

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

September 8, 2003

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

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

MINUTES – August 25, 2003. APPROVED as printed.

COURTESIES – Police Dept

- Police Chief Ron Tussing introduced the two newest officers who recently completed their one-year probation: Corinne Owen and Tina Meder.

PROCLAMATIONS – Mayor Tooley

- Sept 20: Centennial Celebration for First Church of Christ, Scientist.

BOARD & COMMISSION REPORTS. NONE.

ADMINISTRATOR REPORTS – Kristoff Bauer.

- ITEM T: Mr. Bauer said a revised resolution was provided in the Friday packet that reflects changing only the fees previously adopted by resolution. The fees in the Zoning Code have been removed from the revised resolution and will be adopted at a later date via a separate ordinance with a public hearing. He noted that the Zoning Commission and the County Commission supports the changes.
- Mr. Bauer said the membership of the Police Union has rejected the union contract on the agenda this evening. This is Item Q on the Consent Agenda. He suggested that the Council act on the item to give a show of support for the City negotiators and their work on the contract.

CONSENT AGENDA:

1. A. Bid Awards:

- (1) **Gasoline, Diesel Fuel and Lubrication Products.** (Opened 9/2/03). Recommend delaying to 9/22/03.
- (2) **W.O. 02-23, Midland Road Improvements.** (Opened 8/26/03). Recommend COP Construction, \$1,356,840.

B. W.O. 03-22: Contract for Professional Services, Intersection Design Study: West Wicks Lane & Governors Blvd., Interstate Engineering, Inc., \$36,312.00.

C. Contract with Golden Valley County for Library Services for FY 2003/2004, \$1.70 per circulated item.

D. Contract Amendment #1, W.O. 02-23 Midland Road Improvements Project, Engineering, Inc., \$17,148.

E. Contract Amendment #1, South Hills Water Project, Interstate Engineering, \$73,881.63.

F. Contract Amendment #8, Logan Reservoir Painting, Morrison-Maierle, \$8,970.

G. Amendment #3 to Lease Agreement, Gold Creek Cellular of Montana Limited Partnership (dba Verizon Wireless), extending the term of the lease and increasing the rental amount by \$5,000 retroactive to 12/1/02 and adjusted annually by the CPI.

H. Amendment to Federal Aviation Administration (FAA) for Air Traffic Control Tower Lease, adjusting lease rate, \$125,592.82.

I. Lease Proposal for office space for Transportation Security Administration (TSA), \$32,373.72.

J. Sale of Surplus Fire Apparatus to Big Timber Volunteer Fire Department, \$37,500 and Roberts Rural Fire Department, \$18,500.

K. Acknowledge receipt of petition to annex Blocks 2 & 3 and portion of Block 1 of Golden West Estates, Annex #03-06, and setting a public hearing for 9/22/03.

L. Confirmation of Police Officers: Tina Meder and Corine Owen.

M. Acceptance of Quit Claim Deed for a road tract described as Tract 2A-2 of Amended Tracts 2A and 3A, C/S 1876 Amended and located at 4125 Grand Avenue, King of Glory Lutheran Church, owners.

N. Grant Criteria for Tax Increment Funds, as recommended by the Downtown Billings Partnership (DBP).

O. Memorandum of Agreement for landscaping at the Downtown Billings Skatepark, District 7 Human Resources Development Council (HRDC), \$5,000.

P. Law Enforcement Personnel Reimbursement Agreement with the Transportation Security Administration (TSA), reimbursement up to \$63,376.56.

Q. Labor Contract between MPEA – Billings Police Unit and City of Billings. (NOTE: Union membership rejected the proposed contract; the City Council approved

the contract as a sign of support for their negotiators. Because the new contract was rejected, Police will continue to operate under the old contract at this time.)

R. Subordination of Housing Rehabilitation Loan, Kathryn and Daniel Wood, 1915 Phoebe Drive, \$15,000.

S. Subordination of Housing Rehabilitation Loan, Meryle Clement, 9 Campbell Drive, \$10,205.

T. Resolution 03-18014 increasing the Planning and Community Services Dept. Fees for various land use applications.

U. Resolution 03-18015 adopting the *Yellowstone County and City of Billings 2003 Growth Policy*.

V. Resolution 03-18016 clarifying the City Administrator's authority to enter into certain contracts on behalf of the City.

W. Approval of street closures:

- (1) YMCA Montana Marathon, September 21, 2003 from 7:00 AM to 12:00 PM, route closure of Molt Road to Rimrock; Rimrock to 38th Street West; 38th Street West to Poly Drive; Poly Drive to Virginia Lane; Virginia Lane to Parkhill Drive, around Pioneer Park to 3rd Street and disbanding at Daylis Stadium.
- (2) Alberta Bair Theater Street Party, September 20, 2003 from 5:30 PM to 7:15 PM, closure of N. Broadway between 3rd Avenue North and 4th Avenue North.

X. Second and final reading ordinance 03-5252 for Zone Change #719: A zone change from Residential-9,600 to Residential-7,000 on Lot 1, Block 1 of High Sierra Subdivision, 2nd Filing. The subject property is generally located on the northeast corner of Wicks Lane and Sierra Grande Boulevard. Gary Oakland, owner; Engineering, Inc., agent.

Y. Second and final reading ordinance 03-5253 for Zone Change #720: A zone change from Residential Multi-Family-Restricted to Community Commercial on Lot 14 and the West 73' and East 27' of Lot 13, Block 171 of Billings Original Town. The subject property is located at 301 South 26th Street. Samuel and Diane Rankin, owners.

Z. Second and final reading ordinance 03-5254 adding BMCC Sections 19-401 through 19-409 providing for vending by permit in certain parks and recreation facilities; establishing the conditions for application and issuance of permit; and requiring a permit for certain sports camps or services.

AA. Final Plat of Gardner Subdivision.

BB. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Items 1A2 and B from the Consent Agenda. Councilmember Brown separated Item 1A1 from the Consent Agenda. Councilmember Jones separated Items N, V and Z from the Consent Agenda.

Councilmember Iverson moved for approval of the Consent Agenda with the exceptions of Items 1A1, 1A2, B, N, V and Z, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Iverson moved for approval of Item A1 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown asked why the recommendation is to delay the bid award. He also asked if it is cost effective for the City to service their own vehicles. City Administrator Kristoff Bauer said the reason for the delay is to allow for additional time to review the bids. He said the most efficient and cost effective method is to provide our own services. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Iverson moved for approval of Item A2 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott asked for a running total of what has been spent on improvements and services to Briarwood to date and to break out the costs in this particular contract that involve Briarwood. Mr. Bauer said this would be provided to the Council. On a voice vote, the motion was unanimously approved.

Councilmember Iverson moved for approval of Item B of the Consent Agenda, seconded by Councilmember Larson. Councilmember McDermott asked why a study is needed for this intersection. She said she thought the Council is in agreement that this intersection is a problem and the best solution is a traffic signal. She would like to see this money used toward the installation of a traffic signal instead of a study. Councilmember Brewster said the study is to determine if a signal or a "roundabout" is more appropriate. He said the intersection has brief periods when traffic is a problem, centering around school starting and ending. He said Public Works Director Dave Mumford suggested that a roundabout could be less expensive and a better solution. On a voice vote, the motion was approved with Councilmembers McDermott, Ohnstad, Poppler and Jones voting "no".

Councilmember Iverson moved for approval of Item N of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Jones referred to a May 2003 Council action that limited the grant approval amount to under \$20,000 without Council approval. He said he thought the Council "sent a message" to the Downtown Billings Partnership (DBP) with that action. Mr. Bauer said the contract was finally approved at the \$50,000 amount as long as the grant was in compliance with adopted grant criteria. He said this item reflects the next step to establish the grant criteria and provide guidance to the DBP for decisions under \$50,000. Councilmember McDermott noted that there was an amendment made to specify the grant amount to be \$50,000 per grant per project to protect against the four grants being approved for \$50,000 each for a total of \$200,000. Mr. Bauer said this stipulation was already included in the contract. On a voice vote, the motion was approved with Councilmembers Jones and Brown voting "no".

Councilmember Iverson moved for approval of Item V, seconded by Councilmember McDermott. Councilmember Brewster suggested that the annual audit

include a review of sample contracts to make sure contracts have not been "divided" for the purpose of avoiding Council action.

Councilmember Jones expressed concern about language that may leave open the criteria for City Administrator approval of contracts "if funds are available". Mr. Bauer said there is some discretion as long as budget authority is in place. He noted that not all potential contracts are necessarily specified by a line item in the budget because this would become a cumbersome document. This would be the time that this resolution would apply. Councilmember Brown asked if this resolution would take away authority from the Council for budget approval. Mr. Bauer said that would be the case with the smaller budget items. On a voice vote, the motion was approved with Councilmembers Jones and Brown voting "no".

Councilmember Iverson moved for approval of Item Z of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Jones said he thinks the Council should retain the authority to set the fees, rather than the City Administrator. Councilmember Jones amended the motion by changing the ordinance (Section 19-402) to state that "from time to time by Council resolution" for approval of all changes to fees, seconded by Councilmember Brewster. Councilmember Larson suggested a language modification to read "fees will be established from time to time by the City Administrator and finally approved by the City Council", seconded by Councilmember Brewster. Councilmember Jones said that wording would be acceptable. The second concurred. On a voice vote, the amendment was unanimously approved. On a voice vote for the motion as amended, the motion was unanimously approved.

Councilmember Poppler asked that the Council briefly discuss the police contract (Item Q). Mayor Tooley noted that the Council voted unanimously in support of the negotiators in their good faith effort to present the contract for ratification. The union membership has however rejected the contract.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 03-18017 vacating 31st Street West south of Myrtle Drive between Lot 7, Block 14 and Lot 12, Block 19, Lampman Subdivision. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Kennedy moved for approval of the Staff recommendation, seconded by Councilmember Iverson. Councilmember Kennedy said he lives one block north of this vacation request and noted that this would calm the traffic in this area significantly. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property described as a portion of Tract 3A, C/S 2317, Annex #03-05, George Rosenfeld and Eugene A. Brosovich, owners. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

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

4. PUBLIC HEARING AND RESOLUTION 03-18018 creating SILMD 285 for installation of streetlights along Moore Lane south of Laurel Road. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Mr. Bauer noted there were no protests to creating this SILMD. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the Staff recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE amending portions of BMCC Sections 4-301 thru 4-453, prohibiting wild animals within city limits and offensive animal waste; changing certain definitions; requiring permits for 4 or more dogs and/or cats; updating language on noisy animals, dangerous and potentially dangerous behavior and animal's justified use of force; allowing the City Administrator to set fees; prohibiting small animals from being in City parks; requiring dogs and cats to be vaccinated; requiring registration and vaccination tags to be on an animal when off owner's property; allowing impoundment of cats and dogs and collection of fees and increasing penalties. Animal Control Board and Staff recommend approval. (Action: approval or disapproval of Animal Control Board/Staff recommendation.)

Animal Control Supervisor Dave Klein said the Animal Control Board and the Animal Control Staff have been working on these revisions for two years. He said the hope was that these revisions would help to clear up some misunderstandings of the current ordinances. These modifications, if approved, would establish policies and procedures for the Animal Control officers. He noted that insurance premiums will increase for owners of dangerous animals (that have been dealt with previously and that are known to be potentially dangerous animals). This ordinance would provide a safer environment for citizens as it pertains to protection from animals. He noted that there are changes in the requirements for Small Animal permits that will result in additional revenue as all residents with four or more dogs and/or cats will require a permit. Penalty fees are also increased for dogs running at large and noisy animals with subsequent offenses resulting in doubling of fines.

Mr. Klein said it is the recommendation that several of the fees be set by the City Administrator. He said Council approval of the ordinance on first reading will help ensure the health and safety of both the animals and citizens of Billings.

Councilmember Kennedy asked if the regulation that pertains to the complainant of a noisy animal identifying themselves by name, address and telephone number also includes giving this information to the offending animal owner. Mr. Klein said the current policy requires that this information is not released unless statements or logs are presented to the Animal Control Office.

Councilmember Brown asked how these revisions will affect a person that receives a bite from a guard dog that is there for the protection of the owner. Mr. Klein said State law requires that an animal must be quarantined if the bite breaks the skin. If the dog is on its own property, it will not be designated as a dangerous animal.

Councilmember Brewster asked about dogs that are in the back of pickup trucks. Mr. Klein said the dog is considered outside of their property if they reach out and bite someone passing by the pickup truck. If the person reaches into the pickup truck and is bit and the bite breaks the skin, the dog must still be quarantined, but the bite is not an unlawful one. Councilmember Brown asked if the dog's vaccinations are current would there still be a reason to quarantine the animal in a bite situation. Mr. Klein said the Animal Control office would still follow State law requirements of quarantine.

Councilmember McDermott asked dog owners not to bring their dogs to the Farmer's Market.

Councilmember Jones asked about Section 4-451 – collection of fees for impounded animals. He asked about the tax exempt organization notation. Mr. Klein said there are about 10 tax exempt animal organizations in the City that assist with finding homes for these animals. Mr. Bauer said this notation is in response to requests from Animal Rescue groups that want to adopt as many animals as they can. This creates a problem for the Animal Control staff because they are not always sure of the conditions that the animals are entering. The City is trying to provide a clear mechanism that allows for this transition to facilities that are qualified as a rescue group and to know something about the organization and the conditions of the facility and to limit the number of animals that are placed there. Councilmember Jones asked if these facilities understand the requirements. Mr. Bauer said the City is still in the process of developing the requirements. Councilmember Jones asked what the rationale was for the 60 days in the foster homes. Mr. Klein said the 60 days extends the 30 day requirement for licensing by an additional 30 days. At that time the animals must be returned or ownership claimed and licenses purchased.

Councilmember Poppler asked if the ordinance contains provisions addressing owners leaving their animals in the car. Mr. Klein said the Animal Control officers cannot act until the animal is in immediate danger. They will respond to calls through the Police Department to animals that are found to be in a car that registers 105 degrees. This is in conjunction with the State's Cruelty to Animals Laws.

Councilmember Brown expressed his appreciation for the job that Mr. Klein does. He said not many people could do such a good job that is a great value to the City.

Councilmember McDermott referred to Section 4-407 regarding animals in City parks. She emphasized that dogs and small animals do not belong in City parks.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Jones moved for approval of the ordinance on first reading, seconded by Councilmember Larson. Councilmember Jones moved to amend the ordinance so that all fees are finally approved by the City Council as recommended by the City Administrator, seconded by Councilmember Brown. On a voice vote, the amendment was unanimously approved.

Councilmember Jones referred to Section 4-411 – minimum fine changes. Councilmember Jones moved to amend the language to leave the first offense at \$20.00 and increase to \$100.00 on the second offense and subsequent offenses

double, seconded by Councilmember Brewster. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

6. PRELIMINARY PLAT OF SOUTHGATE SUBDIVISION, AMENDED LOT 2B-1, BLOCK 2. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)

Planning Staff Member Bruce McCandless said the subdivision is located on Southgate Drive and is zoned Highway Commercial. The proposed primary use is for a hotel/sports bar and is consistent with the zoning. The plat will create two lots; one that contains the Hampton Inn and vacant property and one that will contain a new sports bar. There are no negative affects identified in the findings of fact and no environmental assessment required and it does conform to the local and state subdivision regulations. He noted that utilities are provided. He said the Planning Staff recommends conditional approval with the conditions as:

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

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

2. 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.

Findings of Fact
Southgate Subdivision amended lot 2B-1 block 2
September 8, 2003

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

1. Effect on agriculture and agricultural water users' facilities

This subdivision will have no effect on agriculture or agricultural water users' facilities. The property was removed from agricultural production several years ago and is now a dry land vacant lot.

2. Effect on local services

a. Utilities – Water, sewer and storm drain facilities are in place in Southgate Drive and any development on the property will connect to them. Private utility companies will provide service to the new lot under their operating procedures.

- b. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - All street improvements were installed by the subdivider several years ago. No further street improvements are needed at this time, but the waiver will cover future improvements if they are needed. The new lot will require a driveway approach that will need the City's approval.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #2 on South 28th Street. 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 located on 4th Avenue North.
- e. Schools – The subdivision is in School District 2. The subdivision shouldn't have a negative affect on the District because it is a commercial subdivision. The District won't directly benefit from higher taxable value on the property.
- f. Parks and Recreation – There is no parkland dedication requirement because this is a commercial area and a minor plat.
- g. MET Transit – MET uses King Avenue East. This subdivision should not affect MET service.

3. Effect on the natural environment

This subdivision should not affect the natural environment because the property is already partially developed and this is in an urbanized part of the city.

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

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

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

An Environmental Assessment is not required because this is a minor plat and is within the City of Billings.

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. Southgate Drive is a local access commercial street and no immediate improvements are needed.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. Southgate Drive is a primary district connector but no immediate improvements are necessary because the 49' wide commercial street can accommodate vehicles and bicycles.

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 existing structure uses city water, sewer, storm drain and solid waste services and these services will be extended to the new lot. All services are approved and regulated by state and federal authorities.

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

The property is in the Highway Commercial zoning district and conforms to the zoning requirements.

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 a public street right of way that provides adequate space for utility installations. All the required utilities are 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 lots have access to Southgate Drive, a dedicated public street.

CONCLUSIONS OF FINDING OF FACT

- The overall conclusion of the Findings of Fact is that the proposed Southgate Subdivision amended lot 2B-1 block 2 does not create any adverse impacts that warrant denial of the subdivision.
- There should be little effect on local services because only one small commercial lot is being created and services are already provided to the existing property.
- 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 Larson moved for approval of the Staff recommendation with conditions, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

7. PRELIMINARY PLAT OF MORNING STAR SUBDIVISION. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)

Planning Staff Member Bruce McCandless said this subdivision is located on Morning Star Drive with the BBWA forming the western boundary. This plat splits 2 acres into four lots each about ½ acre in size. The property is zoned Community Commercial and the property is currently vacant with no immediate plans for the property. Because of the proximity to the canal, there will be no ditch watering or flood irrigation of the property after subdividing. Lake Elmo Road will be improved in the future under City contract and if not, it is advisable to have a condition that the street improvement should be made within a specific period of time. Utility connections should be made prior to the street improvements.

Mr. McCandless said the Planning Staff is recommending conditional approval with the conditions as:

1. Lake Elmo Road improvements (standard street, curb, gutter, sidewalk, etc.) shall be specified in the Subdivision Improvement Agreement and the subdivider is responsible for the defined improvements if City financed improvements aren't made within two (2) years of final plat approval.
Required by BMCC Section 23-702 and requested by Public Works
2. Access from the lots to Lake Elmo Road shall be limited and is subject to approval by the City Engineer's office.
Required by BMCC Section 6-1200 and requested by Public Works
3. Sanitary sewer and water service lines will be installed by the subdivider for each lot at the time of lot development or when Lake Elmo Road is constructed/reconstructed, whichever occurs first.
Required by BMCC Section 23-704 and 23-705 and requested by Public Works
4. The SIA will be amended to include the standard PUD statement that the SIA is not a guarantee of service, that the subdivider must apply for service and applicable fees and franchise fees will be paid by the subdivider at the time of service application.
Requested by Public Works
5. Irrigation ditch easements will be created as needed and any irrigation rights/shares on the property will be severed before final plat approval.
Required by MCA 76-3-504
6. 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.
7. 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.

Morning Star Subdivision
Findings of Fact
September 8, 2003

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

1. Effect on agriculture and agricultural water users' facilities

This subdivision will have no effect on agriculture and a small effect on agricultural water users' facilities. The property was removed from agricultural production several years ago and is now a dry land vacant lot. The BBWA Canal forms the western

boundary of the property and a private lateral ditch forms the south property line. Appropriate easements should be created on the property and any water shares/rights should be severed in accordance with state law.

2. Effect on local services

- h. Utilities – Water and sewer facilities are in place in Lake Elmo Road and any development on the property will connect to them. Lake Elmo Road reconstruction is planned and any utility connections should be made before or when the road is improved. Applications for service and fee payments will be required before connections are allowed. Stormwater will be retained on site but the property may participate in future storm drain improvements and discharge to the system at that time. Private utility companies will provide service to the new lot under their operating procedures.
- i. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- j. Streets - Lake Elmo Road reconstruction is planned by the City, probably next construction year. The subdivider should be responsible for the improvements if City financed improvements aren't made within a reasonable time.
- k. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #6 on St. Andrews. 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 located on 4th Avenue North.
- l. Schools – The subdivision is in School District 2. The subdivision shouldn't have a negative affect on the District because it is a commercial subdivision. The District won't directly benefit from higher taxable value on the property.
- m. Parks and Recreation – There is no parkland dedication requirement because this is a commercial area and a minor plat.
- n. MET Transit – MET uses Hilltop, so service is available within 1/4 mile of the subdivision. This subdivision should not affect MET service.

3. Effect on the natural environment

This subdivision should not affect the natural environment because the property is in an urbanized part of the city. Erosion controls during construction are required by federal and state law.

4. Effect on wildlife and wildlife habitat

MINUTES: 09/08/03

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

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

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

An Environmental Assessment is not required because this is a minor plat and is within the City of Billings.

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. Lake Elmo Road is a collector street and the City is planning a reconstruction project. No immediate improvements are required but the subdivider should be responsible for them if the City project doesn't proceed within a reasonable time.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. Lake Elmo Road is a primary district connector. No immediate improvements are necessary but the BikeNet should be accommodated when the road is reconstructed.

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)]

Sanitary sewer, water service, solid waste collection and disposal services will be provided to the property. Stormwater will be retained on-site as required by the City's stormwater management plans. 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 Community Commercial zoning district and conforms to the zoning requirements.

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 a public street right of way that provides adequate space for utility installations. All the required utilities are 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 lots have access to Lake Elmo Road, a dedicated public street. Because the street is a collector the City should approve the number and placement of access points.

CONCLUSIONS OF FINDING OF FACT

- The overall conclusion of the Findings of Fact is that the proposed Morning Star Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- There should be little effect on local services because this is a four lot commercial lot subdivision within the City and services are provided to adjacent properties. The subdivider will pay for any required facility improvements.
- 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 McDermott moved for approval of the Staff recommendation with conditions, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

8. RESOLUTION 03-18019 expanding the North Broadway Streetscape Maintenance District #4013. ACTION DELAYED FROM 8/25/03. Staff recommends approval of the resolution. (Action: approval or disapproval of Staff recommendation.)

Parks and Recreation Department Director Don Kearney reported to the Council that the pastor of First United Methodist Church was contacted and given an explanation of the proposed maintenance district. He noted that the church thought the trees adjacent to the sidewalk should be maintained within the district. He said the plan is to maintain all the trees that are in the district boundary.

Councilmember McDermott asked who would be paying for the maintenance on Skypoint. Mr. Kearney said any major expense above and beyond a maintenance type of expense would be budgeted through the Capital Improvement Plan. Mr. Bauer clarified that the routine annual maintenance is being paid through a smaller park maintenance district that exists now and will be absorbed by the expanded park maintenance district that is being proposed.

Councilmember Brown asked who will be responsible for Skypoint when the Tax Increment District ends. Mr. Kearney said this is a permanent park maintenance district that transfers with property ownership and would not be affected by the expiration of the Tax Increment District.

Councilmember Kennedy asked what the next step is in forming a Business Improvement District. Billings Downtown Partnership President Greg Krueger said there is a possibility that by the end of this calendar year there will be a petition circulated to property owners for the formation of the first Business Improvement District (BID) and it is the goal that items like Skypoint would be "rolled" into this type of district. He said possible budgets and potential assessments are now being reviewed.

Councilmember Gaghen moved for approval of the Staff recommendation, seconded by Councilmember Larson. Councilmember McDermott said she would not support this item for two reasons. She said she doesn't think the City should burden the downtown property owners who did not initially participate in the district. She said the City is not being fair to certain property owners because of the 7,000 square foot cap for assessments. Councilmember Kennedy asked who brought this item to the Council. Mr. Bauer said this item was initiated in response to Council comments about individuals who had improvements adjacent to their property. Councilmember McDermott said she heard from several property owners that Mr. Scibelli, the former president of the Billings Downtown Partnership contacted them originally. Mr. Kearney confirmed that the petition was circulated by the Billings Downtown Partnership. Councilmember Jones asked what percentage of property owners signed the petition. Parks and Recreation Supervisor Gene Blackwell said 56% of the property owners signed the petition.

Councilmember Jones asked if there are any property owners that do not have improvements adjacent to their property that would be participating in the assessments.

Mr. Kearney said the level of improvements varies greatly within the district with some having lighting, some having trees, and some having benches.

Councilmember Brewster noted there has been a significant amount of money spent to revitalize this area. He said asking the property owners to maintain what has been placed there is a small thing to ask. On a voice vote, the motion was approved with Councilmembers McDermott, Brown, Poppler and Jones voting "no".

9. PUBLIC HEARING AND APPROVAL OF RESOLUTIONS making annual assessments for 2003 on:

- (A) RES 03-18020: Encroachments
- (B) RES 03-18021: Weed Cutting and Removal.

Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

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

10. PUBLIC HEARING AND APPROVAL OF RESOLUTIONS making original spread assessments on various SIDs and Sidewalk Programs. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

- (A) RES 03-18022: Sidewalk, Curb & Gutter #2301, re: W.O. 02-02, #1: 2002 Developer-Related & Miscellaneous Curb, Gutter and Sidewalk Program.
- (B) RES 03-18023: Sidewalk, Curb & Gutter #2302, re: W.O. 01-02, #2: Broadwater Sub., Phase IV Program, Schedule A.
- (C) RES 03-18024: Sidewalk, Curb & Gutter #2303, re: W.O. 01-02, #2: Broadwater Sub., Phase IV Program, Schedule B.
- (D) RES 03-18025: Alley Approach #2399, 43; W.O. 02-02, #1: 2002 Developer-Related & Miscellaneous Curb, Gutter and Sidewalk Program.
- (E) RES 03-18026: Tree Removal #3004.
- (F) RES 03-18027: SID 1349: Utilities, storm drain and street improvements in Lake Hills Subdivision, 9th, 10th, 13th and 25th filings.
- (G) RES 03-18028: SID 1354: Storm drain, curb and gutter and widening on King Avenue East.
- (H) RES 03-18029: SID 1360: Utilities, storm drain and street improvements in Gabel Road area and S 30th, S32nd and S. 29th Streets.
- (I) RES 03-18030A & B: SIDs 1363 & 1364: Water and sewer improvements in Briarwood and Cedar Park Subs.

The public hearing was opened. SPENCER DAVIDSON, 4448 SAN FERNANDO, said he has no objection to the SID, only the assessment method. He said he understands the assessment is done on a square foot basis, and to be fair and equitable the assessment should only be on property that is available for building. He

noted that he has property that contains three (3) lots with a gulley with only 1/3 of the property usable for development. He said the assessment is about three times what the other assessments are. He proposes that the assessment be adjusted to the size of the residence that is receiving the water or sewer or lot availability for building.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Larson. Councilmember Brown noted that the Sidewalk, Curb and Gutter #2301 was spread over a two-year period making the interest "heavy". He asked why there is such a long time between initialization and first assessment and how can property owners avoid interest payments. Controller Pat Weber said it sometimes takes a year to a year and half for the work to be done after the bonds are sold. Sidewalks can't be assessed until the actual work is done. He said a letter is sent to inform the property owner of the assessment and they have the option to pay before the assessments are applied to taxes, which then involves interest.

Councilmember Kennedy asked someone from the staff to address Mr. Davidson's issue about his three lots. Mr. Weber said the Briarwood situation is different in that there was no construction involved, just utility hook up fees. The fees were based on the size of the meters and the System Development Fees were based on square footage. The System Development Fees were adopted by the Council. Councilmember Kennedy asked if there is a way to address the issue of a "blanket" effect to unusual situations. He said he wants to see some relief explored for situations like Mr. Davidson's.

Mayor Tooley said a committee has been formed to review this issue and noted there are problems inherent in the solutions. Mr. Bauer said the City is looking to the legislature for some flexibility for the Council to review other assessment methods, such as a combination of square footage and zoning in street maintenance fees. He added that a proposal to revise the system development fee application method will be brought to the Council. Public Works Director Dave Mumford said the System Development Fees will be discussed at a Council work session next month. He said the Council could adopt language that states those fees could only be charged to buildable lots. Councilmember Poppler asked if a hardship, i.e. "escape" hatch provision for situations similar to Mr. Davidson could be added to the System Development Fee process and could be enacted through retroactive re-assessments. Mr. Bauer said retroactive re-assessments would not be a benefit with the fee structure. He noted that the current fees do not recover the costs of construction and the Staff is recommending that the fees be increased over time. Mr. Keefe cautioned that the problem with making the reductions in assessments retroactive is that the assessments are spread to pay off the debt the City has incurred to pay for the costs. This would limit funds to pay off the debt, and debt payments may not be met.

Councilmember Brown asked if there is a method for lots that are not buildable - could they be re-designated as "worthless" and considered "abandoned" and donated to the City or State and thus not incur assessments. Mr. Bauer said the property owner could donate it to the City, but the assessment would then become the City's responsibility. On a voice vote, the motion was unanimously approved.

11. PUBLIC HEARING AND APPROVAL OF RESOLUTIONS re-spreading assessments on various SIDs. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

- (A) RES 03-18031: SID 1347: Sanitary sewer in Lampman Subdivision.
- (B) RES 03-18032: SID 1351: Curb, gutter and street improvements on Vaughn Lane in Hayes Subdivision.
- (C) RES 03-18033: SID 1353: Utilities, storm drain and street improvements in Circle Fifty Subdivision.
- (D) RES 03-18034: SID 1355: Sewer and street improvements on Greenbriar Road. In Lake Hills Subdivision, 13th and 20th filings.
- (E) RES 03-18035: SID 1359: Utilities and street improvements on East and West Skokie Drives in Lake Hills Subdivision, 20th filing.

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

12. PUBLIC HEARING AND APPROVAL OF RESOLUTIONS re-spreading and combining assessments on various SIDs and Sidewalk Programs. Staff recommends approval of the resolutions. (Action: approval or disapproval of Staff recommendation.)

- (A) RES 03-18036: Sidewalk, Curb and Gutter #9606, W.O. 95-02, #3: 1995 Miscellaneous Curb, gutter and sidewalk program.
- (B) RES 03-18037: Sidewalk, Curb and Gutter #9809, W.O. 97-02, #3: 1997 Miscellaneous Curb, gutter and sidewalk program, Non-task force areas.
- (C) RES 03-18038: SID 1327: Street and utility improvements in Cenex Park Sub., Claimstake Sub., and C/S 2158.
- (D) RES 03-18039: SID 1341: Utility, street and park improvements on Swanson Lane in Circle Fifty Sub.

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

13. PUBLIC HEARING AND APPROVAL OF RESOLUTION RES 03-18040 re-spreading and splitting assessments on SID 1356: Street widening and utilities on King Avenue W -- BBWA bridge to 30th St. W. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

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

14. PUBLIC COMMENT. (Non-Agenda Items; comments limited to 3 minutes per speaker.)

- DON CETRONE, 1314 Yellowstone River Rd. Spoke in regard to the culvert installed decades ago that is now leaking and causing damage to the road. He said City crews started repair work in June and their actions have compounded the problem, creating a “cave-in” and leakage into a storm drain. He stated he has water rights and those water rights are being violated because the water flow was ordered shut off by the City in response to the leak. Mr. Cetrone said his property was annexed in 1985 and believes the leakage problem is now the City’s responsibility. He said he feels that he has been treated unfairly by the City.

Council Initiatives

- COUNCILMEMBER KENNEDY: Councilmember Kennedy requested that a sign be put up in and outside Council Chambers instructing people to turn off all cell phones and beepers while in Chambers. Councilmember Kennedy also asked for clarification on the fines in the Animal Control ordinance and how they would be applied – per animal or per owner. City Attorney Brent Brooks said he would review the language and correct any unclear definitions regarding fine responsibility.
- COUNCILMEMBER BREWSTER: Councilmember Brewster commented in regard to Mr. Cetrone’s public statements above. He noted that the City has “inherited” many of these situations via annexation and the Council needs to make a policy decision or a resolution on how to resolve these issues other than shutting off the water. Mr. Bauer noted the next Council work session will include consideration of a legal analysis and policy discussion on a prior Council initiative related to resolving these type of issues.
- COUNCILMEMBER POPPLER: Councilmember Poppler suggested that the Council revisit the idea of pre-agenda meetings so the Council can discuss issues related to items instead of separating them from the Consent Agenda. Councilmember Larson said he prefers the more in-depth work sessions over the agenda meetings and noted that the Consent Agenda separations have not decreased since the discontinuance of the agenda meeting. Councilmember Brewster said he preferred the discussions that occurred during the agenda meeting to be held during the Council meetings where there is access to public televising. Councilmember Brown said he would like to see the work sessions broadcast on Channel 7. City Administrator Kristoff Bauer noted that the Channel 7 Director is scheduled for a future work session to talk about some ideas and options for the Council.

ADJOURN –With all business complete, the Mayor adjourned the meeting at 8:10 P.M.

THE CITY OF BILLINGS:

MINUTES: 09/08/03

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE, City Clerk