

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## November 24, 2003

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 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 Mick Ohnstad.

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

**MINUTES – November 10, 2003.** APPROVED AS PRINTED.

**COURTESIES** -- NONE

**PROCLAMATIONS – Mayor Tooley.** NONE.

### **BOARD & COMMISSION REPORTS**

- **Parks/Recreation/Cemetery Board.** Parks and Recreation Director Don Kearney gave the presentation in the absence of the Chairman of the Board. Mr. Kearney said the Board is working via a subcommittee on the Disc Golf issue in Pioneer Park. They are looking at a proposal to reduce the course to a 12-hole course to prevent discs from flying into the adjacent residential areas. Mr. Kearney also stated that the Board is working with both the YMCA Swim Club and the Billings Aquatic Club to install a pool heater at the pool in Rose Park. He noted that the Skatepark project is entering its final phase of work with the completion of the right-of-way improvements. The contractor anticipates about 2-3 weeks of work remaining. In response to a question from Councilmember Brewster about the "sliding hill" in Castlerock Park, Mr. Kearney stated that the area has been fenced to deter using the area for sliding. He said it is their hope that they will be able to use the water area there for ice skating later in the season. The department is polling other communities to see how they manage their ice skating areas. In response to a question from Councilmember Brown about providing facilities for skaters, Mr. Kearney said there are hopes of providing a warming house and restroom facilities.

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

- Mr. Bauer called the Council's attention to a memo on their desks this evening concerning Change Order #6 on the 54<sup>th</sup> Street West Water and Sewer Improvement project. He requested the Council add this item to the agenda this evening.
- Mr. Bauer also asked the Council to move Consent Agenda Item G to the Regular Agenda so that a presentation could be given to the Council this evening on the Swords Park Trail and the route proposed.

- Mr. Bauer noted that Celebrate Billings conducted a seminar last week Thursday, which he attended. He noted that the results of that seminar were posted on Friday. The session was taped for rebroadcast on Channel 7.
- Lastly, Mr. Bauer noted that Interim Asst. Administrator (& Director of Finance and Administrative Services) Bob Keefe has notified him that his last day with the City would be December 5<sup>th</sup>. Mr. Bauer thanked Mr. Keefe for the tremendous help he has provided during the period of time Mr. Bauer was Interim City Administrator and also during the time Mr. Keefe served as Interim Asst. City Administrator. Mayor Tooley added his thanks for Mr. Keefe's years of public service.

Councilmember Kennedy moved to ADD C.O. #6 for the 54<sup>th</sup> Street West project to the agenda as Item R, seconded by Councilmember Larson. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Poppler moved to move Item G from the Consent Agenda to the first item on the Regular Agenda, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

## **CONSENT AGENDA:**

### **1. A. Bid Awards:**

**(1) Industrial Park Pavement Rehabilitation – Logan International Airport.** (Opened 10/28/03). (Delayed from 11/10/03). Recommend Empire Sand and Gravel, \$96,169.00.

**(2) Removal of City-Owned House and Barn located at 3410 Poly Drive.** (Opened 11/18/03). Recommend delay to 12/8/03).

**B. C.O. #1, Upgrade of parking Garage Door Hardware,** Dale & Jax Door & Glass Inc., \$15,635.00.

**C. C.O. #2, W.O. 02-19: City Animal Shelter,** General Contractors, \$52,894.63 and 17 days.

**D. C.O. #4, 2003 PUD Replacement, Schedule II,** Chief Construction, \$79,998.46 and 13 calendar days.

**E. C.O. #4, W.O. 02-09: Downtown Bike Connector,** JTL Group Inc., \$547.40 and 0 calendar days.

**F. Amendment #3, Airport Engineering Services,** Morrison Maierle, Inc., for design and construction administration of the Airfield Electrical Vault and the Aircraft Deicing Fluid Supply Station, \$265,220.00.

**G. W.O. 03-06: Swords Park Trail,** approval of trail route. MOVED TO THE REGULAR AGENDA FOR PRESENTATION AND DISCUSSION.

**H. Contract for Professional Services:** Library and Multi-Use Parking Garage, A & E Architects PC, \$349,680.00.

**I. Agreement** with Billings Housing Authority to fund one Officer, term: 1/1/03 - 6/30/04.

**J. Approval of Highway Traffic Safety Contracts** #2004-10-08-10 & #2004-13-01-10 with Montana Dept. of Transportation, \$21,000.00.

**K. Resolution 03-18043** authorizing a project under Montana Code Annotated, the Refunding of Outstanding Bonds and the Issuance and Sale of a \$10,200,000 Higher Education Revenue Note (Rocky Mountain College Project), Series 2003, to finance the same; approving the form of documentation in connection therewith and authorizing the execution and delivery of the note and documentation.

**L. Resolution 03-18044** relating to a project on behalf of "homeWORD" and the Issuance of Revenue Bonds to finance the costs of a remodeling and rehabilitation of an 84-unit Multifamily Rental Housing Complex.

**M. Acknowledge receipt of petition to Annex:** (#03-07), Tracts 1-4, C/S 2064 and Tract 1, C/S 3125, generally located northwest of the intersection of King Avenue West and Shiloh Road, St. Vincent Healthcare Foundation, Inc., petitioner, and setting a public hearing date for 12/8/03.

**N. Acknowledge receipt of petition to Annex:** (#03-09), C/S 1648, 3<sup>rd</sup> Amendment, Tracts 5A1 and 5A2, Emmanuel Baptist Church, petitioners and setting a public hearing date for 12/8/03.

**O. Approval of Quit Claim Deed** of C/S 1707 to Montana Dept. of Transportation for a strip of land situated west of Billings Logan Airport between State Hwy #3 and C/S 715 to allow access to the former Armory property now owned by the State of Montana.

**P. Final plat:** Cornerstone Subdivision.

**Q. Bills and Payroll.**

**LATE ADDITION:**

**R. C.O. #6, 54<sup>th</sup> Street West Water and Sewer Improvements,** Cop Construction, \$94,406.20 and 0 days.

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

Councilmember McDermott separated Item H from the Consent Agenda. Councilmember McDermott moved for approval of the Consent Agenda with the exception of Item H, seconded by Councilmember Brewster. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Gaghen moved for approval of Item H of the Consent Agenda, seconded by Councilmember Larson. Councilmember McDermott said she has had discussions with several Downtown property owners. She said the contract for professional services should not be approved with these two items together. She requested the Library be separated from the Multi-Use Parking Garage and these items be re-advertised as two separate RFPs.

Councilmember Brewster asked where the funding for this item would come from. He also asked who owned the Library building and if the City is a tenant should the study be a product of the City's rent. City Administrator Kristoff Bauer said the issue of ownership of the building has been referred to the City's legal staff, as it is a point of contention. He said the building is operated and managed by the City's Library Director. Mr. Bauer said the City did not want the ownership issue to hold up the proposed study. He said there is \$100,000 set aside to fund this project. Councilmember Brewster asked what would happen if the legal analysis shows that the City owns the building. Mr. Bauer said the cost allocations would remain the same whether the building is managed by the Library or the Public Works Department.

Councilmember Kennedy asked if there were members of the Council on the selection committee. Mr. Bauer said Councilmember Jones was on the selection committee. There were representatives from the Parking Advisory Board, the Library Board and the Library Foundation on the selection committee, Interim Assistant City Administrator Robert Keefe added. Mr. Bauer said there were no representatives from the Downtown Property Owners in the RFP selection committee, but those groups and several other concerned groups are listed as stakeholders and will be included in the scope of the work selection process. Councilmember Kennedy said he is very concerned that the property owners have a say in this project.

Councilmember Gaghen asked how Task III in this proposal would impact the Park II proposed expansion. Mr. Bauer said Park II would continue to move forward with the same priority and scheduled time frame.

Councilmember Jones made a substitute motion to vote on Tasks IA, IB, IIA and IIC at this time and wait to consider Tasks IIB and III at a later date, seconded by Councilmember Kennedy. Councilmember McDermott said her concern is not with the proposed architect, but with the need to separate the projects and have two new RFPs to allow other architectural firms that may want to submit a proposal on an individual project rather than one large project. She asked if separating the tasks would lead to legal problems. Mr. Bauer said there would have to be a discussion with A & E Architects as to approving only portions of the contract. He said he would recommend the Council not separate these two projects and explained that the concept is for these two adjacent structures to provide a cost savings when constructed together. The potential for combining ventilation, electrical and other facilities that are used by both structures would address the health and safety issues of the Library at a lower cost. He said the Council would lose cost saving opportunities by not considering the structures

together. They were combined to illustrate how they relate to each other, impact each other and work together to provide a more effective facility for the community.

Councilmember Larson noted that seven companies responded to an RFP of one large project. If the Council is going to alter the project, a new RPF re-stating the project is more appropriate.

Councilmember Brown expressed concern about mingling money from the Parking Department and the Library, starting the Library project to correct all of the safety issues and considering all of the new regulations that must be addressed.

Councilmember Jones said architectural bids are not usually based on a bid but rather on qualifications of the bidder. He said the contract is usually negotiated after determining the most qualified company. He said there could be good reasons to combine all of the tasks together and the Council should have discussions about adding Tasks IIB and III at a later date. He said he did not think it would be a big issue to go back and negotiate any items not included in the substitute motion. Councilmember Jones added that there is a deadline for addressing the code violation issues in the Library.

Mayor Tooley stated that Task IIB is for functional issues on the 3<sup>rd</sup> and 4<sup>th</sup> floors of the Library for \$34,400.00 and Task III is the preliminary design of a Mixed Use Parking Structure that would be funded through the Parking Division via the Library and Parking Fund for \$215,920.00. He said he understood the contract included a survey of the stakeholders in the downtown area as to their needs for a multi-use structure. Mr. Bauer said that was correct and noted that this is a new approach to this type of project, where the affected stakeholders are given options with additional information prior to construction of this type of facility. This information is then used to help the community and the Council decide what options should go forward for consideration.

On a voice vote for the substitute motion, the motion failed 4-7 with Councilmembers Gaghen, Brown, Kennedy and Jones voting "yes" and Councilmembers McDermott, Brewster, Iverson, Poppler, Ohnstad and Larson and Mayor Tooley voting "no".

On a voice vote for the original motion, the motion was approved 6-5 with Councilmembers Gaghen, Brewster, Iverson, Ohnstad, Larson and Mayor Tooley voting "yes" and Councilmembers McDermott, Brown, Kennedy, Poppler and Jones voting "no".

## **REGULAR AGENDA:**

**NOTE: AN ITEM WAS MOVED FROM THE CONSENT AGENDA TO THE FIRST ITEM ON THE REGULAR AGENDA. SUBSEQUENT ITEMS WERE CONSIDERED IN THE ORIGINAL ORDER, BUT WERE NOT RENUMBERED.**

### **ITEM G: MOVED FROM CONSENT AGENDA:**

#### **(2.) APPROVAL OF TRAIL ROUTE FOR W.O. 03-06: Swords Park Trail.**

Staff recommends that Council approve the preferred path alignment identified in the study report for this project. (Action: approval or disapproval of Staff recommendation.)

Ralph Gurney of HKM Engineering, said HKM Engineering is under contract with the City of Billings to do the design of the Swords Park Trail project. He said approval is needed for the trail route and authorization to complete the design. He said the scope of the project includes the design and construction of a multi-use trail through Swords Park and coordinate ties on either end with Montana Department of Transportation's Airport Road project, design and construct new access points and trailheads consistent with the proposed Park Master Plan, reclaim Black Otter Trail Road west of the substation consistent with the long term circulation patterns identified in the Master Plan, and reclaim and revegetate pioneered road cuts to the extent possible while building trails, trailheads, access, and circulation improvements.

He said the coordination completed to date has been with the Crow Tribe, Montana Department of Transportation as it relates to connections with the Airport Road project, Peter Yegen Museum, Swords Park Master Plan, trail users and the public through two informational meetings.

He said the work completed to date is a complete environmental review and documentation of impacts from the project (including a cultural survey of the entire park and review of Airport Road environmental document), conceptual designs of trails, trailheads access and parking, field reviews with the City, and preparation of the design report.

Mr. Gurney said the total budget for this project is \$860,000 including design and construction (\$140,000 for A & E fees and \$720,000 for construction). Funds are from the Montana Air and Congestion Initiative and a grant from Fish, Wildlife and Parks. With \$720,000 available for construction, the two surfacing alternatives are: 1) the Portland cement concrete path that would go to the west side of Kelly's Grave Loop, and 2) the asphalt cement concrete path that would go as far as the face of Skeleton Cliff. The base bid for either surfacing alternative would include work between the temporary trailhead on the west end of the park to the west side of Kelly's Grave Loop. Additive bid alternates would be 1) resurfacing a 10-foot path on the existing alignment for the south leg of the loop around Kelly's Grave and a 5-foot lane on the existing alignment of the north loop, and 2) constructing either a concrete cement sidewalk or an asphalt concrete sidewalk between the east side of the Kelly's Grave Loop and Skeleton Cliff. He said, if there is money left in the budget after completion of all the alternatives, it would be used to continue with reclamation work within the Park as directed by the Parks Department.

Councilmember Gaghen moved for approval of the Staff recommendation, seconded by Councilmember Larson. Councilmember Poppler addressed the Park Plan on behalf of the Swords family. She said the park was gifted to the City around 1927 by her grandfather George W. Swords. She said he was a civic leader, a visionary and a close friend of many of the City's pioneers. He donated approximately 80 acres of Rimrock frontage to the City to be held in perpetuity as a natural area. She said it was his dream, and the Swords' family dream, that the public have access to the panorama of the Yellowstone Valley and the surrounding mountains.

Councilmember Poppler said the proposed path is not compatible with this dream. She noted there are 11 historic sites in the area. She said there has been damage to the terrain from users of the area, and making a bike trail out of Black Otter Trail would not stop further damage from users who have no regard for its beauty. It would preclude all non-bike trail users from enjoying the scenery of Black Otter Trail. She said she and

members of her family have met with the City to review the blueprints and the presentation and said it does not conform to what was originally agreed upon. She stated few citizens realize that the City might close this historic trail to vehicular traffic. She stated that she intends to request this item placed on a Council agenda for a public hearing prior to action being taken.

Mr. Bauer said he was concerned that there would be confusion between the proposed trail alignment and the eventual adoption of the park master plan. He said the commitment to the Swords family is to bring forward alternatives in the master plan discussion that would include alternatives that would continue the ability to drive around Skeleton Cliff. Tonight's action is to adopt the "blue" portion of the trail and the alignment. He noted that the City is trying to limit access by four-wheelers to the park to preserve the park terrain for the future users. He said it is important to keep the commitment to the Swords family and bring options forward regarding Skeleton Cliff for response by the Swords family. Mr. Bauer said the Staff is asking for approval of the trail route (i.e. path alignment) only at this time, not the master plan.

Councilmember Brewster asked if there would be any closures involved in this approval. Mr. Bauer said there would not be any closures associated with this approval. He noted that access to the park would change because the Airport Road project would cut-off the current access. This is part of the Master Plan that is still open to discussion. He added that there is a proposal to close the Black Otter Trail access. Councilmember Brewster remarked that it is odd to close the Black Otter Trail access and open an access from Airport Road that is at a steeper grade; the access from 6<sup>th</sup> Street makes more sense. Public Works Director Dave Mumford explained the proposal to close Black Otter Trail is contingent upon the construction of an interchange at Alkali Creek and Airport Road. The current access would interfere with the interchange and become right-of-way. The state is reviewing all the proposals for functionality, minimizing the impact on the community and addressing questions raised by the City and would come back to the City and the public for more comment.

Councilmember Brown asked what the impact would be on the construction of Alkali Creek Road. Mr. Mumford said Alkali Creek Road would be designed to match what the State does.

Councilmember Jones asked for clarification on what the Council is being asked to approve. Mr. Bauer said the recommendation to Council is to approve the path alignment identified in the study for this project. Councilmember Jones said he is uncomfortable with approving this path alignment until all other issues are identified. Councilmember Kennedy said he agrees with Councilmember Jones and said that often the options become the "rule of thumb". Councilmember McDermott said a delay in the approval of this item would not cause major problems and said she would want to honor the request of the Swords family.

Councilmember Poppler said she has no concerns about the bike trail until it precludes vehicle traffic from the original route, taking away the original concept of the historic Black Otter Trail that allows access to the Yellowstone Valley views. Councilmember Poppler made a substitute motion to continue the item until a public hearing before the Council on this project can be held, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved. (Note: The public hearing will be held January 26, 2004.)

**2. PUBLIC HEARING AND RESOLUTION 03-18045 vacating portions of cul-de-sac rights-of-way within Rehberg Ranch Estates Subdivision, 1<sup>st</sup> filing, along Smohawk Trail, Cabin Creek Trail, and Shotgun Trail. Janice Rehberg, ETAL, petitioners. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Brewster. 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 properties described as: Lot 4, Block 2, Barry Acreage Tracts, 3<sup>rd</sup> Filing, (Annex #03-08). 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 Brewster moved for approval of the Staff recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #721: a zone change from Residential 9600 to Residential 9600, Residential 7000 and Residential Multi-Family – Restricted on property described as Township 1 South, Range 25 East, Section 12: NWNW Less Emerick Subdivision and C/S 1702 and generally located southeast of the intersection of Central Avenue and 32<sup>nd</sup> Street West. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Bruce McCandless said this property is located at the intersection of 32<sup>nd</sup> Street West and Central Avenue. He said the property is approximately 39 acres in size and is vacant with the exception of the Qwest switch and maintenance building. The planned future use is for single-family residential, two-family residential or multi-family residential. He reminded the Council that the specific uses that are being discussed this evening are not necessarily the guaranteed uses that would be allowed in the future as the requested zone change allows for many different uses. Mr. McCandless noted that a large portion of the property would remain in the current zoning of Residential 9,600. Property to the west is the Parkland West PUD and has underlying zones of Community Commercial and Multi-family Residential; property to the south is Terra West Subdivision that contains single-family homes and one and two-family condominiums; property to the southeast is the Colonial West Subdivision and is zoned Residential 7,000 with several single-family homes under construction. Two "Kramer tracts" are located east of the property and are vacant and were recently purchased by Mr. Todd Icopini, the Colonial West developer.

Mr. McCandless said the Zoning Commission is recommending approval of the zone change because it conforms to the Comprehensive Plan, is an infill project, uses the existing infrastructure which helps to reduce the cost of new development, and is

consistent with the surrounding developments. Most of the negative impacts can be mitigated through the subdivision process that is anticipated to begin this calendar year.

The public hearing was opened. BILL COLE, REPRESENTING FAITH EVANGELICAL CHURCH, said the church is under contract to acquire the twelve acres of the northwest corner of the property. He said his organization generally supports the application. He noted that the parcel they are acquiring does not need a zone change. He added that special review approval would be needed for construction of the church. He said the zone change appears consistent with the neighborhood and the proposed development is appropriate. He stated the developers are high-quality developers and he has every reason to think that the "neighbors" would be doing a quality job of developing their property, which is important to the church.

JIM THAYERS, PRIMROSE RETIREMENT COMMUNITIES, said Primrose is a company from South Dakota that is proposing to develop a retirement community in the lower left-hand 5-acre section on 32<sup>nd</sup> Street West. It would be a two-story 68-unit facility with both independent and assisted living. He said his company has been in business about 15 years and has 8 facilities open and 2 under construction in about four different states. He said he has handouts available about his company. This retirement community would be managed by Primrose Retirement Communities.

LYNN REINLASBLACHER, BACH CORPORATION, SALT LAKE CITY, said his company has been working on this project for three months, noting it would be developing the multi-family component. He said they currently own 1500 apartments and would be building 900 apartments in the next few years. Mr. Reinlasblacher said his company would be developing single-family homes in the southeast corner of the property as well. He noted the apartments would have 24 units per building with a clubhouse, a fitness center, a swimming pool, and hot tub. The apartments would be upscale and not classified as "affordable housing". He noted that his company would not sell the project, but hold them to retain the high value. He said he is happy to be working in Billings and desires to be a developer of which the City can be proud. In response to a question from Councilmember Jones, Mr. Reinlasblacher said the height of the buildings would be 32 feet. He said a neighborhood meeting was held to discuss concerns of the surrounding residents. In response to a question from Councilmember Gaghen, the price range of the apartments would be approximately \$600.00 per month for a one-bedroom and \$1000.00 for a two-bedroom.

BLAINE POPPLER, 2434 AVENUE B, said he supports the zone change. He said the zone change supports the Growth Policy in several ways: 1) being a planned development, 2) being infill development, 3) the Residential 7,000 zoning in the southeast corner addresses the affordable housing issues, 4) there is a desire for more mixed use neighborhoods, and 5) it upgrades Central Avenue between the canal and 32<sup>nd</sup> Street West to a current arterial standard street. He asked the Council to approve the zone change.

MYLES EGAN, BEST REALTY/GMAC, 2690 SOUTHRIDGE DRIVE, said he has spoken with the chairman of the Homeowners Association of Terra West and other homeowners directly south of the Primrose development. He said the main concern of these folks is that the zone change would be approved and the planned development would fail to materialize, leaving the possibility of 250 units in their backyards. He noted that Mr. Reinlasblacher's family has agreed to put a restrictive covenant on the Primrose

portion of the development to not allow more than 70 units. He said the title company prefers that this covenant not be placed until the plat is recorded. Mr. Egan stated this development allows housing in every aspect, addressing affordable housing, senior citizen affordable housing, membership of the church, and apartment dwellers. This is an excellent mix of housing and asked the Council to vote in favor of the zone change.

There were no other speakers. The public hearing was closed. Councilmember Iverson moved to approve the Zoning Commission recommendation, seconded by Councilmember Larson. Councilmember Poppler noted that she would abstain from voting. On a voice vote, the motion was approved.

**5. PRELIMINARY PLAT of High Sierra Subdivision, 4<sup>th</sup> filing, generally located northwest of Skyview High School. Planning Board recommends conditional approval. (Action: approval or disapproval of Planning Board recommendation.)**

Planning Staff Member Candi Beaudry said this preliminary plat is located on the north end of High Sierra Boulevard between the extension of High Sierra Boulevard and Wicks Lane and just northwest of Skyview High School. The plat contains 34 acres and 149 lots are proposed to be developed. Currently the lot is vacant. She noted that the Council recently approved a zone change for this property from Residential 9,600 to Residential 7,000, with the proposed use entirely for single-family residential homes. This property was sold by the City to Oakland Home Builders for development purposes.

Ms. Beaudry said the Planning Board has determined that there will be an affect on the agricultural use in the area. There is concern that there would be conflicts between agricultural users and residential users. She noted there are no agricultural water user facilities.

The Planning Board recommended conditional approval for the High Sierra Subdivision, 4<sup>th</sup> Filing based on the following findings of fact. These findings are based on information from the preliminary plat application and supplemental documents. 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**

The proposed subdivision will border private rangeland to the north. The ranch property is fenced but the subdivision will abut the property line. A 12-foot utility easement runs along the length of the same property boundary. This easement could be used to separate residential uses and help minimize effects on the adjoining agricultural land. Further measures could be employed to reduce the potential for trespass and/or damage to the adjoining property, including notice to landowners of property ownership and fencing.

**2. Effect on Agricultural Water User Facilities**

There are no agricultural water users facilities present on the proposed subdivision.

**3. Effect on Local Services**

**Water and Sewer Service.** City water and sewer will be extended to the proposed subdivision from mains existing in High Sierra Boulevard, Matador Avenue, Cortez Avenue and Sierra Grande Boulevard. Residents in the area have complained to the City on previous occasions about the lack of water pressure in this area. The water pressure problem may be a result of the water pumps, located on Wicks Lane, reaching their design capacity. Without assessing the capacity of these pumps, it would be unwise to permit an unlimited number of connections and reducing the pressure to existing residents even further. The assessment should determine the capacity of the existing pumps and when development would exceed that capacity. The subdivider should be responsible for notifying the City when pump capacity would be met and requesting the pumps to be upgraded through the capital improvement plan process.

**Storm Water Drainage.** Storm drainage and surface flow shall be provided by a combination of surface drainage, curbs and gutters, valley gutters, and storm drain detention. Storm drain facilities currently do not exist in the vicinity of the proposed subdivision. Temporary storm water detention facilities will be constructed off-site in the High Sierra 3<sup>rd</sup> Filing. In the future, the subdivision may be required to participate in the costs of future area-wide storm drainage improvements. The subdivider has included a waiver of right to protest the creation of a Special Improvement District to pay for these future improvements.

**Public Streets and Roads.** Access to the subdivision is from High Sierra Boulevard and Wicks Lane. High Sierra is a collector street that will connect with Annandale Boulevard in the future. The subdivider will construct the entire length of High Sierra from the intersection of Sierra Grande to the north boundary of the subdivision. Both sides of High Sierra will be improved to collector street standards with full height curb and gutter and 5-foot wide boulevard sidewalk. High Sierra will be constructed to 49 foot from back of curb to back of curb. Matador Avenue, Cortez Avenue and Del Mar Street are classified as local streets and will be constructed to 37 foot from back of curb to back of curb. Roll-over curbs and 4-foot wide boulevard sidewalks will be installed along both sides of the local streets. An interesting pavement feature will be incorporated into the design of Matador and Cortez Avenues. The subdivider proposes to introduce subtle S-curves to the roadway within the standard right-of-way widths of 60 feet. The effect will be to widen some boulevards, allowing for additional landscaping, and calm traffic by reducing the sight line. Sierra Grande will be designed to a collector standard, but curb, gutter and sidewalk will be installed only the north side with a 30-foot width of pavement extending from the lip of the gutter. Wicks Lane will be paved from Sierra Grande to the west line of Block 1 to complete the north half of the divided arterial section as established for Wicks Lane. No curb and gutter shall be installed on Wicks Lane except transition curbs.

**Traffic.** The traffic accessibility study concluded that this subdivision would generate 124 vehicle-trips during the morning peak hour and 164 vehicle-trips during the afternoon peak hour. This would contribute approximately 9.4% to the total traffic during the AM peak and 14.1% of the total traffic during the PM peak at the Wicks Lane-Gleneagle (Governors) Boulevard intersection. The subdivider has agreed to contribute 15.72% to the cost of traffic control improvements at the intersection of Wicks Lane and Gleneagles Boulevard based on the subdivision contribution to the total daily traffic volumes at this intersection.

**Fire and Police Protection.** The proposed subdivision will be served by City Police and Fire Departments. The Fire Station #6 is the closest fire station and is located at 1601 St. Andrews Drive, about 2 miles from the subdivision. The subdivider shall install fire hydrants at locations approved by the Billings' Fire Department

**Solid Waste Disposal.** Solid waste disposal will be provided by the City of Billings Solid Waste Department.

**Schools.** The proposed subdivision is served by School District #2. Nearby schools include Skyview High School, one block south, Eagle Cliff Elementary, one mile south and Castle Rock Junior High, one half mile to southeast.

**Parks.** The parkland dedication requirement was met when High Sierra Subdivision 1<sup>st</sup> Filing was platted. High Sierra Park is located southwest of the proposed subdivision at the west terminus of Wicks Lane. Maintenance of the park is performed by the City and paid for with funds received through a park improvement maintenance district. All of the lots within the proposed subdivision shall be added to the existing park maintenance district.

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

The property is essentially flat but drops off abruptly west of Wicks Lane towards Alkali Creek. The soil layer is fairly thin and overlies flat-lying sandstone bedrock that outcrops along hillsides and on flat surfaces. The land is currently vacant, open grassland. The soils are composed of sandy loam and are moderately erodible and do not contain significant amounts of expandable clays.

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

This area of the Billings Heights is frequented by herds of antelope that graze on open rangeland as well as domestic lawns. There may be conflicts between humans and wildlife in this area. The Montana Department of Fish, Wildlife & Parks commented on the presence of antelope habitat and their concerns with future human conflicts. They believed that "prospective homeowners should be advised that current residents in this area are experiencing problems with antelope that eat flowers, shrubs and gardens. FWP does not remove wildlife from residential areas unless there is a threat to physical safety. Since this

subdivision is in and adjacent to occupied antelope habitat, this problem will continue for sometime."

**6. Effects on Public Health and Safety**

There are no known manmade hazards or natural hazards occurring within the proposed subdivision.

**B. Environmental Assessment** [Section 23-304(c)(2), BMCC; 76-3-210(1), MCA]

The proposed subdivision is exempt from the requirement for preparing an environmental assessment because it is totally within an area that has adopted:

1. a growth policy,
2. zoning regulations,
3. a strategy for public infrastructure.

**C. Conformance with the Yellowstone County - City of Billings 2003 Growth Policy, and *Billings Urban Area 2000 Transportation Plan*.** [Section 23-304(c)(3) BMCC]

**1. 2003 Growth Policy**

The proposed subdivision conforms to the following land use goals of the *Yellowstone County – City of Billings 2003 Growth Policy*.

- a. Predictable land use decisions that are consistent with neighborhood character and land use patterns.

*The High Sierra Subdivision, 4<sup>th</sup> Filing is consistent with the master plan approved by the City Council for this area and the previously approved High Sierra Subdivision, 3<sup>rd</sup> Filing.*

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

*The High Sierra Subdivision, 4<sup>th</sup> Filing is a continuation of the Heights neighborhood surrounding Skyview High School. The subdivision extends existing streets and utilities in a similar pattern as the existing development and lot sizes and densities, though slightly smaller, are not out of character with the neighborhood.*

- c. Contiguous development focused in and around existing population centers separated by open space.

*The High Sierra Subdivision, 4<sup>th</sup> Filing is within the City limits and adjacent to existing development. The subdivision may be considered infill and does not contribute to urban sprawl. The subdivision is adjacent to State*

*Trust land and a cattle ranch which both serve as open space buffers along its west and north boundaries.*

- d. Affordable housing for all income levels dispersed throughout the City and County.

*The High Sierra Subdivision, 4<sup>th</sup> Filing is zoned R-7000 and includes lots large enough for duplexes. The small lot size will help keep home prices down. The owner/developer intends on building homes affordable to the entry level consumer.*

- e. More housing and business choices within each neighborhood.

*The High Sierra Subdivision, 4<sup>th</sup> Filing is strictly residential but the R-7000 allows for some flexibility of housing choices. Most of the lots are designed for single family units, but at least 7 lots can be developed for duplex units.*

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

The proposed subdivision adheres to the goals and objectives of the 2000 Transportation Plan and preserves the street network and street hierarchy laid out in that plan. No bike routes or trails were identified for that area in the 1994 BikeNet Plan.

**D. Compliance with the Montana Subdivision and Platting Act and Local Subdivision Regulations. [Chapter 23, BMCC]**

The preliminary subdivision plat application met all the requirements of the City Subdivision Regulations and the Montana Subdivision and Platting Act. The subdivider has complied with the procedures for preliminary plat review outlined in the regulations.

**E. Sanitary Requirements. [Section 23-201, BMCC; Section 23-304(c)(5), BMCC]**

The subdivider must receive certification from the Montana Department of Quality to connect with the City water and sewer lines.

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

A zone change from R-9600 to R-7000 was recently approved by the City Council. Most of the lots range between 7,323 and 8,500 square feet which would accommodate single family units only. Seven of the lots are greater than 9,600 square feet and would accommodate duplex units.

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

Electricity, gas, telephone and cable TV can be extended from existing services adjacent to the proposed subdivision. Where possible, these utilities will be located in an easement along the rear lot lines. However, Northwestern Energy has raised a concern about the "stair-step" utility easements located along the rear lot lines in

Blocks 2 and 4. Without redesigning the lots, the subdivider should reach some agreement with the utility company for the location of the utility easements for these lots.

- H. **Legal and Physical Access.** [Section 23-304(c)(8), BMCC; 76-3-608(3)(d), MCA]. Legal and physical access is provided by High Sierra Boulevard and Wicks Lane.

## **CONCLUSIONS OF THE FINDINGS OF FACT**

Review of the preliminary plat application and supplementary submittal documents indicate that this proposed subdivision will have no significant impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public safety. Furthermore, the preliminary plat complies with requirements of the City Subdivision Regulations and the Montana Subdivision and Platting Act.

Ms. Beaudry said the conditions for approval are:

1. To minimize the effects on agriculture, the subdivider shall post private property signs along the north boundary of Block 1 and require the rear yards of lots adjoining the Dover Ranch property be fenced. The fencing shall not encroach into the utility easement. The fence requirement shall be specified in the Subdivision Improvements Agreement and the Declaration of Restrictions and Protective Covenants.  
As an alternative to the condition stated above, the subdivider shall reach an agreement with the owners of the Dover Ranch and the utility company for an acceptable placement of rear yard fences. The results of that agreement shall be specified in the Subdivision Improvements Agreement and the Declaration of Restrictions and Protective Covenants.
2. To minimize the effect on local services, the subdivider shall:
  - a. Assess the capacity of the water pumps located at the Wicks Lane pump station and determine the number of residences that can connect to the water system before that capacity is reached.
  - b. Present the assessment to the Public Works Distribution & Collection Division for review and approval.
  - c. Restrict the number of water connections to not exceed the existing capacity and specify this number in the SIA. The SIA must also provide for the remaining connections after the capacity of the water station has been increased.
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.
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.

Mayor Tooley called for a 5-minute recess at 8:25 P.M. The Council meeting was reconvened by Mayor Tooley at 8:30 P.M.

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

**6. PRELIMINARY PLAT of Olive Glen Subdivision, generally located at 528 Lake Elmo Drive. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Bruce McCandless said this plat is located at 528 Lake Elmo Drive. It would create two lots for commercial development. There is an existing office building on one lot. He said the owner indicated that he intends to build approximately 60 single-family attached dwellings on Lot 1. This is permitted by the zoning. He said the zoning is Community Commercial and housing is allowed in the zoning.

Mr. McCandless said the findings of facts for Olive Glen Subdivision are as follows:

**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 partially developed with a commercial building and the remainder is dry land pasture. The BBWA canal borders the property on the west but it will not be affected by the subdivision. Water rights/shares on the property should be severed when the land is subdivided.

2. Effect on local services

- a. Utilities – Water and sewer lines are installed in Lake Elmo Drive and service extensions will be made to lot 1 when it develops. This property is in the Billings Heights Water District. Service connections for lot 1 should be installed when the lot develops or Lake Elmo Drive is reconstructed, whichever comes first. Storm water will be retained on site. Private utility companies will provide service to the new lot under their operating procedures. MDU requested easements on each lot's perimeter.
- b. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - Lake Elmo Drive will be the primary access for the property. It is scheduled for reconstruction next year. Adequate right of way has been dedicated by previous owners. If the City doesn't proceed with the reconstruction project, the subdivider should be responsible for improving the street frontage. Access to the collector street should be controlled by City Engineering so that the

driveways don't interfere with the efficient operation and carrying capacity of the street. Killarney Street may be a secondary access for proposed lot 1. It may need to be improved with curb and gutter to its intersection with Shamrock in order to control traffic and stormwater flows from the street. The subdivision to the west of this property platted an alley along the common property line. A no vehicle access strip should be platted along the property line adjacent to the alley because the alley is unimproved and there are no plans to use the alley for traditional purposes such as utilities and solid waste collection. The proposed use for the property will trigger the requirement for a Traffic Accessibility Study. It should be a final plat condition so that the information is available before the lot develops.

- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #6 on St. Andrews Dr. The Fire Department stated that it has no issues with the proposed subdivision but it will be involved with the planned housing project on proposed lot 1. 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 4<sup>th</sup> Avenue North.
- e. Schools – The subdivision is in School District 2. Bench Elementary School will serve the property. The school reports that it has the capacity to serve children from the subdivision and Castle Rock and Skyview are reported to also have capacity. 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 minor plat. The nearest public parks are Two Moon Park and the undeveloped Afflebaugh and Swords Parks.
- g. MET Transit – The nearest MET routes are on Main Street, less than 1/4 mile from this property. This subdivision should not significantly impact 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 should not adversely affect wildlife or habitat. The property borders the BBWA canal that sometimes functions as a wildlife corridor but this development shouldn't restrict wildlife movement through the area. 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. The BBWA canal can be a safety issue for small children and pets. 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 2003 Growth Policy and the Urban Area 2000 Transportation Plan? [BMC 23-304 (c) (3)]**

**1. Growth Policy**

The proposed subdivision conforms to the following land use goals of the *Yellowstone County – City of Billings 2003 Growth Policy*.

- a. Predictable land use decisions that are consistent with neighborhood character and land use patterns.  
*The proposed subdivision is consistent with the neighborhood character that includes a mixture of single and multi-family housing and commercial property.*
- b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.  
*The proposed development of attached, single family housing provides a buffer or transition from the high intensity commercial development along Main Street and Lake Elmo Drive to the single family residential neighborhood that is located west of this property.*
- c. Contiguous development focused in and around existing population centers separated by open space.  
*The proposed subdivision is infill development, utilizes existing infrastructure and does not contribute to urban sprawl. There are no open space buffers planned but a BikeNet easement along the BBWA will be preserved.*
- d. Affordable housing for all income levels dispersed throughout the City and County.  
*The immediate neighborhood contains multi-family rental apartment buildings and single family homes worth several hundred thousand dollars. The proposed single family attached residential development should be a nice mid-point between these extremes. The density that is allowed by the zoning should help to promote more affordable housing.*
- e. More housing and business choices within each neighborhood.

*The property is zoned Community Commercial and is partially developed with a commercial building. If the housing is constructed on lot 1, it will provide more housing choice in the neighborhood.*

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Lake Elmo Drive is a collector street that is scheduled for reconstruction next year. The project is planned as a city financed project, so this subdivider isn't expected to construct standard street improvements unless the City's project doesn't proceed.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. Lake Elmo Drive is a primary district connector, which establishes a BikeNet route on this collector street. The BBWA canal is designated as a conservation corridor and a future bike path or route. A 20' easement is being created along the canal property. No immediate improvements are necessary.

**D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMC 23-304 (c) (4)]**

This proposed subdivision meets the requirements of the Montana Subdivision and Platting Act and the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

**E. Does the subdivision conform to sanitary requirements? [BMC 23-304 (c) (5)]**

The property is served by municipal water, sewer, storm drain and solid waste services and these services will be extended to the new lot. All services are approved and regulated by state and federal authorities.

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

The property is in the Community Commercial zoning district. The existing building and use conform to the zoning. Additional commercial use or the proposed housing development conform to the zoning. If housing is constructed, it must follow the requirements for the Multi-Family Residential – Restricted classification.

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

The subdivision adjoins a public street right of way that provides space for utility installations but easements are required on the perimeter of the lots.

**H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and BMC 23-304 (c) (8)]**

The lots border Lake Elmo Drive and Lot 1 has access to Killarney, both public streets that provide legal and physical access.

**CONCLUSIONS OF FINDING OF FACT**

- The overall conclusion of the Findings of Fact is that the proposed Olive Glen Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- There should be little effect on local services because this is an infill proposal and services are already provided to the partially developed property and surrounding properties.
- The proposed subdivision conforms to several goals and policies of the 2003 Yellowstone County – City of Billings Growth Policy and doesn't conflict with the Transportation or BikeNet Plans.

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

Mr. McCandless said the Staff recommendation is for conditional approval with the conditions as follows:

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 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. 8' easements will be created along the perimeter lot lines of both lots.  
*Required by BMCC Section 23-603 and requested by MDU*
5. A 1' no vehicle access strip will be created along the property's border with the adjacent O'Leary Subdivision alley.  
*Requested by Public Works*
6. A Traffic Accessibility Study will be completed prior to final plat approval. It shall be reviewed and approved by City Engineering and any identified on-site or off-site improvements completed or financially secured before final plat approval.  
*Required by BMCC Section 23-702 and requested by Public Works*

7. If Killarney Street is used for lot 1 access, it shall be improved with standard city curb, gutter and pavement from lot 1 to its intersection with Shamrock Street.

*Required by BMCC Section 23-702 and requested by Public Works*

8. 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.*

9. 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.*

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

**7. DISCUSSION ON AMENDMENTS TO THE ANNEXATION POLICY. Staff recommends approval of those alternatives Council wishes to add to the current Annexation Policy and direction to staff on a ranking system for the evaluation criteria. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Ohnstad moved for approval of all alternatives developed by the Staff, seconded by Councilmember Larson.

Councilmember Brewster said he sees a conflict between Alternative #1 & #2 regarding the timing of phased improvements. He said Alternative #1 appears to take care of Alternative #2. Mr. Bauer said one provides more flexibility. Councilmember Brewster amended the motion to delete Alternative #1 and accept Alternative #2 instead of #1, seconded by Councilmember Kennedy. Mayor Tooley asked about the ability to enforce Alternative #1. Planning Department Director Ramona Mattix said there is a way to enforce that includes monitoring any time limits or specific negotiations that are made during annexation. Councilmember Kennedy asked how potential buyers would be informed of these phased in improvements. Ms. Mattix said this information would be available to purchasers during the title search process.

Mayor Tooley asked for confirmation that the pluses and minuses in Alternative #1 apply to Alternative #2. Ms. Mattix replied "yes". Councilmember Gaghen commented that this alternative would be difficult to monitor.

Councilmember Iverson asked if the phrase "in no instance should the phasing exceed 10 years" from Alternative #1 can be added to Alternative #2. Councilmember Brewster said that was not the intent of his motion, adding that he prefers Alternative #2 that gives more flexibility. Mr. Bauer said the requirements have two main purposes: 1) to communicate to the potential annexing parties what the parameters are that they must meet coming into the City, and 2) to guide the Staff. He said the Staff should know what

limits the Council would be giving them to negotiate the timeframes. Councilmember Kennedy said there should be a stated time frame with exceptions for hardship cases that would allow future Councils the flexibility to remove a stated year timeframe in certain instances. He said the idea of this annexation policy is to encourage annexation. The idea of a ten-year period is good, but he does not want to "shut the door" on it either.

Councilmember Poppler asked the City Attorney if the Council could approve something that obligates the Council for a timeframe beyond the term of the newest member of the Council or extending something beyond the authority of current councilmembers. City Attorney Brent Brooks replied "yes". Mayor Tooley stated that Council action remains in force until a future action of a future Council.

Councilmember McDermott said the Council needs to "get a payback" for infrastructure that has been built by the City out to these areas. The way to do that is to encourage annexation. Ms. Mattix said the effect would be that every negotiation timeline would be open and the further the timeline the more difficult it would be for the property owners to anticipate. The shorter the timeframe the more likely the information would be available. Councilmember McDermott said the cost of these improvements can be so great that the homeowners need as much time as possible to finance it. Mr. Bauer said the goal of the Council is to either make it easy for all properties in the sphere of influence to annex or mandate a differentiation between properties that should and should not be annexed. The suggested alternatives should be adjusted accordingly. Councilmember Gaghen asked if the discretionary period for phasing in improvements in annexation is a common occurrence in other areas. Ms. Mattix said it is not a usual policy and generally not a negotiable process. Mr. Bauer said most communities have much more specific requirements for annexation. Councilmember Gaghen said she is uncomfortable in allowing more flexibility that would become cumbersome for Staff to enforce.

Mr. Brewster said this particular area has limitations on where landowners can obtain water and ground appropriate for septic installation. He noted there is virtually no water in the area that the City would like to see developed. These are small subdivisions that are right next to City boundaries and close to City services.

Mayor Tooley said he would like to discourage leap-frog development because there is little consideration for the cost to the homeowners and the community. His interest is to fashion the annexation policy to discourage this type of development. He said this is an overview to keep in mind as these alternatives are discussed. Councilmember Kennedy said the phrase "adjacent to the City limits" should be added to these conditions to specify that annexation would not be considered without this requirement.

Councilmember Iverson said a 10-year maximum time limit for phasing in improvements is a reasonable requirement. Councilmember Brewster said Alternative #1 & #2 both say the same thing with the addition in #1 of an actual timeframe. Councilmember Ohnstad noted problems can occur without a specific timeframe. Councilmember Brewster stated that Alternative #2 states that specific commitments for timing of phased improvements must be made and requires specific negotiations.

Councilmember Larson said that Alternative #2 could be amended to include the goal of achieving the phasing in within ten years unless there are special circumstances that the Staff would bring to the Council that would change that. He said the Council needs to express to the Staff that 10 years is the target, but not set that in stone. He

noted that Alternative #3 requires the subdivision to submit a Master Plan showing future density potential which would be an added expense for the development. Alternative #4 regarding underground utility installation is another substantial expense for the subdivision. Alternative #5 requires Right-of-Way dedications. Alternative #6 requires a maintenance district that is another expense for items that are not to City standards. He said he does not think the City is creating an incentive for sub-standardly built subdivisions if Alternatives #3 through #6 are approved, but rather an incentive to do it right in the first place. The City is asking for a large commitment from potential annexation requestors with those specific alternatives. On a voice vote for the amended motion, the motion was approved. Alternative #1 was disapproved and deleted, and Alternative #2 approved.

Mayor Tooley questioned the need for Alternative #6 – to require the petitioners to form a maintenance district or service surcharge for those items or services not to City standards. This would increase cost to track different maintenance districts, he said. Ms. Mattix said this would allow the Council to grant annexation to a petitioner and agree that the service level would be less or that they would pay more for an additional service. Councilmember Larson said he would like to see Alternative #6 remain as another negotiated element of the annexation. Mayor Tooley said he would not want to see it a requirement, but there should be a time limit to avoid neighborhoods with gravel roads surrounded by similar homes that have paved streets. Councilmember Brewster said that situation could be covered under Alternative #2 where specific commitments would be made to meet the requirements. The maintenance district would survive until City standards were met. Mr. Bauer noted that the City does maintain some unimproved roadways, but they are large generators of complaints and require a lot of special attention. Councilmember Larson suggested that the word “allow” be substituted for “require” in the formation of a maintenance district with a set timeframe commitment to meet City standards.

Public Works Director Dave Mumford expressed concerns for giving subdivisions a ten-year time frame to bring gravel roads to City standards. He said the main concern is that the City would be maintaining a gravel road for ten years at a very low fee because of the small number of lots to cover the cost. Councilmember Jones asked if administrative costs are allowed to be included in the maintenance. Mr. Bauer replied “yes”. Councilmember Jones said the word “require” should remain to insure the maintenance of the roads. Councilmember Brewster agreed with Councilmember Larson that all of the alternatives make potential annexation requestors take a hard look at those requirements before taking the first steps toward annexation.

Ms. Mattix noted that Alternative #8 should have the words “last ten years” omitted. Councilmember Kennedy amended Alternative #8 to delete “within the last ten years”, seconded by Councilmember Jones. On a voice vote for the amended motion, the motion was unanimously approved. Alternative #8 is amended to read “For any subdivision created in the County, require all existing water and/or sewer systems be improved to current City standards and allow for phasing of the improvements.”

Councilmember Kennedy said this policy isn’t perfect but it is adequate for now and he urged the Council to approve the alternatives as they have been amended. Councilmember Larson commented that Alternative #7 refers to annexations of more than 50 acres being brought to City standards immediately. He said he is concerned that the

minus creates the concern that those large areas may need a level of service that the City is unable to respond to. Ms. Mattix said this requirement allows an agreement prior to annexation to the City that accepts a lower level of service. This is currently done with vacant property.

Councilmember Jones expressed the concern that these alternatives are changing the policy without the requirement of a public hearing.

Councilmember Poppler called for the question, seconded by Councilmember Gaghen. On a voice vote to stop debate, the motion was approved with Councilmember Brown voting "no". On a voice vote for the motion as amended, the motion was approved with Councilmember Brown voting "no".

**Summary of alternatives and Council action:**

#	Alternative	Council Decision
1	Allow for phasing of improvements or services to meet City standards, but in no instance should the phasing exceed 10 years	Disapproved/Deleted
2	Require specific commitments for the timing of phased improvements or services in an annexation agreement	Approved
3	Require a Master Plan be submitted showing possible future subdivisions so that the increase in density potential can be evaluated by the Council.	Approved
4	Require that when underground utilities are constructed, a street and pedestrian facilities design be submitted and paid for by the petitioners so that the utilities would be installed consistent with the street and ROW improvements needed.	Approved
5	Require ROW dedication on lots to be annexed where the ROW is not to City standards	Approved
6	Require the petitioners to form a maintenance district or incur a service surcharge for those items or services not to City standards	Approved
7	Require that large area annexations of developed property (>50 acres or >50 units) and created within the previous 10 years be treated the same as vacant property and brought to City standards.	Approved
8	Require that any subdivision created within the last 10 years in the County require all existing water and/or sewer systems be improved to current City standards and allow for phasing of the improvements.	AMENDED to read "For any subdivision created in the County, require all existing water and/or sewer systems be improved to current City standards and allow for phasing of the improvements.

**8. PUBLIC COMMENT. (Restricted to Non-Agenda Items; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)**

- TOM SAWATZKE, 2140 WHITEWATER CIRCLE, spoke on the Arlene Corridor Project. He said at a meeting he attended last week he learned that the proposed alignment between Poly Drive and Grand Avenue had been changed and is now 50 feet from his back yard. He asked that the City not be allowed to impose its might and mandate that the Whitewater Circle neighborhood bear the burden of the negative impacts of a badly needed busy street. He said he supports the need for the road. Mr. Sawatzke asked that the neighborhood be allowed to offer input on the proposed alignment and that Staff evaluate other alternatives.

Public Works Director Dave Mumford said this concern was brought to the attention of a Public Works consultant at a November 13<sup>th</sup> meeting that discussed the final design. This concern is being reviewed with the design staff regarding options for shifting the road. He noted that the 50 feet is actually to the road right-of-way; the actual road is much farther away. Mr. Mumford said after the review, the design staff would meet next week with the residents in that area.

**Council Initiatives**

- COUNCILMEMBER BROWN: Councilmember Brown spoke on the legislative intent of HB94 regarding public comment at meetings. He indicated he thought our process violated the intent of HB94 and asked that Staff investigate the legality of time limits and limiting public comment to non-agenda items. He expressed concern that the City is opening itself up to a costly lawsuit. Staff was directed to make copies of the text of HB94 and the legal opinion from the City Attorney and distribute copies to the Council. Mr. Bauer said the Council has the option to go beyond the minimum requirement that meets the law. Councilmember McDermott suggested that the Director of Legislative Services be invited to speak to the Council about this issue at a future work session.
- MAYOR TOOLEY: Mayor Tooley read a letter from Rocky Mountain College regarding the recent vandalism to the tepee on their campus. RMC will be replacing the tepee in the near future. Mayor Tooley asked the Council for a statement of support for RMC and against hatred and discrimination. Councilmember Gaghen moved to prepare a resolution of support for RMC and against hatred and discrimination, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved. A resolution will be prepared and scheduled for Council at its next meeting on 12/8/2003.
- COUNCILMEMBER OHNSTAD: Councilmember Ohnstad moved to hold a public hearing before the Council to allow the CDC (Citizens for Deer Control) Committee and any other interested parties to comment on the deer control issue in the City, seconded by Councilmember Gaghen. Councilmember Poppler asked for information prior to the public hearing about what options the Council has to deal with wildlife issues. On a roll call vote, the motion failed 4-7. Councilmembers voting "yes" were McDermott, Gaghen, Poppler, and Ohnstad.

Councilmembers voting "no" were: Brown, Brewster, Iverson, Mayor Tooley, Kennedy, Jones and Larson.

City Administrator Kristoff Bauer commented on the Master Plan requirement for the annexation requirements that were adopted this evening. He said Golden West Estates has not developed a Master Plan and is currently scheduled to be on the December 8<sup>th</sup> Council agenda for consideration of annexation. He asked the Council for direction on this issue. Councilmember Kennedy commented that the Council has completed the work that is required of them, and it is now up to the petitioners to do their work.

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 10:05 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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