

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 12, 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. Deputy Mayor Doris Poppler called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Deputy Mayor, followed by the Invocation, which was given by Councilmember Peggie Gaghen.

ROLL CALL – Councilmembers present on roll call were: McDermott, Gaghen, Brown, Brewster, Kennedy, Poppler, Ohnstad, and Jones. Councilmember Larson arrived at 6:40 PM. Councilmember Iverson was excused. Mayor Tooley was out of town.

MINUTES – April 28, 2002. Approved as printed.

COURTESIES – Finance Dept

- Administrative Services Director Robert Keefe presented Pat Weber, Controller for the City of Billings, the Government Finance Officer's Association (GFOA) certificate of recognition for budget participation in conjunction with the GFOA Distinguished Budget Presentation Award for the City's FY 03 budget document. He said Mr. Weber is the person primarily responsible for the preparation of the FY 03 budget and did an excellent job of keeping the budget process on track.
- Mr. Keefe also presented Alene Malloy, CPA and Jim Hauck, CPA, Accountants for the City of Billings, the GFOA award of financial reporting achievement. He added that the City has been awarded the GFOA certificate of Achievement for Excellence in Financial Reporting for the 2002 CAFR. He noted all members of the Finance Department assist in preparation of the information but Ms. Malloy and Mr. Hauck are the persons primarily responsible for the preparation of the City's June 30, 2002 Comprehensive Annual Financial Report (CAFR). The City's award is the highest form of recognition in the area of financial reporting for municipalities and it is the 18th year the City has received this award. It signifies and assures the investing community that they can depend on the annual financial reports meeting the guidelines of the Government Finance Officer's Association.

PROCLAMATIONS – Mayor Tooley.

- Police Week: May 11-17 – with May 14th observed as Peace Officer's Memorial Day
- National Women's Health Week: May 11-17
- National Public Works Week: May 18-24
- Buckle Up America Campaign: May 19 – June 1
- Poppy Day – May 17th
City Attorney Brent Brooks distributed the Red Poppy symbols to all persons present.

BOARD & COMMISSION REPORTS:

- Downtown Billings Partnership acting Executive Director Geg Krueger gave a brief

history and update of the status of the Partnership and their related activities. He noted the 1997 Framework Plan that was approved by both the City Council and the County Commissioners. He said the goal is to “tackle issues and seize opportunities to lead the downtown into the future.” He noted over \$17 Million in private funds have been obtained, using the Framework Plan as a tool, to make the vision of the downtown come to reality. He said the Partnership is “proud of its accomplishment, sure of its goals and focused on the vision to revitalize downtown Billings” and assured the Council that he would come before the Council on a regular basis to keep the Council informed on Partnership activities. He noted that the International Downtown Association has recognized the Downtown Billings Partnership as being on the cutting edge and a shining example of how to get things done.

- Deputy Mayor Poppler thanked all Board and Commission members for the work they perform for the City.
- Councilmember Mick Ohnstad noted that Home Depot donated \$1,000 to Bright ‘N Beautiful to provide a new planting park across from Billings Central High School on Division Street.

ADMINISTRATOR REPORTS – Kristoff Bauer.

- Mr. Bauer noted that the Chamber of Commerce presented Deputy Mayor Poppler with a symbolic check in the amount of \$257,359,000. This amount represented the contribution that visitors made to the City’s economy during the year 2002.
- Mr. Bauer provided the Councilmembers a packet containing the proposed color schemes for the new Billings Operations Center facility. He noted that the staff has recommended the neutral color scheme and including accent colors on an awning over the front entrance. The Council agreed to move forward with the staff recommendation.
- He announced that there would be a Public Comment portion at each Council Meeting, as required by State law. This comment period would give speakers a chance to address the Council on any subject for three (3) minutes and would be scheduled at the end of each meeting. He noted that a clipboard has been placed in the back of the Council Chambers and anyone wishing to speak during this comment period must register their name, address and subject matter on the clipboard. This will assist the Mayor, or presiding officer during the Public Comment period.
- He noted that the proposed Budget was passed out to the Councilmembers and the first scheduled meeting will be an overview of the budget on May 19th at the Community Center at 5:30 P.M. There will be a total of three meetings with the adoption of the final Budget at the June 9th Council Meeting. All meetings will be open to the public.
- Mr. Bauer acknowledged the awards that were previously announced during the courtesies and added that the leadership of Administrative Services Director Robert Keefe is an integral part of those awards.

CONSENT AGENDA:

1. A. **Mayor’s Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Bill Lamdin*	Library Board	05/01/03	12/31/06
2.	Jolene Rieck	Yellowstone Historic Preservation Board	01/01/03	12/31/05
3.	Paul Daniels**	Yellowstone Historic Preservation Board	11/01/02	12/31/03

B. Bid Awards:

- (2) **Rose Park Parking Lot Improvements Project.** (Opens 4/22/2003). (Delayed from 4/28/03). Recommend Hardrives Construction, Inc., \$118,387.84.
- (3) **W.O. 02-19: City Animal Shelter.** (Opened 4/29/03). Recommend General Contractors, \$1,181,469.
- (4) **Downtown Billings Skate Park: Right-of-Way and Utility Improvements.** (Opened 4/29/03). Recommend HME AME Inc., \$82,111.50.
- (5) **2003 Water Service Replacement Project.** (Opened 5/6/03). Recommend delaying award to 5/27/03.
- (6) **\$1,196,000 Pooled Special Improvement District Bonds, Series 2003C.** (SIDs 1349 and 1354). (Opened 5/12/03). Recommendation ~~to be made at meeting.~~ Recommend RBC Dain, 4.0534% net effective interest rate.

C. Budget Line Item Changes within Tax Increment Financing Fund as requested by Downtown Billings Partnership transferring budget authority from several line items to Architectural Assistance (\$50,000) and the Façade Grant Program (\$117,670) and Yellowstone County (\$37,000) and that Yellowstone County be authorized to use \$10,000 Civic Center budget for the Lawerli Plaza project.

D. Amendment No 7, Professional Services Contract for engineering services for water/wastewater capital improvement projects, Morrison-Maierle, \$307,190.

E. Temporary Use Agreement with Big Sky Economic Development Authority (BSEDA) for Deering Clinic temporary parking solution.

F. Contract for Professional Services for W.O. 02-22: Stormwater Management master Plan for the Lower Blue Creek Drainage, Morrison-Maierle, Inc., \$50,000.

G. 2003 TurnKey Agreement for Cobb Field Stadium, Billings Mustangs Baseball Club and American Legion Post No. 4.

H. Railroad-Highway Grade Crossing Signal Agreement, STPRP 1099(36)[5196], Montana Rail Link, Montana Dept of Transportation and City of Billings,

for installation of railroad crossing signals and gates for multi-track crossing on riverside Road, south of State Avenue.

I. Assignment and Transfer of Non-Commercial Aviation Ground Lease, Fenske Companies to Larson Family Properties.

J. Assignment and Transfer of West End Hangar Ground Lease, MGM Land Company to R. W. McKamy.

K. Street closures for special events:

- (1) Disabled American Veteran's (DAV) Memorial Day Parade, May 26, 2003.
- (2) St. Vincent's Health Care "Heart and Sole Race", June 14, 2003.
- (3) Billings Jaycees' Western Day Parade, July 12, 2003.
- (4) Downtown Billings Association (DBA) Burn the Point Parade, August 29, 2003.
- (5) Downtown Billings Association (DBA) Burn the Point Block Party, August 29, 2003.

L. Resolution 03-17979 relating to City of Billings Storm Sewer Gross Revenue Bonds, authorizing the issuance of bonds to refund outstanding series 1993 and series 1994 bonds; and authorizing the issuance and calling for the public sale of Storm Sewer Gross Revenue Refunding Bonds, Series 2003, in the estimated principal amount of \$7,100,000 and setting a sale date for June 9, 2003.

M. Second and final reading Ordinance 03-5243 for ZONE CHANGE #713: a zone change from Residential 7,000 (R7000) to Residential 6,000 (R6000) on property described as Lot 6, Block 2, Meadowlark Subdivision, located at 338 Sharron Lane. (PH and first reading held 4/28/03).

N. Final plat: Holiday Business Park Subdivision.

O. Final plat: Yellowstone Ridge Subdivision.

P. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Item 1A from the Consent Agenda. Councilmember Jones separated Items B2 and C from the Consent Agenda. Councilmember Brown separated Item E from the Consent Agenda.

Councilmember McDermott moved for approval of the Consent Agenda with the exception of Items 1A, B2, C and E, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item 1A of the Consent Agenda, seconded by Councilmember Larson. Councilmember McDermott said the Billings Montana City Code states that vacancies that occur during the year must be filled during the months of July and January, unless the Mayor determines that the vacancy must be filled due to the lack of a quorum and the members shall be appointed to fill the balance of the term. She said, after checking, neither of the boards are in danger of not having a quorum. She asked why these selections have been brought to Council prior to the July selection process which is presently being advertised. Mr. Bauer said the Mayor presented the proposed selections and he is not present to state his reasons. He said the Mayor must have considered these appointments to be important at this time. He agreed that it is not consistent with the current code. Councilmember McDermott suggested that the code should be reviewed and changed or that the appointments be made in compliance with the code. Councilmember Jones asked if these positions were advertised. Mr. Bauer said the Historic Preservation Board positions were advertised and he was unsure about the Library Board position. Councilmember Jones amended the motion to delay the appointments to the May 27th Council Meeting, seconded by Councilmember Brewster. On a roll call vote, the amendment was approved 7 – 2 with Councilmembers McDermott, Gaghen, Brown, Brewster, Poppler, Ohnstad, and Jones voting “yes” and Councilmembers Kennedy and Larson voting “no”.

Councilmember McDermott moved for approval of Item B2 of the Consent Agenda, seconded by Councilmember Larson. Councilmember Jones asked what the seven prioritized alternatives for the bid item were. Kim Olsen, Olsen Architecture said the bid item was W. O. #02-19 for the City Animal Shelter. She said the alternatives are: 1) crematorium addition, 2) additional kennels, 3) a fire wall between the entry and intake room, 4) enclosing the vestibule, 5) upgrading finishes in the kennel areas, and 6) floor epoxy. Mr. Bauer noted that the alternatives are not included in the bidding. He said if there is funding available from the budget contingency the crematorium alternative would be considered for addition at a later Council date. Councilmember Brown asked if there is an alternative crematorium in Billings. Mr. Bauer said there is a private provider that the City uses for destruction of seized drug forfeitures. He said a crematorium would save the City money by disposing of these items along with the use for dead animals. Public Works Director Dave Mumford clarified that presently dead animals are not cremated but are taken to the City Landfill for disposal. He said cremation is a more sanitary method of disposal. On a voice vote, the motion was approved with Councilmember Brown voting “no”.

Councilmember McDermott moved for approval of Item C of the Consent Agenda, seconded by Councilmember Larson. Councilmember Jones said there was a \$30,000 approved budget reallocation at the last Council Meeting for signs along Montana Avenue. He said the budget process is two months away and he would like to see the Council postpone this allocation and process it during the budget process. He asked Mr. Krueger if there is a grant deadline and are the projects selected from a prioritized list. Mr. Krueger said this is a matching grant program. Kim Olsen said the projects are on a first come first served basis for the façade program. She noted that this very active program coincides with the construction cycle and is very busy in the Spring. There is \$25,000 in applications and the funds have run out as of January. Councilmember Jones said he would like to

see the selection process be on a competitive basis. On a voice vote, the motion was approved with Councilmembers Jones and Brown voting "no".

Councilmember McDermott moved for approval of Item E of the Consent Agenda, seconded by Councilmember Larson. Councilmember Brown said he is concerned about the City paying a lot of money for property that is rented to other parties for \$1. Councilmember McDermott asked if there is an estimate on the value of the city owned property as a parking facility. Community Development Manager John Walsh said the property was the site of the Head Start Program. It is located on South 26th Street frontage and the cost is approximately \$250-\$350 per square foot. It contains three lots of about 10,000 square feet in total size. He noted that BSEDA is interested in purchasing the land and is waiting to see if expansion plans are completed. Mr. Bauer said Bresnan Communications is considering the purchase of the site for their facility or the Council may consider Yellowstone County's offer to purchase the property if the Bresnan proposal fails. On a voice vote, the motion was approved with Councilmembers Jones and Brown voting "no".

REGULAR AGENDA:

2. PUBLIC HEARING and Variance OP#03-02: a variance from the Section 6-1203(r) of the Site Development ordinance relating to limited access through an alley. The subject property is located at 1212 Grand Avenue, Tract A, C/S 2192, Albertson's Inc., applicant. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

There was no staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the staff recommendation, seconded by Councilmember Larson. Councilmember Kennedy said that Albertson's has done an excellent job of improving properties in the community and thanked them for staying in the area. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE extending the boundaries of Ward IV to include recently annexed property in Annex #03-03: Tract 1, C/S 2085. Staff recommends approval. (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 Brown moved for approval of the staff recommendation, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

4. ALLOCATION OF FY 2003-2004 CDBG AND HOME FUNDS. Public hearing held 4/28/03. Community Development Board and Staff recommend approval (Action: approval or disapproval of CD Board/Staff recommendation).

There was no staff report. Councilmember Brewster moved for approval of the CD Board and Staff recommendation, seconded by Councilmember Kennedy. Councilmember McDermott said she would recuse herself from voting on the HRDC allocation as she is Treasurer and on the Board of Directors. Councilmember Brewster

amended the motion to approval of the CD Board and Staff recommendation with the exception of the HRDC allocation, seconded by Councilmember Kennedy. On a voice vote for the amendment, the motion was unanimously approved. Councilmember Brewster moved to approve the HRDC allocation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved with Councilmember McDermott abstaining.

5. AMEND CAPITAL IMPROVEMENT PROGRAM (CIP) by adding \$150,000 for Highland Park Spray Pool and directing staff to include the project in the FY 2004 budget. Staff recommends approval makes no recommendation. (Action: approval or disapproval of staff recommendation CIP amendment.)

Councilmember Kennedy moved for approval of the CIP amendment, seconded by Councilmember Gaghen. Councilmember Brewster asked for clarification on what the Council is actually approving. He asked if the Council is adding this to the CIP but not necessarily approving it in the budget. Councilmember Kennedy explained that the intent of his motion was to increase the General Fund budget by \$100,000 and the Aquatics Construction Fund budget by \$150,000 for FY 2004 with \$50,000 from CDBG Funds and \$100,000 from the General Fund reserves. Deputy Mayor Poppler clarified that the intent of the motion was to put this money in the General Fund for this purpose.

Councilmember Larson noted that the Council is simply adding this funding to the budget. He added that during the budget process in a few weeks, the Council could conceivably pull it back out at that time. He said this action is instructing staff to add it to the budget, there is no action regarding construction associated with it. Mr. Bauer said this action adds the proposal to the CIP and would be considered as part of this year's CIP activities. Mr. Bauer said the item is not currently in the proposed budget. Councilmember Larson noted that this process is not stating that the City is constructing the pool, it is merely adding it to the budget and the budget has not been approved. Councilmember Gaghen said the original intention of her motion regarding the Highland Park Spray Pool was that funding from "whatever source" be available so that construction may be accomplished at the earliest possible time. She understood that placing it in the CIP was necessary before approving the construction of the spray park pool and hoped it would not be a variable in the proposed budget process. Councilmember McDermott clarified that the original intent of the motion was to allocate the funding as stated in the current motion. Mr. Bauer said the dilemma is of timing, if this is approved for the FY 2003 budget there would be less than 45 days to get it encumbered under a contract. This is the reason to carry it over to the FY 2004 budget.

Councilmember Brewster asked if there are other appropriate sources of funding for this spray park. He said it was communicated to him that there were groups that would develop other resources to fund these types of projects. He said the intent of the federal block grant funds is for this type of purpose.

Councilmember Jones asked for confirmation that this involves the 2004 CIP. Mr. Bauer replied "yes". On a voice vote, the motion was approved with Councilmembers Brewster and Brown voting "no".

6. PRELIMINARY MINOR PLAT of Amended Lot 1, Superior Homes Subdivision. Planning Staff recommends conditional approval of the preliminary

plat and approval of two variances. (Action: approval or disapproval of Planning Staff recommendation).

Planning Staff Member Juliet Spaulding said this is a preliminary plat of a 3-lot minor subdivision on the corner of Jaque Lane and Main Street in the Heights. There are 3 existing commercial sites on the lots. She said there is a condition that the staff would like to remove from the recommended conditions Condition #2B to “chamfer the southeast corner of Lot 1-C, as required by City Engineering, to accommodate future street signs, hydrants or other improvements”. She said there is an 80-foot half width dedication to Main Street and property owners have a rather expensive sign on the corner and the condition would leave that sign off-site and create future problems. She said the City Engineer approves the removal of this condition. Ms. Spaulding said the Planning Staff is recommending conditional approval with the conditions as follows:

1. The following changes shall be made to the Subdivision Improvements Agreement (SIA):
 - a. A note to the SIA shall be added stating: “No improvements are required for Jaque Lane at the time of filing of the plat, but Subdivider acknowledges that the City may require the installation of curb & gutter and asphalt pavement upon any further development or redevelopment of this property, or as a part of a general street improvement project in the area. *(Recommended by City Engineering)*”
 - b. A note shall be added to the SIA stating that “Any further development or expansion of existing buildings on these lots must conform to the Highway Commercial Zone setbacks and site requirements. Furthermore, expansion or change of occupancy of the buildings on Lots 1-A and 1-B may require building modifications in order to bring these buildings into compliance with current building and fire codes, given that their walls are on or near the property lines.” *(BMCC, Section 27-404; Recommended by City-County Planning)*
 - c. A note shall be added to the SIA stating that “Lot 1-C does not currently have City Sanitary Sewer services. When service to this lot is requested, it will be subject to lateral sanitary sewer construction fees and may be subject to trunk sanitary sewer construction fees. It will also be subject to any system development fees.”
2. The following changes or additions shall be made to the plat:
 - a. Provide a one-foot no access strip along Main Street and along Jaque Lane to within 40 feet of the eastern property line of Lot 1-B. *(BMCC, Section 23-605(d); Recommended by City Engineering)*
 - ~~b. Chamfer the southeast corner of Lot 1-C, as required by City Engineering, to accommodate future street signs, hydrants or other improvements. *(BMCC, Section 23-601(j); Recommended by City Engineering)*~~
 - c. Clarify the 10 foot dimension at the northeast corner of Lot 1-C. *(Recommended by City Engineering)*
 - d. Provide the book and page number for the 20-foot wide ditch easement. *(BMCC, Section 23-603; Recommended by City Engineering)*

3. Individual water service lines and meters shall be installed in coordination with Heights Water District, prior to final plat approval. *(City Subdivision Regulations Section 23-705(a); recommended by City-County Planning)*
4. 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.
5. The final subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal City Code, and Rules, Regulations, Policies, and Ordinances of the City of Billings, and the Laws and Administrative Rules of the State of Montana.

The following variances have been requested:

- *A variance from Section 23-702(d) and (e), BMCC, which states that streets shall be paved and have standard integral curb and gutter.*

Jaque Lane is presently a gravel street without curb, gutter or sidewalks. The entire street needs to be resurfaced and upgraded with curb, gutter and sidewalks. City Engineering states that this street may likely be improved in the near future, funded by a Special Improvement District. City Engineering is therefore supporting this variance request, so that the improvement to Jaque can be done all at once. They have requested that a note be added to the SIA stating that street improvements may be required upon further development or redevelopment on these lots, or as a part of an overall street improvement project. This note is a recommended condition of approval. Furthermore, a waiver of the right to protest the creation of an SID will be filed with this subdivision plat.

- *A variance from Section 23-703(a), BMCC, which states that sidewalks shall be required on both sides of all streets.*

The City Engineering supports the requested variance for the same reasons as noted above.

The City-County Planning staff has prepared the Findings of Fact for the Amended Lot 1, Superior Homes Subdivision for review and approval by the Billings City Council. These findings are based on information received from the subdivider, their surveyor, City departmental review, and planning staff evaluation. The findings address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Section 23-304(c), BMCC).

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

1. Effect on Agriculture

This parcel has three existing commercial businesses on it and is in a Highway Commercial zone. It will not have an impact on agriculture.

2. Effect on agricultural water user facilities

The parcel has a BBWA ditch lateral running through its northeast corner. A 20-foot ditch easement exists for this lateral. As a condition of approval, City Engineering has requested that the book and page of the filed easement be

shown on the final plat. This subdivision shall have no impact on downstream users of this ditch.

3. Effect on Local Services

- **Water and Sewer Service.** The proposed lots are served by the Heights Water District for water service and by the City of Billings for sanitary sewer service. The Heights Water District has requested that the lots be provided with individual water service lines and meters, as they are currently served by a shared service line. This has been recommended as a condition of approval. City Public Utilities Department finds no evidence that Lot 1-C has sanitary sewer to it. They have requested that language be added to the SIA stating that upon request for extension of the sewer to that lot, the owner will be assessed the lateral and possibly the trunk construction fees, as well as any system development fees in effect at the time.
- **Storm Water Drainage.** Upon new construction, the property owners will have to comply with the City of Billings' Storm Water Management Manual. Presently, this property is located outside of existing storm drain facilities. When new construction takes place on any of the lots in this subdivision, all storm water from a 24-hour, 100-year storm shall be retained on site. The application for a building permit will trigger this process.
- **Public Streets and Roads.** The proposed lots take access off of Jaque Lane. Jaque Lane is an existing City street that does not meet City standards. It is a 25 foot wide gravel top street within a 60-foot right-of-way. It does not have curb, gutter and sidewalk, or storm drains. The subdividers have requested a variance from Sections 23-702(d) and (e) and Sections 23-703(a), BMCC to not install the required paving, curb, gutter and sidewalks at this time. City Engineering is supportive of this variance but has recommended that language be added to the SIA noting that the City may require the installations of curb, gutter and asphalt upon any further development or redevelopment of this property or as a part of a general street improvement project in the area. The subdividers have submitted a waiver of the right to protest future upgrades to Jaque Lane which includes, but is not limited to, the installation of street lights, street widening, curbs and gutters, sidewalks, driveways.

The subdivision also fronts Main Street on its east side. City Engineering has recommended as a condition of approval that a one-foot no access strip be shown on the final plat along this frontage and also to within 40 feet of the eastern property line of Lot 1-B. They have also recommended that the southeast corner of Lot 1-C be chamfered in order to allow for future installation of curb, gutter, street signage, hydrants, or other improvements.
- **Fire and Police Protection.** The City of Billings Fire Department reviewed the preliminary plat application and had no concerns with the proposal. The City Police Department will serve this subdivision and commented that Jaque Lane needs to be brought up to standards including curb, gutter and sidewalks for pedestrian and

motorist safety. These improvements will likely be made in the near future as part of a general street improvement project.

- **Solid Waste Disposal.** The Billings Solid Waste Department currently provides solid waste hauling. The Billings Landfill has adequate capacity to provide landfill disposal service.
- **Schools.** This three-lot commercial subdivision should not have an impact on schools.
- **Parks.** Parkland dedication is not required for minor subdivisions.

4. Effects on the Natural Environment

The subject parcel is located amid urban density commercial development off of a principal arterial street. The businesses will continue to be served by public sewer and water. The effects on the natural environment should be minimal.

5. Effects on Wildlife and Wildlife Habitat

The subject parcel is located amid urban density commercial development off of a principal arterial street. The effects on wildlife or wildlife habitat should be minimal.

6. Effects on Public Health and Safety

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

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

An Environmental Assessment is not required for minor subdivisions pursuant to MCA 76-3-210(1). Should there be any further subdivision of these lots, an Environmental Assessment may be required at that time.

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

1. 1990 Yellowstone Comprehensive Plan

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

a. Protect against the encroachment of incompatible or unrelated uses. (K-5)

The proposed subdivision would create three lots with existing commercial buildings on them. These businesses are compatible with other businesses in the area.

b. Curb urban sprawl and discourage leapfrog development. (K-7)

The proposed subdivision would create three lots with existing commercial buildings on them. It is within an urbanize area and would not encourage sprawl.

c. Encourage and direct urban growth to urban infill areas and contiguous lands to maintain a strong economy and accomplish a sound transition of agricultural land. (I-3)

This subdivision is in an urban setting and puts no development pressure on agricultural land.

d. Capitalize on the use of existing public sewage systems and improve sewage systems in areas not currently served by public systems. (H-4)

The proposed lots are to be served by the Heights Water District and the City of Billings sanitary sewer services.

2. Billings Urban Area 2000 Transportation Plan and BikeNet

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

D. Compliance with the Montana Subdivision and Platting Act and local subdivision regulations. [Chapter 23, BMCC]

The Amended Lot 1, Superior Homes Subdivision meets the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

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

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

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

The lot is zoned Highway Commercial and the lot sizes comply with the requirements of this zone. The structures on Lots 1-A and 1-B are legal non-conforming structures, but the creation of this subdivision is not increasing their non-conformity. It is recommended as a condition of approval that a note be added to the final Subdivision Improvements Agreement stating that any new development or expansion of the existing structures on any of the lots shall be done in conformance within the standards of the Highway Commercial zone. Also, expansion or change of occupancy of the buildings on Lots 1-A and 1-B may require building modifications in order to bring these buildings into compliance with current building and fire codes, given that their walls are on or near the property lines.

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

Both MDU and Northwestern Energy currently serve the property. They have reviewed the preliminary plat.

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

Legal and physical access is available to the subdivision from Jaque Lane. All streets leading up to Jaque Lane are dedicated to the public.

CONCLUSIONS OF THE FINDINGS OF FACT

The Planning Department staff has determined that the Amended Lot 1, Superior Homes Subdivision will not significantly affect agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat or public safety. In addition the subdivision complies with the 1990 Comprehensive Plan, and the Billings Urban Area 2000 Transportation Plan. Recommended conditions of approval would help to mitigate any potential effects on local services and bring the subdivision into compliance with state law and local subdivision regulations.

Councilmember Ohnstad moved for approval of the Planning Staff recommendation and removal of Condition 2B, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

7. PRELIMINARY PLAT of Cornerstone Subdivision. Planning Board recommends conditional approval. (Action: approval or disapproval of Planning Board recommendation.)

There was no staff report. The recommended conditions are:

1. The subdivider will create a 10' utility easement along the entire frontage of the subdivision on Grand Avenue.
Requested by MDU and required by BMC 23-603 (a).
2. Before final plat approval the subdivider will submit to the Planning Department and Engineering Division a parking plan that shows that sufficient parking spaces are provided for existing structures/uses to meet the City's site development ordinance requirements. If the parking plan shows that insufficient spaces are provided, the lot lines may be adjusted to expand the parking area and to bring the lots and structures into compliance with City requirements.
Requested by Public Works and required to meet zoning and site development ordinance requirements that no lots be created that do not conform to those ordinances.
3. 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.
This condition permits minor changes to the final plat documents without requiring the subdivider to repeat the subdivision review and approval process.

4. 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 requested variance is as follows:

- The SIA shall be modified to indicate that a variance was requested and approved for a variance from BMC 23-605(d) to permit driveway access to arterial streets.

The findings of facts are as follows:

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

1. Effect on agriculture and agricultural water users' facilities

This subdivision will have no effect on agriculture or agricultural water users' facilities. The property is not farmed and there are no irrigation water supply or waste ditches.

2. Effect on local services

- a. Utilities – Water and sewer lines were recently installed in the Grand Avenue right of way. The church paid for service extension to the property line when the mains were being built. The systems have capacity to serve this subdivision. Stormwater will be managed with on-site absorption and the Grand Avenue borrow ditches. Future street improvements will probably require a change in drainage patterns and the property will participate in any future storm drain projects that serve the area. Private utilities serve the property and MDU requested additional easement along Grand Avenue.
- b. Solid waste – A private waste hauler provides collection services. There is a five (5) year moratorium on the City supplying that service. The City's landfill has adequate capacity to serve the subdivision.
- c. Streets - Grand Avenue is a principal arterial street. No improvements are necessary at this time but participation in future construction is guaranteed by the waiver of right to protest SIDs. If annexation is approved, it may be approved with the condition that the parking lots be paved so that dirt and rock dust aren't blown or tracked on to the street.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The property is in the BUFSA so the fire department already provides this service. Police response time is a function of officer location and availability at the time a call for service is received. AMR provides emergency medical services and response would probably come from the west end station in the 2500 block of Grand Avenue.
- e. Schools – The subdivision is in School District 2. The subdivision should not affect schools because it doesn't contain housing. Water and wastewater services could allow the school to expand, which could impact the school district.

- f. Parks and Recreation – There is no parkland dedication requirement because this is considered to be a commercial subdivision and it is a minor subdivision. The subdivision should have no effect on parks or recreation programs.
- g. MET Transit – The nearest MET bus route is on Rimrock Road at Shiloh, approximately two miles from the subdivision. This subdivision should not impact MET service.

3. Effect on the natural environment

This subdivision should not effect the natural environment because the property is already developed.

4. Effect on wildlife and wildlife habitat

This subdivision will not affect wildlife or habitat. There are no known endangered or threatened species on the property.

5. Effect on the public health, safety and welfare

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

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

An Environmental Assessment is not required because this is a minor plat and the first subdivision of a tract of record.

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

1. Comprehensive Plan:

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

- a. Capitalize on existing public water supply systems. H-2
- b. Capitalize on existing public sewage systems and improve sewage systems in areas not currently served by public systems. H-4

The subdivision does not meet the following goals/policies of the comprehensive plan

- a. 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
- b. Curb urban sprawl and discourage leapfrog development. K-7

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Grand Avenue is designated as a principal arterial street which requires 120' of right of way. The subdivider will dedicate the required ½ width right of way. No improvements

are necessary at this time but the property will participate in any future road improvement projects.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. The Plan doesn't require improvements in this area.

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 water and sewer services. It uses a licensed private waste hauler and City of Billings landfill. These 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 Ag-open in the county and the proposed subdivision would not conform to zoning because the zone requires a 10 acre minimum lot size. However, the owner has petitioned for annexation to the City of Billings and if the petition is accepted the zoning will convert to R9600 single family residential. Churches and schools can be operated in this zone with Special Review approval. A Special Review isn't necessary to continue this use but could be in the future if the buildings/uses are expanded.

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

The subdivision adjoins public street rights of way and easements will be dedicated that provide adequate space for utility installations. All the required utilities are already in place.

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

The lots have direct access to Grand Avenue, a public street.

CONCLUSIONS OF FINDING OF FACT:

- The overall conclusion of the Findings of Fact is that the proposed Cornerstone Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- There will be some minor effects on local services. The property will pay for fee-for-services but will not pay property taxes to support tax supported services such as police, fire, parks, etc.
- 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, it will comply with local zoning, sanitary requirements and provides legal and physical access to each parcel.

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

Deputy Mayor Poppler recognized and welcomed a group of Boy Scouts that joined the Council Meeting audience. There were from Troop 10 of the American Lutheran Church.

8. RESOLUTION 03-17980 adopting Cost-of-Service Wastewater Rate Schedule. Staff recommends approval of Alternative "D" resolution – placing wastewater customers in one of two classifications based on the strength of their wastewater discharge, place a 10% surcharge on out-of-city customers and reduce capital expenditures by about \$2 Million. (Action: approval or disapproval of staff recommendation.)

Mr. Bauer clarified that the staff is recommending Alternative D which is consistent with the presentation brought to the last regular Council meeting. Councilmember Larson moved for approval of Alternative D of the Cost of Service Wastewater Rate Schedule, seconded by Councilmember Kennedy.

Councilmember Brewster asked what the impact would be of increasing the out-of-city classification to 100% surcharge. Mr. Bauer said the surcharge in the past was only on the fixed monthly charge. This resulted in very little difference in the high volume and low volume customers. With the 10% surcharge applied to both the fixed monthly charge and the volume charge, the high volume customer would see a substantial increase than the low volume. He said 100% surcharge would have a significant impact on the high volume customers. Mr. Bauer said the dilemma the City faces in any rate that are set is that they must be fair and have a rational basis to support them. He added that a 100% surcharge would not be justifiable just because of location.

Councilmember Brown said the City is in the business of selling water and wastewater services and the 10% surcharge would discourage the use was "what we really want to sell". Mr. Bauer said there is a policy that we do not serve individuals outside of the City with water and discourage serving sewer customers outside of the City. Therefore, the City does not look for customers outside of the City, however there

are historical customers, the largest customers being Conoco and Metra Park. He added that neither water nor sewer services are allowed to make a profit and any reserve of revenue that accrues must be returned to the customer in the form of reduced rates.

Councilmember McDermott asked if everyone is subject to an increase with this proposal. Mr. Bauer said that was correct. Councilmember Jones asked if the rates will increase for the next four years. Mr. Bauer said that was correct. He said the intent is to come back to Council in the next year or two and review the rate increases to see if they are justified or need to be adjusted. The increases will cover the debt that the City is incurring in replacement of the Headworks facility. Councilmember Jones said the City has just paid down the bond with annual payments of \$828,000 per year. This is already in the City's built-in rates. He said he is concerned with voting the rates in for a four-year period because changing rates after a one-year review may not occur.

Councilmember Jones amended the motion to change the review from in 4 years to a 1 year, seconded by Councilmember Brown. Mr. Bauer said his concern is that a yearly review of the rate will require additional staff time and consultant service to assist in the proposal. He said he agreed that reviewing the rate more frequently than every five years is appropriate, but has concerns about every year. He asked Council to consider a two-year review date. Councilmember Kennedy asked if the change suggested by Councilmember Jones will put us at risk with this information not available at the public hearing. Mr. Brooks said the important aspect is that the public knows the rates will be reviewed periodically. He said there was no commitment made at the public hearing.

Councilmember Larson noted that approval of the rate increase will become part of the budget and if a Councilmember has questions about the rate increase it can be addressed during the budgeting process without triggering a rate study review and the associated costs. Councilmember Kennedy asked what the cost of the rate study was. Mr. Mumford said approximately \$60,000 to \$100,000. Councilmember Jones said the current study considers four years and could be utilized for the one-year review. Councilmember McDermott said she agrees with Councilmember Jones and said if the study meets the assumption in one year then the rates can be continued. Mr. Bauer said the study in one year may not have a high cost, but there will be costs incurred with reviewing the fees on an annual basis. On a roll call vote, the amendment failed 4-5 with Councilmembers McDermott, Brown, Poppler, and Jones voting "yes" and Councilmembers Gaghen, Brewster, Kennedy, Ohnstad and Larson voting "no".

Councilmember Brewster moved to amend the motion to review the rate schedule in 2 years rather than 4 years, seconded by Councilmember Larson. On a voice vote, the amendment failed.

Deputy Mayor Poppler asked to have the original motion restated. She asked if the motion included the 4-year review. Councilmember Jones said the rate tables include the annual increases every year for the next four years.

Councilmember Brown reiterated that he is not convinced that the City can justify a wastewater increase. Mr. Bauer said the City is proposing a rate increase for wastewater for 2003, 2004 and 2005. The three major components of the rate increase are: 1) the way the service is provided, changing from a flat rate to a cost-of-service rate creating a residential customer, a commercial-domestic strength customer, a commercial high-strength customer, and an out-of-city class, based on the strength of the effluent, and 2) change in the revenue requirements, based on the fact that there was no rate increase

last year and there are increased costs due to inflation, cost of operation and maintenance and proposed capital expenditures (replacement of the Headworks facility). Councilmember Jones agreed that the Headworks facility does need to be addressed, but the City has just retired over \$20 Million in bonds and the Headworks facility will require approximately \$4 Million in bonds. He said he is not convinced that a rate increase is needed at this time.

Councilmember Brown asked why the rate increases would be needed because of a change in the method of billing. Mr. Bauer said it is the method that the costs are allocated among the customer classes. Rates are being raised for everyone because revenue requirements have increased based on inflation and the proposed capital expenditures. Allocating the increases among the customers is a rate design issue. Mr. Bauer said a large portion of operation and maintenance costs come from salaries. There are also increases associated with chemicals and utilities.

Councilmember Gaghen noted that even with the rate increases, Billings is well under other cities of comparable size.

Councilmember Brewster asked how the City justifies the difference in the bonds recently retired and the bonds required for the capital expense that are significantly smaller. Mr. Keefe said the bonds retired recently cost \$820,000 per year. He said the debt service on the new bonds will be about ½ of that, financed over twenty years. He said the increases involve a number of considerations. He added that by financing the Headworks facility over 20 years the rate increases were kept to a minimum in the first part of the bond issue. Ratepayers twenty years from now will share the cost. Mr. Bauer said capital expenditures have the greatest impact on the rate increases, but it is more complex. The combination of the capital budget, that includes other components, and the on-going costs of operation and maintenance are driving the revenue requirement. He noted that the City is incurring debt with underfunded repair and replacement. The rate increases will help alleviate this underfunding of the past.

Councilmember Brewster moved to reconsider Councilmember Jones' motion to change the review from 4 years to 1 year, seconded Councilmember Brown. Councilmember Brewster said he would like to see what the reserves do over the next year with the capital expenditures. He said he would like to see more solid numbers and the Council could use the current rate study numbers at that time. Councilmember Kennedy said he sees no necessity in looking at this in one year, when the triggers are in the budget that allow for any changes that need to be made. Councilmember Brewster said he thinks it is more difficult to make changes at the budget time that it is now. On a roll call vote, on the motion to reconsider, the motion was approved 5-4 with Councilmembers McDermott, Brown, Brewster, Poppler and Jones voting "yes" and Councilmembers Gaghen, Kennedy, Ohnstad and Larson voting "no".

Councilmember Larson called for the question. On a roll call vote for the first amendment by Councilmember Jones to change the review period from 4 years to 1 year, the amendment passed 5-4 with Councilmembers McDermott, Brown, Brewster, Poppler, and Jones voting "yes" and Councilmembers Gaghen, Kennedy, Ohnstad and Larson voting "no". Councilmember Larson called for the question. On a roll call vote for the motion as amended, the motion was unanimously approved.

9. CONTRACT for Classification & Compensation Consulting Firm. ~~Recommendation to be made at meeting.~~ Recommend Fox Lawson & Associates and authorize the Mayor to negotiate a contract not to exceed \$80,000. (Action: approval or disapproval of staff recommendation.)

Councilmember McDermott moved for approval of the staff recommendation of Fox Lawson and Associates, seconded by Councilmember Gaghen. Human Resources Manager Rick Harden said the City received 15 proposals from consulting firms nationwide. The proposals ranged from \$40,000 to \$153,000. He said the last two consulting firms presenting to the committee were well qualified and the major difference between those two was the time that would be spent in the early stages of looking at the classification of jobs. The president of the recommended firm will be intimately involved throughout the entire process making at least three trips to Billings. Mr. Harden said Fox, Lawson & Associates was approximately \$6,000 higher than the other firm, but the amount of time spent on the "front end" will assure a good product. On a voice vote, the motion was approved with Councilmembers Brown, Kennedy and Larson voting "no".

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

The public comment period was opened. WELDON BIRDWELL, 44 YELLOWSTONE AVENUE, said there is a FUTURE GEN PROJECT to build a coal-fired power plant of 275 megawatts. He said this would be a demonstration electricity generation plant that would be a billion dollar project for the next ten years. It would strip out the hydrogen fuel cells to be used to power hydrogen cars. It would also address the problem of pollutants that are normally generated with coal-fired plants. He said the State of Montana has a "fair shot" a having this plant built in Eastern Montana if the State acts immediately. He asked the Council to address a letter to Governor Martz encouraging the State of Montana to do everything possible to secure this project for Montana. He noted that the competition would come from Wyoming, West Virginia, and even Illinois.

Councilmember Brown asked if this would involve taxpayer money. Mr. Birdwell said the Federal Department of Energy would be assuming 80% of the cost and private enterprise would assume 20%. He said this plant should be built here to bring ten years of good paying jobs and the technology to make our coal a feasible energy source for the next century. He noted there has been only one public meeting in Miles City regarding this and the decision will be made in June.

There were no other speakers. The public comment period was closed.

Council Initiatives

COUNCILMEMBER BROWN: Councilmember Brown said the City Administration and Parks Department appear to be reluctant to accept the direction of the City Council on parks and recreation issues. He moved for the City of Billings to abandon the Aquatic Study previously adopted, seconded by Councilmember Brewster. Councilmember Larson said he would abstain from the discussion and the voting. Councilmember Brown said he has run into resistance over the issue of a swimming pool in the Heights that he is willing to raise money to build. He noted there has been resistance with wading pools that have been approved by Council. He also said he has a problem with the Aquatics Study that was done by an out of state firm. Councilmember McDermott

voiced her concern over the problems with the Aquatic Study and noted that the closure of Athletic Park with an indoor facility in the downtown area "someday" is not specific enough. She said there is a need for a pool in that area.

Councilmember Brown called for the question. Mr. Bauer said the Council initiative procedure is to request the staff to research and report back to the Council with a Council Memo to place on an agenda for direct action. He asked the Councilmembers consider modifying the request to direct the staff to bring back discussion of the Aquatics Study for reconsideration by the Council. Councilmember Brown called for the question. City Attorney Brent Brooks noted that this action would require a $\frac{3}{4}$ majority vote (6) to add this motion to the agenda. Councilmember Kennedy moved to place Councilmember Brown's initiative to abandon the Aquatic Study on this evening's agenda, seconded by Councilmember Brewster. On a roll call vote, the motion failed 4-4 with Councilmembers McDermott, Brown, Brewster, and Poppler voting "yes" and Councilmembers Gaghen, Kennedy, Ohnstad and Jones voting "no". Councilmember Larson abstained from voting.

Councilmember Brown moved to place this initiative on the agenda for action on 5/27/03, seconded by Councilmember Jones. On a voice vote, the motion was approved with Councilmembers Ohnstad and Kennedy voting "no".

ADJOURN —With all business complete, the Mayor adjourned the meeting at 8:36 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Susan Shuhler, Deputy City Clerk