

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 28, 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 Mick Ohnstad.

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

MINUTES – July 14, 2003. APPROVED AS PRINTED.

COURTESIES – NONE

PROCLAMATIONS – Mayor Tooley. NONE

BOARD & COMMISSION REPORTS – Traffic Air Pollution Control Board

- Russell Boschee, Director of the Yellowstone County Air Pollution Control said the Board would be meeting tomorrow afternoon at 1:00 p.m. in Room 105 of the Courthouse. One of the items to be discussed is the sandblasting operations located in the North Park area.

ADMINISTRATOR REPORTS – Kristoff Bauer.

- Mr. Bauer noted that a copy of the Final Budget for FY 2004 was placed on the desks of the Councilmembers this evening.
- He asked that Item H be separated for a staff presentation before action is taken this evening.
- Mr. Bauer called the Council's attention to Item B1, adding that bids have now been opened and Staff has made a recommendation that was included in the Council's Friday packet.
- He asked the Council to separate Item P, the final plat for B & R Subdivision and noted that staff is recommending a two-week delay to August 11 to address unresolved issues that remain to date.

Mayor Tooley requested that a motion be made to hold an Executive Session after tonight's meeting to discuss the deliberations for the City Administrator position. The issue is the right to privacy for the candidates. He said there would be a full and open discussion at the meeting scheduled for Wednesday evening July 30th at 6 P.M. Councilmember Poppler moved to hold an Executive Session after tonight's meeting, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

CONSENT AGENDA:

1. A. Mayor's Appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Marieanne Hanser	Yellowstone Soil Conservation District	08/01/03	12/31/06

B. Bid Awards:

(1) W.O. 03-03, Contract #2, 2003 Street Maintenance. (Opened 7/22/03). ~~Recommendation to be made at meeting.~~ Recommend H. L. Ostermiller Construction, \$435,554.50.

(2) Veteran's Park Parking Lot Improvements. (Opened 7/22/03). Recommend delaying award to 8/11/03.

(3) Amend Park Phase I Parking Extension. (Opened 7/15/03). Recommend Empire Sand & Gravel, \$282,288.00.

C. W. O. 03-18 Public Works Projects Contracts with Morrison-Maierle, Inc. for an amount not to exceed \$500,000 and HKM Engineering for an amount not to exceed \$500,000 for contract administration and construction project management for Public Works Projects including Roads, Public Utilities, Storm Sewer, and General Obligation Road Bonds.

D. Contract with Montana Dept. of Public Health and Human Services-Developmental Disabilities Division for specialized MET transportation for disabled individuals, \$161,039 in revenue for FY 03-04.

E. Grant Agreement with the State of Montana, Fish Wildlife & Parks Local Government Boating Improvement (LGBI) for improvements to the Coulson Park Boat Ramp, \$25,600 grant monies.

F. Acknowledge receipt of petition to vacate a portion of Rangeview Drive, Westfield Drive, and Rangeview Court in Rush Subdivision, 8th filing and setting a public hearing for 8/25/2003.

G. W.O. 02-19: Underground Joint Use Right-of-Way Utility Easement with Northwestern Energy, Montana Dakota Utilities, Bresnan Communications, LLC and Qwest Corporation, for the new City Animal Shelter.

H. Resolution 03-18005 placing \$5,200,000 General Obligation Bond Issue on the November 2003 ballot for construction of Alkali Creek Road, Arlene Street and South Billings Boulevard arterial street improvements.

I. Resolution 03-18006 amending SILMD #10, #160, #257 & #263 boundaries.

J. Approval of application for the 2003 Local Law Enforcement Block Grant and acceptance of grant funds; City match is \$6,338.00 to come from Drug Forfeiture Fund.

K. Subordination of First Time Homebuyer's Loan, Daisy Ordonez, 4125 Murphy Avenue, \$5,000.00.

L. Subordination of First Time Homebuyer's Loan, Tina Becker-Pate, 119 Prickett Lane, \$5,000.00.

M. Second and final reading of ordinance 03-5247 for Zone Change #716: A zone change from Residential-6,000 to Residential Manufactured Home on C/S 2537, Tract 1 and two adjacent parcels in Section 22, Township 1 North, Range 26 East, located at 1036, 1038 and 1040 Bench Boulevard.

N. Second and final reading of ordinance 03-5248 for Zone Change #717: A zone change from Residential-6,000 & Residential-7,000 to Neighborhood Commercial on Lots 10 - 12 in Block 4, Valley View Acres Subdivision, Amended.

O. Second and final reading ordinance 03-5249 revising sections of the Billings Montana City Code regarding various City Subdivision Regulations: Section 23-704: Sanitary Sewer System; Section 23-705: Water Supply System; and Section 23-710: Solid Waste Disposal.

P. Final Plat of B & R Subdivision.

Q. Final Plat of Midland Subdivision, 4th filing, Amended Lots 1E & 1D-1, Block 2.

R. Final Plat of Rush Subdivision, 8th filing.

S. Final Plat of Superior Homes Subdivision, Amended Lot 1, Block 5.

T. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brewster separated Items H and P from the Consent Agenda. Councilmember McDermott separated Items 1A, J and N from the Consent Agenda. Councilmember McDermott moved for approval of the Consent Agenda with the exceptions of Items 1A, H, J, N and P, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item 1A of the Consent Agenda, seconded by Councilmember Kennedy. Mayor Tooley noted there was a letter from Clinton McFarland, Chairman of the Yellowstone Conservation District, endorsing the appointment of Marieanne Hanser to the Yellowstone Soil Conservation District.

Councilmember McDermott asked if Ms. Hanser would be the City of Billings representative and what the Yellowstone Conservation District does and were there any financial ramifications. Mayor Tooley said the District is required by State law to advise on the conservation of riverbanks, irrigation and those types of activities related to agriculture. The selection of these board members requires County Commissioner approval with two members chosen by the urban areas within the County. Three municipalities - Billings, Broadview and Laurel must choose these two board members to represent urban interests, with the advice of the Yellowstone Conservation District. Ms. Hanser is one of those candidates. He noted that the County finances the board. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item H of the Consent Agenda, seconded by Councilmember Kennedy. Public Works Director Dave Mumford gave a presentation on the three projects that are included in the Arterial Street General Obligation Bond Ballot item and resolution. The three projects are South Billings Boulevard, Alkali Creek and development of the Arlene Street Corridor. The bond sale is necessary because the transportation system needs additional funding to provide for these projects. He noted that growth in the system demands improvements in the transportation system.

Mr. Mumford said the Alkali Creek Road project is from Senator's Boulevard to Saddle Club Road. The road will consist of two lanes with a shoulder and ditch on both sides and a 10-foot multi-purpose trail. This is a \$1.1 Million project, with \$750,000 coming from the bonds. The Arlene Corridor project from Poly Drive to Broadwater Avenue will aid the north/south connection of West Billings to Highway 3. The road will consist of two options, a rural construction through the Peter Yegen Golf Course that provides for pedestrian traffic and a two-lane section through the northern portion with center median and a 10-foot bike trail. This is a \$4.5 Million project with \$3.2 Million coming from the bonds. The South Billings Boulevard project is from Laurel Road to King Avenue. The road will consist of four lanes in the style of a typical arterial with sidewalks, streetlights and minor landscaping. This is a \$1.4 Million project, with \$1 Million coming from the bonds. Other funding sources for these projects are City Storm Drain Funds, Sidewalk Assessments to property owners, Water and Sewer Funds, City Storm Water Funds, Gas Tax funds, private contributions and CTEP funds. He said the total cost of these projects is \$6.9 Million. He noted the request is for \$5.2 Million in Transportation Bonds to fund the projects. It is anticipated that all projects will be completed within three years of the bond sale.

Councilmember Brewster asked why Alkali Creek Road was chosen for enhancement over Lake Elmo Road or Bench Boulevard. Mr. Mumford said Lake Elmo Road is currently a work in progress and Bench Boulevard is being studied, with the possible availability of Federal dollars to aid in that construction. Mr. Mumford noted that all of Alkali Creek Road is in the City. He said the general obligation bond issue would free up the Gas Tax money that can be used on other maintenance projects for neighborhood streets that are also in need of repairs.

Councilmember Brown asked what costs are involved that are not construction related. Mr. Mumford said there are fees to sell the bonds and administrative fees for both the Public Works and Finance Departments totaling less than \$300,000. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item J of the Consent Agenda, seconded by Councilmember Kennedy. Councilmember McDermott said the background information did not state how the money from the grant would be spent. She asked that this information be provided to the Council at a later date. Interim City Administrator Kristoff Bauer said this information would be provided to the Council tomorrow. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item N of the Consent Agenda, seconded by Councilmember Kennedy. On a voice vote, the motion was approved with Councilmember McDermott voting "no".

Councilmember McDermott moved to postpone Item P of the Consent Agenda to the August 11th Council meeting, seconded by Councilmember Kennedy. Councilmember Brewster asked if the issues could be resolved in two weeks. Mr. Bauer said one of the problems is that not all of the guarantees are in place to make sure the required improvements will be completed. He said the City hopes to have the agreements that hold the subdivider accountable in place within two weeks. He said this information would be provided to the Councilmembers in advance of the next meeting. Councilmember Gaghen noted that the developer has concerns about the delays that are escalating his financial costs. On a voice vote, the motion was approved with Councilmember Gaghen voting "no".

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCES amending Section 6-511, 6-512, 22-302, and 26-115 revising and clarifying the Excavation Bond and Utility Bond requirements. 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 Gaghen moved for approval of the ordinance on first reading, seconded by Councilmember Brewster. Councilmember Poppler asked City Attorney Brent Brooks to explain the need for the revisions to the bonds. Mr. Brooks said the City is revising the bond language to clarify liability limits that equal the tort limits set by State law and property limits and damages. This would protect the taxpayer from bearing the burden of incidents or substandard work that could occur while contractors are working in the City's rights-of-way.

Councilmember Jones asked about language pertaining to the General Aggregate being deleted. Mr. Brooks said the City would ultimately make that decision. Mr. Bauer said the Council would have the option to designate a representative with that authority. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION expanding the N. Broadway Streetscape Maintenance District #4013. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brown moved for approval of the staff recommendation, seconded by Councilmember Kennedy. Councilmember McDermott stated her concern about the inequity of the method for assessing the property

owners. She said she is working with a committee to bring forward legislation that will change the manner in which the street assessments are formulated. She said the City should stay consistent until that legislation comes about. She noted the two “businesses” that benefit from the present assessment formula are the City and the Gazette. Councilmember McDermott offered a substitute motion to postpone consideration of this item to the August 11th Council meeting, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #718: A zone change from Residential 9,600, Residential 6,000 and Residential Professional to Residential 7,000, Residential Multi-Family-Restricted and Community Commercial on 27 acres of land located northwest of the intersection of Shiloh Road and Grand Avenue, Goodman, Inc., owners, Engineering, Inc., agent. Zoning Commission recommends denial. VALID PROTEST received. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the location of this zone change is north of Grand Avenue and west of Shiloh Road. He said it currently is 27 acres of cropland and encompasses a majority of Goodman Subdivision, 2nd filing. He noted there is also a current subdivision application with this zone change. Mr. Bollman said this property was zoned, annexed and subdivided in 1994 with the majority of the area zoned Residential 9,600. The surrounding areas are zoned Residential 9,600 to the north and east, and Agricultural Open-Space to the west. He said the majority of the zone change request is for Residential Multi-Family Restricted with Residential 7,000 proposed along the north side of Avenue D to buffer the Single Family Residential to the north and the multi-family units that will be developed on the lots. There is a small area of change to Community Commercial.

Mr. Bollman said the Zoning Commission is recommending denial based on 1) density concerns from the potential number of units that could be built, 2) congestion of traffic, and 3) higher density and taller buildings. He said there is a valid protest (from owners of lots to the north) to the zone change. He noted that the owners of the subject property have requested that the public hearing be continued to August 25th to allow the Council to consider the zone change with the subdivision application. He added that the Council cannot impose conditions on the zone change, but can place them on a subdivision to limit the density allowed on the property.

The public hearing was opened. RICK LEUTHOLD, ENGINEERING, INC., said he represents the developers. He noted the property was annexed and subdivided based on the existing conditions of the community at that time. He said the owners have a vision of a quality asset that would benefit the community and would fit better into the mixed use. He noted Rocky Village as an example of their vision. He said much of the property would be held long term by the owners and their estate. He noted this is an infill development that would create a quality development. Mr. Leuthold said the delay allowed the owners to process the subdivision plat with the zoning request. He said the owners could provide conditions that will help mitigate the concerns of the Zoning Commission. He asked the Council to grant the continuance to August 25th to hear all of the conditions before making a decision.

JOHN GOODMAN, NO ADDRESS GIVEN, said the property has been in his family for many years. It was farmed for many of those years. He said the problems he has encountered while farming were from encroachments from the population due to growth. He said his desire is to develop the land. The taxes have "gone through the roof" and he can't afford to farm anymore. His desire is to develop the land to the highest and best use and be good stewards of the land with a quality development. He asked the Council to consider his comments.

DOUG NEUHOFF, NO ADDRESS GIVEN, said he is an adjacent landowner. He said he investigated the land use and zoning of his property before building his home. He said he would have not made the investment if he knew that multi-family housing would be allowed to be built in the area. He said every adjacent landowner, with the exception of the owners' daughter, is opposed to multi-family housing being developed there. He explained that there is no way to protect his property values when multi-family housing is built next to his property. Mr. Neuhoff said noise and traffic would disrupt the peaceful quality of life he now experiences. He also noted that the school system in the area would suffer from an increase in students beyond their capacity. He said the current zoning is compatible with the surrounding neighborhoods and does what it is supposed to do - protect the integrity of neighborhoods and give order to development. He said the neighbors would be willing to discuss ways to buffer the multi-family areas from the single-family areas.

KIM PRILL, 2115 PARK RIDGE LANE SOUTH, said she lives north of the proposed zone change. She understands the need to accommodate growth and the demands for affordable housing. She said the owners and the developer were aware that many homeowners in the area have large investments in their homes with the understanding that the zoning was for residential single family. She said she and her husband made their homebuilding decisions based on the land use and zoning established in 1994. She said there are properties all along the Shiloh Road Corridor that are more appropriate for multi-family housing. She expressed concern for the impacts on property values, parks space, and congestion. She also noted that single family housing is in compliance with the West End Master Plan. She urged the Council the make a decision on the zoning issue before August 25th.

ROD WILSON, 422 SHAMROCK LANE, said he is a developer and the owner of Shiloh Point Subdivision. He said Shiloh Point Subdivision is in its third year of development and all 56 single-family lots have been improved at a cost in excess of \$1.7 Million. He noted the zoning surrounding Shiloh Point was single family residential when they purchased the property, adding that the requested zoning designation on the subject property provides for ten times more building units on the property than its present zoning. He said this is not compatible with the neighborhood. He said the owners of Goodman Subdivision are asking all of the surrounding property owners that have large investments in their property to "serve as the buffer" for the proposed change of use. He noted that, from a developer's perspective, the developer could expand the Residential 6,000 zoning and allow their Residential 9,600 to serve as the buffer or use a Planned Unit Development that allows mix usage with restrictive and well defined plans. He noted that the Zoning Commission has voted to deny the zone change and that the developer and surrounding property owners try to "work something out that would be acceptable". He explained that the adjacent property owners would be supportive of a buffer of single

family residential within the Goodman Subdivision on the north and west sides. He noted that the adjacent property owners have signed a petition against the proposed zone change and have met the requirements of a valid protest.

HEATHER WYANT, 4134 WATERFORD DRIVE, said she just purchased a home in the Shiloh Point Subdivision in April of this year. She said they purchased their home thinking that the surrounding community would remain a single family rather than multi-family development. She expressed concern for the congestion that multi-family residential would create. She said there is suitable area on the east side of Shiloh Road for multi-family development. She asked the Council to consider leaving their area as single family zoning.

CARL ANDERSON, 1708 43RD STREET WEST, said this development will impact his financial situation. He said the field near his home should have been reserved for single family development. This zone change will possibly allow apartment buildings which will affect his property value. He noted that he has made serious financial decisions based on the current zoning, and it is not "fair to change the rules of the game in the middle of the game". He said this development does not protect the existing surrounding landowners. If the developer doesn't think their development will impact the surrounding single-family homes, they shouldn't have a problem providing their own single-family residential buffer around the perimeter of their property, he added. He said he agrees with the Zoning Commission recommendation.

DAN WELLS, 4555 UPLAND DRIVE, gave a description of all of the surrounding residential and commercial areas that are in close proximity to the subject property. He said the owners have requested a delay on the zone change decision to allow more information contained in the Subdivision Agreement to come to the Council. This agreement will state the actions the developers will take to minimize the impact and preserve the view of properties to the north and west of the Goodman Subdivision. He said the developer is limiting the density to half of the possible 520 units with "twin" home sites surrounding the property. He said this location is the one designated in the West End plan to be available for mixed use. He said they are willing to work with the neighbors to meet their needs. He asked the Council for approval of their proposal.

KATHY NEUHOFF, 1800 43RD STREET WEST, said she has the same concerns as the previous speakers. She stated it took twelve years to find the place they wanted to stay in for the rest of their lives – on 43rd Street West. She said they have invested all of their time, money and hard work to make this "place the one we stay at forever", noting their twelve year search was for a single-family residential area. She said there is a great need for multi-family areas, but this is not the place for one. East of Shiloh Road is a more appropriate place for this type of housing. She said the surrounding residents invested in their homes with the knowledge that it was single family residential zoning. She expressed concern for the schools that will not be able to accommodate 200+ additional children. Her primary concern is for the schools, parks, traffic congestion and safety of her children. She wants the security of knowing her children are safe playing and riding their bikes in the neighborhood.

THERESA GOODMAN, 7631 FRITZ ROAD, LAUREL, said she is one of the owners of the subject property. She stated this farm has been in the family since 1942 and she and her husband started farming it in 1951 and purchased it in 1972. She said the property is surrounded by developments on three sides, the north, east and west.

There are single family homes with Residential 7,000 zoning “backing up to the homes” and homes on 10-acre tracts nearby with “plenty of room for children to play”. She noted that they and the developer have gone to the neighbors to the west and in Shiloh Point Subdivision and explained their intentions. They have subsequently altered some of their development plans to meet the needs of the neighbors. She said it is their desire to follow the West End Master Plan for this development with a quality project.

MONTY SOLEMS, 1739 43RD STREET WEST, said he is currently building a home at 1739 43rd Street West. He asked the Council to consider that this project is putting the “cart before the horse or at least alongside of the horse” by trying to combine the zoning issue with plat changes. He said it is important to consider the zone change before making changes in the plat. He asked that the Council look at the two issues as separate issues. He said the property owners are asking for all multi-family units not a mixture of multi-family and single family units. He asked the Council to consider the Zoning Commission’s recommendation.

ARTHUR MEREDITH, 1765 WATERFORD CIRCLE, said he lives two lots away from the proposed zone change. He said there are many concerns but it all comes down to whether the Council wants to protect the investment and property values of many owners or one owner. He said the plat should be developed based on the current zoning, and not consider the zone change and the subdivision simultaneously. He said he considered the current zoning before purchasing his property and he has made a huge financial investment building his “dream home”. He reminded the Council that the surrounding homes are not moderate value homes, but rather “upper end homes”.

MIKE HEFFNER, 4209 GRAND AVENUE, said he lives in Goodman Subdivision, 1st filing that is southwest of the proposed zone change. He said he has been an architect for 25 years and has lived all of his life in Billings. He said there have been many meetings with City departments to discuss the approach to this project. He noted that the Circle 50 Subdivision has gone through many developments and changes in zoning as it grew. He said part of zoning is change and it is evident in the West End Plan. He said the developers are asking to continue the “rainbow” effect on the east side of Shiloh Road to the west side of Shiloh Road. He said everyone wants multi-family development, but “somewhere else”. However that is not what the study shows. The study shows that it should be interspersed within all of the various areas. This is the intention of the developer. He said the over-crowding in the schools has been there for the 20 years that he has lived in the area and is a School District problem. He noted there is already Residential 7,000 on the east side of Shiloh Point and multi-family to the east of the Residential 7,000.

CHARLIE GAMBLE, 1819 CRYSTAL DRIVE, said he wanted to correct comments made about Residential 7,000 zoning east of Shiloh Point. He said that was a “negotiated settlement” to the request to place multi-family there. He noted that the zoning in Remington Square was placed on the property in 1972. He said the most important rule in real estate sales is to find out what the zoning of the surrounding vacant land is and to make the prospective buyer aware of it before the purchase agreement is signed. He said the surrounding property owners do have a good point.

DOUG BRAUN, 2509 PATRICIA, said he drives by Rocky Village every day and “does a slow-burn”. He said they took a beautiful piece of property and “junked it up”. He

also said it is his opinion that the high-density apartments in Circle 50 are horrible. He sympathizes with the Goodmans and Neuhoffs as well.

Councilmember Jones moved to continue the Public Hearing to August 25th, seconded by Councilmember Kennedy. Councilmember McDermott said the Council should give the public some solid time frames to avoid coming back again and again to testify. Councilmember Jones said he hopes to see the developer and the property owners work out an acceptable compromise with the neighbors that they can bring to the Council. Councilmember Kennedy said he supports this motion because the best time to negotiate these types of things is when the land is raw. Mr. Bauer noted that this is the first reading of the ordinance to change the zoning. He noted that the Council must abide by the zoning code and act within 30 days of the petition. He said because the petitioner has asked for the delay, this might not be an issue. If the Council denies this motion and closes the public hearing there is still the option to postpone the action and still have the ability to open a public hearing on the 25th if it is necessary. If the Council approves the first reading, the action will still come back for second reading on August 25th and at that point the Council can approve or deny the request. A final option is to affirm the Zoning Commission recommendation and ultimately deny the request and there would be no further action required on this item. Another zone change request could not be presented for one year however.

Mayor Tooley noted that the people who have spoken tonight would not be allowed to testify again unless they are completing their remarks, should the public hearing be continued. Councilmember Poppler asked what the status of the subdivision application would be if the Council accepts the Zoning Commission recommendation to deny the zone change. Mr. Bauer said the subdivision would have to be designed using the current Residential 9,600 and Residential 6,000 zoning. He said there is an existing plat with the current zoning and the owners and developers could move forward with that existing plat that adheres to the current zoning. On a roll call vote, the motion failed 4-5 with Councilmembers Brown, Brewster, Kennedy and Jones voting "yes" and Councilmembers McDermott, Gaghen, Poppler, Ohnstad and Mayor Tooley voting "no".

The public hearing was closed. Councilmember Brewster moved to delay the decision (with a closed Public Hearing) to August 25th, seconded by Councilmember Kennedy. On a voice vote, the motion was approved with Councilmember Ohnstad voting "no".

5. PUBLIC HEARING AND SPECIAL REVIEW #740: A special review to allow the construction of a commercial building over 3,000 square feet in size in a Neighborhood Commercial zone. The property is described as Lot 1B, Conitz Subdivision Corrected and Amended and is located at 4170 State Street. (re: Ace Hardware). Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Juliet Spaulding said this special review request is to construct a commercial building over 3,000 square feet in a Neighborhood Commercial zone. This is to accommodate the relocation of the Ace Hardware Store to be located at 4170 State Street. The adjacent properties are zoned Residential 6,000 to the north and Residential 9,600 to the east and the south. The Residential 9,600 is lightly developed with the subject property also vacant. The properties to the north are more

densely developed. Controlled Industrial zoning is to the west. Further to the south is Residential 7,000 where the new Chrysalis Subdivision is currently being developed. The site is a large lot of 30,000 plus square feet and is currently zoned Neighborhood Commercial. Neighborhood Commercial zoning does allow 50% lot coverage, she noted. The proposed development would be approximately 32% lot coverage.

Ms. Spaulding said the Zoning Commission recommended conditional approval. The conditions were developed to minimize impacts on the surrounding area and are:

1. The location of the proposed building will be in the general location as shown on the submitted site plan.
2. The proposed building shall have a footprint of no greater than 9,850 square feet.
3. The landscaping shall be installed as shown on the submitted site plan and shall have not fewer than four (4) trees, shall include a 6-foot sight-obscuring fence along the east and south property boundaries and four-sided dumpster enclosure constructed of sight obscuring material. Chain link fencing is not allowed to be used where sight-obscuring fencing is required. All landscaped areas shall consist of at least 75% living material.
4. Outdoor display of merchandise shall be removed each night. No overnight outdoor storage of merchandise is allowed in Neighborhood Commercial zones.
5. Exterior lighting on the building or in the parking lot shall have full cut-off light shields and be directed towards the ground. No light trespass on adjacent properties is allowed.
6. The location of the new drive approach and right-of-way improvements shall be as required by the Engineering Division. These improvements will be reviewed during the building permit application process.

The public hearing was opened. CHARLES GOLDY, 2127 LYNDALE LANE, said he is the architect for the project. He said they are asking for approval to build a facility larger than 3,000 square feet. He said they moved the curb cut to the other side of the lot so the building is not on the residential side of the property. He said the present store is inadequate and a larger facility is needed. The King family has owned the store for a long time and desired to remain in the same location.

GEORGE STEVENS, 111 FIRST STREET WEST, ROUNDUP, MT., said he is the store manager for the Ace Hardware Store at this location. He asked for the Council's approval of the special review. He said the location is in a great neighborhood to do business with loyal customers that deserve to have a nice hardware store in their neighborhood.

DUANE BARMAN, 215 CALHOUN LANE, said he is the Vice-Chairman of the Southwest Corridor Task Force. He said the task force unanimously supports Ace Hardware and their special review request. He asked the Council to consider their vote for support.

DOUG BRAUN, 2509 PATRICIA, said he owns rental property near the subject property. He said the Ace Hardware serves a good purpose and is a good neighbor. He asked the Council to approve the special review.

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

Mayor Tooley called for a brief recess at 8:25 P.M.
Mayor Tooley reconvened the meeting at 8:35 P.M.

6. PUBLIC HEARING AND SPECIAL REVIEW #741: A special review to allow the location of a sandblasting operation in a Controlled Industrial zone on property located at 5 Washington Street. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the special review is to allow the location of a sandblasting operation in a Controlled Industrial zone on a triangular piece of property located at 5 Washington Street. The surrounding zoning is Controlled Industrial to the east and south, Residential Manufactured Home to the west and across Washington Street is Residential 6,000.

Mr. Bollman said the Zoning Commission is recommending conditional approval. He noted that the Planning Staff recommended denial to the Zoning Commission due to concerns with the location of the business in relation to residences to the west, south and southeast. He said the staff noted some "fugitive dust" coming from the area where sandblasting is occurring. He noted that after the staff's visit, the business did some retrofitting of property to prevent the dust from escaping. The Zoning Commission said it was an appropriate use with the conditions. The conditions are:

1. Allowed hours of operation for sandblasting shall be limited to 8:30 a.m. to 5:00 p.m. Monday through Friday, and from 9:00 a.m. to 12:00 p.m. on Saturday.
2. All sandblasting shall occur inside the building and shall be conducted in compliance with Yellowstone County Air Pollution Control regulations.

Councilmember McDermott said the business uses copper rather than silica in the sandblasting operation. She asked if copper was safer. Mr. Bollman said research of information provided by the Air Pollution Control Office and the MSDS sheets show that copper is a safer material to use. Silica is sometimes linked to silicosis and lung disease. Copper meets all the safety standards that are required and is approved for use in California.

Councilmember Brown asked if the condition related to the hours of operation was for noise abatement or the sandblasting itself. Mr. Bollman said the suggested hours of operation were from a letter from the owner to the Zoning Commission. This was taking into consideration the residential area nearby.

The public hearing was opened. BARRY WRIGHT, 1433 SHANNON, said he is the owner of Wright's Custom Repair. This business has been in the family for 28 years. He said the business has been located on Washington Street for the last two years. The zoning is the same as the last place of business – Controlled Industrial – where sandblasting was also done. He said sandblasting is the day-to-day operation that keeps the business running. Without this part of the operation, the business would not survive. This will affect many other businesses as well. He said the Yellowstone County Air Pollution Authority stated in a letter that their business was in complete compliance with all regulations of a sandblasting operation. He noted the copper they use passes the California Air Resources Board requirements and is certified in

California for performing outdoor sandblasting. He said additional curtains and ductwork have been added to prevent the dust from escaping the operation. Mr. Wright said he has 75 neighborhood signatures that state they have no objection to the sandblasting operation. He said the times that the business has had to work late has never been later than 9 P.M. The sandblasting operation makes very little noise, just a "whoosh" of air when turning the sandblaster on and off.

DUANE CLARK, 215 CALHOUN LANE, said he is the Vice-Chairman of the Southwest Corridor Task Force. He said the task force has voted unanimously to approve the sandblasting operation. He asked that the time limit of 5 P.M. be reconsidered to accommodate those occasional jobs that run past 5 P.M.

JERRY FORGA, 37 WASHINGTON STREET, TRAILER #37, said he works for the Wright's. He said he lives "right around the corner" and there is no noise from the sandblasting operation. He understands that once in a while jobs run past the 5 P.M. closing time. He said the Wrights have improved the building and area since moving to this new site.

DANIEL LEE MYERS, 37 WASHINGTON STREET, TRAILER #1, said he can see the business from his home and does not notice any dust. He said he supports the request of the Wrights. . He noted that the Wright's help to refurbish bikes for low income children.

COLLEEN WRIGHT, 1433 SHANNON STREET, all but one of the neighbors did not know that there was even a sandblasting operation there. She noted that the nearby train causes more dust than their sandblasting operation.

JEFF RICHARDSON, 1530 CUSTER AVENUE, said he has a business on Washington Avenue. He said sandblasting is like the recycling effort in that usable equipment can be sandblasted for longer life. He said the business is self-contained and they recycle the sand. The used sand is run through a sifter separating out the debris so the sand can be used again and the debris can be easily disposed of.

NATHAN FLESHER, 37 WASHINGTON STREET, TRAILER #8, said he lives close to the sandblasting operation and does not hear any noise or see any dust. He said the Wrights are "real nice people."

BILL SCHAFER, 824 N. 25TH STREET, said the Wright's Furniture business operated at 5th and N. 20th Street for years with no complaints. He said the business has improved the dust containment beyond what was required by the Yellowstone Air Pollution Authority. He said during his visit to the site he was standing next to the sandblasting operation and was not even aware of it. There was no "fugitive dust" to be seen anywhere. He said the business has met every requirement necessary and has the full approval of the neighborhood. He added that a Controlled Industrial area should not be encumbered to a 5 P.M. quitting time, 9 P.M. is a more appropriate restriction.

DOUG BRAUN, 2509 PATRICIA, said he has done business with the Wrights for over 20 years. He said the lease he had with them in the North Park area generated no complaints. He noted they are good people, good owners, neighbors and business people. He asked the Council to allow them to continue their operation and the sandblasting which is a major part of their business. He said they are making every effort to comply with the regulations. He added the Wrights are a real asset to the community.

There were no other speakers. The public hearing was closed. Councilmember Poppler moved for approval of the Zoning Commission recommendation with an extension of the hours to 10 P.M. as necessary, seconded by Councilmember Kennedy. Councilmember Jones made a substitute motion to remove the time restrictions (condition #1) to the operation entirely, seconded by Councilmember Brown. Councilmember Gaghen asked if open hours of operation are standard for businesses in a Controlled Industrial zone. Mr. Bauer said there are no time restrictions for businesses in this zone. However, there is a noise ordinance for the entire City in all zones. This would be a more appropriate tool to address the specific problem of noise and noise concerns. He encouraged any Councilmember who has had access to information related to the sandblasting operation that other Councilmembers may not have to make it part of this public record. Councilmember McDermott said she and Councilmember Gaghen were given separate tours of the operation and were able to visually observe procedures. Councilmember McDermott said she would expect that Councilmembers in every ward would notify each other when information vital to the decision making process is required. Councilmember Gaghen said she has also had lengthy contact with the two individuals who are protesting this special review. On a voice vote, the substitute motion was unanimously approved.

7. PRELIMINARY PLAT of Weidler Acres Subdivision, Amended Lot 11. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)

There was no staff report.

RECOMMENDED CONDITIONS

1. The Subdivision Improvement Agreement will be brought into standard, acceptable format.
Requested by Public Works and required by BMC Article 23-801.
2. 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.
3. 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.

Findings of Fact
Weidler Acres Subdivision amended lot 11
July 28, 2003

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 and a small effect on agricultural water users' facilities. The property's lawn is irrigated by the High Line Ditch. Easements will need to be created if both lots are going to continue using ditch water and flood irrigation should be prohibited.

2. Effect on local services

- a. Utilities – Water, sewer and storm drain facilities are in place in Rimrock Road. The SIA should be amended to include a statement about storm drainage, even if no improvements are required at this time. Private utility companies will provide service to the new lot under their operating procedures.
- b. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - Curb, gutter, sidewalk, pavement widening and a pedestrian safety island were installed on Rimrock Road in 2002. No further street improvements are needed at this time, but the waiver will cover future improvements if they are needed. The existing driveway approaches will provide adequate access to both lots.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #3, located at 17th St. West and Parkhill. The Fire Department stated that it has no issues with the proposed subdivision. 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 station that is located on Grand Avenue.
- e. Schools – The subdivision is in School District 2. The District didn't respond to a request for comments, so it is assumed that the District has adequate facilities to serve the subdivision.
- f. Parks and Recreation – There is no parkland dedication requirement because this is a minor plat. Creating one additional lot should not appreciably affect parks or recreation programs.

- g. MET Transit – MET uses Rimrock as a primary route. This subdivision should not impact MET service.

3. Effect on the natural environment

This subdivision should not affect 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

The subdivision should not negatively affect public health or safety. Street improvements that were completed last year should help to slow traffic and make entering/exiting this property easier and safer than without the improvements. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties.

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 from 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
- c. 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
- d. 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. Rimrock Road is a principal arterial street but no immediate improvements are needed.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. Rimrock Road is designated as an arterial district connector that should be used as a bike route until alternate routes are developed.

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 existing structure uses city water, sewer, storm drain and solid waste services and these services will be extended to the new lot. All services are approved and regulated by state and federal authorities.

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

The property is in the Residential-9600 zoning district and 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 adjoins a public street right of way that provides adequate space for utility installations. All the required utilities are 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 access to Rimrock Road, a dedicated public street.

CONCLUSIONS OF FINDING OF FACT

- The overall conclusion of the Findings of Fact is that the proposed Weidler Acres Subdivision amended lot 11 does not create any adverse impacts that warrant denial of the subdivision.
- There should be little effect on local services because only one single-family lot is being created and services are already provided to the existing 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.

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

8. **PUBLIC COMMENT.** (Non-Agenda Items; comments limited to 3 minutes per speaker.) NONE

Council Initiatives

COUNCILMEMBER POPPLER: Councilmember Poppler moved to direct staff to fill the Highland Park and Veteran's Park wading pools for the remainder of the summer and hire the necessary lifeguards to man them and empty them each night and refill them each morning to avoid the Public Health concerns, seconded by Councilmember McDermott. Mr. Bauer said the staff should first consider the ramifications of this motion and come back to Council with a memo on the next agenda. This is needed to understand the costs and risks associated with this action. Councilmember Poppler said four lifeguards would not stress the Parks and Recreation budget. Councilmember Ohnstad reminded the Council that the State Board of Health closed these facilities due to lack of compliance. Mr. Bauer said changing the water each day may meet the guidelines, but the staff will have to investigate this. Mayor Tooley noted that there might be funds available in Council Contingency to fund the salary of the lifeguards. Councilmember McDermott asked if North Park could be added to this motion. Mr. Bauer said North Park is in construction and should be open before the end of summer.

COUNCILMEMBER GAGHEN: Councilmember Gaghen amended the motion to use Council Contingency funds to fund lifeguards if necessary, seconded by Councilmember McDermott. Councilmember Kennedy said he feels this is a decision that is "shooting from the hip" and setting a precedent to address items without information and not on the agenda. Councilmember Poppler said this is a subject that was discussed long ago and very overdue. Mr. Bauer said bringing this back to Council with information gathered from staff is consistent with the Council's policies. Councilmember Gaghen withdrew her motion. Councilmember Gaghen moved for a substitute motion to direct staff to come back at the Special Meeting on July 30th with information to help the Council decide how to re-open the wading pools in Highland Park and Veterans Park for the rest of the summer and a resolution calling for the use of Council Contingency funds for the cost of lifeguards at these pools, seconded by Councilmember McDermott. Councilmember Jones noted that another option is to utilize extra lifeguards that are already working for the City. On a voice vote, the motion was unanimously approved.

MINUTES: 07/28/2003

COUNCILMEMBER MCDERMOTT: Councilmember McDermott moved to direct staff to develop an ordinance regarding Skateboarding in the Downtown area, seconded by Councilmember Gaghen. This ordinance was a condition of the funding from the Downtown Billings Partnership for the Skatepark. On a voice vote, the motion was unanimously approved.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 9:25 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

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