

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 22, 2002

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 Poppler.

ROLL CALL – Councilmembers McDermott, Brown, Brewster, Iverson, Kennedy, Poppler, Ohnstad, Jones and Larson were present on roll call. Mayor Tooley noted that Councilmember Stephen Bradley unexpectedly passed away last week. Vigil services will be tomorrow evening at Dahl Funeral Chapel and funeral services will be held Wednesday morning at St. Pius Church.

MINUTES – July 1, 2002 and July 8, 2002. Approved as printed.

COURTESIES –

- **Community Development Division - Wells Fargo.** CDBG Coordinator Jill Krueger introduced Patrice Elliott from Wells Fargo. Wells Fargo has partnered with the Community Development Division in a low-income housing rehabilitation loan program and also contributed a \$10,000 grant toward administration of the program.
- **Police Department** – Sgt. T. J. Vladic, Outstanding Supervisor 2001
Deanna Anthony, Employee of the Year 2001
Peggy Lehman, Volunteer of the Year 2001.

Chief Tussing presented the awards to the individuals listed above. Ms. Lehman, Ms. Anthony and Sgt. Vladic also received a \$100 gift certificates and a plaque for their service. He noted that Deputy Chief Archer received an Administrator of the Year Award at the Montana Chiefs of Police Conference last week.

PROCLAMATIONS – Mayor Tooley. None

BOARD & COMMISSION REPORTS. None

ADMINISTRATOR REPORTS – Dennis Taylor.

Assistant City Administrator Kristoff Bauer said he has asked Recreation Supervisor Joe Fedin to talk about wading pool hours of operation. Mr. Fedin said lifeguards are actually supervising the wading pools this year. They are operating from Noon to 6:00 p.m. each day. He noted that people have asked to have them open from 10 a.m. to 8 p.m. each day. Mr. Fedin said they did not think they could get qualified lifeguards this late in the season for any additional wading pool positions. He said they could plan and budget for that issue next year.

Mayor Tooley discussed the procedure for replacing the vacant Council position in Ward I due to the unexpected death of Councilmember Stephen Bradley. He noted the City Charter calls for the vacancy to be filled within 30 days. He said he would be accepting letters of interest until August 5th. A replacement will be approved and

appointed at the August 12th Council meeting. A Council committee consisting of Councilmembers McDermott, Kennedy and Ohnstad will conduct interviews. The Committee will recommend two candidates to the Mayor and he will select one of the candidates that will be presented to the City Council for approval. Any citizen of Billings who resides in Ward I is welcome to apply for the position, with a letter of interest, a resume and any support information. The qualifications include: an individual must be a citizen of the United States, a qualified voter and a resident of Ward I.

CONSENT AGENDA:

1. A. Bid Awards:

(1) Roof Coating for Industrial Park Hangars 1-4 for Billings Logan International Airport. (Opened 6/25/02-delayed from 7/8/02). Recommend rejection of all bids received.

(2) Work Order 02-03, 2002 Street Maintenance, Contract #2. (Opened 7/16/02). Recommend H.L. Ostermiller Construction Inc., Schedule I: \$340,404.03; Schedule II: \$125,536.77.

B. Change Order #2, Circle Fifty and Hancock Grand Subdivision, JTL Group, Inc., \$5,545 and 0 days.

C. Modification #1, to DATARADIO contract for modification of Mobile Technology Computers, DATARADIO, \$29,569.37.

D. Agreement to acquire the Naviline software from H.T.E, Inc., \$61,280 from information technology service fund.

E. Agreement to provide Law Enforcement Data Processing Service to Yellowstone County Sheriff's Department for July 1, 2002 through June 30, 2003, \$62,613.00.

F. Agreement between Parmly Billings Library and Yellowstone Genealogy Forum to maintain genealogical materials.

G. Agreement to reimburse Optima Venture L.P. for a portion of costs incurred in construction of sanitary sewer to benefit facilities in Weil Subdivision/Holiday Business Park.

H. Approval of Sale and Removal of Modular Home on City Owned Property at 63 Charlene Street.

I. AIP 17 Grant Amendment and AIP 23 Grant Authorization; total grant funds: \$253,800 (City's share is 10% = \$25,380.)

J. Approval to provide an additional funds in FY03 HOME funds to the Housing Authority for the 8-unit Autumn Square Townhouses, SW corner of So. 28th Street

& 2nd Avenue So., \$55,000

K. Resolution of Intent 02-17864 to Create SID 1349 for Lake Hills Subdivision, 9th, 10th, 13th & 25th filing to install water, sanitary sewer, curb and gutter, and street improvements, and setting a public hearing date for 8/12/02.

L. First reading ordinance providing for one Public Hearing at the first reading of an ordinance or any matter requiring a Public Hearing, and setting a public hearing for 8/12/02.

M. First reading ordinance authorizing the City Administrator to execute certain contract amendments/change orders on first reading, and setting a public hearing for 8/12/02.

N. D.A. Davidson & Co., Billings Gazette and First Citizen Bank street closure for an ice cream social to thank downtown merchants for their patience during construction, Friday, July 26, 2002, 11:00 a.m. to 2:30 p.m.

O. Alberta Bair Theatre street party closure in front of the theatre for kick-off event of the Australian group The Waifs, Thursday, September 5, 2002, 12:00 p.m. to 8:00 p.m.

P. Final plat of Broadwater SV Subdivision.

Q. Bills and payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Item M from the Consent Agenda. Councilmember Brewster moved for approval of the Consent Agenda with the exception of Item M, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item M, seconded by Councilmember Larson. Councilmember McDermott said the Council should not be delegating their authority to the City Administrator regarding the execution of certain contract amendments and change orders. She stated this is delegating budget authority and encouraged the Council to disapprove Item M. On a voice vote, the motion was approved with Councilmembers McDermott, Brown, Poppler and Jones voting "no".

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 02-17865 to Proceed to sell, dispose or lease City property: parcels undesirable for future parkland and 188 acres subdivided into 5 lots known as High Sierra Subdivision, and setting an auction date of August 19, 2002. Staff recommends approval. (Action: approval or

disapproval of staff recommendation.)

Parks and Recreation Director Don Kearney said this is a proposed sale by auction of 188 acres called High Sierra property west of Skyview High School and 11 park properties located throughout the City. He said the Parks 2020 Master Plan, adopted by the Parks and Recreation Board and the City Council, recommended the sale of these parks. The goal of the sale is to remove these park lands from City ownership and to place them back onto the tax rolls. He said the average size of the parks is approximately one acre. He noted the 2020 Master Plan identified a need for larger parks and these small parcels do not fit into that recommendation. He reminded the Council that their approval of the sale is required after the auction has taken place. He noted that other options of the sale of the smaller parcels would be for the surrounding property owners to form a Park Maintenance District or other acceptable maintenance entity, with a waiver of protest included to protect against a failure to pay taxes. A delay of sale for a certain park property is also an option. He noted that the High Sierra park land involves a failed SID and all the funds from the sale must go back to the SID fund, as required by State law. Councilmember Brown asked what the method would be to remove a certain park from the list of available park land for sale. Mr. Kearney said that would be part of the Council's recommendation via a motion.

The public hearing was opened. STEVE JUDD, 2519 SUNNYVIEW, noted that Sally Ann Park is contained in Lake Hills Subdivision, 25th filing, which is included in SID 1349 that was on the agenda as a resolution of intent to create the SID. The subdivision is just getting started and he asked that the Council give the potential homeowners a reasonable amount of time to decide whether they wish to create a Park Maintenance District on the park land. Councilmember Larson inquired about the reasonable amount of time that would be needed. Mr. Judd said the subdivision has been vacant since the 1960's and noted that there are four houses to be built this fall and it will take at least two years to get the subdivision going.

CHARLIE GAMBLE, 1819 CRYSTAL DRIVE, said he represents the homeowners of the Town and Country Estates that have maintained Dokken Park for the last thirty years. He noted that the park is well maintained and cared for, adding great value to the surrounding area. He said the homeowners have proposed to form an association, a legal entity, including a waiver of protest as requested by the Parks Department that would maintain the park. He asked the Council to withdraw Dokken Park from the auction and give the homeowners an opportunity to establish the homeowner's association. The association would contract for maintenance of the park. Mayor Tooley asked if the homeowners intend to purchase the park. Mr. Gamble replied "no". He added that the City is currently paying for the water to the park and the homeowners' intent is to assume that cost and obtain a liability insurance policy as part of the association.

RON WHITWORTH, 2529 RANCHETTE ROAD, said he had a landscape architect draw a plan for Rolling Hills Park approximately two years ago. He said he had a petition signed by 22 of the 24 property owners that are willing to form a PID to support and pay for all improvements of the park. He requested the Council remove Rolling Hills Park from the sale list and allow time for the homeowners to form the PID.

CARMEN DECARLO, 1641 AUGSBURG DRIVE, said a group of surrounding neighbors had signed a petition in 1998 and again this year to keep Lutheran Park as a park. He said the park is used by the surrounding property owners for all the different

sports because it is undeveloped and ideal to practice on. He asked that the Council keep the park as it is. Councilmember Brewster asked if the Lutheran Church uses the park. Mr. Decarlo said the church uses the park for many functions and noted that the church maintains the sprinkling system and the City provides the mowing. He said the neighbors are willing to form a Park Maintenance District to maintain the park.

TOM HARMON, 1662 AUGSBURG DRIVE, said four years ago the surrounding neighbors of Lutheran Park signed a petition requesting that the park not be sold. He said the park gets heavy use by the neighborhood children during the different sporting seasons. He noted the current petition has 70 signatures asking the Council to remove Lutheran Park from the list of park land to be sold and allow the property owners to maintain the park.

STEVE DERTING, 1625 AUGSBURG DRIVE, said he has lived in the area of Lutheran Park for the last nine years. He said the park is a nice, open park that is a great place for children to play. It is a low maintenance park, requiring mowing only. He asked the Council to keep the park open to the children.

JEAN MEHLHAFF, 1635 AUGSBURG DRIVE, said she has lived in the area of Lutheran Park for twenty-four years. She supports the neighbors' request that the park remain as it is. She noted it is a very desirable place for children to play.

TED GODWIN, 2706 COUNTRY LANE, said he represents the residents around Dokken Park. He said he has managed the park for the last eleven years, collecting money to pay for the contractor to mow and fertilize the park. He noted the residents have spent over \$42,000 in the last eleven years to maintain the park. He said the residents are willing to take over the expenses of the water. He asked the Council to save this park.

KEN HOLLER, 1616 O'MALLEY DRIVE, said he has been in land development for over fifty years. He said the most recent development he was involved with is close to Sally Ann Park. The area has 80 homes worth over \$20 Million and an SID was recently created for the subdivision. He asked the Council to give the homeowners in the area a chance to get the subdivision built and a Park Maintenance District created. He said the decision to put Sally Ann Park up for sale "is most erroneous." He asked the Council to give the subdivision a chance to grow and form a Park Maintenance District and to remove Sally Ann Park from the sale list.

LESLENE CASSEL, 3412 ARLENE CIRCLE, said her property is adjacent to Racquet Club Heights Park. She said the park has been maintained with lawns, trees and flower gardens by the adjacent homeowners. She said the developers created this "common ground" area to give the residents room in a park type setting. She said she feels it is a lack of good faith to allot the developers a common ground area that is being taken away. She asked the Council to consider removing Racquet Club Heights Park from the list of parks to be sold.

G. D. CHRISTMAN, 3391 RACQUET DRIVE, said he is the president of the Racquet Club Heights Homeowners Association. He asked the Council to delay the sale of the Racquet Club Height Park until the tax code elimination issue is resolved.

GENE HERBERT, SR., 3014 MORLEDGE STREET, said his purpose tonight is to save Ramada Natural Park. He said he has lived across the street from this park for the last twenty-five years. He noted the park is in the middle of the subdivision and was donated to the City by two developers. He said the City has not put any money into improvements of this natural park and the surrounding residents want to keep it in its

natural state. Mr. Herbert said four years ago the residents asked the Park Board to designate this as a natural park in hopes that this would stop the "ridiculous notion that we have to get rid of small area parks." He said it was given to the subdivision as a park and not to the City "as an asset to be sold on a whim." Children use the park for all kinds of sports and games. He also noted it is a park where animal lovers can bring their animals for walks. Mr. Herbert said the cost of maintenance to the park is minimal when it has only been mowed one time this year. Once the City sells this park, it will be gone forever. He asked the Council to leave the park as it is. Councilmember Brown asked if the residents in the area would consider a Park Maintenance District. Mr. Herbert said it could be arranged.

KATHY HANSON BROWN, NO ADDRESS GIVEN, said she lives across the street from Ramada Park. She said her children, along with many other children, have been using this part for recreation since the day they moved into the neighborhood. The park gives the neighborhood children a fun, safe place to play. She asked the Council not to take away their park.

EVERETT JONES, 3027 MORLEDGE, said he realized the City is in the middle of a difficult "budget crunch". He said younger families are moving into the area and Ramada Park is needed for these young people. This is the only place children can go to safely play. The surrounding residents desire that this park remain undeveloped, but that does not mean that it is unkempt. He said the surrounding residents could make it "cost neutral" for the City. He asked the Council to take this park off the list of parks for sale. Mr. Jones said the neighbors would be willing to do what is needed to keep this park.

MIKE FORNSHELL, 2530 SILVER SPUR TRAIL, said his house borders Rolling Hills Park. He said the park has a lot of potential and the neighborhood is planning to put a PID in place. He noted it is a great location and place for the children to play. He asked the Council to let Rolling Hills Park remain a park.

RON HILL, 2202 WEST SKOKIE, said he is speaking to protect all of the parks. He said the subdivision requirements that mandate protection of park lands is a good thing. He noted that SID 1349 on this evening's agenda, concerns Sally Ann Park, which is the park that his property overlooks. He asked the Council to protect Sally Ann Park.

IVAN WHITE, 300 NO 25TH STREET, said that Councilmember Bradley was his voice for the downtown district and this voice is missing tonight. He urged the Council to establish a memorial garden from one of these park lands that are being sold to commemorate democracy and the work that Councilmember Bradley did to secure dignity for the downtown residents.

ROB VELTKAMP, 2626 COUNTRY LANE, said he is speaking on behalf of Dokken Park. He said all of the residents present tonight are willing to continue all the parks as they are no matter what the cost would be. At a meeting of the residents in his neighborhood it was agreed to assume all of the costs involved through the formation of a Park Maintenance District and let the property owners pay for the maintenance of the park. There were no other speakers. The public hearing was closed.

Councilmember Iverson moved for approval of staff recommendation to sell park properties with the exception of Racquet Club Heights Park, Rolling Hills Park, Ramada Park, Sally Ann Park, Dokken Park and Lutheran Park, seconded by Councilmember Brown. Councilmember Larson amended the motion to direct staff to prepare a staff report at the next agenda meeting on the process necessary to create PMD's on the parks

that have been separated, seconded by Councilmember Kennedy. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION 02-17866 vacating the alley in Block 273, O.T. of Billings. Staff recommends approval (Action: approval or disapproval of staff recommendation.)

There was no staff report. Assistant City Administrator Kristoff Bauer confirmed that the property is currently owned by School District #2 and leased to Headstart. 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 McDermott. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND SECOND/FINAL READING ORDINANCE 02-5216 extending the boundaries of Ward II to include recently annexed property in Annexation #02-13 for Tract 2B and 3, C/S 3011 Roy and Jock Clause, petitioners and owners. Staff recommends approval. (Action: approval or disapproval of ordinance on second/final reading.)

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.

5. PUBLIC HEARING AND SECOND/FINAL READING ORDINANCE 02-5217 revising BMCC Section 2-706, providing that a city official or employee may accept a gift or favor of food, merchandise or services whose cash value is less than \$50. Staff recommends approval. (Action: approval or disapproval of ordinance on second/final reading.)

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. Councilmember Brown moved to amend the motion to approve the gift in favor of food only and delete the gift of merchandise or services whose value is less than \$50, seconded by Councilmember Poppler. Councilmember Brown said \$50 is a significant gratuity. He said merchandise or services in the amount of \$50 could become a problem. He said he does not want the temptation of merchandise or services to sway a City employee with regard to a decision they may make. Councilmember Larson asked if this would include merchandise such as the T-shirt he received for opening the Big Sky State Games. Councilmember Ohnstad said he would like to know what the rationale was with regard to merchandise and services. Mayor Tooley said the Board of Ethics reviewed the current code of ethics and determined it to be so restrictive and did not allow elected officials or City employees to do certain things that involve communication with the citizens of Billings. The wording of the proposed ordinance was designed by the Board of Ethics with several safeguards: 1) no cash is allowed, and 2) no City official may receive any gift of any kind if it is given to influence their vote or behavior. He said this would allow City officials attending certain functions that involve City business meetings

with committees or groups to accept a meal or a small token gift (i.e. a pen, a mug, or a T-shirt) offered to them. Councilmember McDermott asked if the City official could accept a gift over the amount of \$50 if it is turned over to the City as if it was City property. City Attorney Brent Brooks said this would be one option and another option would be for the City official to pay for the item or determine a value for the item and make a contribution of that amount. On a voice vote for the amendment, the motion failed with Councilmembers Brewster and Brown voting "yes". On a voice vote on the original motion, the motion was approved with Councilmembers Jones and Brown voting "no".

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#700: a zone change from Residential 9,600 to Community Commercial on Lots 1-3, Block 1A of Lampman Subdivision Amended. The subject property is generally located at the southeast corner of South 30th Street West and Henesta Drive.
Louie Kuchera, owner. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this is a zone change located on the southeast corner of Henesta Drive and South 30th Street West. The surrounding zoning to the north is Residential 9600 and Single-Family Residential, to the south and west is Community Commercial, and to the east Controlled Industrial. He said there was a previous attempt to change the zoning to Community Commercial last March, which was defeated by the Council. At that time there was significant protest from the surrounding neighborhood. He said the owner of Lot 4 worked with the neighbors to devise a solution that would satisfy them. The result is a draft of a Development Agreement that if it is approved would provide for a concrete type wall along the north property line, which is Henesta Drive, landscaping along Henesta Drive and restrictions on access onto Henesta Drive. He noted there was no opposition from the surrounding residents at the Zoning Commission meeting held earlier this month. The Zoning Commission is recommending approval of the zone change based on the attached 12 criteria. Councilmember Brewster noted that the conditions appear to be the same conditions that were offered at the previous meeting. Mr. Bollman said he thought the Development Agreement came too late during the previous attempt to allow the residents to understand what the agreement would do. He said their concerns have been addressed and the evidence of what the owner has done on King Avenue was a positive visible sign to the residents. Councilmember Jones asked about conditions to the zone change. Mr. Bollman explained that conditions couldn't be placed on a zone change. The Development Agreement would have to be approved by the City Council at a later date, he said.

The public hearing was opened. LOUIS KUCHERA, 5220 PRIOR MOUNTAIN VIEW DRIVE, said he proved to his neighbors that he would do everything he said he would do. Everything is now on Tract 1A, the building and the lighting, he noted. He said he feels he is less intrusive than the nearby McDonald's Restaurant. He noted there is a security system that scans the area for potential trouble. He said several of the lights were adjusted to comply with requests from the neighbors. He said the basic need now is additional parking. There were no other speakers. The public hearing was closed.

Councilmember Jones moved for approval of the zone change, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

7. PRELIMINARY MINOR PLAT of Croy Subdivision, generally located at the intersection of Lake Elmo Road and Milton Lane. Staff recommends conditional approval of preliminary plat and findings of fact. (Action: approval or disapproval of staff recommendation.)

Planning Staff Member Gail Kenson said this is a minor subdivision plat on the east side of Lake Elmo a ¼ of a mile north of Hilltop Road. It is a two-lot subdivision and zoned Residential Multi-Family. She said the staff is recommending conditional approval that includes:

1. To minimize the effect on local services, the subdivider shall:
 - a. Place on the face of the plat an 8-foot utility easement along the north, south and easterly property boundaries.
 - b. Reduce the right of way dedication from a 20 foot required width to 15 feet.
 - c. Request a variance of the required right of way dedication of 20 feet (Article 23-600 (k) BMCC).
2. Minor wording. Minor wording changes hereafter shall be made in the Subdivision Improvements Agreement, Waiver and other related platting documents may be requested by the City Engineer's office, the Public Utilities Department and the Planning Department to clarify the documents and properly address issues identified during the preliminary plat review and bring them into the standard, acceptable format.
3. Compliance. If approved, the final subdivision shall comply with all requirements of the City of Billings Subdivision Regulations (except for the variance requested), 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.

NOTE: The City Engineer and the Billings Fire Marshall shall assign all addresses.

The Findings of Fact for Croy Subdivision have been prepared by the City-County Planning Department. These findings are based on information received from the subdivider, their engineer, city departmental review, and planning staff evaluation. The findings address the review criteria required by the Montana Subdivision and Platting Act (76-30608, MCA) and the City of Billings Subdivision Regulations (Section 23-304(c))

A. Primary Review Criteria [Article 23-300, Section 23-304 (c)(1)] [MCA 76-3-608 (3)(c) BMCC]

1. Effect on Agriculture

The site is presently used for a single family dwelling unit and a duplex dwelling unit and there is currently no agricultural use on the subject

property.

2. Effect on agricultural water user facilities

This development will not affect any agricultural water user facilities.

3. Effect on Local Services

The property proposed with this subdivision is currently within the Billings City limits and is served by existing City services.

- **City Engineering Division.** The City Engineer's office has reviewed this proposed subdivision and had these specific comments:
No internal streets are proposed with this subdivision. Current access for Lots 1 and 2 will remain the same.
- **Parks and Recreation.** Minor subdivisions are not required to dedicate parkland.
- **Fire and Police Protection.** The City of Billings Fire Department and Police Department presently provide fire and police service.
- **Public Utilities Department.** The Public Utilities Department presently provides water and sanitary sewer service to the property.

4. Effects on the Natural Environment

This project is located on property that has already been developed for single and duplex family housing.

5. Effects on Wildlife and Wildlife Habitat

This property is in a relatively heavily developed part of Billings and the subdivision of this property will not have any more adverse impacts to wildlife than the existing multifamily uses.

6. Effects on Public Health and Safety

The subject property is zoned Residential Multi-family and currently supports a single family residence and a duplex dwelling unit and the owner is not proposing to change this use or intensify the use on the property.

B. Conformance with the *Yellowstone County Comprehensive Plan*, and *Billings Urban Area 2000 Transportation Plan*. [Article 23-300, Section 23-304(c)(3) BMCC]

1. 1990 Yellowstone Comprehensive Plan

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

- **Retain and improve existing residential neighborhood and develop new residential areas in an orderly and financially sound manner. (K-1)**

The proposed development is an existing residential development that is within a transitional area between the commercial development along Main Street and the less dense residential uses on Lake Elmo. The proposal is consistent with and compatible with the existing built environment.

- **Protect against the encroachment of incompatible or related uses. (K-5)**

The proposed development is an existing single and multi-family residential areas and is adjacent to like and compatible uses.

2. Billings Urban Area 2000 Transportation Plan

The proposed subdivision is within the jurisdictional area of the Billings Urban Area 2000 Transportation Plan and conforms to this plan by providing for safe and efficient traffic circulation. This development also complies with 1995 BikeNet Plan with the contemplation of on-road bike lanes on Lake Elmo Drive.

C. Compliance with the Montana Subdivision and Platting Act and local subdivision regulations. [Article 23-200, Section 23-201, BMCC] [Article 23-300; Section 23-304(c)(4) BMCC]

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

D. Sanitary requirements. [Article 23-200, Section 23-201, BMCC] [Article 23-300; Section 23-304(c)(5) BMCC]

The City of Billings Public Utilities Department currently provides both domestic water and sanitary sewer service. Their facilities meet all of the requirements of the State of Montana.

E. Zoning requirements. [Article 23-200, Section 23-201, BMCC] [Article 23-300, Section 23-304(c)(6) BMCC]

This site is currently zoned Residential Multi-family and the proposed lots will comply with the area requirements of this zoning district. The required 15 foot minimum setback for the duplex on Lot 2 will not be met due to the required 15 foot right of way dedication to accommodate the street improvements planned for Lake Elmo Drive. This structure will become a legal nonconforming structure and will be afforded those rights of continuation as provided in Article 27-404, BMCC.

F. Planned utilities. [Article 23-300; Section 23-304(c)(7) BMCC] [MCA 76-3-608(3)(c)]

Utilities are located in the existing Lake Elmo frontage and additional easements will be provided surrounding the two lots.

G. Legal and physical access. [Article 23-300; Section 23-304(c)(8) BMCC] [MCA 76-3-608 (3)(d)]

Legal and physical access to this subdivision is provided by direct access from this site to Lake Elmo for Lot 2 and from Milton Lane for Lot 1.

Councilmember Larson moved for approval of the staff recommendation for conditional approval and approval of the findings of fact, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

8. RECONSIDERATION and recommendation regarding reopening the neighborhood Wading Pools/Spray Decks. Staff recommends delaying action until Aquatic Assessment study has been reviewed and acted upon by the Council. (Action: approval or disapproval of staff recommendation.)

Councilmember McDermott moved for the immediate re-opening of the three wading pools at Highland Park, Veteran's Park, and Castlerock Park, as wading pools or spray parks, according to the neighborhood preference, seconded by Councilmember Brown. Councilmember Iverson said she is opposed to the motion to re-open the wading pool for the following reasons: 1) the cost of \$400,000 from a skeleton budget to pay for costs incurred in re-opening the outdated pools, 2) Highland Park wading pool is located within ½ mile of South Park swimming and wading pool, 3) the City Administrator and the Parks Department have recommended a plan for the City's aquatic infrastructure, 4) the aquatic study recommends that spray parks instead of wading pools be installed to avoid the issues of a need for lifeguards, longer hours of operations and sanitation issues in wading pools. She said she believes the Council should accept the staff recommendation to review and act upon the aquatics assessment for the entire City.

Councilmember Poppler said she is a strong advocate of the wading pool concept. She said she feels the Parks plan is inflexible and that everything the Council proposes is not considered because it doesn't fit the plan. She said she would agree to spray parks in place of wading pools if the project were completed quickly. She said she strongly supports Councilmember McDermott's motion. Councilmember Brown said the Council should listen to the citizens who are asking for the re-opening of the wading pools. Councilmember McDermott said she wished for the neighborhood to have flexibility in deciding whether they would want a wading pool or a spray park. She said it is irresponsible to make the decision without neighborhood input.

Assistant City Administrator Kristoff Bauer noted that potential funding was not made available to the Council regarding this issue. There are five sources of funding. He said the staff's recommendation would be to use those funding sources to provide for the re-opening of the wading pool/spray parks. He said the Other Capital Projects Fund of \$137,000 would be the first recommendation. The second source would be

\$75,000 from the Aquatics Construction Fund. The third source recommended would be the \$50,000 from the CDBG funds for the Highland Park Pool. The remainder would have to come from the Undesignated Fund Balance. He noted the recommendations depended on the option the Council chooses, the more expensive wading pool or the lower cost option of the spray park.

Councilmember Jones said his biggest concern is with the actual operating costs. He noted the City has a tight budget. The cost of lifeguards is questionable considering there has been none provided in thirty years and the City has not had a single drowning incident. He said his preference is for the spray parks. Councilmember Ohnstad said the City should remain consistent and provide the spray parks only. Councilmember McDermott reiterated that the neighborhoods should have the final choice between wading pools and spray parks.

Councilmember Larson informed the Council that he would abstain from voting on this issue.

Councilmember Brewster asked if it is reasonable to form a Park Maintenance District around the pools to allow the neighborhoods to assume the cost of the maintenance. Assistant City Administrator Kristoff Bauer said there would not be a technical problem creating this, rather it would depend on the desire of the neighborhoods to participate and support it. Councilmember Kennedy said he is concerned about the lifeguard issue and does not want to see the City or the Council "open to this kind of liability." He said the neighborhoods should realize the costs of what they are requesting. Councilmember Brown said he didn't want "government and big brother" taking care of everything.

Councilmember McDermott said that a Park Maintenance District might work for some of the areas, but it will not work in the Highland Park area where it is an extremely low-income neighborhood. This would place a real burden on the residents living there. She noted the reason this neighborhood wants the wading pool is that there are many children there who do not have many recreational opportunities. Councilmember Jones asked if a small charge to use the wading pools would be appropriate. Assistant City Administrator Kristoff Bauer said this would actually increase the operations costs by requiring an additional person to handle admission fees.

Mayor Tooley asked what the intention of staff was and the time frame involved in recommending delaying action on this item until the Aquatic Assessment Study has been reviewed and acted upon. Mr. Bauer said the intent is to bring the Aquatic Assessment Study to Council for consideration and adoption at the next regular meeting on August 12th. He said this would allow the study to be used as a guide for solving the issue of the wading pool re-opening. He noted the wading pools are not a high priority in the study.

On a voice vote, the motion was approved 5-4 with Councilmembers McDermott, Brown, Brewster, Poppler and Jones voting "yes". Councilmembers Iverson, Kennedy, Ohnstad and Mayor Tooley voted "no" and Councilmember Larson abstained.

9. CONTRACT FOR MAINTENANCE on the 800 MHZ radio system, E.F. Johnson Company, \$405,276.00, 3 years. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Councilmember Brown moved for approval of the staff recommendation, seconded by Councilmember Larson. Councilmember Brewster voiced concerns about the high cost of a maintenance contract on the equipment and asked for an explanation. Fire Chief Marv Jochems said the system is a very complex one for every radio in the entire City. He noted there are 3 simulcast radio sites, 15 repeaters, 5 racks of equipment in the 911 center, 5 communications positions in the 911 center, numerous control stations in all departments, and 700 radios. The maintenance contract includes preventive maintenance on: 1) all radios, including all parts and equipment, 2) twenty-four hour, seven days a week service, and 3) software upgrades on the computers. He noted the contract is not more than it has been for the last three years.

Councilmember Brewster asked why the City bought a simulcast system rather than a true nodal system. Chief Jochem said with the simulcast system when an incident occurs there is no wait time for other responders to access airtime.

Councilmember Brewster said a true nodal system has three separate transmitters that "act like cell sites where you transfer off." He noted this would triple the capacity of the system. Councilmember Brewster said there was a state-wide committee comprised of several utility companies, the State, a few cities and the county that looked at several systems to create a state-wide 800 MHz system and most all of them "pulled back from it because that system would not work because it is a bottleneck for your capacity." He said he is concerned that the City continues to put money into a system that will not be adequate in the future. He added he is not sure that EF Johnson has the technology to make it nodal. He said he hopes that future Capital Improvement Plans would contain a system that would be capable of better expansion. He noted that his intent is not to hold up the contract but to caution the Council about future decisions on a system that would not meet the City's future needs. On a voice vote, the motion was unanimously approved.

Council Initiatives

- **City-initiated zone change on recently annexed property described as: Tracts 2B and 3, C/S 3011.** Councilmember Brewster moved to initiate a zone change on C/S 3011, Tracts 2B & 3, also known as Cherry Creek Estates, to Residential 9600, seconded by Councilmember Brown. Councilmember Brewster said the intent of the Council for this area needs to be clarified. He noted the surrounding area that was annexed was done so as Residential 9600. He said he thought the intent was to maintain lower densities as the City moves toward the river because the access to the area was more restricted. He added this would alleviate the concerns of the surrounding residents. He said this would not hold up the developer, as the Subdivision Agreement would come before Council the same time as this zone change. On a voice vote, the motion was unanimously approved. Staff was directed to proceed with processing a City Council-initiated zone change to R9600 on both parcels.
- **Policy change to eliminate providing lifeguards for wading pools.** Councilmember Jones moved to direct staff to prepare an informational report on the lifeguard issue including the use of self-closing gates, insurance coverage and disclosure statements, seconded by Councilmember Brown. Councilmember Larson

questioned why the Council is not following the expert opinion in the Aquatics Assessment Study that recommends lifeguards at wading pools. His experience has been that any insurance agent would not recommend eliminating lifeguards in any potential liability issue. He said the only way to eliminate lifeguards is to provide a neighborhood educational program, provide incredible signage and then still realize there will be a risk factor. Councilmember Poppler said the expense of a lifeguard would be well worth it. Councilmember Jones withdrew his motion and Councilmember Brown withdrew his second. Councilmember McDermott moved to authorize staff to inquire as to how other cities of similar size are handling the issue of wading pools with lifeguards, seconded by Councilmember Jones. Councilmember Iverson said most of the cities that are similar to Billings have converted to the spray parks. Councilmember Poppler asked if there is a State law that requires a lifeguard to be present at wading pools. Mr. Bauer said there was not. On a voice vote, the motion was approved with Councilmembers Kennedy, Iverson and Brewster voting "no". Staff was directed to research what other comparable cities are doing with their wading pools in regard to staffing them with lifeguards and report back to the Council.

Councilmember McDermott asked if Assistant City Administrator had researched the current contract with the auditors to ascertain options available to the Council for the Audit Committee. Mr. Bauer replied that the contract includes four hours of time that can be allocated to research a special project. He said he has been working with staff on a method to present a discussion item to the Council to get a consensus of how the Council would like to direct those four hours. Due to the timeframe involved he asked the Council to be thinking about the special areas that the Council would like to look at. He asked that the suggestions be directed to him via e-mail as soon as possible. He noted that anything that would extend beyond the four hours would require additional costs. Mr. Bauer said he would compile the suggestions and contact the auditors to get estimates of the potential cost to accomplish the tasks the Council requests.

Councilmember Brown moved to place on the November ballot a City-wide Park Improvement Wading Pool/Spray Park Bond Issue. There was no second. Assistant City Administrator Kristoff Bauer said it was too late to put this on the November ballot. Councilmember Brown withdrew his motion.

Councilmember Poppler asked about Administrative Services Director Robert Keefe's health following his surgery. Mr. Bauer said he is making remarkable and steady progress and has spent several days on the job despite the on-going chemotherapy process.

Councilmember Jones asked if there is a procedural problem regarding the wading pools because the Council did not designate where the funding would be coming from. Mr. Bauer said the discussions with the neighborhood communities would have to transpire first to ascertain the type of facilities they would want. At that time the staff would recommend a proposal that includes the community's decisions, the appropriate funding, authorization for design and the appropriate contracts for Council

approval. Mr. Bauer said he is concerned as to how the neighborhoods will be polled to arrive at the decision that the Council will consider. He said he would ask staff to propose a methodology to bring to the Council for discussion at a work session. The Council will ultimately decide the process to follow, he added. Councilmember McDermott said the intention of her motion was to use reserve funding for the re-opening of the wading pools. Mr. Bauer said it would take more than a motion to amend the budget. He said the staff would gather the information and present a proposal that will include specific funding sources, which would come before the Council for approval and authorization of agreements.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 9:45 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

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