

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

## **September 23, 2002**

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 Jan Iverson.

**ROLL CALL** – Councilmembers present on roll call were: McDermott, Gaghen, Brewster, Iverson, Kennedy, Poppler, Ohnstad, Jones and Larson. Councilmember Brown was excused. Councilmember Brown joined the meeting later at 7:45 p.m.

**MINUTES – September 9, 2002**. APPROVED as amended.

### **COURTESIES - None**

### **PROCLAMATIONS – Mayor Tooley.**

- Fire Prevention Week: October 6-12

### **BOARD & COMMISSION REPORTS. – None**

### **ADMINISTRATOR REPORTS – Dennis Taylor.**

- Mr. Taylor said they have reached a tentative agreement on the preferred site for a new library. It is located in the vicinity of the Community Center and Tiny's Tavern. He noted this would be on the October 28<sup>th</sup> meeting agenda.
- He reported there have been positive discussions on the last property the City needs to acquire for the expansion of Park Two.

### **CONSENT AGENDA:**

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

- (1) **SID 1354: King Avenue East Widening, Parkway Lane to South Billings Boulevard and Simpson Street Extension.** (Opened 9/10/02). Recommend Schedule I: Western Municipal, \$400,717.50; Schedule II: JTL Group, Inc., \$968,255.20.
- (2) **SID 1349.** (Opened 9/17/02). Recommend delaying award to 10/15/02.
- (3) **Two New Current Model Fire Apparatus.** (Opened 9/17/02). Recommend delaying award to 10/15/02.
- (4) **Window Cleaning Services for the Terminal Building Area for the Airport.** (Opened 9/10/02). Recommend Sparkle Plenty, \$44,100.00
- (5) **Rehberg Ranch and Zimmerman Place Subdivisions Water Main Extension and Pump Station Project.** (Opened 9/10/02). Recommend COP

Construction, \$856,748.00.

**(6) 6 Wheel Mechanical Broom Sweeper for Street/Traffic Division.**

Recommend using the State bidding schedule, \$137,352.00.

**(7) Construction of Rimrock Road Waterline and Sewer Extension.**

(Opened 8/27/02). DELAYED FROM 9/9/02. Recommend COP Construction, \$2,595,478.00.

**B. C.O. #7, SID 1346: Broadway Streetscape, STPE1099(31),** JTL Group, \$44,918.55 \$26,912.80 increase and 10 calendar days.

**C. Contract Amendment #7,** Tier 2 Landfill Gas Sampling and Analysis, EMCON/OWT, \$18,730.00.

**D. Contract** for planning, design, engineering of the Park Parking Lot Replacement and Repair projects, Kadrmas, Lee and Jackson, \$11,500.00.

**E. Contract** for planning, design and engineering services for the Swords Park and Black Otter Trail sites, Fischer and Associates, \$50,099.00.

**F. Contract** for planning, design, engineering and contract administration services for North Park Playground Replacement project, Land Design, Inc., \$10,750.00.

**G. TEN Resolutions 02-17884 THRU 02-17893** authorizing changes in designation of authorized signers on the US Bank accounts.

**H. Resolution** ~~setting the annual mill levy rates for FY 2003.~~ Included in Item 4.

**I. Resolution of Intention 02-17894** to Annex Tract 1B of C/S 1446 Amended (LESS I-90 Right of Way) and Block 1, Lot 4 of Cereus Subdivision, both located in the NE4 of Section 17, Township 1 South, Range 26 East. (Operations Center), Annex #02-16 and setting ~~a public hearing date~~ final council action date for 10/15/02.

**J. Resolution of Intention 02-17895** to Annex that portion of Yellowstone Club Estates north of Walter Hagen Drive, Annex #02-14 and setting a public hearing date for 10/28/02.

**K. Resolution of Intention 02-17896** to Annex that portion of Yellowstone Club Estates south of Walter Hagen Drive, Annex #02-15 and setting a public hearing date for 10/28/02.

**L. Resolution of Intention 02-17897** to construct improvements identified in W.O. 02-14: 2002 School Route Improvements and setting a public hearing date for 10/28/02.

**M. Authorization** to submit an INTERCAP loan application for the Automation of Park Irrigation Systems project, loan amount up to \$2,680,000.

**N. Approval** of the parade route for the Skyview High School Homecoming Parade.

**O. Approval** of Non-Binding Recommendation from the Local Law Enforcement Block Grant Advisory Board for expending grant funds in the areas of salary/benefits and equipment/technology/chaplain travel, \$94,702.00.

**P. Bills and payroll.**

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

Councilmember McDermott separated Items A7, B, J and K from the Consent Agenda. City Administrator Dennis Taylor requested that Item H be withdrawn from the Consent Agenda as it appears later on the Regular Agenda. Councilmember McDermott moved for approval of the Consent Agenda with the exception of Items A7, B, J and K, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item A7, seconded by Councilmember Kennedy. Councilmember Brewster asked about the bid that was rejected because a form was not signed. He said the bidder called him to say that this was not standard City procedure and that this form was usually signed after the bid opening. Councilmember Brewster asked if that was the correct interpretation of normal practices. Deputy City Attorney Kelly Addy said the Public Utilities Department is moving toward the requirement of the Liquidated Damages form to be submitted along with the bid. This requirement was present when the Rimrock Road Waterline and Sewer Extension bid was first advertised in May of this year. He noted that of the four bidders that responded, only one failed to submit the required form. He added that when the bid was re-advertised, both Western Municipal Construction and COP Construction were advised at a pre-bid meeting that the liquidated damages form must be signed and submitted with the bid. Mr. Addy said this early submittal is so that the question of reasonable liquidated damages is determined beforehand to prevent delays in the timely start of the projects. He said Western Municipal's bid was the apparent low bid, however the liquidated damages form was not signed and submitted with the bid, therefore staff recommended that the contract be awarded to COP Construction, who followed bid instructions. He stated that the Montana Supreme Court said that so long as there is not fraud, collusion, or arbitrary behavior the contract does not have to be awarded to the low bidder. This court action defended the City's ability to decide who should be awarded the contract. He quoted Judge Baugh as saying "the City Council is in as good a position as I am to decide who should get this contract." He continued that the court dissolved the temporary restraining order and denied the injunction allowing the City Council to decide who should be awarded the bid. Mr. Addy advised the City Council that awarding the contract to the low bidder at this point would legally be a very difficult course for the City to take because the bidder that did submit the form could argue in court that this was arbitrary. His noted the Council has two options: 1) to award the contract according to the Public Utilities Department recommendation for COP Construction, or 2) consider re-bidding the project again. Councilmember Jones asked if the requirement was stated in

the request for bids. City Administrator Dennis Taylor confirmed this requirement was stated in the request for bids. He noted that there were some instances where Public Works has required this submittal after the bid opening. He said it is the Administration's recommendation that this requirement be a part of all future bids and contract requirements. He reminded the Council that the City is getting closer to winter delay on this project.

NOTE: Councilmember Brown joined the meeting at this point, 7:45 P.M.

Councilmember Poppler asked if there are two different procedures between the Public Works Department and Public Utilities Department regarding this issue. Mr. Taylor said there have been differences in the past. Councilmember Poppler asked if this was part of the confusion in this matter. Mr. Taylor said he did not believe so because the second lowest bidder was able to follow the requirements. He said that it is in the best interest of the City to follow the requirements that were stated at the pre-bid meeting. Mr. Taylor said the preferred method is what was used in this instance and he recommended that the Council approve the recommendation of staff. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember McDermott moved for approval of Item B, seconded by Councilmember Larson. Councilmember McDermott noted that there was a discrepancy in the agenda stating that the net increase for this item was \$26,912.80 but the background information is requesting \$44,918.55. She asked which amount was correct. Mr. Taylor said the staff memo stated the correct amount, which is \$44,918.55; the agenda appears to contain an error. Mayor Tooley noted the agenda should be corrected to contain the \$44,918.55 amount. Councilmember McDermott said she was disappointed to see another cost for the Skypoint project. She said according to her notes the project is well over the promised \$450,000.00 budget figure. She also expressed disappointment in three businesses that have not contributed to the cost of the project. Councilmember Jones said it is unconscionable that the City continue to add costs to this project. He said he thinks it is also unconscionable that the City continue to allow this project to be mismanaged. Public Works Director Dave Mumford said this is the final change order that will close out the project. The change order represents issues that include fencing, traffic control, extra painting, damage incurred by vehicles, replacing trees and general closing out of the Streetscape project. He noted that the Streetscape portion of the project did come in under budget. He added that there were overruns on the Skypoint portion however. Councilmember Poppler asked how future maintenance of the Streetscape would be managed. Mr. Mumford said there is a Park Maintenance District that has been created for this project and was intended for maintenance of the Streetscape, including Skypoint. Councilmember Poppler asked if there are any estimates on what costs will be involved in the maintenance of the Skypoint. Mr. Mumford said there are no estimates at this point.

Councilmember Brown asked who is in charge of managing the project. Mr. Mumford said the project was under the administration of the Public Works Department in partnership with the Downtown Partnership. Councilmember Brown asked if the City was reimbursed for their part in this project. Mr. Taylor said the past practice each year is to budget a General Fund amount that supports the Engineering Division of the Public Works

Department. A new procedure will allow engineering work to be charged back to each project rather than a General Fund expense. He said he hopes to present the 2003 budget to the Council that will include all of these types of costs as reimbursable by the projects.

Councilmember McDermott asked who would be participating in the Park Maintenance District for the Broadway Streetscape. Mr. Mumford said it would be the businesses involved in the Broadway Streetscape.

Councilmember Gaghen asked if the costs for the noted items included labor. Mr. Taylor replied "yes".

Councilmember Larson said the Council must put these costs into perspective. He noted the recent Skatepark bids that came in well over \$600,000 of the original estimated costs. He noted that the Streetscape is not a typical project. He said this might be a good time to take another look at the City's relationship with the Downtown Partnership. Councilmember Larson said he has a lot of confidence in allowing the people and businesses that have a stake in the downtown area to manage these downtown projects. He said he thinks it may be a good time to establish communication between the Council and the Partnership to develop an approach to these issues. He reminded the Council that the City and Downtown Partnership started out as partners to save the downtown. This relationship has deteriorated to an "us and them" status and the only way to rectify the problems is with open discussions fairly soon.

Councilmember Larson emphasized the items in this change order have already been completed. He added if the Council rejects certain items of this change order, some contractors will not get paid for work they have completed.

Councilmember Brewster moved that this change order be broken down into Skypoint and Streetscape items and voted on separately, seconded by Councilmember Jones. Councilmember Brewster said he is not opposed to the change order costs on the Streetscape but has been increasingly opposed to any additional funds being expended on Skypoint. Councilmember Jones agreed with the comments of Councilmember Brewster. He noted that the items could be easily separated by the two projects. He said it appears that \$32,000 is related to the Skypoint project.

Councilmember McDermott said she is not blaming staff, but sees part of the problem as not having a staff engineer assigned to the project that would track these costs. She asked that future projects have a staff engineer assigned to the project.

Councilmember Gaghen asked if there are other funds that could cover the items that are part of the Skypoint project if it is not approved. Mr. Taylor said there are no other funding sources and the vendors that provided those services would go unpaid without approval.

Councilmember Kennedy called for the question. On a voice vote to stop the debate, the vote was approved with Councilmember Larson voting "no". Mayor Tooley announced the debate was stopped.

On a voice vote to separate the items, the motion failed.

On a voice vote to approved Item B, the motion was approved with Councilmembers Jones, Poppler, Brewster and Brown voting "no".

Councilmember McDermott moved for approval of Item J, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item K, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING FOR INPUT on the FY 2001 Draft Comprehensive Annual Performance Evaluation Report (CAPER) for the CDBG and HOME Programs. (Action: public hearing.)**

Community Development Manager John Walsh said each year the City is required to submit a report on the results of the federally funded CDBG and HOME programs to HUD within 90 days of the end of the program year. He noted the Councilmembers each received a copy of the FY 2001 Comprehensive Annual Performance Evaluation Report. This annual report reports on the City's progress in achieving the goals of its Five Year Consolidated Plan. He said tonight's public hearing is a required part of the process regarding that report. The public hearing was opened. There were no speakers. The public hearing was closed.

### **3. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5222 amending Sections 2-211, 2-212, and 2-215 and adding a new Section 2-226 providing that council meetings convene at 6:30 p.m.; and, establishing by ordinance city council work sessions and rules of order. Staff recommends approval. (Action: approval or disapproval of ordinance on second/final reading.)**

There was no staff report as this was a second reading. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the staff recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

### **4. PUBLIC HEARING AND APPROVAL OF RESOLUTIONS 02-17898 THRU 02-17906 making the annual assessments for 2002 on: Park Maintenance, Fire Hydrant Maintenance, Demolition, Encroachments, Light Maintenance Districts, Storm Sewer Maintenance, Street Maintenance, Weed Cutting/Removal and setting annual mill levies for Transit Operating, Library Operating, Public Safety and General Obligation Debt Service. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Controller Pat Weber said the annual assessment resolutions for this item have been completed by the Finance Department and are ready to spread on the tax rolls. He gave three examples of how these assessments would affect taxes on selected properties. Councilmember Poppler asked what the average amount of school tax would be. Mr. Weber said the mills had not been set as yet for the school districts or the county. City Administrator Dennis Taylor noted that the City tax portion is about 20% and the schools are approximately 20%. Councilmember McDermott asked if the assessments would be changing with the current changes in the assessed values. Mr. Weber said with the average house appraisal at \$130,000, the taxes could increase more than the examples he gave. Councilmember Gaghen noted that the breakdown of the tax dollar that was

given to the Councilmembers should be made available to the public. Councilmember Jones asked why some of the Light Maintenance District assessments increased more dramatically than others. Mr. Weber said the Light Maintenance Districts are a separate entity by State law and any repairs that are made must be charged back to the district. This is reflected in the increases to several districts.

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 Larson. On a voice vote, the motion was unanimously approved.

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

- (A) **RESOLUTION 02-17907: Sidewalk, Curb, & Gutter #2201. (W.O. 01-02, #1: 2001 Developer-Related & Miscellaneous Sidewalk Programs).**
- (B) **RESOLUTION 02-17908: Sidewalk, Curb, & Gutter #2202. (W.O. 00-02, #2: 2000 Broadwater Sub., Phase II).**
- (C) **RESOLUTION 02-17909: Sidewalk, Curb, & Gutter #2203. (W.O. 00-02, #2: 2000 Broadwater Sub., Phase II).**
- (D) **RESOLUTION 02-17910: Alley Approach #2299: (W.O. 01-02, #1: 2001 Developer-Related & Miscellaneous Sidewalk Programs).**
- (E) **RESOLUTION 02-17911: Tree Removal #3003.**

The public hearing was opened. JORJA BELMAREZ, 48 JEFFERSON said the City put in a sidewalk a few years ago and in the process destroyed the boulevard that she had spent \$600 sodding. She said the City has refused to repair the damages and has sent her a bill for \$3,300. She said she does not think this is right. Mayor Tooley directed her to talk with Public Works Director Dave Mumford to resolve her issues with the City.

There were no other 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.

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

- (A) **RESOLUTION 02-17912: Sidewalk, Curb, & Gutter #2101: W.O. 00-02, #1: 2000 Developer-Related & Miscellaneous Sidewalk Programs).**
- (B) **RESOLUTION 02-17913: Sidewalk, Curb, & Gutter #9704: W.O. 97-02, #1: 1997 Developer-Related Program).**
- (C) **RESOLUTION 02-17914: SID 1332: Circle 50 Subdivision**
- (D) **RESOLUTION 02-17915: SID 1341: Circle 50 Subdivision**

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Iverson moved for approval of the staff recommendation, seconded by Councilmember Brewster. Councilmember McDermott asked if the City still requires owners to place a sidewalk in front of homes due to any improvements they are making during rehabilitation of their homes. She said she thought the problem of

having “piecemeal sidewalks” had been solved with the owners signing waivers and the installation of sidewalks all at one time. Mr. Taylor said he did not know what the present practice was but would check on this and report back to the Council. Councilmember McDermott suggested that the Council “take a look at the sidewalk policy” and decide if changes need to be made that would lead to a consistent policy on sidewalk replacement. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND RESOLUTION 02-17916 vacating a portion of Edward Street from Monad Road to approximately 846.5 feet to the north. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Planning Staff Member Candi Beaudry said the public hearing this evening is for the vacation of a portion of Edward Street. She noted that all affected landowners were notified of the public hearing, which included the City, Sysco and Familian Northwest. She said the purpose of the street vacation is to allow for the expansion of the Sysco facility. The property to the west will be sold to Sysco and along with the vacated street portion be aggregated to the existing property owned by Sysco. Ms. Beaudry said the street vacation extends from Monad Road to 850 feet north with the existing Edward Street terminating in a cul de sac that would give access to Familian Northwest and Sysco. She noted that the remaining portion of the Edward Street will be preserved with relocation of some utilities required.

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

**8. 2003 UNIFIED PLANNING WORK PROGRAM (UPWP). (Action: review and recommendation to the Policy Coordinating Committee (PCC).)**

Mayor Tooley noted that this plan from the Planning Department contains goals that the Billings Metropolitan Planning Organization intend to accomplish. He said the Councilmembers received a draft of the work program and this plan would be recommended to the Billings Policy Coordinating Committee with the approval of the Council. Councilmember Larson moved for approval of the 2003 Unified Planning Work Program Policy, seconded by Councilmember Kennedy. Councilmember Brewster said it appears to be a very aggressive plan and commends the department if they are able to get through it. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5223 FOR Zone Change #701: A zone change from Residential-9,600 to Public on Tract A-4 of Certificate of Survey No. 646 Amended, located at 2085 Santiago Boulevard. City of Billings, owner; Interstate Engineering, agent. Zoning Commission 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 Zoning Commission

recommendation, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING AND FIRST READING ORDINANCE FOR Zone Change**  
**#703: A zone change from Public to Controlled Industrial on a portion of Certificate of Survey No. 779 (a more complete description may be obtained from the Planning Department). The subject property is generally located on the northwest corner of Monad Road and Edward Street. City of Billings, owner; Sysco Food Services of Montana, agent.. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said this zone change includes property located on the north side of Monad Road and west of Edward Street, a portion that was contained in the street vacation earlier in the meeting. The zone change is from Public to Controlled Industrial. He noted that properties to the east and south are zoned Controlled Industrial and the uses in the area are all light industrial allowing the proposed zoning to be compatible with existing zoning. Mr. Bollman said the Zoning Commission held a public hearing and recommended approval of the zone change. Councilmember Poppler asked what type of screening was going to be used to buffer the Cemetery from noise. Assistant City Administrator Kristoff Bauer said the City is taking action on the Cemetery side by planting trees and on the Sysco side a solid fence is being installed to mask the site and provide noise control. He noted that Sysco has assigned that area as a trailer parking area to decrease the chance of noise pollution. Councilmember Brown asked about the type of trailers that would be parked there and would they have generators that are continually running. Mr. Bauer said his understanding is that the warehouse would house any food substances that require the use of generators and the trailers would not be parked with contents inside.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the Zoning Commission recommendation, seconded by Councilmember Larson. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**11. PUBLIC HEARING AND FIRST READING ORDINANCE FOR Zone Change**  
**#704: A zone change from Community Commercial to Controlled Industrial on Lots 1-5, Block 144 of Billings Original Town, located at 2309-2<sup>nd</sup> Avenue South. Thelma Spiegelberg, owner; Ernie Dutton, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Gail Kenson said this zone change from Community Commercial to Controlled Industrial is located in the area known as the Gateway Triangle. She noted that most of the properties in the area are slowly changing to Controlled Industrial. She said the current use of the subject property is a vacant auto body shop and the property owner desires to convert this into a specialty contractor business that requires the proposed zoning. Ms. Kenson said the Zoning Commission recommends approval of the zone change.

The public hearing was opened. ERNIE DUTTON, AGENT, NO ADDRESS GIVEN, said he was available for questions from the Council. There were no questions for Mr. Dutton. There were no other speakers. The public hearing was closed. Councilmember Jones moved for approval of the Zoning Commission recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

**12. PRELIMINARY PLAT of Weil Subdivision, 2<sup>nd</sup> filing, generally located on Mullowney Lane south of Holiday Avenue. Planning Board recommends conditional approval of preliminary plat including the requested variances and acceptance of the findings of fact. (Action: approval or disapproval of Planning Board recommendation.)**

Planning Staff Member Gail Kenson said this item is a preliminary major plat and the Planning Board has recommended conditional approval to the City Council. She noted the Holiday Inn and Interchange are to the north of the property. She said this is the 2<sup>nd</sup> platting of this subdivision and it contains 94 lots. The Conditions of Preliminary Plat approval are:

- 1. To minimize the effects on local services, the subdivider shall:**
  - a. Include language in the SIA that states: "If the subdivider wishes to construct the improvements identified in Phase II, all improvements will be done including storm drain trunk lines and outfall sized according to the Southwest Storm Drain Master plan. The oversize of these storm drain improvements will be paid for by the developer if it is not programmed in the City of Billings' Capital Improvement Plan at the time of construction." (Section 23-706, BMCC)(Requested by City Engineering.)**
- 2. To bring the subdivision into compliance with state law and local subdivision regulations, the following is required:**
  - a. Minor wording.** Minor wording changes hereafter shall be made in the SIA and documents, as requested by the City Engineering Division and Planning Department, to clarify the documents and bring them into the standard, acceptable format.
  - b. Compliance.** If approved, the final subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal City Code, and Rules, Regulations, Policies, and Ordinances of the City of Billings, and the Laws and Administrative Rules of the State of Montana.

The City-County Planning staff for review and approval by the City-County Planning Board has prepared the Findings of Fact for Weil Subdivision, 2<sup>nd</sup> Filing. 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 (76-3-608, MCA) and the City of Billings Subdivision Regulations (Section 23-304(c)), BMCC

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

**1. Effect on Agriculture**

The 74.998-acre tract is currently in agricultural production. This area is transitioning from agricultural production to commercial development and is losing its viability as agricultural land.

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

The irrigation lateral along the east side of Mullowney Lane serves the property and is part of the Canyon Creek Ditch Company system. This ditch wastes into the Suburban Ditch, which is located along the south property line of this subdivision. The lateral can be eliminated at its headgate when this subdivision is substantially developed and no longer requires irrigation. As development progresses and the lateral is still being utilized, no change in alignment is proposed.

The Suburban Ditch traverse the property from west to east and will continue service to agricultural properties to the east for many years. Other than extension of the existing pipe under Mullowney Lane to accommodate the widening of the street, no change in the Suburban Ditch is proposed.

**3. Effect on Local Services**

**Water and Sewer Service.** In 2002, the City of Billings Public Utilities Department (PUD) will install a 16-inch water main in South 12<sup>th</sup> Street West from Midland Road to Titan Avenue. The subdivision will also be served by the extension of existing 12-inch water mains, which are located in Holiday Avenue and Mullowney Lane. Sizing of the water main in Titan Avenue will be based on the future service area requirements west of Mullowney Lane. Planning and design for this main will be coordinated with PUD. The cost of oversizing from a 12-inch water main to the required trunk size will be paid for by PUD. Fire hydrants will be placed along streets in the subdivision at a commercial spacing of no more than 300 feet.

In 2002, the City of Billings PUD will install a 24-inch sewer main in South 12<sup>th</sup> Street West from Midland Road to Titan Avenue. Sewer improvements for Phase I will include installation of an 8-inch lateral sewer line in Interstate Avenue and Cordova Street to Annette Avenue and then east to a connection to the new 24-inch trunk main in South 12<sup>th</sup> Street West. The extension of the trunk sewer main west on Titan Avenue from South 12<sup>th</sup> Street West to Mullowney Lane will be included in future phases. The cost of oversizing from a standard 8-inch lateral to the required trunk size will be paid for by PUD.

The property is subject to all applicable water and wastewater fees and charges. The subdivider acknowledge that the subject to the Trunk Sewer Fee, and will be responsible for the installation of sewer lateral lines or fees. The Trunk Sewer Construction fee shall be paid in phases at the time of permitting of plans and specifications for each construction phase. These fees shall be based on the net lot area contained within each construction phase.

**Storm Water Drainage.** Storm drainage for the public streets shall be provided by a combination of surface drainage and curb and gutters, drain to underground storm drains, and with discharge to a proposed new trunk storm drain with a Yellowstone River discharge on City property southeast of the subdivision. The new trunk storm drain and discharge will be in accordance with the recommendations of the Southwest Billings Stormwater Management Master Plan, which is currently being prepared. Phase I lots and streets will utilize an interim retention area in Block 10 until such time as the trunk storm drain is available. A 25-foot wide easement through Lot 23, Block 10, is provided on the face of the plat and by separate document for the new trunk storm drain. All street drainage improvements shall comply with the provisions of the *Stormwater Management Manual*.

**Public Streets and Roads.** The subdivider will enter into a private contract for the construction of all required improvements for those streets within or adjacent to the subdivision as follows:

Mullowney Lane: Standard curb and gutter will be installed along the Mullowney Lane frontage (east side only) of the subdivision. New base gravel and asphalt pavement will be installed from the new curb and gutter out to match the existing pavement on Mullowney Lane.

Interstate Avenue, Annette Avenue, Titan Avenue, Kristy Street, and Cordova Street: These internal streets will be constructed with standard curb and gutter and full-width pavement (49 feet back of curb to back of curb).

South 12<sup>th</sup> Street West: The subdivider are also the owners of Tract 1 of C/S 2834. The South 12<sup>th</sup> Street West improvements will extend from Titan Avenue to Holiday Avenue and will also include the south half of Holiday Avenue west to the existing pavement at Weil Street. Standard curb and gutter will be installed along the west side of South 12<sup>th</sup> Street West. From Titan Avenue to Holiday Avenue, asphalt pavement will be installed for a half-street width of 32 feet. Full-width development of the Holiday Avenue extension will be dependent upon participation of property owners in a private contract or creation of a Special Improvement District.

The design thickness of the street improvements shall be determined from actual field tests conducted by a responsible testing laboratory. The design section shall be submitted to, reviewed by, and approved by the City Engineer.

### **Fire and Police Protection**

The Fire Department reviewed the preliminary plat application and had no comments. Street widths, lot access, and fire hydrant location comply with all City of Billings Fire Department requirements.

The City Police Department will serve this subdivision. To minimize the effects on the Department, the subdivider will phase the development over a period of time. Phasing will allow revenues to keep closer pace to the cost of providing public safety services.

### **Emergency Medical Service**

Ambulance service and emergency medical response is currently and will continue to be served by American Medical Response. The company has no concerns about continuing this service.

### **Solid Waste Disposal**

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

### **Schools**

School District 2 was sent a notification. The District did not respond to the Planning Department's request for comments. This is a commercial subdivision and the Planning Department does not anticipate any impact on the school district by this development.

### **Parks**

Parkland dedication is not required for a commercial subdivision.

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

The proposed subdivision is currently in agricultural production. There are no special natural features that will be affected by the subdivision.

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

The area is frequented by deer and provides habitat to pheasants and small mammals. The subdivision will disturb this habitat. The Montana Fish, Wildlife and Parks had no specific concerns about impacts to wildlife.

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

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

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

- a. Protect against the encroachment of incompatible or related uses. (K-5)**  
*The proposed subdivision will be a continuation of commercial development that is currently in the area. Commercial uses are compatible and appropriate for this proposed development.*
- d. Curb urban sprawl and discourage leapfrog development. (K-7)**  
*This project is an infill project. There is existing development to the north and west. The property to the east will more than likely develop as municipal sewer services are brought westward from Midland Road.*
- e. Promote orderly and rational land use during the various stages of economic growth cycles. (K-12)**  
*The extension of water and sewer service west along Midland Road promotes orderly commercial growth in this area. The availability of services makes urban density development possible and provides small business owners a more affordable alternative to more expensive, large lot development.*
- f. Capitalize on the use of existing public sewage systems and improve sewage systems in areas not currently served by public systems. (H-4)**  
*The development will be extending city sewer to an area that is not currently served by sewer. The availability of services makes urban density development possible in an area currently adjacent to urban densities.*
- g. Require that geologic hazards such as expansive/contractive soils, rockfall, steep slopes and landslide areas be addressed in the development review process (J-1). There are no geologic hazards present.**
- h. Eliminate development in designated floodways and limit development in the flood fringe area (J-4). There is no designated floodway in this area.**
- i. Preserve areas of open space within areas of urban development and promote access by non-motorized traffic (K-11).**  
*This subdivision is located in an area that is identified for bike trails or greenway corridors. The developer has provided an on-street bike lane along Mullowney Lane. A bikeway/walkway in the storm drain easement along the southeast corner of Titan Avenue and South 12<sup>th</sup> Street West will provide access into the Riverfront Park trail system.*

***West Billings Master Plan***

- a. Establish development patterns that use land more efficiently.**

*The increased density of the proposed development and the availability of sewer and water service ensure a more efficient use of both land and public utilities resources than large lot development.*

**b. Obtain linear parks and rights-of-way, easements ...and other continuous linear features lending themselves naturally to the creation of a non-vehicular transportation network.**

*This subdivision is located in an area that is identified for bike trails or greenway corridors. The developer has provided an on-street bike lane along Mullowney Lane. A bikeway/walkway in the storm drain easement along the southeast corner of Titan Avenue and South 12<sup>th</sup> Street West will provide access into the Riverfront Park trail system.*

**c. Reduce sprawl and development pressure on agricultural lands, conserve irrigated farmland, and increase the density of new residential development by requiring new subdivision in the West Billings Plan are to be served with municipal or approved community water and sewer systems.**

*This subdivision will be served by municipal water and sewer systems and is considered an infill project.*

**e. Development of non-irrigated farmland within the appropriate zoning designation is considered a priority.**

*The subdivision is currently in agricultural produce. It is a relatively small tract of agricultural land that is becoming surrounded by commercial development.*

### ***Billings Urban Area 2000 Transportation Plan and BikeNet***

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

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

Weil Subdivision meets the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations with the exception of one development standard. The subdivider has requested a variance from Section 23-602 BMCC, requiring alleys in commercial subdivisions. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

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

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

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

The subdivider has complied with the lot size requirements for the Highway Commercial zoning district.

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

Both Montana Dakota Utilities and Northwestern Energy have reviewed the preliminary plat and made recommended changes to the utility easement layouts.

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

Legal and physical access is available to the subdivision from Mullowney Lane, South 12<sup>th</sup> Street West, Interstate Avenue, Annette Avenue, Titan Avenue, Kristy Street, and Cordova Street.

**The Conclusions Of The Findings Of Fact are:**

The Planning Department staff has determined that the Weil Subdivision, Second Filing will not significant affect agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat or public safety. The few negative impacts can be minimized through reasonable measures as conditions to final plat approval.

Councilmember McDermott moved for approval of the Planning Board recommendation, seconded by Councilmember Brewster. Councilmember Brown asked if the lots are zoned Residential 9,600. Ms. Kenson said all of the lots are commercially zoned. On a voice vote, the motion was unanimously approved.

**Council Initiatives**

- **COUNCILMEMBER LARSON:** Direct staff to compile a historical background summary on the Downtown Groups, their entity makeup, authority, projects, funding management of resources and relationships to the Council and the Tax Increment District Funds and schedule for a presentation at a future work session that would included representatives from the different downtown groups. Councilmember Larson volunteered to assist staff with the preparation and reconstruction of the history. He said he hopes that this will eventually lead to future projects that are brought before the Council from the downtown groups coming to a successful conclusion because the project has good management. Councilmember Poppler asked that a work session be scheduled prior to the one with the downtown groups to inform the Council of all aspects of what will be discussed. Councilmember Larson moved to direct staff to complete the above summary, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.
- **COUNCILMEMBER BREWSTER:** Direct staff to investigate and propose solutions to the Right-of-Way dispute behind Bench School in the Heights and bring to next work session. Councilmember Brewster volunteered to assist with the meeting between staff and the property owner to discuss possible solutions. Councilmember Brewster moved that the City place a concrete barrier and dead end signage to prevent traffic from inappropriately using what is not clearly a Right-of-Way, seconded by Councilmember Poppler. Councilmember Brewster said the property owners did create a barrier at one point, but the questions of a possible right-of-way required that the barrier be removed. He said he feels it would be only right to replace what was originally intended to be a barrier to the traffic that uses the

parking lot owners property as an access to Main Street. Mayor Tooley said that the replacement rational must be clearly made to avoid other requests for publicly funded barriers in other parts of the City. Councilmember Iverson asked if this was an appropriate action and has Public Works discussed this with the surrounding property owners. Mr. Mumford said this has not been discussed with the property owners, but this can be done and noted that a barrier can be put in place if it does not create a hazard. Councilmember Kennedy requested that there be something in writing regarding the negotiations with the surrounding property owners stating the actual problem and what the possible alternatives would be. City Administrator Dennis Taylor suggested that this issue be discussed including the pros and cons of a barrier at a work session and avoid directing public engineering via Council decision at the end of a meeting. Councilmember Larson suggested that staff should contact the property owner for his input and be prepared to have specific solutions at the next work session. Councilmember Iverson offered a substitute motion to direct staff to resolve this issue and present it at the next work session, seconded by Councilmember Larson. On a voice vote, the substitute motion was unanimously approved.

- **COUNCILMEMBER BROWN** asked what the status was of the vote the Council took at a previous meeting to hold a public hearing at the time of the second reading on the Yellowstone County Club annexation. City Attorney Brent Brooks said that the Council has voted on something that is not required by State statute. He noted it would be appropriate to vote again to ratify the decision if the Council desires. He said he does not see any legal danger to the Council as they would be holding themselves to a higher standard than is required by State law. Mr. Brooks said the public hearing that Councilmember Brown is referring to may be outside of past practices, but is certainly valid with State law. Councilmember Poppler said she thought Councilmember Brown's concern was whether or not the work session where the Council voted for the public hearing for the annexation constituted a legal public meeting. She noted that anytime a quorum exists at a meeting of a public body, that would constitute a public meeting. Mr. Brooks noted that 6 members of the Council constitutes a quorum and that is why work sessions are made available to the public. Councilmember Larson noted that the Council has already accomplished what was decided at the meeting.

**ADJOURN** –With all business complete, the Mayor adjourned the meeting at 9:15 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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