

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 27, 2003

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

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

ELECTION OF DEPUTY MAYOR/MAYOR PRO TEM

- Deputy Mayor: Doris Poppler (Re-elected)

The Mayor opened the floor for nominations. Councilmember Kennedy nominated Councilmember Jones for Deputy Mayor, seconded by Councilmember Brewster. Councilmember McDermott nominated Councilmember Poppler, seconded by Councilmember Iverson. Councilmember Jones withdrew his name for nomination. There were no other nominations. The nominations were closed. On a voice vote, Councilmember Poppler was unanimously re-elected Deputy Mayor.

- Mayor Pro Tem: Shirley McDermott (Re-elected)

The Mayor opened the floor for nominations. Councilmember Poppler nominated Councilmember McDermott for Mayor Pro-Tem, seconded by Councilmember Brown. There were no other nominations. The nominations were closed. On a voice vote, Councilmember McDermott was unanimously re-elected Mayor Pro Tem.

MINUTES – January 13, 2002. APPROVED as printed.

COURTESIES – Solid Waste Division

- Mayor Tooley recognized former Councilmember Richard Clark in the audience.
- Councilmember Gaghen recognized former Councilmember Marion Dozier in the audience.
- Councilmember McDermott recognized James Iverson in the audience, an appointee to the Blue Ribbon Committee this evening.
- Solid Waste Supervisor Ken Behling called Larry Bradley forward, noting he retired from the City's Solid Waste Division on 12/31/02, after working for the City since 1964. Mr. Behling noted that Mr. Bradley worked for Solid Waste during his entire career starting when solid waste collection was done manually with rear-load type of collection vehicles. Mr. Bradley was presented with a plaque in honor of his dedicated service to the City.

PROCLAMATIONS – Mayor Tooley. NONE

BOARD & COMMISSION REPORTS. NONE

ADMINISTRATOR REPORTS – Dennis Taylor.

- Mr. Taylor noted that a copy of the Legislative Report from Lobbyist Jani McCall had been placed on the desks of the Councilmembers. It contains the latest update of the bills recommended. It is Item B on the Consent Agenda this evening.

CONSENT AGENDA:

1. A. Mayor’s Appointments: Blue Ribbon Committee

	Name	Board/Commission	Term	
			Begins	Ends
1.	James Iverson	Blue Ribbon Committee	01/01/03	11/30/05

B. Legislative Report and direction to Staff.

C. Bid Awards:

- (1) **Chemicals – Wastewater Plant – Dry Polymer.** (Opened 12/24/02). Recommend Polydyne, Inc., @ \$0.97/lb.
- (2) **Vibratory Plow – Parks & Recreation Dept.** (Opened 1/21/03). Recommend delaying to 2/10/03.
- (3) **Cleaning Services for Four Parking Garages.** (Opened 1/14/03). Recommend Top Line Services, LLC, \$24,300.00 for one year.

D. W.O. 02-23: Midland Road Improvements Project Design Contract, Engineering, Inc., \$181,886.00.

E. Amendment #1, Bus Bench Advertising Agreement, Blair Unlimited, for vinyl advertising bus/van wraps.

F. Encroachment Permit with Billings Bench Water Association (BBWA) for bike/pedestrian bridge in Descro Park, \$30.00 recording fee.

G. Matching 1999 General Obligation (G.O.) Bond funds for Recreational Trails Program grant for Swords Park Trail, \$5,000.

H. Ranking of sites for Downtown Transfer Center site selection.

I. Authorization to purchase the North 81.67 feet of Lot 4, Sandra Subdivision (39 Charlene St) for future expansion of the public utilities water treatment facility, \$100,750.

J. Street Closure of Montana Avenue between the 2300 and 2500 blocks for

Magic City Blues Festival, August 8-9, 2003.

K. Approval of securities for pledged collateral on Certificates of Deposit.

L. Agreement with Koch Financial Corporation at a rate of 5.14% for financing services in connection with the construction of the new Operations Center.

M. Resolution 03-17947 relating to W.O. 96-08: 2000 School Route Sidewalk Program, making certain findings with respect to the pledge of the revolving fund to the security thereof and setting a public hearing for 2/10/03.

N. Resolution of Intent 03-17948 to create SILMD #279 in Cambridge Subdivision on Cambridge Drive and setting a public hearing for 2/24/03.

O. Resolution 03-17949 of support for maintaining local control.

P. Final plat of Briarwood Subdivision, 2nd Filing, 5th Amended.

Q. Final plat of Legends West Subdivision.

R. Final plat of Popelka Commerce Center Subdivision.

S. Bills and payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Gaghen separated Item C1 from the Consent Agenda. Councilmember Brown separated Item L. Councilmember Jones separated Item H. Councilmember Larson moved for approval of the Consent Agenda with the exceptions of Items C1, H and L, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

Councilmember Larson moved for approval of Item C1, seconded by Councilmember Gaghen. Councilmember Gaghen said she was impressed with the decrease in the bid amount for the chemicals, down 12.6% from the previous year. She asked Public Utilities Director Carl Christensen to explain how this savings will affect the City. Mr. Christensen said the Polymer is used at the Wastewater Plant to dewater the solids. He said the decrease in the per unit cost represents a savings of \$7,000 for the City. On a voice vote, the motion was unanimously approved.

Councilmember Larson moved for approval of Item H, seconded by Councilmember Iverson. Councilmember Jones asked what authority approval of this item would give the staff. Airport Director Bruce Putnam said the agenda item requests that the Council approve the three sites in the priority that was established by the Community Committee and proceed with negotiations to acquire a site based on those priorities. Mr. Putnam noted that any acquisition offer would then come before Council for approval. In answer to Councilmember Jones' question, Mr. Putnam said the negotiations will begin

with Priority #1 and continue until an agreement is reached. On a voice vote, the motion was unanimously approved.

Councilmember Larson moved for approval of Item L, seconded by Councilmember Iverson. Councilmember Brown asked where the \$532,056 per annum payment will come from. He expressed concern about characterizing this transaction as a lease. Administration and Finance Department Director Robert Keefe said this is a lease/purchase agreement in which the City will have the option to exercise purchase of the property after a 20-year period. It is a annually appropriated lease that the City can "walk away from" at any time during the 20-year period. He said the payment will come from the user departments that will occupy the facility. Councilmember Brown asked if there would be any tax increases in order to service this debt. Mr. Keefe said there will be increased costs that would require new sources of revenue or finding a way to work it into the existing budget. He said the portion from the General and Public Safety Funds is approximately \$330,000. Councilmember Brown commented that this is a lot of money to finance. On a voice vote, the motion was approved with Councilmembers McDermott, Brown and Jones voting "no".

REGULAR AGENDA:

2. PUBLIC HEARING and adoption of the Capital Improvement Program (CIP) for Fiscal Years 2004 through 2007. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

City Administrator Dennis Taylor said the staff annually recommends a Capital Improvement Program that covers a five-year period. This year the City is covering a four-year period to allow time for more citizen involvement in the process. He noted the Capital Improvement Program Committee was chaired by Public Works Director Dave Mumford. The program covers FY 2004-2007. Mr. Mumford said the full CIP was not regenerated but was studied to ascertain what adjustments and additions would need to be considered. This included projects that needed to be added to accommodate situations that occurred last year. Also a review of time frames and funding that is needed to keep projects on tasks was done. He said part of the reason for these actions was to review and improve public participation. Mr. Mumford said the first part of the program states the projects that have no changes, followed by projects approved last year with minor changes in time or financing, new projects and those that were deleted.

Mr. Taylor said the items that are of most interest are the projects that have no sources of revenue to support them and require a vote of the citizens. These projects are known as the General Obligation Bond Projects and will be placed before the voters in the next four years. He said Project #1 is street and traffic improvements that would not have funding from the Gas Tax or Street Maintenance Funds. This project involves \$5 Million of improvements throughout the City. The projects for FY 2003 include South Billings Boulevard to Laurel Road, Laurel Road to King Avenue East, Alkali Creek Road improvements, South 32nd Street West, King Avenue to Gabel Road and Arlene Extension (Poly Drive to Broadwater Avenue). These projects all allow for improvement in north and south movement and address significant safety issues. He said these items could receive positive voter reception this Fall if the Council approves them this evening. The projects for FY 2004 will include the recommendations of the Blue Ribbon Committee with regard

to improvements to Cobb Field and the various aquatic facilities that require voter approval. He noted, based on today's estimates these projects could be as high as \$13 Million. The projects for FY 2006 will include the improvements recommended by the \$100,000 Architect and Engineering Study for the Library Building including the Public Works facilities on the 4th floor and better use of the unimproved 3rd floor. This could range between \$3 Million to \$8 Million depending on the options the Council chooses. The projects for FY 2007 would include the remaining transportation improvements such as Bench Boulevard (Lake Elmo to Wicks Lane), Annandale Road (River Oak to Glen Eagle) and Grand Avenue (17th to 22nd). Mr. Taylor emphasized that none of these projects would proceed within the next decade without additional resources and staff is recommending that those resources come from General Obligation Bonds approved by the voters.

Mr. Keefe gave a summary of the proposed projects. He said the previously approved projects, mentioned by Mr. Mumford, in the Capital Improvement Program total \$62 Million. He said previously approved projects that were changed total \$47 Million. New projects proposed, including security-related projects at the Airport, total \$11 Million. He noted that \$9,760,906 in projects were deleted. This brings the total of proposed projects to \$121,186,969. He added that this figure does not include the Equipment Replacement Program.

Mr. Keefe said some significant issues include the General Obligation Bonds that Mr. Taylor noted earlier. There are proposed Revenue Bonds for water and sewer and parking projects. The water and sewer bond financing will be \$23 Million and the parking bond financing, to finance a parking facility, will be \$5 Million. He said the current low rates for financing make it feasibly more attractive now and allows system users 15 years from now to help pay for the improvements. Mr. Keefe said there were 12 projects that moved from FY2003 to FY 2004, for a total of \$6 Million.

Mr. Keefe said the new projects proposed include: 1) Airport improvements totaling \$970,289, including expanding the Closed Circuit TV system, Business Park paving, Roof for the Business Park buildings, Interactive training equipment, and replacing the Parking Revenue and Access Control System, 2) ITD improvements including fiber optic connections between Public Utilities Department and the new Billings Operation Center and from City Hall to the Public Utilities Department. He noted that County and State participation in funding these items are a possibility, 3) Engineering projects, including several studies to prepare for future projects. These projects include East End Storm Water Study, King's Green Drainage, Uinta Park Subdivision, West Heights Storm Master Plan, Alkali Creek Road improvements and Midland Road Storm Drain for a total of \$1,748,000, and 4) Study for improvements to the Library of \$100,000; Land acquisition for the MET Transit Transfer Station for \$500,000 and remodeling/upgrading Library and City Offices in the Library Building for \$8 Million. He noted that the amount for the Library would depend on the study results and Council input and could be in a range from \$3 Million to \$8 Million.

Mr. Keefe said the deleted projects include the Cambridge Way Storm Drain for \$50,000, Library Bond Project for a new Library that was \$9 Million and Phase II of the Transit Facilities project that was merged with Phase III for \$710,906.

Mr. Keefe said the Equipment Replacement Program is a 20-year plan that is revised annually. He noted that equipment is not automatically replaced at 20 years, but is

reviewed on an annual basis for possible replacement. This process allows the funding requirements to remain level. He noted the replacement costs for FY 2004 will be \$4,727,629. He added that this amount relates to equipment that now exists and is in need of replacement and does not allow for additional new purchases.

Mr. Taylor reminded the Council that the Capital Improvement Plan and the Equipment Replacement Plan are tools to provide guidance for the next four years. The items in these plans will be contained in the budget that the Council will consider this Spring. He noted that new equipment needs will appear as a supplemental budget request at budget time. Mr. Taylor recommended the FY 2004-07 Capital Improvement Plan proposal be approved and urged the Council to adopt it.

Councilmember Gaghan asked if some of the funds for the proposed land acquisition for the MET Transit facility would come from federal sources. Mr. Keefe said his understanding is that 80% of the funding needed for the site acquisition and construction would be from federal sources. Mr. Putnam added that the \$500,000 proposal in the Capital Improvement Plan would be for the flexibility and additional latitude to ensure acquisition of the site and completion of the project. Mr. Taylor noted that any property acquired by the City beyond \$300,000 must have two appraisals and federal requirements may be more stringent. The additional funds in the CIP will ensure that all requirements to secure the land and construct the project will be met.

The public hearing was opened. MARION DOZIER, RESIDENT OF THE SOUTHSIDE, spoke in support of the Highland Park Wading Pool. She asked the Council to include this item in the Capital Improvement Plan or the appropriate budget. The requested amount is \$100,000 and she noted that Block Grant Funds have been secured for maintenance of the pool. She said \$50,000 has been set aside for this purpose. She noted the spraypark at Terry Park uses twice the amount of water per day than was used in the wading pool, even when drained each night. She said this project has the support of the Little Flower Daycare and the Southside Neighborhood Task Force. She asked the Council to find \$100,000 in the budget to fund this request.

WELDON BIRDWELL, 44 YELLOWSTONE AVENUE, said he concurs with Ms. Dozier's comments on the Highland Park Wading Pool. He strongly encouraged the Council to include the \$100,000 expense in the Capital Improvement Project or elsewhere in the budget to reopen this pool. He said it is a worthwhile project and an important matter for the Southside neighborhood.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the staff recommendation, seconded by Councilmember Larson.

Councilmember Brewster noted that he wanted to move the Aquatic Center project to this year for electoral consideration. However, in light of the fact that the Blue Ribbon Committee has just been appointed and approved, he expressed his desire that this committee be allowed to perform their review and recommendation so that a complete and concise proposal can be presented to the voters. He also asked the staff and councilmembers to consider additional funding be included in the Street Bond improvements for acceleration of the signaling programs.

Councilmember Poppler amended the motion to include a project to design and reconstruct the Highland Park wading pool consistent with health and safety standards for the FY 2004 portion of the Capital Improvement Plan at a cost of \$180,000 to be funded

from Community Development Block Grant funding as has been or may be awarded and the remainder from the General Fund undesignated fund balances, seconded by Councilmember Gaghen. On a voice vote, the motion failed 3 to 7 with Councilmembers McDermott, Gaghen and Poppler voting "yes" and Councilmembers Brown, Brewster, Iverson, Kennedy, Jones, Larson and Mayor Tooley voting "no".

Councilmember McDermott amended the motion to utilize Community Development Block Grant funds for \$150,000 (\$100,000 added to the \$50,000 CDBG funds already allocated to the Highland Park pool), seconded by Councilmember Gaghen. Councilmember Brewster asked if this assumes that Community Development Block Grant funds rather than a Park Maintenance District will be allocated for maintenance each year. Councilmember McDermott said that was correct. She said Community Development Manager John Walsh has acknowledged that the project is eligible for those funds. Councilmember Brewster expressed concern that there is a need for predictable and on-going funds for maintenance and said there is the possibility that the Community Development Board may not approve this funding. Councilmember McDermott said that her understanding is that Community Development Block Grant funding could be the sources for this maintenance. Councilmember Gaghen commented that in the event that the Community Development Board denied the maintenance funding in the future, private funding sources could be considered.

Councilmember Jones expressed concern that the Council is allocating CDBG money prior to the process that originates from the Community Development Board. He said his understanding is that the Community Development Board will make this determination and recommend approval to the Council. He said this would not obligate the CDBG funds but would place it into the Capital Improvement Plan for determination of funding. Mr. Taylor noted that the amendment adds the project to the Capital Improvement Plan, which is a "guideline" that forms the recommendation for the budget. Councilmember Kennedy said he is concerned that allocating this amount of CDBG funds will "tie the hands" of the Community Development Board. There is limited funding and many requests. He said the proper source for funding this project is through property taxes. Councilmember Iverson agreed that there are many other worthy projects that compete for CDBG funds. She noted that when one project is funded another project must be cut. She said the Highland Park Wading Pool project is a necessary one, but noted that children in other areas of the City would like water facilities in their neighborhoods also.

Councilmember Poppler noted that her motion did not ask for funds from the CDBG, but from the General Fund. She said there should be \$100,000 that could be "squeezed out" of a multi-million dollar budget to fund this small project and not rely on a Park Maintenance District. Councilmember Gaghen said she is comfortable in allocating the CDBG dollars to the Highland Park pool project because there is a strict allocation of 15% of CDBG dollars to cover all other social service agencies. She noted that funds for the wading pool would not interfere with those allocations. Councilmember McDermott noted that \$150,000 of CDBG funds were used exclusively to fund the Terry Park spraypark. She added that CDBG funds are designed to be spent in low to moderate income neighborhoods. Councilmember Brown said he thinks it is not a good idea to allocate funds for a project that is only a "guesstimate" at this point. On a voice vote to amend the motion, the motion failed. On a voice vote for the original motion to approve

the staff recommendation, the motion was approved with Councilmembers Brown, Poppler and McDermott voting “no”.

3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #708: A zone change from Residential-7,000 to Residential-6,000 on Lot 1 of Robinson Subdivision. The subject property is located at 416 Orchard Lane. Laurie and Tuanette Van Winkle, owners. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this is a zone change request from Residential 7,000 to Residential 6,000 on property located at 416 Orchard Lane between Mitchell Avenue and Vaughn Lane. The property is 15,190 square feet in size. He noted that two property owners have withdrawn their protests, therefore the remaining two protests do not constitute a valid protest. He said the Zoning Commission held a public hearing on the request and recommends approval of the zone change.

The public hearing was opened. DUANE CLARK, VICE CHAIRMAN OF SOUTHWEST CORRIDOR TASK FORCE, noted that the applicant did not come to the task force meeting to give their position on the zone change request. He said it is the policy of the task force to not support applicants who do not present their requests in that forum. He said the task force opposes the zone change.

LAURIE VAN WINKLE, NO ADDRESS GIVEN, said he is the person requesting the zone change. He said he did not receive notification from the task force to appear at their meeting. He said he has lived in the community for 54 years. He noted the zone change request will not cost the City any money. He asked the Council to approve the zone change request.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember Kennedy. Councilmember McDermott asked why the request is for Residential 6,000 when Residential 7,000 allows for duplexes. Mr. Bollman said there is not enough lot area to keep the existing single-family dwelling.

Councilmember Jones said he would not vote on this zone change as his mother-in-law lives in the vicinity of the zone change request.

On a voice vote, the motion was approved with Councilmembers Gaghen and McDermott voting “no” and Councilmember Jones abstaining.

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #710: A zone change from Residential-6,000 to Neighborhood Commercial on Lots 1-4, Block 1 of North Park Subdivision. The subject property is located at 1511 6th Avenue North. John S. Armstrong, owner. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this zone change is from Residential 6,000 to Neighborhood Commercial on property located at 1511 6th Avenue North. He said the area to the north of the property is zoned Residential 6,000 and along 6th Avenue is zoned Community Commercial. He said the Zoning Commission recommends approval of the zone change.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brown moved for approval of the Zoning Commission recommendation, seconded by Councilmember Kennedy. Councilmember McDermott said the applicant appeared before the North Park Task Force. She said the zone change fits within the North Park Plan and she is comfortable with the zone change. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION 03-17950 approving tax benefits for the building at 1 North 33rd St., on behalf of Richard and Karen Harte. The subject property is described as Lots 9-12, Block 104, O.T. (re: Universal Awards Building). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the staff recommendation, seconded by Councilmember Kennedy. On a voice vote, the motion was approved with Councilmember Brown voting "no".

6. PUBLIC HEARING AND RESOLUTION 03-17951 amending the budget for FY 2002-2003 to reduce Council Contingency and increase the Parks & Recreation budget for the Meadowlark Park Master Plan, \$10,000. Staff recommends approval of the resolution. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Iverson moved for approval of the staff recommendation, seconded by Councilmember Larson. Councilmember Jones asked what happens to excess funds if the cost of the master plan is less than \$10,000. Mr. Taylor said the request is to fund this from the existing budget or Council Contingency up to \$10,000. Councilmember Brewster noted that this allows the Plan to be completed this year so applications for other sources of revenue to help the park can be completed. On a voice vote, the motion was approved with Councilmember Poppler voting "no".

7. PUBLIC HEARING FOR SPECIAL REVIEW #732: A special review to allow the location of a drive-through service in a Community Commercial zone on Lot 5A, Block 12 of Amended Sweet Acres Subdivision, 6th Filing. The subject property is located at 2223 Central Avenue. Little Horn State Bank, owner; Ernie Dutton, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Bruce McCandless said the property is located at 2223 Central Avenue. A special review is required because the property to the north is zoned Residential 6,000 and if a drive-up service is planned a special review is required when the surrounding zoning is residential. The Zoning Commission conducted a public hearing and is recommending conditional approval. Those conditions are: 1) A 6-foot sight obscuring fence or landscaping and fence shall be provided along the north property line and there shall be no access between the parking lot and alley except a walk gate for the purpose of trash disposal in a dumpster located in the alley, and 2) A Traffic Accessibility Study will be submitted to the City Engineer and be approved before beginning construction. He noted that the study has been completed, but has not been

fully reviewed by the Engineering office. Councilmember Kennedy noted that the intersection is a very congested intersection.

The public hearing was opened. ERNIE DUTTON, 2046 MARIPOSA LANE, said he is the agent for the proposal. He said the property is a full city block from the corner. The Traffic Accessibility Study concludes that most of the traffic that would frequent the intersection is already in the area. He further stated that the study said the proposed Kentucky Fried Chicken establishment would have minimal impact to traffic and safety operations of the surrounding streets.

Councilmember Gaghen asked what the square footage was of the proposed facility. Mr. Dutton said it would be 2,000 square feet. She asked how many parking spaces would be allotted to the facility. Mr. Dutton said the requirement is one parking space for every 100 square feet; the requirement is 20 spaces.

Councilmember Brown asked if the proposal includes a drive through. Mr. Dutton said this was the purpose of the special review. Councilmember Kennedy moved for approval of the Zoning Commission recommendation, seconded by Councilmember Larson. Councilmember Kennedy asked if the special review “runs with the land”, so if Kentucky Fried Chicken does not locate there the next proposal could include the same conditions. Mr. McCandless said that was correct as long as the conditions didn’t materially change. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING FOR SPECIAL REVIEW #733: A special review to allow the location of a beer and wine license with gaming in a Community Commercial zone on Lots 10-18, Block 103 of Billings Original Town. The subject property is located at 3314-1st Avenue North. Greg & Becky Pekovich, owners. The Zoning Commission forwards no recommendation on this item. Planning Staff recommends conditional approval. (Action: approval or disapproval of Planning Staff recommendation.)

Planning Staff Member Bruce McCandless said the property for this special review is located on the southeast corner of the intersection of North 34th Street and 1st Avenue North. He said the division between the Central Business District and zoning surrounding this property is on North 33rd Street. The property is zoned Community Commercial. He noted the property is one block outside of the Central Business District and therefore is exempt from the 600 foot separation requirement. He said there is either an arterial street or blockage of buildings separating the property from other uses and preventing the view of the subject building. Mr. McCandless said the license will only be permitted in the café portion of the building which is shielded by the hotel on two sides. He said the Zoning Commission conducted a public hearing in January and forwarded no recommendation due to a “tie” vote. The Planning Staff has recommended conditional approval. The conditions are: 1) On-premise consumption of beer and wine shall be limited to the existing café 2,800 sq. ft. ground floor and 900 sq. ft. basement that are illustrated on the submitted site and floor plans, and 2) The casino/gambling operations are limited to the 1,100 sq. ft. ground floor and 900 sq. ft. basement area illustrated on the submitted site and floor plans.

The public hearing was opened. STEPHANIE MARR, 2275 DIVISION STREET, BALLANTINE, MT, said she supports the special review. She said she has worked for

Greg and Becky Pekovich for the last six years and is Greg's sister. She said she manages several of his businesses. She noted that Mr. Pekovich has purchased three motels in Billings that had unsavory reputations and has "turned those businesses around and now employs approximately 60 people in them." She said it is stressed to the employees that these operations will be clean, legal businesses. She assured the Council that they will endeavor to run a reputable business that will not be a problem to the community at this location. Ms. Marr said she sees this as a positive change for Billings. Councilmember Brown asked if the casino and bar will harm the present restaurant trade. Ms. Marr said the owner of the restaurant said she thinks the addition would draw business to her establishment. Councilmember Brown asked if the bar would be serving food. Ms. Marr said the bar would not compete with the established food service. Councilmember Brown asked if the restaurant would be connected to the casino. Ms. Marr said "yes".

LIBBY LAIRD, 134 SOUTH SANTA FE DRIVE, said she is head of the Church Board at St. Luke's Episcopal Church. She said she is representing Father Gary Rottingham who could not attend the Council Meeting. She said they respectfully ask the Council to consider that St. Luke's is opening a preschool this Fall and to deny the special review in view of the 600-foot separation requirement. She noted that the Church has had problems in the past with "drunks and other undesirables" crossing their yard and actually entering the building. She said it is not in the best interests of the church to have a bar and casino this close to a church and preschool. She also noted that Central Catholic High School and a public park are also in the vicinity. She asked the Council to maintain the zoning restriction and deny the special review.

LIZ FREEMAN, 1502 LEWIS, WORDEN, MT., said she speaks in support of the location of the beer and wine license at the Esquire. She said she has worked for the Pekovichs for 4-1/2 years and found them to be very respectful and responsible business people. She said the policies and procedures implemented at their Long Branch Bar in Ballentine have created a friendly neighborhood bar and casino from what was a very undesirable bar. She noted that checking ID is strictly enforced, checks are not cashed on the premises and rowdy behavior is not tolerated. She said because of past practices by the Pekovichs, she has no doubt the proposed establishment will be an asset to the downtown area.

AL KOELZER, 2828 WESTWOOD DRIVE, said he speaks in favor of approval of this application. He said he has worked with the Pekovichs for about 10 years on their real estate transactions. He is impressed that this family "buys the worst properties and makes them work". He noted it is truly a family operation with all members helping to restore and manage the businesses. He said the Petkovichs provide an important service to Billings by providing affordable and decent places for people to reside and stay in.

TOM EMERLING, 1516 9TH STREET WEST, said he is a business broker in Billings. He said he sold the Pekovichs the Lewis and Clark Motel and agrees with Mr. Koelzer's comments. He noted the immediate neighbors around the Esquire are very supportive of the proposed establishment. He said the Pekovichs would have the most to lose as the clientele of the bar and casino will affect the motel business.

BRIAN SCHMALZ, BALLANTINE, said he is familiar with the operation of the Long Branch. It is a clean, well-respected, nice place to go. He said he feels sure this

will be the case with the proposed establishment. It will be a welcome addition to that area of town.

LEONARD DUNER, BALLANTINE, said he has known Greg Pekovich for four years as he lives close to the Long Branch. He said he has never seen or heard of any problems with the operation of the Long Branch. He said the Pekovichs are a very community supportive family.

LUANNE PEKOVICH, NO ADDRESS GIVEN, said she lives at the Lewis and Clark Motel. She said Greg Pekovich is her brother and she has worked with him for six years. She said the family business endeavors to run clean, safe operations. She said it is in the best interests of the Pekovichs to police their operations closely. She encouraged the Council to approve the special review.

GREG PEKOVICH, 111 SKY RANCH, said he and his wife Becky recently purchased the Esquire Motel. He said they endeavor to always operate clean establishments. He noted that the license request is for beer and wine only with gambling. He noted that the previous operation in the lounge included a full liquor license. He said their intention is to reopen the lounge after a closure of about 4 years and in the process draw clientele to overnight stays at the motel. This would allow travelers to eat, sleep and be entertained in one location. He said the proposal meets all of the criteria necessary to approve this special review. He said their successful operation of the Overpass Motel and the Long Branch shows their history and ability to operate those types of businesses. Mr. Pekovich said beer, wine and gaming licenses are a limited commodity in Billings. If the license is not located as stated in the proposal, it will draw traffic away from the downtown area rather than to the downtown area. He called attention to the letters of support from the Downtown Billings Association.

There were no other speakers. The public hearing was closed. Councilmember Poppler moved for approval of the Planning Staff recommendation, seconded by Councilmember Larson. Councilmember Larson asked Councilmember Poppler if the approval includes the conditions recommended by the staff. Councilmember Poppler said "yes".

Councilmember Gaghen said she is a member of the First Baptist Church and will vote against the special review. She said she has had experience as the church secretary by persons who misused alcohol and have threatened or startled her in her position. She said she feels this could happen at the St. Luke's Preschool and understands their concerns. She commended the Pekovichs for their accomplishments with the Overpass Motel in particular.

Councilmember Larson noted that ten years ago most of the community could not comfortably walk on Montana Avenue. He said several property owners have restored many of the buildings and brought about a major renaissance in this community with little help from the downtown promotion efforts. He said the area needs thriving, active businesses run by people who care. The quickest way to bring the problems that the church is concerned about is to let these businesses fail, be poorly run and the buildings to be empty. He said he believes the Pekovichs are committed to making a difference in this operation and neighborhood. He noted that the problem of unwanted trespassers has markedly decreased as the downtown area has been restored.

On a voice vote, the motion was approved with Councilmembers McDermott and Gaghen voting “no”.

9. PUBLIC HEARING FOR SPECIAL REVIEW #734: A special review to allow the location of a church, preschool, private school (elementary, junior and/or high school) and commercial recreation uses in a Residential-9,600 zone on Lot 1, Block 4 of High Sierra Subdivision, 2nd Filing. The subject property is generally located on the east side of Wicks Lane, between High Sierra Boulevard and Siesta Avenue. Harvest Church, owner; Alex Tommerup, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this special request is for a number of different uses that are allowed through special review and the Residential 9,600 zoning. The request is to allow the location of a church, private school and commercial recreation uses in a Residential 9,600 zone on property located on the east side of Wicks Lane between High Sierra Boulevard and Siesta Avenue. The property is 28.7 acres in size. He said there are single-family residences located to the east of the property. The first phase is for approval of the entire site and the master plan. The initial development of the property will occur in the southern portion and will be a multi-use building and parking lot. The north end of the property contains baseball and soccer fields and the potential for a community recreation center. Harvest Church is proposing the main church building include a school and other uses with parking around the north and east sides of the building. The proposal also contains a skateboard park and amphitheatre on the property. Mr. Bollman said the Zoning Commission held a public hearing and recommends conditional approval. The conditions are:

1. The property shall be landscaped, including berming, as shown on the submitted site plan. Additionally, the areas labeled as “future parking” shall be landscaped in accordance with the landscaping regulations in the zoning code.
2. The “food court” and “bookstore” shall be limited to non-profit, non-franchised operations and shall be accessory and incidental to primary church use of the property.
3. The lighting for the baseball and soccer fields shall not be operated any later than 10 p.m. and the lighting standard locations and direction shall be approved by the Planning Department prior to installation.
4. The hours of operation for the amphitheater shall be limited to between 8 a.m. and 10 p.m.

He noted the conditions were intended to clarify the proposal or require further review of certain aspects of the development once they come in for permanent review.

Councilmember Brown asked if the developers have addressed the needed water and sewer and street improvements. Mr. Bollman said a Development Agreement with the City that would address those issues would be necessary prior to development of the site. As the project moves along, those details will be addressed. Councilmember Brown asked if the City will be sharing in development of the street. Mr. Bollman said the Development Agreement would include the City’s participation.

The public hearing was opened. ALEX TOMMERUP, NO ADDRESS GIVEN, said he is the architect for the project. He said the facility was a church “plant” from the

West End and has grown in the last two years to 900 members. He said the church has made a commitment to the area to provide the services in the master plan. He said the church has received positive comments from some of the neighbors.

RICHARD CLARK, 1207 25TH STREET WEST, asked the Council to approve the plans for this church facility. He said it is a place for the whole family to go with ball fields for the kids and plenty of recreation for the Heights users.

There were no other speakers. The public hearing was closed. Councilmember Jones moved for approval of the Zoning Commission recommendation with conditions, seconded by Councilmember Brown. Councilmember Gaghen recommended that the applicants speak with Mary Westwood prior to planning the skatepark. She noted that the plan is commendable.

Councilmember Poppler asked if there is sufficient parking for 900 members. Mr. Tommerup said the first phase allows parking for 260 cars. He said there would be a couple of services to accommodate the members. He noted the ratio used is 2 to 1, 2 members for every 1 parking space and is standard church design. He said the City requires a 4 to 1 ratio. Councilmember Poppler asked if a traffic study has been done. Mr. Tommerup said the traffic study is in process and is part of the requirements.

Councilmember Brewster asked if the Council will have a chance to review this during the Subdivision phase. Mr. Bollman said the subdivision phase is completed. The Traffic Accessibility Study will be reviewed and approved by the City Engineering Department prior to the building permit stage and included in the Development Agreement.

Councilmember Brown said he is very excited about having this project come to the Heights. Councilmember Kennedy stressed the importance of the traffic study. On a voice vote, the motion was unanimously approved.

The Mayor called for a five-minutes recess at 8:27 P.M.

The Mayor reconvened the Council Meeting at 8:35 P.M.

10. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property (Annex #02-18): A 9.9197 acre tract located in the NE4 of Section 14, Township 1 North, Range 26 East, B & R Development, owners. Staff recommends approval of ordinance on first reading. (Action: approval or disapproval of ordinance on first reading.)

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Larson moved for approval of the ordinance on first reading, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

11. PUBLIC HEARING AND RESOLUTION 03-17952 FOR ANNEXATION #03-01: A resolution annexing a tract of land situated in the NE1/4 of Section 23, Township 1S, Range 25E more particularly described as: C/S 1079, Second Amended Plat, Tract 4A, containing 0.0917 acres. Eugene A. and Carol C. Brosovich, owners. Staff recommends approval of the public services report and resolution. (Action: approval or disapproval of Staff recommendation.)

Planning staff member Bruce McCandless said the size of the property is .1 acre located southeast of Gabel and Hesper Roads. The owners of the property petitioned the City for annexation to obtain services. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember McDermott moved for approval of the staff recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

12. PUBLIC HEARING AND FIRST READING ORDINANCE providing that the Billings, Montana City Code (BMCC) be amended by providing for the repeal of sections 2-201, and 2-211 through 2-225; and by adding new sections to be numbered 2-201 through 2-207, 2-211 through 2-216, 2-221 through 2-225, and 2-231 through 2-241; establishing: the Mayor and City councilmembers' compensation, duties, powers, and conduct; the meetings, rules of order, minutes, and rules of procedure; committees; the requirements for ordinances and resolutions, the procedure for adopting and recording same, and effective dates. Staff recommends approval of the ordinance on first reading. (Action: approval or disapproval of Staff recommendation.)

Assistant City Administrator Kristoff Bauer said this ordinance attempts to allow for consistency between the Council's policy and procedures and the documented policy and procedures in the existing code. He highlighted Section 2-204 regarding the elections of Deputy Mayor and Mayor Pro Tem. He noted the current code states the elections are annual and the Council practice is to elect them concurrent with the General Elections, which is every two years. He noted Section 2-207 that is an addition dealing with forfeiture of office. This portion addresses the reasons and procedures for the removal of an official from office. He said both sections have alternatives available after the public hearing. Those alternatives include approval on first reading and return for final approval, or they can be amended and approved on first reading and returned for second reading and final passage.

Councilmember Brown questioned whether the Council should have the right to eliminate someone elected by constituents. He said it should be handled by the voters in the community.

Councilmember Poppler asked that Section 2-207 be separated out for further study. She said she supports returning to past practices with the Deputy Mayor and Mayor Pro Tem elections every other year.

Councilmember McDermott said she agrees with Councilmember Brown's comments. She noted that the review of the City Charter will come up in the next two or three years and that would be the appropriate time to address those issues. She also said she agrees with Councilmember Poppler's comment about the election practices.

Mayor Tooley asked City Attorney Brent Brooks if there is something in the Charter regarding the election process that directly contradicts what the Council is doing. Mr. Brooks said he did not believe so. He said as long as the Council is adhering to the minimum requirement based upon the City Charter the Council is correctly operating.

Mr. Bauer said both options are legal and acceptable. He said the staff will draft the ordinance in the direction the Council would like to go.

Councilmember Gaghen said she understood that the Council is mandated by the Charter and the ordinance was not as high a precedent. She said Mr. Brooks now indicates that the ordinance is as effective. Mr. Brooks confirmed the Charter requires elections every other year and the ordinance requires every year. He said each factor must be examined separately and there is no one answer to give on any aspect of the ordinance.

The public hearing was opened. There were no speakers. The public hearing was closed.

City Administrator Dennis Taylor noted that the Constitution of Montana requires that the citizens of the City of Billings vote on the question of whether or not to have a study commission every ten years. This is why the Council may want to take action and decide what the policy and recommendations of this Council should be. This action tonight is a policy decision of the Council as to how the meetings will be conducted and other issues that are not clearly stated in the Charter. He asked the Council to provide direction that the Council would like the staff to take in making changes to those procedures and policies through the ordinance.

Councilmember Gaghen moved for approval of the ordinance on first reading, seconded by Councilmember Larson. Councilmember Larson said the only issue regarding the election of Deputy Mayor and Mayor Pro Tem is the specificity of how General Elections are defined. He said it is the responsibility of the Council to give more definition to the requirement. He added that he does not feel any councilmember will be comfortable with the option of removing another councilmember from office. However, he noted that without having specific policies for that provision, the Council will be faced with the potential of having a vacancy on the Council that the voters will allow to occur, which has happened in the past. He added that he is uncomfortable with the language in that particular section of the proposed ordinance.

Councilmember McDermott clarified that Deputy City Attorney Kelly Addy stated that General Election means Municipal General Election on all odd years.

Councilmember Larson amended the motion to require Deputy Mayor and Mayor Pro Tem elections to occur at the first meeting of the year after each Municipal General Election and the term be two years, seconded by Councilmember Brewster. Councilmember Poppler said the position of Deputy Mayor and Mayor Pro Tem should possibly circulate among the Councilmembers, but the Council needs to decide on a policy. Councilmember Brown said he did not see a need for change. On a voice vote, the amendment was approved with Councilmembers Kennedy and Gaghen voting "no".

Councilmember Poppler amended the motion to remove the proposed Section 2-207 from the ordinance (regarding forfeiture of office) to be reviewed and resubmitted at a later date, seconded by Councilmember Gaghen. Mr. Taylor suggested that the Council could leave Section 2-207 as it currently exists and present a more detailed discussion of their concerns at a work session and draft an ordinance specifically and solely to deal with the forfeiture of office issue. Councilmember Poppler noted this ordinance is of great importance and would suggest that the staff confer with several Councilmembers during the drafting stage. Mr. Taylor reminded the Council that the City Code is basically silent on this critical issue.

In response to Councilmember Larson's question, Mr. Bauer clarified that Section 309A of the Charter includes provisions for death, resignation, removal from office, and

forfeiture of office for councilmembers. Councilmember Larson said the situations listed in Section 2-207A are straightforward and clear, but it is paragraph B the Council should focus their energy on. Councilmember Gaghen said items 5 and 6 relate to and should be grouped with the items in Section B. Mr. Bauer clarified that a tribunal (in item 5) relates to a court of law to act, not a group of peer Councilmembers and is consistent with the Charter. He added that item 6 does relate to section B.

Councilmember Larson offered a substitute motion to approve the ordinance as amended and remove for future consideration Section 2-207 A6 and Section 2-207 B, seconded by Councilmember Gaghen. A question of procedure was raised regarding changes in the ward boundaries and redistricting affecting a council position. Councilmember Iverson said the Charter states that the ward boundaries that a Councilmember was in when elected remain firm during redistricting changes and may be the loophole until the next election. On a voice vote, the substitute motion was unanimously approved.

13. \$7,135,000 TAX INCREMENT URBAN RENEWAL REFUNDING BONDS, SERIES 2003:

(A) Bond Bid award. ~~Recommendation to be made at meeting.~~ Recommend S.G. & Long and Company at a net interest rate of 3.4563%.

(B) Resolution 03-17953 relating to \$7,135,000 Tax Increment Urban Renewal Refunding Bonds Series 2003; Authorizing and Directing the Issuance, Awarding the Sale and Prescribing the Form and Terms and Security.

~~Recommendation to be made at meeting.~~ **Recommend approval of the resolution.**

Administration and Finance Department Director Robert Keefe reminded that Council that at the last meeting there were no bids received. He said through the City's Financial Advisor, four companies were contacted that might be interested in purchasing the bonds. Those companies were concerned about Qwest being the biggest property owner in the district and suggested that the City look into insuring the bonds. The advisor is in the process of contacting potential insurers and potential purchasers of the securities. He noted that all four companies did state that they could sell the bonds. D A Davidson and Piper Jafrey collaborated on a proposal and the staff is not recommending that proposal. The S. G. Long proposal was determined to be the best proposal and the Financial Advisor concurred. He said this will save the City \$440,000 over the next five years. He said the recommendation is to award the bonds to S. G. Long as underwriter and approve the Bond Sale Resolution.

Councilmember Brown asked what the rate on the bonds is. Mr. Keefe said the rate on the bonds being refunded ranged from 4.5% to 7.1% and the rate on the refunding bonds to be issued will be 3.4563% net effective interest rate. Councilmember Brown asked what the total cost of the transaction was. Mr. Keefe said it is in the vicinity of \$80,000 to \$100,000. He noted the \$444,000 savings includes that cost.

Councilmember Brown moved for approval of staff recommendation for Item 13A, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Brown moved for approval of staff recommendation for Item 13B, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

14. DISCOVER AMERICA VIDEO: (Delayed from 1/13/03)

(A) Agreement with Teaching Learning Network to create a video segment on Billings. Staff recommends approval of the agreement.

(B) Resolution authorizing the use of \$19,500 in Council Contingency funds for the production and broadcast of the video. Staff recommends approval of the resolution.

Mayor Tooley gave a report of his findings regarding other development entities contributing to the cost of the production and broadcast of the video. He said he received a letter from the Downtown Billings Partnership stating they did not have enough information on the Teaching Learning Network to participate in the funding request. Big Sky Economic Development Authority also chose not to participate. The Chamber of Commerce said they would not participate, adding that they have produced a 7-1/2 minute promotional video about the City of Billings and offered to let the City use it. The Downtown Billings Association said they would contribute \$2,000 to the effort. He said with the DBA's contribution the Council would be required to approve a \$17,500 expenditure for the project. He reminded the Council that the Teaching Learning Network has access to cable distribution of the completed video to approximately 64,000 households. He said the master tape is secondary to the widespread broadcast opportunities.

Councilmember Brewster moved to approve the staff recommendation regarding the agreement with the Teaching Learning Network, seconded by Councilmember Brown. Councilmember Gaghen said the appeal of this item is the market potential. She noted that a downtown business member was excited that Billings may participate in this and said the cost seemed "minimal for the good that it could do". Councilmember Jones expressed concern with the participation agreement regarding air times that are not conducive to the largest viewing public. He said he feels there are a lot of loose ends to the agreement and has reservations about it.

Councilmember Larson said he thinks the positions of the different downtown and economic agencies are backwards; that they should be spearheading this and asking the City to participate in this endeavor. He said if they don't see the value in this project, then he can't justify spending the taxpayers' dollars on it. Councilmember McDermott said she can't support this project without more financial support from the other agencies. Councilmember Kennedy noted the request amounts to 13% of the Highland Park Pool requested costs. The City needed to be fiscally conservative, he said, adding that generally the marketing budget is the first to be eliminated when cost savings go into effect. On a voice vote, the motion failed.

Item 14B was not considered due to failure of item 14A.

15. PRELIMINARY PLAT of B & R Subdivision generally located at 2122 Bitterroot Drive. ~~Staff~~ Planning Board recommends conditional approval of the preliminary plat application including the Findings of Fact. (Action: approval or disapproval of ~~Staff~~ Planning Board recommendation.)

Planning Staff Member Bruce McCandless said this application is a recommendation from the Planning Board for conditional approval of B & R Subdivision located on the west side of Bitterroot Drive and south of Mary Street. He said there will

be 34 lots zoned Residential 7,000. He said the subdivider intends to construct single-family residences. The Findings of Fact, which are presented as an attachment, discuss the potential negative effects and the following conditions are recommended as measures that will mitigate them.

RECOMMENDED CONDITIONS

1. Subdivider shall establish covenants, deed restrictions or other means to notify lot owners that the irrigation ditches that cross the property may not be altered, the easements may not be encroached upon by structures or vegetation and their operation may not be impaired without BBWA approval and further, that maintenance will be performed by the ditch company or other water users as needed. All surface water rights shall be severed from the land.
Required by BMC Section 23-603(a) and MCA 7-3-504(k)
2. The subdivider will provide to the City Engineer a letter of approval from the BBWA for any irrigation ditch changes prior to final plat approval.
Requested by BBWA and Public Works to ensure that the laterals meets downstream water users' needs and satisfies BBWA requirements
3. Subdivider will coordinate with the US Post Office for location of mailboxes or other delivery facilities that do not encroach upon the proposed curbside walk.
Requested by Public Works and required by the ADA
4. Amend SIA 2 C to require that the stormwater management design report be submitted and approved by the City Engineer before final plat approval.
Requested by Public Works
5. The stormwater management design report will examine alternatives and recommend a solution for discharging stormwater to an existing drain or other facility that will remove stormwater from the site. The proposed stormwater detention basin on lot 13 will not be used, so there will be no restriction on transferring the lot due to the existence of the basin.
Requested by Public Works, area property owners and the Planning Board to address concerns about on-site stormwater detention
6. Subdivider will submit an underground utility trench dewatering plan prepared by a licensed professional which must be approved by City Engineering prior to final plat approval. Subdivider will be totally and solely responsible for the dewatering plan, construction and the effects of dewatering. The subdivider will clarify and identify responsibility/liability for damages that may occur from the construction activity. The subdivider will indemnify the City for any damages; indemnification to be approved by the City Attorney.
Requested by Public Works, area property owners and Planning Board to identify and mitigate the effects of dewatering utility trenches

7. Subdivider will notify prospective purchasers that the property is subject to high groundwater conditions and that foundations and basements may require specialized engineering and construction to account for this condition.
Requested by area property owners and Planning Board to inform prospective buyers that extra care and costs are warranted when developing this property
8. A 6' sight obscuring fence will be installed on the interior boundary lines of the utility and irrigation easements that are along the north and south property lines. Fences shall be installed at the time of house construction and may not obstruct the easements. Other suitable buffering may be proposed that protects livestock and prevents encroachment into the utility and irrigation easements.
Requested by Planning Board to provide a buffer between houses and agricultural land uses
9. Subdivider will prepare and submit an update to the Daniels Subdivision Traffic Accessibility Study (TAS) which must be approved by City Engineering before final plat approval. The TAS will address the traffic from the B & R Subdivision that may use the streets within the Daniels Subdivision and the traffic from the Daniels Subdivision that may use the Peony Drive extension for access to Bitterroot Drive. Mitigation that is identified by the TAS will be included in the private contract that is executed for public improvements construction.
Requested by Public Works and Planning Board. BMC 23-703(a) requires accessibility studies for residential subdivision of over 50 units. The cumulative effect of this subdivision and the adjacent subdivision exceeds this threshold.
10. Lawn irrigation wells are prohibited within the subdivision.
Requested by area residents and the Planning Board to reduce the potential for depleting the available water that is used for domestic purposes
11. Subdivider will investigate the feasibility of piping all irrigation ditches on the property.
Requested by the Planning Board to reduce the impact of irrigation ditches on owners of this subdivision
12. Define how existing water rights and water transportation will be preserved for downstream water users.
Requested by area residents and the Planning Board to assure water users that they will have continued access to irrigation water
13. Define and demonstrate basement flooding mitigation.

Requested by the Planning Board to show how future residents can be protected from damage from shallow groundwater

14. Demonstrate how utilities and irrigation ditches will occupy easements and provide evidence that their uses will not conflict.

Requested by area residents and the Planning Board to show how utilities that co-locate with irrigation ditches can be installed without impairing access to or use of the ditches

15. Demonstrate how the westerly irrigation ditch can be maintained and how water users will gain access to the ditch for maintenance activities.

Requested by area residents and the Planning Board to assure future access to the ditch lateral that supplies downstream water users

16. Demonstrate efforts to protect against water well contamination.

Requested by area residents and the Planning Board to address potential contamination of water source by urban development

17. When the final plat application is submitted the subdivider will schedule a meeting with the Planning Board and area residents to disclose how the conditions described above have been addressed by the subdivider.

Requested by area residents and the Planning Board to determine that mitigation has or will occur

18. Minor wording changes may be made in the final documents upon request of the Planning or Public Works Departments to clarify the documents and bring them into standard, acceptable format. The changes are not intended to alter the intent or extent of the documents. *Standard condition that permits minor changes to the final plat documents without requiring the subdivider to repeat the subdivision review and approval process.*

19. Subdivider shall comply with all applicable federal, state and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations.

This condition informs the subdivider that all local and state laws and policies apply to the subdivision even if they are not specified in the documents.

The following are the findings of fact:

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

1. Effect on agriculture

This subdivision will have an effect on agriculture and agricultural water users. The property is crossed by a BBWA supply ditch that irrigates about 50 acres north and east of the property. Therefore the ditch can't be abandoned and it must be rebated

on this property. The subdivider will have to assure the BBWA that he can construct new pipes or ditches that will continue delivering water to the users. Most of the agricultural uses are in the County and are for single family residences and small acreage tracts used as livestock pasture. Encroaching urbanization will impact if and how these uses are continued. Taking the approximately 10 acres out of agricultural production should have a small effect on agriculture. Utility installations in the adjacent subdivision appear to encroach on the existing irrigation ditches. Future installations should be compatible with the ditches. Small residential lots are not compatible with flood irrigation so water rights should be severed from this land. The irrigation ditches will remain in use so new residents need to be informed that they will continue in operation and that they may not be altered or used by the residents.

2. Effect on local services

- a. Utilities – Water and sewer facilities will be extended by the developer to serve this subdivision. The property is in the Heights Water District, which will supply the needed domestic water through an extension of the line that is in Peony Drive in the Daniels Subdivision. Sanitary sewer will be constructed by the subdivider and connected to the trunk line in Bitterroot Drive. The subdivider proposed to install a stormwater detention basin on one of the lots, to be used in the interim until a storm drain trunk line is installed in Bitterroot. This proposal raises public health concerns so the stormwater should be conveyed off-site. High groundwater and stormwater management have been concerns in the adjacent Daniels Subdivision so the final design of all utilities should be reviewed and approved by the City before any construction occurs. Private utilities will be extended to this property under the companies' operating rules.
- b. Solid waste – Since the property is partially developed and may have been served by a private hauler, the City may be barred from serving this land for at least 5 years. The City's landfill has adequate capacity for this waste.
- c. Streets - The subdivider will construct Peony Drive from its terminus in the Daniels Subdivision to a new connection with Bitterroot Drive. It is proposed to be a 37' wide street within a 60' right of way and have a 5' curbwalk. The subdivider has agreed to prohibit mailboxes, signposts and other obstructions in the sidewalk so that pedestrian travel isn't impeded. This requires the subdivider to work with the US Post Office to provide alternative mail delivery facilities. Bitterroot Drive is a two lane asphalt street and won't be improved at this time. The waiver of protest to creating SIDs ensures this property's participation in a future improvement. Subdivision regulations require accessibility studies in subdivisions with more than 50 homes. This subdivision does not meet that threshold but since it connects to the Daniels Subdivision the cumulative effect will exceed 50 dwelling units. A TAS or updated Daniels TAS should be produced and any mitigation should be identified and constructed by the subdivider.

- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #6 located at Wicks Lane and St. Andrews, which is approximately 3 miles from this property. Police response will depend upon officer availability and location when a call for service is placed. AMR provides medical care and transport and response would probably come from the main station that is located on 4th Avenue North near Main Street.
- e. Schools – The subdivision is in School District 2. The subdivision residents will attend Eagle Cliffs Elementary, Castlerock Middle and Skyview High School. The district did not respond to a request for comments, so it is assumed that the facilities are adequate to serve the proposed subdivision. This is one of the areas that was affected by the School District's closure of Beartooth Elementary School. All elementary age children from this area are bused to Eagle Cliffs, which is approximately five miles from this property.
- f. Parks and Recreation – Because this is a major plat the subdivider must dedicate parkland or provide cash in lieu of parkland. The subdivider will donate cash in lieu of parkland and will participate in SIDs and PMDs to develop and maintain Daniels Subdivision park. The cash amount will be determined by using the purchase price or an appraisal value.
- g. MET Transit – There are two MET routes that serve the area. The nearest bus stop is located at Bitterroot and Elaine Street, approximately ½ mile from the subdivision. This subdivision will probably not prompt MET to change routes because the relatively low density development doesn't usually generate enough ridership to warrant service changes.

3. Effect on the natural environment

There should be little impact on the natural environment because the property is essentially part of a larger subdivision that is partially developed. There may be minor increases in air pollution during construction and from additional vehicle traffic in the area. Erosion control during construction is required by state law.

4. Effect on wildlife and wildlife habitat

There will be little impact on wildlife or wildlife habitat because this and surrounding property contain many housing units. There are no known endangered or threatened species on the property. Montana Fish Wildlife and Parks responded to the request for comments but had no specific comments on the subdivision.

5. Effect on the public health, safety and welfare

There are no known health or safety hazards on the property. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties. Residents of the area have expressed concerns that the underground utility construction work, new lawn irrigation wells and stormwater management facilities may disrupt water levels in domestic wells or contaminate them.

The subdivider will need to satisfy the Engineering Division and DEQ that the construction won't have these effects. Residents in the Daniels Subdivision have expressed reservations about additional properties adding to stormwater flows within the Daniels Subdivision. That subdivision has a history of high groundwater and slow runoff. The B & R Subdivision should not worsen the problems because it drains to the east rather than north into the Daniels Subdivision. The subdivider proposed an on-site stormwater detention basin that would be used until a storm drain is installed in Bitterroot. Public health concerns indicate that this alternative should be abandoned and the stormwater should be conveyed off-site to existing drains or other facilities. High groundwater may affect foundations or basements and the subdivider should disclose this fact and demonstrate how it will be addressed during home construction.

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

An Environmental Assessment is required and was submitted with the preliminary plat application. No significant adverse environmental effects were identified.

C. Does the subdivision conform to the 1990 Yellowstone County Comprehensive Plan and the Urban Area 2000 Transportation Plan? [BMC 23-304 (c) (3)]

1. Comprehensive Plan:

The subdivision meets the following goals/policies of the comprehensive plan

- a. Encourage a variety of housing types and/or styles within proposed housing developments. C-2
- b. Safe, energy efficient and sanitary housing. C-6
- c. Capitalize on existing public water supply systems. H-2
- d. Capitalize on existing public sewage systems and improve sewage systems in areas not currently served by public systems. H-4
- e. Encourage and direct urban growth to urban areas and contiguous lands to maintain a strong economy and accomplish a sound transition of agricultural land. I-3
- f. Curb urban sprawl and discourage leapfrog development. K-7

The subdivision does not meet the following goals/policies of the comprehensive plan
None

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Bitterroot Drive is a principal arterial street. 60' of right of way is being dedicated with the plat. No improvements are required at this time. Internal streets to serve the lots will be constructed by the subdivider using a private contract.

3. BikeNet Plan

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

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

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

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

The subdivision will use City sanitary sewer service and City solid waste collection and disposal services. The Heights Water District will supply domestic water to the property. All services are approved and regulated by state and federal authorities.

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

The property is in the Residential 7000 zoning district and the subdivision conforms to the zoning. Single and two family dwellings are permitted in the R7000 zone. 10 of the lots are large enough to accommodate two family dwellings although the subdivider intends to build only single family houses.

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

The subdivision contains public street rights of way and dedicated utility easements that provide adequate space for utility installation. The plat shows irrigation ditch easements and the final plat will have to comply with rules or conditions that are set by the BBWA.

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

All lots will have access to a public street.

CONCLUSIONS OF FINDING OF FACT

- The overall conclusion of the Findings of Fact is that the proposed B & R Subdivision does not create any adverse impacts that warrant denial of the subdivision.

- The proposed subdivision will impact local services and cause some increase in demand for those services. However, when the vacant parcel is developed the homeowners will pay property taxes and fees that should help to support those services. Agricultural water users may be impacted but the effects should be mitigated by assuring continued access to water that will flow through this property.
- The proposed subdivision conforms to several goals and policies of the 1990 Yellowstone County Comprehensive Plan and doesn't conflict with the Transportation or BikeNet Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, sanitary requirements and provides legal and physical access to each parcel.

Mr. McCandless said the Planning Board felt that if the conditions are applied the Council could approve the preliminary plat. Councilmember Poppler asked what the first condition meant by severing the water rights. Mr. McCandless said the water shares that are issued by the BBWA would need to be removed from the land, severing future property owners from irrigating their land with water from the BBWA canal. This condition only affects this piece of property. Councilmember Poppler said she is concerned about possible well contamination for surrounding property owners. Mr. McCandless said the primary concern was from storm water disposal and there is a condition that provides for drainage of the storm water using the Holling Drain.

Councilmember Poppler asked if there were protests of the plat. Mr. McCandless said there were 30 people speaking their concerns at the public hearing and a number of letters were received with the annexation. He said the conditions are provided to address those concerns. He noted the last condition will require the subdivider to come back to the surrounding neighborhood and demonstrate what has been done to alleviate their concerns. Councilmember Brewster asked if additional requirements can be added after the Council approves the preliminary plat. Mr. McCandless said "no".

Councilmember Iverson moved for approval of the Planning Board recommendation, seconded by Councilmember Brewster. Councilmember Gaghen asked the developer how the conditional requirements will affect the cost of the future homes. Mr. Brosovich said the homes are in the affordable housing category and would be similar to the homes in the nearby Daniels Subdivision.

Councilmember McDermott asked if the surrounding property owners were amenable to the conditional requirements presented at the Planning Board meeting. Mr. McCandless said the Planning Board did address those concerns. He said he did not think there were any "large scale protests". He added that most of the conditions were things the developer would have had to do anyway, but would have done during the final design phase and immediately prior to construction. It is unusual to have so much detail at the preliminary plat stage. He said he doesn't foresee huge costs coming from the conditions.

Councilmember Brewster amended the motion to strike the requirement for the developer to come back to the Planning Board to show how they are meeting the conditions, seconded by Councilmember Larson. Councilmember Brewster said the issues that have been communicated to him have clearly been addressed in the prior

conditions. Councilmember McDermott asked what recourse the City has if the developer does not meet the conditions. Mr. McCandless said at the final plat stage the City staff will review the plat for completion of the conditions. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

16. PRELIMINARY PLAT of Billings Operation Center Subdivision, generally located at the southwest corner of the South Billings Boulevard/Interstate 90 Interchange. Staff recommends conditional approval of the preliminary plat application including the requested variances and approval of the Findings of Fact. (Action: approval or disapproval of Staff recommendation.)

Planning Staff Member Candi Beaudry said the staff is requesting the Council take action on the preliminary plat for the Billings Operations Center. She said it is located at the intersection of South Billings Boulevard and Interstate 90 and comprises 24 acres and includes 5 lots, 4 that are north and 1 that is south of Midland Road. The zoning is both Entryway General Commercial and Public with the current use as irrigated farmland. The proposed Billings City Operations building will be located there. She noted there will be approximately 1,066 feet of Midland Road right-of-way dedicated. She noted there is water and sewer available and storm drainage will not be retained on site but rather discharged into the river via a storm drain. The conditions of approval are:

1. To minimize the effects on agricultural water user facilities the subdivider shall:
 - a. Obtain permission from the Suburban Ditch Company to realign the Suburban Ditch as proposed.
 - b. Obtain permission from Mr. John Fox, the adjoining property owner to realign the Suburban Ditch as proposed.
 - c. Reestablish 30-foot wide irrigation ditch easements on Lot 1, Block 2, Midland Road right-of-way, and Lot 4, Block 1. Separate easement documents shall be filed with the Clerk and Recorder when the final plat is filed and the easements shall be shown on the final plat (76-3-504(9) and (10), MCA). On Lot 4, Block 1, the irrigation easement must be located outside of the existing 10-foot utility easement.
2. To minimize the effects on local services, the subdivider shall:
 - a. Abide by the Subdivision Improvement Conditions attached to this report.
 - b. Show the location of the stormwater detention area easement on the final plat and file a separate easement document with the Clerk and Recorder when the final plat is filed.
 - c. Chamfer the lot corners at the intersection of Midland Road and South Billings Boulevard to 25 foot chamfer.
 - d. Obtain the necessary approach permits from the Montana Department of Transportation for Midland Road and the 40-foot access to Lot 1, Block 2 off of South Billings Boulevard.
3. To ensure that future land uses are legally permitted, the subdivider must follow the procedure to use the land contrary to zoning.
4. To ensure that utilities may be extended to every lot, the subdivider shall show the additional utility easements on the face of the plat:

- a. For a new gas line, 10-foot easements must be shown on the north side of Midland Road and the West Side of South Billings Boulevard.
- b. For electrical lines, 10-foot easements must be shown on both sides on Midland Road

Variations

The subdivider has requested and the City hereby grants the following variations by the City council from the strict interpretation of the City's Subdivision Regulations.

1. Variance from the arterial back of curb to back of curb width standard from 52 feet to 49 feet (27-601(k), BMCC).
2. Variance from the minimum radius and minimum tangent requirements based on a 45 mph design speed required for arterial streets (27-601(o), BMCC).
3. Variance from the provisions of Section 23-602 requiring platting of alleys in a commercial area.
4. Variance from the provisions of Section 23-605(d), BMCC requiring no-access on Midland Road to permit controlled access along both the north and south sides per specific site plan approval.
5. Variance from the provisions of Section 23-605(d) requiring no-access on South Billings Boulevard to permit one, 40-foot drive approach for Lot 1, Block 2, starting 100 feet south of the north property line of Lot 1.

Required Improvements

To minimize the impacts on local services, the Subdivider must construct the following improvements as required and in conformance with the City Subdivision Regulations.

A. STREETS

(1) *Street Construction*

All private internal access roads and site improvements within the Subdivision will be in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, the Uniform Building Code, the *Storm Water Management Manual*, and other applicable City Codes, Rules, and Regulations.

Subdivider and City agree that the required street improvements are as follows:

- (a) Standard curb and gutter will be installed on both sides of Midland Road from the west end of the Subdivision to the intersection with South Billings Boulevard defining a 49-foot wide (back of curb to back of curb) minor arterial street with center turn lane. Pavement on Midland Road shall include transitions at the west end to the width of the existing traveled way.
- (b) Standard curb and gutter will be installed on the west side of South Billings Boulevard and at the intersection of Midland Road in

accordance with the recommendations of an approved Traffic Accessibility Study and as approved by the Montana Department of Transportation. Pavement on South Billings Boulevard will include transitions at the north and south ends to the width of the existing traveled way.

- (c) The street widening and transitions on South Billings Boulevard will be in accordance with MDT Urban Design Standards and will be constructed per plans and specifications approved by the City Engineer and Montana Department of Transportation.

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.

- (2) *Street Signs*

Street name signs shall be furnished and installed as required by the City Engineer.

- (3) *Storm Drainage*

Storm drainage for Midland Road shall be provided by a combination of surface drainage and underground storm drains in the street. Storm drainage may be routed to an approved outfall or may include an onsite retention basin on Lot 4, Block 2. All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and shall be in accordance with the recommendations of the approved Storm Drain Study to be submitted to the Engineering Department by the Subdivider. Open retention areas shall be attractively landscaped.

- (a) Drainage from the South Billings Boulevard street frontage, and the intersection of Midland Road and South Billings Boulevard, will discharge to the existing borrow ditches in accordance with plans and specifications approved by the City Engineer and the Montana Department of Transportation.

- (b) All development within the lots of the Subdivision will meet the criteria of the City of Billings *Stormwater Management Manual*. If an off-site outfall is not constructed to serve the Subdivision, storm drainage from the internal developments will be to on-site retention systems designed specifically for each site development. Site drainage requirements will be described in the Storm Drain Study provided for each project at the time of development and will be subject to review and approval by the City Engineer in conformance with the *Stormwater Management*

Manual. Open retention and detention areas shall be attractively landscaped.

- (4) *Sidewalks*
Sidewalks will be installed on South Billings Boulevard and Midland Road at the time of the street construction. Sidewalk shall be 5-foot wide boulevard walk on Midland Road and South Billings Boulevard adjacent to the Subdivision

- (5) *Traffic Control Devices*
Subdivider will furnish necessary traffic control devices within or adjacent to the Subdivision. Traffic control devices shall also include all necessary signing, striping, and channelization devices to properly complete the implementation of the proposed street construction.

All traffic control and street improvements will be as outlined in the Traffic Accessibility Study to be submitted to the Engineering Department by the Subdivider. The Traffic Accessibility Study will be subject to review and approval by the City Traffic Engineer and the Montana Department of Transportation.

Any change of anticipated use of any lot from that estimated in the original Traffic Accessibility Study will require an update of the traffic analysis and recommendations.

- (6) *Access*
Access will be permitted to the Subdivision from Midland Road through the review and approval of individual lot development site plans. No access will be permitted to the Subdivision from South Billings Boulevard except by a 40-foot drive approach, beginning 100 feet south of the north line of Lot 1, Block 2. The precise location of this access point is shown on the face of the plat.

The minimum entrance throat length for the Midland Road street access will be determined through the Traffic Accessibility Study.

There will be no side access (ingress or egress) from individual lots or building pads within the minimum required storage throat.

- (7) *Street Lighting*
Street lights will be installed on Midland Road and South Billings Boulevard adjacent to the Subdivision as part of the initial private contract or Special Improvement District. A Street Light Maintenance District will be formed for future maintenance of the street lights.

- (8) *Landscaping*
The street frontage of all subdivision lots will be landscaped in accordance with City of Billings and Yellowstone County Unified Zoning Regulations for Interchange/Entryway Zoning Districts Article 27-1000. Maintenance of all site landscaping, including that in the public right-of-way, shall be the responsibility of the lot owners. Landscaping inside the Subdivision will meet the requirements of the Unified Zoning Regulations, Section 27-1006.

B. UTILITIES

- (1) *Water*
A 16-inch water main exists in Midland Road through the Subdivision. Service stubs to the lots and fire hydrants at 300-foot intervals will be installed.
- (2) *Sanitary Sewer*
A 24-inch sanitary sewer main exists in Midland Road through the Subdivision. The Subdivider will install sanitary sewer services from the existing main in Midland Road to the lots.
- (3) *Storm Drain*
Storm drain lateral lines, inlets, and manholes will be installed in Midland Road with discharge piping to the retention area as described in Section A.(3). The storm drain improvements will be in accordance with plans and specifications as approved by the City Engineer.
- (4) *Standards*
The water, sewer, and storm drain lines shall be sized and installed in conformance with City design standards and specifications and the rules and regulations of the City of Billings.
- (5) *Power, Telephone, Gas, and Cable Television*
All power, telephone, gas, and cable television lines within the public right-of-way shall be installed underground prior to street paving. Appropriate utility easements will be provided across the Subdivision lots for service to the proposed development.
- (6) *Water and Sanitary Sewer Extension and Fees*
The Subdivision Improvements Agreement does not constitute an approval of extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water and sanitary sewer to the Public Utilities Department. The extension/connection to water and sanitary sewer is subject to the approval of the applications and the conditions of approval. Applications will need to be submitted for processing prior to

the start of any construction and prior to review and approval of any project plans and specifications.

The property is subject to Water Transmission and Wastewater Trunk Construction Fees and Water and Wastewater Lateral Fees in effect at the time of application for extension/connection of water and sanitary sewer, and payable to the Public Utilities Department at the time of submittal of said applications. The property is subject to Water and Wastewater System Development Fees in effect at the time of obtaining said services.

(7) *Irrigation*

The Suburban Ditch across the Subdivision is located in an easement as filed with the Yellowstone County Clerk and Recorder in Book _____, Page _____. The easement is to be used for location, operation, and maintenance of an irrigation ditch facility until such time as the irrigation use is terminated by separate recorded agreement or the ditch is relocated per separate recorded agreement.

Various lateral irrigation ditches traverse the property. These ditches are serving the agricultural needs of this property and will be discontinued as development occurs.

C. CONSTRUCTION

- (1) Except as otherwise provided, Subdivider shall install and construct said required improvements utilizing the mechanics of a Special Improvement District or private contracts secured by Letters of Credit or a Letter of Commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said Special Improvement District or private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Engineer.
- (2) The City and Subdivider agree that the required improvements, to be constructed in one phase, are as follows:
 - (a) Full-width arterial street improvements (49 feet back of curb to back of curb) on Midland Road from the intersection with South Billings Boulevard to the end of the existing pavement at the west line of the Subdivision (including appropriate transition tapers to the existing pavement).
 - (b) Installation of storm drain and inlets in Midland Road and construction of outfall line and retention basin in Lot 4, Block 1.

- (c) Installation of fire hydrants and water and sewer services to the lots along Midland Road.
 - (d) Installation of sidewalk along the Midland Road and South Billings Boulevard frontages of the Subdivision.
 - (e) Street widening from the new curb and gutter along the South Billings Boulevard frontage out to the existing asphalt including transition tapers north and south on South Billings Boulevard.
 - (f) Street lights along the Midland Road and South Billings Boulevard frontages of the Subdivision.
 - (g) Signing, striping, and traffic control devices for the improved portion of Midland Road and South Billings Boulevard adjacent to the Subdivision.
- (3) Subdivider shall comply with all applicable Federal, State and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

The City/County Planning Staff has prepared the Findings of Fact for the Billings Operations Center Subdivision. The Montana Subdivision and Platting Act requires that the local government assess the subdivision's effect on the primary review criteria specified in 76-3-608, MCA. Likewise, subdivisions must meet the provisions of Billings Municipal City Code 23-304(c).

The Findings of Fact are:

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

1. Effect on Agriculture

The subdivision will convert approximately 24 acres of irrigated farmland into commercial use. Adjacent parcels south and east of the property are also used for agricultural purposes, but do not rely on the land to be subdivided for continued operation. The proposed subdivision is not expected to significantly impact the agricultural operations to the south or east.

2. Effect on Agricultural Water User Facilities

The Suburban Ditch meanders through the property and flows from south to north. The water rights are owned by the Suburban Ditch Company which sells shares to water users. There are no shares allocated to the subject property. The ditch provides irrigation water to a few downstream users including Amend

Park, a City park. The President of the Suburban Ditch Company, Mr. Joseph Miller, indicated that the company's primary objective is to preserve the flow of water. The Ditch Company would consider options to cover, line or realign the ditch and would like to be presented multiple options for consideration. Mr. Miller has not been contacted about the proposed alignment.

As proposed, the alignment of the ditch would be moved from its present location to a new location and completely piped. The new alignment would require vacating an existing 30' ditch easement and reestablishing an easement in Lot 1, Block 2, within the right-of-way of Midland Road and along the west boundary of Lot 4, Block 1. This new alignment would also require a realignment of a portion of the ditch located on the adjacent property to the south. The property owner, Mr. John Fox, has not been contacted about this proposed change.

3. Effect on local services

- a. Utilities – The proposed subdivision will connect to existing municipal sewer and water services. A 16-inch water main was recently extended within the Midland Road right-of-way and will serve this proposed subdivision. Sanitary sewer collection is provided by a 24-inch main within the Midland Road right-of-way. Each property owner shall be required to apply for municipal sewer and water connection. Unless waived by the City Public Utilities Department, all lots are subject to Water Transmission and Wastewater Trunk Construction fees and Water and Wastewater Lateral fees in effect at the time of application to connect. The lots are also subject to Water and Wastewater System Development fees unless waived by the City Public Utilities Department.

Storm drainage for Midland Road street frontage will be provided by a combination of surface drainage, curbs and gutters, inlets and buried storm drain lines designed in accordance with the City Stormwater Management Manual. The facilities will discharge stormwater into an on-site retention basin. The retention basin is not shown on the preliminary plat, but the potential location has been discussed with the City Public Works Department. The basin would be located in the northern portion of Lot 4, Block 1, within the 300-foot "no open storage buffer" recommended by the South Billings Boulevard Interchange Master Plan. If properly designed and landscaped, the detention basin could become an aesthetically pleasing amenity to the proposed subdivision and a major Billings' entryway.

All developments within the proposed subdivision shall discharge stormwater to on-site retention systems designed specifically for each site development. All future developments shall be required to provide a Storm Drain Study for each project at the time of development.

Drainage from South Billings Boulevard street frontage and the intersection of Midland Road and South Billings Boulevard will discharge into existing borrow

ditches in accordance with plans and specifications approved by the City Engineer and the Montana Department of Transportation.

- b. Solid Waste – The City of Billings will collect and dispose of solid waste that is generated in the subdivision. The City’s landfill has adequate capacity for this waste.
- c. Streets – The proposed subdivision will extend Midland Road, a minor arterial, approximately 1,066 linear feet to connect with South Billings Boulevard. Due to the constraints presented by connecting with the existing Midland Road and need to align with the South Frontage-South Billings Boulevard intersection, it is impractical to meet all the minor arterial design standards listed in 27-601, BMCC. For that reason, several variances are requested from these standards, including:
 - A variance from the arterial back of curb to back of curb width standard from 52 feet to 49 feet (27-601(k), BMCC).
 - A variance from the minimum radius and minimum tangent requirements based on a 45 mph design speed required for arterial streets (27-601(o), BMCC).

Standard curb and gutter and 5-foot wide boulevard sidewalks will be installed on both sides of Midland Road and the west side of South Billings Boulevard. The pavement on the west end of Midland Road will transition to the width of the existing roadway. Similar transitions will be included on South Billings Boulevard. Because South Billings Boulevard is a State highway all improvements must be constructed in accordance with MDT Urban Design Standards and approved by the City Engineer and the Montana Department of Transportation.

The final design for the Midland Road and South Billings Boulevard intersection will be based on an approved Traffic Accessibility Study (TAS). The TAS shall include, but not be limited to number and width of turning lanes, stacking depth and restricted lot access, traffic signal, and median modification.

The subdivider proposes to “control access” to Midland Road as oppose to “restrict access” and has requested a variance from 23-605(d), BMCC that requires a 1-foot wide restricted access easement along arterials. The variance from this requirement is requested for several reasons: 1) The City (subdivider) has agreed to provide the future owner of Lots 1, 2 and 3, Block 1 a maximum of three separate curb cuts, 48 feet wide each. 2) The subdivider will require separate access onto Midland Road for Lot 4, Block 1 and up to five curb cuts on Lot 1, Block 2. The number of curb cuts needed is based on the nature of the proposed use. An entry and exit each will be needed for street and solid waste trucks separate from a general public

access, police access and employee access. The final number of curb cuts shall be determined through site review for each individual development. The subdivider is also requesting a single access off of South Billings Boulevard to accommodate the future Police facility requirements. Montana Department of Transportation must permit any additional accesses onto State highways.

- d. Emergency Services – The City Fire Department will respond to emergencies in this subdivision. The nearest fire station is Station #4 located at Miles Avenue and 5th Street West which is less than 4 miles from the proposed subdivision. Police response time should be immediate because the main staffing facility will be located on the property. The proposed subdivision is located within the service area of American Medical Response which provides emergency medical care and transport.
- e. Schools – No schools will be affected by the commercial subdivision.
- f. Parks and Recreation - The proposed subdivision is located slightly more than one-quarter mile from Riverfront Park. The proposed subdivision is not expected to interfere with the park or public recreation.
- g. MET Transit – There is no bus service to this property. Currently, the closest bus stop is located at King Avenue East and Hallowell Lane.

4. Effect on the natural environment

The proposed subdivision is situated on alluvial sediments which include a variety of unconsolidated material ranging from clay-sized particles to cobbles. Infiltration of surface water can be quite rapid and depth to water table is very shallow. Water table depths have been reported as near as ten feet from the surface in the general vicinity. For these reasons, the potential for groundwater contamination is high if certain precautions are not taken. Future developments must adhere to the Phase II Stormwater Requirements included in the City's Stormwater Management Manual. These requirements may mandate primary or secondary treatment of surface runoff prior to releasing it into a natural setting. Site drainage requirements will be described in the Storm Drain Study provided for each project at the time of development. Every study will be subject to review and approval by the City Engineer in conformance with City standards.

5. Effect on wildlife and wildlife habitat

There is no wildlife or wildlife habitat present on the property. The Montana Fish, Wildlife, and Parks Department had no specific comments on the subdivision.

6. Effect on the public health, safety and welfare

There are no known health or safety hazards on the property. This property is not within a mapped floodway or floodway fringe and should not create flooding hazards for surrounding properties.

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

The requirements for preparing an environmental assessment do not apply to the first minor subdivision created from a tract of record (76-3-609(3), MCA).

C. Does the subdivision conform to the 1990 Yellowstone County Comprehensive Plan and the Urban Area 2000 Transportation Plan (23-304(c)(3), BMCC).

1. 1990 Yellowstone County Comprehensive Plan:

The subdivision meets the goals/policies of the comprehensive plan:

- By providing sites to maintain a diverse economy and for the relocation or expansion of exiting businesses.
- By locating business uses next to major highways, commercial traffic through residential neighborhoods is minimized and convenience for business customers is maximized.
- Extension of urban services to the site will be efficient and very cost effective because of their proximity to the site.
- The site is contiguous to the City limits and represents a logical extension of the community as opposed to leapfrog development.
- Having no significant limitations caused by steep slopes, flooding, unstable land, soil conditions or other natural factors, the land itself is well suited to cost effective development.
- There are no natural or wildlife habitat features or environmentally sensitive areas of special interest to be protected or preserved on site.

2. Urban Area Transportation Plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. The plan identifies Midland Road as a minor arterial and recommends completing the connection between Mallowney Lane and South Billings Boulevard. The proposed subdivision will provide this connection.

3. BikeNet Plan

The Alternative Modes Coordinator has indicated that the Billings Operations Center Subdivision is not located on a BikeNet corridor. However, South Billings Boulevard and South Frontage Road are delineated in the BikeNet plan as on-street connectors. If these roads were to be modified as part of the requirements in a Traffic Accessibility Study, they should be striped for a bike lane.

4. South Billings Boulevard Entryway Master Plan

The proposed subdivision lies within the area covered by the South Billings Boulevard Entryway Master Plan. The County Commissioners approved an update of the plan on October 15, 2002. The plan recognized the extension of Midland Road and recommends that land uses north of the road be consistent

with Entryway General Commercial zoning standards. In anticipation of this subdivision proposal, the plan recommends that land use south of Midland Road be consistent with either Entryway General Commercial uses or Public uses. In addition, a requirement that no open storage be allowed within 300 feet of the Interstate 90 right-of-way or South Billings Boulevard right-of-way is recommended.

The proposed subdivision is consistent with the recommendations. The land to be subdivided was rezoned Entryway General Commercial north of Midland Road and rezoned to Public, south of Midland Road.

Although the preliminary site design respects the 300 foot "no open storage" recommendation, a use being considered for north of Midland Road is not allowed in Entryway General Commercial uses. If the City desires to use the land for purposes other than those permitted in the existing zone, it must follow the procedures to use land contrary to zoning. This option is available to government entities that are exempt from local zoning requirements.

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

This proposed subdivision meets the requirements of the Montana Subdivision and Platting Act and the local subdivision regulations except concerning the potential conflict with the zoning. The remedy for the conflict is to proceed with the procedures to use land contrary to zoning.

E. Does the subdivision conform to sanitary requirements (23-304(c)(5), BMCC)?

The subdivision will use City sanitary sewer service and City solid waste collection and disposal services. Both services are approved and regulated by state and federal authorities.

F. Does the proposed subdivision conform to all requirements of the zoning in effect (23-304(c)(6), BMCC)

The subdivision conforms to the existing zoning as explained above.

G. Does the proposed plat provide easements for the location and installation of any utilities (76-3-608(3)(c), MCA and 23-304(c)(7), BMCC).

The subdivision contains public street rights-of-way and dedicated utility easements that provide adequate space for utility installation. Based on a review of the proposed utility easements by Montana-Dakota Utilities and PPL, the final plat must be modified to show the utility easements in the locations preferred by these utilities.

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

All lots will have access to Midland Road.

CONCLUSIONS OF FINDING OF FACT

It has been determined that any adverse affects the subdivision will have on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and public health and safety may be reasonably mitigated. The measures recommended for mitigating the following effects are encompassed in the Recommended Conditions of Approval.

Ms. Beaudry said there are impacts to agricultural water users that can be mitigated. She added that zoning conflicts will need to be addressed. She said the Planning Staff recommends approval including the requested variances and findings of fact. She said this is not a typical subdivision and the City cannot enter into a Subdivision Improvements Agreement, therefore everything required is listed in the conditions for approval. Approach permits are need from MDT, she noted. Storage of bulk materials will require additional zoning processing through the Board of Adjustment which is granted to governmental agencies. Councilmember Jones asked about the storm water drainage. Ms. Beaudry said concerns about discharging storm water under the interstate and into City drains redirected the route of discharge into the river via a storm water outfall that leaves the property at the southeast corner, intercepting Mr. Miller's property. Mr. Miller is in full agreement with this. Ms. Beaudry said a discharge permit will be required.

Councilmember Kennedy moved for approval of the preliminary plat with conditions and requested variances and findings of fact, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

17. PRELIMINARY PLAT of Colonial West Subdivision, generally located on Monad Road at 30th Street West. Staff Planning Board recommends conditional approval of the preliminary plat application including the Findings of Fact. (Action: approval or disapproval of Staff Planning Board recommendation.)

Planning Staff Member Bruce McCandless said this preliminary plat is located north of Monad Road at approximately 30th Street West. He said the present zoning is Residential 7,000 and the proposal is to create 79 single-family lots that will support manufactured housing. The property size is approximately 20 acres and is immediately east of the Terra West Subdivision. There will be "cash in lieu" of parkland that would go into the development. He noted there was substantial testimony from residents in Terra West Subdivision at the Planning Board hearing, concerning access to the property. There is one primary access and one emergency access. He noted that one of the conditions requires the subdivider to construct Hampton Way east of the property to Central Avenue providing two accesses to the property.

1. The subdivider will reserve and sever all surface water rights or shares from the land. Irrigation ditches or waste ditches will be maintained or alternatives implemented
Required by BMC Section 23-603(a) and MCA 7-3-504(k)
2. Subdivider will coordinate with the US Post Office for location of mailboxes or other delivery facilities that do not encroach upon the proposed curbside walk. No other sidewalk encroachments such as street signs, fire hydrants or light poles will be permitted.
Requested by Public Works and required by the ADA
3. The subdivider will join the Terra West Park SID and PMD for development and maintenance of the park.
Requested by PRPL and required by the City's Annexation Policy and Annexation Agreement
4. Subdivider will provide evidence of a 30' wide storm drain easement across Tract 1B C/S 2991 for the proposed 24" storm drain or provide alternative stormwater management facilities.
Requested by Public Works and is required for the proper disposal of stormwater from the site per BMC Section 23-706
5. A revised Traffic Accessibility Study must be submitted and approved by the City Engineer before final plat approval. Special mitigation measures will be subject to the City Engineer's approval.
Requested by Public Works, which has not approved the preliminary report that was submitted with the plat application and required by BMC Section 23-702 (a)
6. The subdivider will construct Hampton Way east of this property and to Central Avenue during Phase 1. The roadway must be paved and must be constructed to standards that are approved by the Public Works and Fire Departments.
Requested by the Fire Department and required by the Uniform Fire Code
7. Minor wording changes may be made in the final documents upon request of the Planning or Public Works Departments to clarify the documents and bring them into standard, acceptable format. The changes are not intended to alter the intent or extent of the documents.
Standard condition that permits minor changes to the final plat documents without requiring the subdivider to repeat the subdivision review and approval process.
8. Subdivider shall comply with all applicable federal, state and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations.

This condition informs the subdivider that all local and state laws and policies apply to the subdivision even if they are not specified in the documents.

VARIANCE

The subdivision regulations require 60' wide local street rights of way. The subdivider proposes to dedicate 50' wide street rights of way and 5' lighting and hydrant easements on both sides of the street. The Planning Board recommends that the variance be approved.

The findings of fact are:

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

1. Effect on agriculture

This subdivision should have little effect on agriculture and agricultural water users. The property is irrigated by a private supply ditch that will be terminated. The subdivider should terminate all water rights or shares on the land. No other properties are served by the ditch. Waste irrigation water that enters the property from the north and west must continue to be handled by the subdivider and will probably be part of the subdivision's stormwater management design. Eliminating 20 acres from agricultural production will have virtually no effect on agriculture in the county.

2. Effect on local services

a. Utilities – Water and sewer facilities will be extended by the developer to serve this subdivision. Both utilities are available in Daystar Ave., in the adjacent Terra West Subdivision. Storm drain will be extended from this property to Central Avenue where the City intends to build a new trunk line that connects to the Bannister Drain. The storm drain would be installed in an easement that runs from this property to Central. Drainage from adjacent agricultural land will be part of the stormwater that is conveyed in this drain. Private utilities will be extended to this property under the companies' operating rules.

b. Solid waste – The City of Billings will collect and dispose of solid waste that is generated in the subdivision. The City's landfill has adequate capacity for this waste.

c. Streets - The subdivider will construct all of the internal streets and connect them to other public streets and private travel easements. About 3300' of street will be constructed within the subdivision. All of the streets will be local access streets that will be dedicated to the public and will be maintained by the City. The subdivider is requesting a variance that would permit 50' wide rights of way but he would also create 5' wide easements on both sides of the street for fire hydrant and future street light installation. Since curbswalks will be used, the subdivider should work with the US Post Office to provide alternative mail delivery facilities so that the sidewalk width isn't reduced by the placement of mailboxes in the sidewalks. The

City is attempting to reduce these types of encroachments in order to better comply with the ADA. Streets and other public improvements are to be installed in phases. The subdivision's primary access is from the existing Daystar Drive, located in the Terra West Subdivision. The subdivider proposes to install an emergency access road in Phase I that is the extension of Hampton Way. The road would occupy a public access easement and would connect to Central Avenue. The road needs to be built to City standards in Phase I to provide a second access for construction activity and future residents. A preliminary traffic accessibility study (TAS) was submitted with the application. It has been reviewed but City Engineering hasn't approved it and thinks that a revised TAS will be necessary to clearly identify this subdivision's impacts and to propose specific mitigation measures.

d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #5 located on 24th Street West, which is approximately 1 mile from this property. Police response will depend upon officer availability and location when a call for service is placed. AMR provides medical care and transport and response would probably come from the west end station that is located in the 2500 block of Grand Avenue.

e. Schools – The subdivision is in School District 2. The subdivision residents will attend Big Sky Elementary, Riverside Middle School and West High School. The district did not respond to a request for comments, so it is assumed that the facilities are adequate to serve the proposed subdivision. Big Sky Elementary is one of the schools that has been reported to be at capacity and Riverside is located approximately 6 miles from the subdivision.

f. Parks and Recreation – Because this is a major plat the subdivider must dedicate parkland or cash. The PRPL Department requested that land be added to the Terra West Park that is adjacent to this property. The subdivider prefers to donate cash in lieu of parkland and will participate in SIDs and PMDs to develop and maintain the Terra West Park. Participation in the SID and PMD is a condition of annexation and is required by the City's Annexation Policy. The cash in lieu contribution amount will be determined by using the purchase price or an appraisal to establish the land value. The subdivider is proposing to create an access easement between this subdivision and the park. That easement should be improved so that pedestrians and bicyclists may use it.

g. MET Transit – MET Transit operates a route on Monad Road, approximately 1/8 mile south of this subdivision. The development density of this property and other proposed development in this area may help support continued or expanded MET services.

3. Effect on the natural environment

There should be little impact on the natural environment. There may be minor increases in air pollution during construction and from additional vehicle traffic in the area. Erosion control during construction is required by state law.

4. Effect on wildlife and wildlife habitat

There will be little impact on wildlife or wildlife habitat because surrounding properties contain many housing units. There are no known endangered or threatened species on the property. Montana Fish, Wildlife and Parks responded to the request for comments but had no specific concerns about the subdivision.

5. Effect on the public health, safety and welfare

There are no known health or safety hazards on the property. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties. The primary safety concern expressed during staff review is that there needs to be an emergency access/exit near the northern end of the subdivision. The subdivider should be required to construct this roadway to its intersection with Central Avenue. Residents of Terra West Subdivision testified at the Planning Board's public hearing and requested that multiple accesses be created so that not all of this subdivision's traffic would use Daystar and pass through the Terra West Subdivision. The subdivider verbally agreed to construct the road in Phase I and pave it so that it can be used as a primary or secondary access for house construction and by future residents.

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

An Environmental Assessment is required and was submitted with the preliminary plat application. No significant adverse environmental effects were identified.

C. Does the subdivision conform to the 1990 Yellowstone County Comprehensive Plan and the Urban Area 2000 Transportation Plan? [BMC 23-304 (c) (3)]

1. Comprehensive Plan:

The subdivision meets the following goals/policies of the comprehensive plan

- a. Encourage a variety of housing types and/or styles within proposed housing developments. C-2
- b. Safe, energy efficient and sanitary housing. C-6
- c. Capitalize on existing public water supply systems. H-2
- d. Capitalize on existing public sewage systems and improve sewage systems in areas not currently served by public systems. H-4
- e. Encourage and direct urban growth to urban areas and contiguous lands to maintain a strong economy and accomplish a sound transition of agricultural land. I-3
- f. Curb urban sprawl and discourage leapfrog development. K-7

The subdivision does not meet the following goals/policies of the comprehensive plan
None

2. Urban Area Transportation Plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Monad Road is identified as a minor arterial street. No improvements are required at this time but the subdivider will contribute funding to the future construction of a traffic signal at 32nd Street West and Monad and other mitigation may be identified in an updated TAS.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. The plan proposes an on-street connection between Central and Monad that runs through this property. The proposed street layout and easements provide that route, although it is somewhat circuitous.

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

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

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

The subdivision will use City sanitary sewer and water services and City solid waste collection and disposal services. All services are approved and regulated by state and federal authorities.

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

The property is zoned R7000 and RMF-R and the subdivision conforms to the zoning requirements.

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

The subdivision contains public street rights of way and dedicated utility easements that provide adequate space for utility installation.

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

All lots will have access to a public street.

CONCLUSIONS OF FINDING OF FACT

- The overall conclusion of the Findings of Fact is that the proposed Colonial West Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision will impact local services and cause some increase in demand for those services. However, when the vacant parcel is developed the homeowners will pay property taxes and fees that should help to support those services.
- The proposed subdivision conforms to several goals and policies of the 1990 Yellowstone County Comprehensive Plan, the Transportation Plan and the BikeNet Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, sanitary requirements and provides legal and physical access to each parcel.

Councilmember Brown noted some area residents are concerned about wear and tear on Day Star Street from service vehicles doing subdivision work. Mr. McCandless said he thought most of the traffic would come through Terra West Subdivision during construction and those are paved streets. When house construction begins there should be a second access to alleviate the concerns of those residents. He said the Council could put stipulations on which access would need to be used.

Councilmember Larson said he is not comfortable with putting conditions on required road usage during the construction phases. He would like to send the message, however, to be a good neighbor and mitigate any impacts on the neighboring homes. He did not think the City can dictate who can or cannot drive on a public road. Mr. McCandless agreed and added that it is not unusual for subdivisions to be interconnected with driving through one to access another happening frequently.

Councilmember Poppler moved for approval of Planning Board recommendation with attached conditions, seconded by Councilmember McDermott. Councilmember Jones said he hopes the developers and the truck traffic will be cognizant of the neighborhood concerns and will take measures to alleviate those concerns. On a voice vote, the motion was unanimously approved.

Council Initiatives -- NONE

ADJOURN —With all business complete, the Mayor adjourned the meeting at 10:03 P.M.

THE CITY OF BILLINGS:

MINUTES: 01/27/03

By: _____
Charles F. Tooley MAYOR

ATTEST:

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