street.
- e. Schools – The subdivision is in School District 2. The subdivision should not affect schools because it is a commercial subdivision.

f. Parks and Recreation – There is no parkland dedication requirement because this is a commercial subdivision. The subdivision should have no effect on parks or recreation programs.

g. MET Transit – The nearest MET bus route is at State Avenue and S. 34<sup>th</sup> Street. This subdivision should not impact MET service.

3. Effect on the natural environment

This subdivision should not effect the natural environment because the property is already developed.

4. Effect on wildlife and wildlife habitat

This subdivision will not affect wildlife or habitat. There are no known endangered or threatened species on the property.

5. Effect on the public health, safety and welfare

This is an industrial site so there are hazards on the property and there are air and other waste emissions. However, public access is restricted so and emissions are regulated by local and state governments. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties.

**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 and the first subdivision.

**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. Capitalize on existing public water supply systems. H-2
- b. Capitalize on existing public sewage systems and improve sewage systems in areas not currently served by public systems. H-4
- c. 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
- d. Curb urban sprawl and discourage leapfrog development. K-7
- e. Steady, incremental growth of existing area businesses is supported. B-2

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. State Avenue and Sugar Avenue are minor arterial streets and additional right of way should be dedicated to meet subdivision requirements. State Avenue is an improved City street and requires no improvements. Sugar Avenue is paved but lacks curbs, gutters and sidewalks. No immediate improvements are required but future participation is guaranteed by the waiver of right to protest SIDs that is recorded with the plat.

**3. BikeNet Plan**

The subdivision is also within the jurisdictional area of the BikeNet Plan. The Plan doesn't require corridor preservation in this 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 and its buildings presently use City water, sewer and stormwater 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 Heavy Industrial zoning classification and the subdivision conforms to that zoning. Some of the buildings would not meet today's standards for setbacks and separation but that won't be an issue unless they are destroyed. Replacement structures will have to comply with present day zoning and building standards.

**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 adjoins public street rights of way that provide adequate space for utility installations. All the required utilities are already in place.

**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)]**

The lot has access to two public streets.

## **CONCLUSIONS OF FINDING OF FACT**

- The overall conclusion of the Findings of Fact is that the proposed Western Sugar Cooperative Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- There should be no effect on local services because the property is already developed and is using City 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.

## **RECOMMENDED CONDITIONS**

1. Subdivider will show on the plat and/or provide statements in the Subdivision Improvement Agreement addressing the following public street issues:
  - a. Dedicate 10' of street right of way on Sugar Avenue and State Avenue.
  - b. A variance from BMC 23-601(k) to permit 40' minor arterial street rights of way.
  - c. A variance from BMC 23-605(d) to permit driveway access to arterial streets and shall stipulate that any future accesses will require approval from the City Engineer's office.
  - d. Identify the buildings that will remain in the right of way and obtain encroachment permits.

*In order to reduce the impact on local services and facilities and required by BMC 23-601 and 23-605.*

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.*

## **VARIANCE**

A variance from BMC Section 23-602(a) requiring alleys in commercial and industrial districts. Prior platting omitted alleys and there appears to be sufficient space on the site to provide access to all buildings and on-site parking to meet the property's needs.

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

**15. PUBLIC COMMENT. NONE.**

**COUNCIL INITIATIVES:**

- **COUNCILMEMBER KENNEDY:** Councilmember Kennedy noted that the nice Spring weather has brought about increased vandalism around West High and Senior High. Both have school resource officers and he requested that word get to these officers and the principals of those schools about the increase in vandalism and the need for more enforcement.

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 10:53 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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