

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## October 14, 2003

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

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

**MINUTES – Sept 22, 2003.** APPROVED as printed.

**COURTESIES** – Planning Director Ramona Mattix introduced Wyeth Friday, the newest planner in that department.

### **PROCLAMATIONS – Mayor Tooley.**

- October 25: Make a Difference Day
- October 20-25: World Population Awareness Week
- October: National Arts and Humanities Month

### **BOARD & COMMISSION REPORTS – NONE**

### **ADMINISTRATOR REPORTS – Kristoff Bauer.**

- Mr. Bauer noted that a revised copy of the Deed for Item I appears on the council desks this evening.
- Mr. Bauer also noted that Staff is requesting a late addition to the agenda this evening for a change order for the sanitary sewer main in Lewis Avenue – Change Order #4, Schedule II, 2003 PUD Replacement project. Councilmember Brewster moved to add Change Order #4 for Lewis Avenue to the Regular Agenda as Item 6, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved. This item was added as Item 6.
- Mr. Bauer asked that the Council separate Item K so that the correct wording for the ordinance for Skateboarding could be reviewed prior to Council deliberations.
- Mr. Bauer reminded the Council of the meeting at the Lincoln Center Board Room at 5:30 PM on Wednesday, October 15<sup>th</sup> regarding the Shiloh Overlay District.

### **CONSENT AGENDA:**

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

**(1) HazMat Response Vehicle for Fire Dept.** (Opened 9/9/03).  
(Delayed from 9/22/03). Recommend Billings Truck Center, \$75,320.00.

**(2) 1-1/2 Ton – Cab & Chassis 4x4 for Fire Dept. (Brush Truck)**

MINUTES: 10/14/03

(Opened 9/9/03). (Delayed from 9/22/03). Recommend Archie Cochrane Motors, \$35,831.00.

**(3) One New Current Model Cab & Chassis – 52,000 GVW for Fire Dept. (Water Tender)** (Opened 9/9/03). (Delayed from 9/22/03). Recommend Billings Truck Center, \$73,988.00.

**(4) HVAC System Replacement – Fire Station #1.** (Opened 9/16/03). (Delayed from 9/22/03). Recommend Accent Air Conditioning & Heating, \$46,695.00.

**(5) W.O. 02-14: Washington School Walks.** (Opened 10/14/03). Recommend delaying award to 10/27/03.

**(6) Private Contract #392: King's Green Subdivision, Phase I.** (Opened 9/30/03). Recommend Gray Construction, Inc., Schedule I, \$118,429.10 and Empire Sand & Gravel Co., Schedule II, \$94,974.00.

**(7) W.O. 03-05: Downtown Railroad Crossings.** (Opened 10/7/03). ~~Recommendation to be made at meeting.~~ Recommend rejecting all bids and rebidding.

**(8) Sale of Surplus Items from City Property at 114-116 N. 26<sup>th</sup> St.** (Opened 9/30/03). No bids were received. Recommend authorizing Parking Division to negotiate sale of individual items.

**(9) Renovation of the Stewart Park Driver's Break Room and Transfer Center Site.** (Opened 9/30/03). Recommend General Contractors, \$146,480.00.

**(10) One New Current Model 2003 or 2004 Landfill Track-Type Tractor/Sale of Used D8R Tractor.** (Opened 9/23/03). Recommend Tractor & Equipment Company, \$267,305.00.

**B. W.O. 04-01: 2004 Water Rehabilitation Project, Contract** for Professional Engineering Services, HKM Engineering, Inc., \$174,500.00.

**C. Lease of City Hangar Property** to Westcott, LLC, \$14,400 in first year, adjusted annually by CPI, term: 1 year + 1 year option to renew.

**D. Heritage Trail Plan,** Contract for Professional Services, Engineering, Inc., \$24,325.00.

**E. Amendment to Inter-Creditor Agreement** on increase bank participation in the Downtown Revolving Loan Program.

**F. Revised method of securing public right-of-way:** Transtech Center (Gabel Sub., 2<sup>nd</sup> filing – Transtech Center Sub.).

**G. Acceptance and approval** of supplemental funds to the 2002 High Intensity Drug Traffic Area (HIDTA) Award #12PRMP606, Office of National Drug Control Policy, \$40,748.00 additional funds.

**H. Time Extension** for Silver Creek Subdivision Preliminary Plat until 9/11/04. Delayed to 10/27/03.

**I. Acceptance of Quit Claim Deed** from K & S Development for purchase of street right-of-way at 345 Main St. re: (Sunsilks), \$19,100.00.

**J. Second/final reading ordinance 03-5256 for Zone Change #718:** A zone change from Residential-9,600, Residential-6,000 and Residential Professional to Residential Multi-Family-Restricted, Residential-9,600, Residential-7,000 and Community Commercial on portions of Goodman Subdivision, 2<sup>nd</sup> Filing (a more complete description may be obtained from the Planning Department). The subject property is generally located north of Grand Avenue and west of Shiloh Road. Goodman, Inc., owner.

**K. Second/final reading ordinance 03-5257** amending BMCC by adding Sections to be numbered 24-611 through 24-618; regulating the use of skateboards and other play vehicles; setting safety requirements; prohibiting certain conduct; and, setting a penalty.

**L. Second/final reading ordinance 03-5258** amending BMCC by revising Section 27-1704: Schedule of Fees.

**M. Final Plat** of Aspen Gateway Subdivision.

**N. Final Plat** of Briarwood Subdivision, 4<sup>th</sup> Filing.

**O. Bills and Payroll.**

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

Councilmember McDermott separated Items A7, A1, A5, A9, D and J of the Consent Agenda. Councilmember Jones separated Item I from the Consent Agenda. Mayor Tooley separated Item K from the Consent Agenda. Councilmember McDermott moved for approval of the Consent Agenda with the exceptions of Items A1, A5, A7, A9, D, I, J and K, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item A1 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott asked if the funds to be used for the HazMat Response Vehicle would come from the General Fund or the HazMat federal dollars recently received. Fire Chief Marv Jochems said the money would come from the Equipment Replacement Program of the General Fund. The HazMat federal dollars will be used to purchase a trailer that will carry equipment used for regional response, he said.

Councilmember Jones asked if the trailer would have the command light system that is being deleted from this item. Chief Jochems said the trailer would not have the command lights, but will have minimum lighting (a light on each corner) at the same level that the current trailer has. Councilmember Jones said he thinks the command light system is important and asked if there is an alternate funding source for this purpose. City Administrator Kristoff Bauer said this could be added to capital expenditures in the next budget process. Chief Jochems said the Fire Department's intention is to purchase this in

the future as a separate budgeted item. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item A5 of the Consent Agenda, seconded by Councilmember Iverson. Councilmember McDermott said the School Walks project has been anticipated for two years and asked if the RFPs could be submitted earlier, in the future. City Engineer Vern Heisler said the bidding is usually scheduled during the first part of the year. Mr. Bauer noted this has been an incredibly busy construction season. He noted that smaller projects have been moved to later in the season to accommodate the larger projects. Councilmember Gaghen asked if the residents surrounding this area have been informed that the school walks will not be constructed this year. Mr. Heisler said the Staff would endeavor to make that notification. Mr. Bauer noted that this item would appear on the October 27<sup>th</sup> Council agenda for award and could still be constructed this year. He noted that the holiday on October 13<sup>th</sup> has complicated the bid schedule. Mr. Heisler said the Staff is striving to complete construction of this project this calendar year. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item A7 of the Consent Agenda, seconded by Councilmember Brewster. Mr. Bauer said the Staff is recommending the Council reject all bids, delay the project and request rebidding. One bid was non-responsive and the remaining bids that were received were significantly over budget because this is the busy time of the construction season. The Downtown Billings Partnership concurs that this project should be rebid in the spring of 2004 because it is the most competitive time of the year for construction projects. On a voice vote, the motion to reject all bids and delay the project was unanimously approved.

Councilmember McDermott moved for approval of Item A9 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott asked for more background information on this \$146,000 item. Transit Manager Ron Wenger said this project expands the transit driver's breakroom by 100 square feet and renovates the two restrooms to be ADA accessible and compliant. Because this involves federal money, the restrooms, which are for drivers only, must be remodeled to be ADA compliant. The second part of the improvements calls for removing and replacing the old shelters at the Transfer Center and refurbishing the planters, benches and signs in the area. On a voice vote, the motion was unanimously approved.

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

Councilmember McDermott moved for approval of Item I of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott asked if it was the City's responsibility to pay \$19,100 for the right-of-way concerning the property at 345 Lake Elmo Drive. City Engineer Vern Heisler said traffic studies indicate that additional right-of-way is needed along Lake Elmo Drive and to a lesser degree on Main Street. The right-of-way is being acquired for traffic safety purposes. Mr. Bauer noted this property has been the subject of controversy for a period of time and the initial estimated cost to acquire all of the right-of-way and property adjacent to it was \$100,000. With the Target developers interested in the property, it reduces the cost significantly and avoids the

condemnation process with the current property. He said this is a small price to pay for a significant piece of property that allows the City to complete the intersection.

Councilmember Brewster asked if the developers are paying for the street improvements. Mr. Bauer said this may be part of the project, and only concerns the right-of-way. He also noted that there was an error in the council memo, no amended plat is necessary at this point. Mr. Heisler noted that the \$30,000 Target contribution is for intersection improvements.

Councilmember Poppler asked if the City must remove the structure and clear the lot. Mr. Heisler said the property owner would be removing the structure in a couple of weeks. The City is acquiring the right-of-way with the money and would make the right-of-way improvements in the future. On a voice vote, the motion was approved with Councilmember Poppler voting "no".

Councilmember McDermott moved for approval of Item J of the Consent Agenda, seconded by Councilmember Brewster. On a voice vote, the motion was approved with Councilmembers Brown, McDermott and Poppler voting "no".

Councilmember McDermott moved for approval of Item K of the Consent Agenda, seconded by Councilmember Brewster. Mayor Tooley noted that the adjustments to the skateboard ordinance voted on at the previous meeting were in the ordinance on the Councilmember's desks. Recreation Supervisor Joe Fedin noted that the skateboard ordinance before the Council contains both green and yellow highlighting. The green items are ones discussed at the work session on September 15<sup>th</sup> and the yellow items are actual changes made at the September 22<sup>nd</sup> Council meeting. He said the green items need to be considered this evening and include: 1) the actual area, which is the downtown area, 2) except when riding to a specific destination, which was removed at the last meeting, 3) Section 613 was researched and stricken from the ordinance, 4) old Section 24-615 (now 614) has several wording changes, 5) Section b deleting wording or using the phrase "public property", 6) Section d regarding bike riding in the Skatepark, and 7) the ordinance to take effect 30 days after the second reading or the date of the official opening of the Skatepark. Mayor Tooley clarified that the changes noted by Mr. Fedin will be included in the consideration of the ordinance on this evening's agenda. Mr. Bauer noted that the definition in Section 24-614b was taken out and the term used was "public property." Council has restricted that to only parking lots and parks. Councilmember Brewster amended the motion to adopt the yellow highlighted portions of the ordinance that refer to the grounds of any City owned parking lot or park, seconded by Councilmember Jones. Councilmember Brewster said this more accurately reflects what the Council discussed. On a voice vote, the amendment was unanimously approved.

On a voice vote on the main motion, the motion as amended was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION 03-18041 amending FY2004 Budget to provide budget authority for projects carried over from FY2003 in the Tax Increment Fund. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. GREG KRUEGER, DOWNTOWN BILLINGS PARTNERSHIP DIRECTOR, 2906 3rd AVENUE NORTH, spoke

in favor of the budget amendment to the Partnership’s annual budget. He noted that all but one of the projects is currently underway. He noted that the amounts in the Staff memo are the Partnership’s portion only. He said the Council has indicated that the project for the Downtown Signage should not only include a study, but the cost of the signs. He asked that the Council allow this to go into the signage budget and allow the Partnership to come to the Council with Plan B of the master signage configuration. He said the Partnership is considering an RFP that asks for a design/build, to be offered to all of the local sign companies as well (design a plan, design the signs and build the signs). Rules of the Partnership include preference for local vendors.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Jones amended the motion to strike the “27<sup>th</sup> Street Master Plan” language from the list of projects and retain “Signage”, seconded by Councilmember Brewster. On a voice vote, the amendment was unanimously approved.

Councilmember McDermott asked if the Council could allocate some of the Partnership money for extra security to address panhandling problems in the downtown area. Mr. Bauer said this is a complex issue and needs to be researched. He said TIF money has been designated to implement the Framework Plan and does not include on-going operational expenses. On a voice vote, the motion as amended was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION annexing Blocks 2 & 3 and portion of Block 1 of Golden West Estates, Jerry Olson ETAL, owners. (Annex #03-06). Staff recommends denial of the annexation. (Public hearing continued and action delayed from 9/22/03). (Action: approval or disapproval of Staff recommendation.)**

Planning Department Director Ramona Mattix said this annexation is located on the west side of Molt Road approximately one mile north of Rimrock Road. She said the site is currently zoned Residential 15,000 and would change to Residential 9,600 upon annexation. The property is 22.6 acres with the current and proposed land use being residential. There were no objections on the department comments to the public services report. There were no significant impacts on City services, with sewer available at 62<sup>nd</sup> and Molt Road and water available in Molt Road, south of Ironwood. She said the homeowners are requesting water service only and would sign waivers of the right to protest an SID for future sewer construction. She noted that City policy would require that streets be paved within three years. She said the homeowners are unwilling to commit to that timeline, therefore Staff is recommending denial of annexation, unless an agreement is reached on road improvements. Ms. Mattix said the total revenues based on the current taxable value of 14 lots would be \$8,781.07.

Ms. Mattix said the annexation is within the Sphere of Influence, is 10 acres or greater, should not cause a decline in City services to existing residents, however existing infrastructure is insufficient, and it is not a wholly surrounded County island, but is contiguous to the City limits. She reiterated that the annexation agreement was not reached regarding the infrastructure improvements and financing with regard specifically to the street improvements.

The public hearing was opened. MIKE ATKINSON, 6326 GOLDEN WEST TERRACE, said he lives in the area to be annexed. He said since 1976 the residents of Golden West Estates have requested water from the City. The residents currently use cisterns filled by hauling City water. He said the cisterns are a health hazard. Many of the homes use a reverse osmosis system. The residents have not established a water district for economic reasons. He said the residents have been confident that the City would eventually extend water to their subdivision, as it would be the obvious thing to do. He said the plan first established was a good one, but the requirement of paving the streets and sewer installation has stalled the process. He said he feels there is no reason for either of those requirements in this proposed annexation. He noted that the streets have a gravel surface and maintenance is extremely inexpensive. He added that negotiating the hills in the winter with pavement would be prohibitive. Mr. Atkinson said the cost for street improvements would be extremely burdensome with the amount of frontage that each lot has.

PAT MURTAGH, 3848 QUARTER CIRCLE DRIVE, said it is contrary to common sense to agree to build and pave a road that the residents don't want in the first place. He said the cost for sewer and road improvements is too high for the residents of this subdivision and paving the road before the installation of sewer that would go beneath the road is not a good plan. He said the residents don't want to build a road and then tear it up to construct a sewer and then pay for road restoration. They also do not want to pay for a sewer until it is needed (when more lots are sold). He said the residents do not want to put themselves in extreme debt until the additional subdividing occurs. He said the residents have a win-win proposal that includes: 1) a revenue of 7-1/2 cents per square foot impact fee in addition to the cost of the water pipe and the hook-up fees, 2) \$4,000 annually for City street maintenance (normally costing \$1,000 per year) and will agree to form a maintenance district to maintain the roads at no cost to the City, and 3) \$2,000 annually for storm drainage assessments (with no water being processed with by the City).

GLEN MCFARLANE, 6252 GOLDEN WEST TERRACE, said he has lived at this address for 21 years. He said informal discussions between the property owners of Golden West Estates began in late 2002. They also met with Aqvi Esta Subdivision to obtain information regarding costs and fees associated with their own annexation. He said the tax estimates provided by the City/County Planning Department were \$575.00 for each current owner and approximately \$320.00 for the 3 vacant lots. He said the residents agreed to proceed with annexation based upon this information and 85% of the property owners signed the annexation petition. The application was submitted in May of 2003. At their October 7<sup>th</sup> meeting to work out the final language for the annexation agreement, the residents were informed that the Public Works Department would require the property owners to agree to an SID to pave the two streets in Golden West Estates at their expense within three years. Mr. McFarlane said the cost of \$40,000 per property owner to pave the streets is prohibitive. He said the property owners would like to propose a compromise regarding the maintenance and paving of the streets and will form their own SID to maintain the gravel streets to an agreed upon standard until such time as the resident property owners include a minimum of 350 property owners to share the cost of paving the streets. He asked the Council to

consider the reports the residents have submitted to them. He said there are many reasons why this is a good fit to the City's annexation policy.

There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of Staff recommendation, seconded by Councilmember Ohnstad. Councilmember Brewster asked Mr. McFarlane to outline the reasons why this annexation is in agreement with the City's annexation policy. Mr. McFarlane said the only reason why the annexation does not agree with the annexation policy is with regard to the requirement to pave the streets within three years. He said the residents are not opposed to paving the streets but would like to be part of a larger SID with a more reasonable timeline. He said the major concerns are timing and cost to the current residents.

Councilmember Brewster made a substitute motion to delay this annexation for two weeks to allow time to negotiate an agreement on paving the streets, seconded by Councilmember Brown. Mr. Bauer reminded the Council that all annexations require agreements that the residents install all of the improvements including water, sewer, storm and street. He asked Council to give a specific recommendation regarding negotiations with this development that is not inconsistent with past annexation practices. Councilmember Brewster asked about the plan to build the streets ahead of the sewer construction. Mr. Bauer said there are conflicting requests from property owners about the timing of sewer installation, asking that the sewer construction be deferred which increases the cost of installation. The question then becomes, "to pay a lower cost now for street installation only, or a higher cost later for sewer installation and restoration of streets." He said the central problem is that this is a low-density area with large lots and street assessments create a large impact on those lots. There is no opportunity to reduce the per lot cost until this area develops into a more dense development which is not likely to occur in the near future. The dilemma is transitioning a County development at Residential 15,000 into a City development with Residential 9,600. Councilmember Gaghen noted that it would take a great deal of time to reach the number of 350 property owners that were able to form a SID as proposed by Mr. McFarlane. Mr. McFarlane noted there is a large amount of development that is happening all around their subdivision.

Councilmember McDermott noted that the Council has not turned down any annexations that are within the Sphere of Influence. She said she hoped that some kind of agreement could be reached as she is inclined to vote in favor of this annexation. She said she is sensitive to the costs the property owners will incur. Mr. Bauer said the concern for the Council is if they want to start the practice of annexing properties with gravel roads and allowing that to continue in the future. He noted that the City is not equipped to maintain gravel roads. He said it is very hard to hold a future party that was not a part of the agreement to future promises with regard to assuming the cost of improvements. On a voice vote, the substitute motion was approved.

Mr. Bauer reminded the Council that he would like direction on what type of negotiations the Council would like the City to proceed with. Councilmember Brewster said he would like time to review all of the materials that correspond to the action presented this evening. Councilmember Poppler asked about the content of the SID for the Ironwood Subdivision. Mr. Bauer said Ironwood residents are responsible to construct all infrastructures as part of the annexation process. This negates the need



for a SID. Mr. Bauer said there are no opportunities to create any efficiencies in the future that would reduce the cost for residents of Golden West Estates. (NOTE: Action was delayed to 10/27/03 – Notation ADDED per request of Councilmember McDermott).

**4. PUBLIC HEARING AND ADOPTION OF THE ORDINANCE amending portions of BMCC Sections 4-301 thru 4-453, prohibiting wild animals within city limits and offensive animal waste; changing certain definitions; requiring permits for 4 or more dogs and/or cats; updating language on noisy animals, dangerous and potentially dangerous behavior and animal’s justified use of force; allowing the City Administrator to set fees; prohibiting small animals from being in City parks; requiring dogs and cats to be vaccinated; requiring registration and vaccination tags to be on an animal when off owner’s property; allowing impoundment of cats and dogs and collection of fees and increasing penalties. (Delayed from 9/22/03.) Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. LISA KEMMER, 22 KOVASH STREET, said she is a teacher at MSU-B in the Philosophy Department with a specialty in ethics. She said the animal control ordinance needs more work and more input. She recommended that the ordinance be tabled for the following reasons: 1) there is a lack of clear definitions on critical terms (ie. aggressive behavior), 2) there are references that may be perceived to unnecessarily benefit Animal Control, 3) there is a lack of well defined judicial process (regarding checks and balances), and 4) there is a lack of acknowledgement that animals have any interests (Animal Welfare Act). She said there are many instances where a dog can be mishandled and falsely accused if a bite occurs. She asked the Council to table this item until these issues have been heard and dealt with.

DELMER SCHMIDT, 4123 JUNE DRIVE, said he speaks in favor of the ordinance. He said barking dogs are the biggest problem the City has and causes much trouble between neighbors. He said the ordinance is of no effect if it is not enforced.

NANCY HALTER, 921 HARVARD AVENUE, said she has lived on Harvard Avenue for 13 years. She said there was one cat in the neighborhood at that time and now it has become a “dog ghetto” with 17 dogs in residence. Ms. Halter said it is time for the animal control ordinances to change and address the constant barking in her neighborhood. She said she feels like a victim in her own home and has also suffered abuse from the dog owners for her efforts to maintain quiet in her neighborhood. She stated that Billings suffers because dog owners have failed to train their dogs. In the past, her complaints against the barking were not taken seriously by the owners, with no action taken on their part. She asked why the fines have been lowered since the original presentation. She said if the fine is not of a serious nature the offenders will not take animal control seriously. Ms. Halter said if the new ordinances are fully enforced, these changes will benefit her neighborhood and many others. She asked that the \$50 fine be reinstated, for the first offense.

LOUIS GUNDLACH, 4131 JUNE DRIVE, related his experience and frustration with three barking dogs adjacent to his backyard and the ineffectiveness of the current animal control ordinances. He said his only option now is to sell his house and move to

another location. He asked the Council to approve the ordinance and allow Animal Control to enforce it.

RICHARD GUCKEEN, 1270 CLAIMJUMPER LANE, said he agrees with all of the previous speakers. He said he is totally surrounded by numerous dogs in his neighborhood that bark at all hours of the day and night. He has asked the neighbors to be courteous about pet ownership and find the reason for the continuous barking. Mr. Guckeen said he is frustrated with the ineffectiveness of the present animal control ordinance. He said the proposed changes in the ordinance are good and asked the Council to make the changes have a large impact. He said he feels pet owners should be courteous and treat their neighbors with respect, respecting their right to not hear continual barking.

BENNY MILLS, 4185 MITCHELL AVENUE, said he has counted 14 dogs that reside on his block. He said the dogs bark continuously, day and night and the animal control people don't do anything about this. He said he hopes something can be done about this.

HEATHER CUNNING, 3955 BLUEBIRD STREET, asked the Council to table the ordinance until it can be reviewed by a panel of at least three qualified people, to be sure they are fair to all members of the city - animal and human alike. She agreed that the ordinance needs to be changed. She said she is concerned with the portion that pertains to hybrid animals.

CHERYL KELLY, 15902 MEGAN LANE, SHEPHERD, MT., said she teaches responsible pet care to people referred by the courts. She noted that behind every problem animal is an irresponsible human. She said she feels this ordinance is fair and asked the Council to approve the ordinance as it is very necessary. She said Animal Control needs some power to get animal problems under control.

GREG IAN, 921 HARVARD DRIVE, said he spoke with the Animal Control Board a week ago. He said he asked for serious protection that really works.

WENDY WARREN, 1147 AVENUE C, said she couldn't open a window in her own home because of barking dogs. She said the Council needs to give Animal Control power to fine owners of nuisance pets.

MATT MILLENBACH, 2011 PRYOR LANE, said he has lived in many communities across the country and has become well aware of how unpleasant and destructive uncontrolled barking dogs can be to a neighborhood. He said they could have an effect on property values. Mr. Millenbach said the issue of barking dogs was a consideration in the house purchase he made in Billings, noting he is amazed at how many people inflict this noise upon their neighbors by letting their dogs bark during the day. He said he is concerned that one day one of his great neighbors will move away and allow someone to move in that allows their dog to bark and disturb their peace and quiet. Quiet neighborhoods are a significant part of life and enhances his property values. He asked the Council to adopt the recommended ordinance.

JEANETTE GROOMS, 282 PROSPECTORS LANE, said she has lived in Billings Heights for 18 years. She said she takes issue with many of the things contained in this ordinance, noting she is concerned about the section that refers to impoundment of animals. She asked for a revision of this section to include a visit by the owner once a day. She is also concerned with the section that requires the homeowners to add the City as an additional insured if there is a dangerous dog on the

premises. She said she called the Attorney General's office and their response was that this might not be legal. She said she thinks this is an invasion of privacy. She asked the Council to table this ordinance for further study. She said she agrees with the problem with barking dogs, but said the owners should be the ones punished.

ELEA REESE, NO ADDRESS GIVEN, said she left the City because of barking dogs. She said she requires all her City tenants to put bark collars on their dogs, noting this has worked well. She suggested that owners with noisy dogs consider using bark collars. Ms. Reese said she is also concerned about the section in the ordinance that gives the Animal Control officers the ability to destroy animals because of human failures. She stated that is cruelty to animals and the owners should be the ones penalized, noting there is no provision for dogs that are victims of human abuse and neglect. She suggested the use of a microchip or number identification for dangerous animals.

KATHY KAUFMAN, 2736 SOUTH HIGHWAY 312, said she agrees with previous speakers about the problem with barking dogs. She said the burden should be on the owners to correct the problem with fines and education on how to stop the barking. Her main concern is the definition for dangerous dogs. There is no mention of provoked or unprovoked response from animals. She provided the Council with handouts regarding "fair laws for responsible pet owners" and "facts about chaining or tethering dogs" suggesting the Council consider some of the facts and her comments contained in those documents. She said that clarity is missing in the ordinance.

JIM GREEN, 2110 WINGATE LANE, said he is a firm believer that the dog's behavior is the responsibility of the owner. He said a barking dog is a nuisance. Mr. Green stated there are means and education to help the dog stop barking. He added his biggest concern is taking the dog without due process. He said a panel should be convened to assess the impoundment of the offending dog, with a trained person that can determine if the dog is really dangerous. He agreed that there are many good provisions in the ordinance, but thinks some of the language should be revised. He urged the Council to table this ordinance and form a committee of concerned citizens to review and revise the ordinance.

BRENDA EMERY, 519 SOUTH 35<sup>TH</sup> STREET, said she is a Montana native, but has lived in 22 other cities and been involved with animal rescue groups and animal control groups in every city. She said there is room for improvement in the way the shelter in Billings is operated, emphasizing that the majority of the communities she has lived in demonstrate a willingness for the shelters and the animal groups to work together to keep euthanization numbers down and the animals adopted out. Ms. Emery said the kill rate in San Francisco is five animals per 1,000 people, whereas in Billings the kill rate is 25 animals per 1,000 persons. Her calculations show that ½ of the Animal Shelter budget is expended on putting animals down. She noted she has joined a group called Safe Harbor that places animals that have reached their limit in impoundment. The group has offered to participate in a contract and proposal to rescue animals from euthanasia at the Animal Shelter without results. Councilmember Jones asked if Safe Harbor still provides this service to the Animal Shelter. Ms. Emery said Mr. Klein no longer allows the group to do this. Councilmember Poppler asked where Safe Harbor keeps the dogs they process. Ms. Emery said they are kept in foster homes around the City and at one location outside of the City that has three barns and

several kennels. There are several other kennels that are used that give the group discounted rates. She said they work through Pet Smart to adopt these dogs.

LAURA TIMMONS, 66 ANTELOPE TRAIL #5, said she would like to see the Council adopt the changes provided in this ordinance. She has worked with animals all of her life and it is not an easy thing to put an animal down, but reality must be faced without emotion when dealing with these issues. She said there are many reasons why animals must be put down and many times people do not see the full picture. Many of the problems these animals have are human caused, through indiscriminant breeding. She asked the Council to consider the changes to the ordinance and adopt them.

DAN MOORE, 852 PARKHILL DRIVE, said he and his wife have been fighting a noisy dog for 11 years. He said this is a tremendous problem. He is also tired of the dogs using his front lawn as a rest stop. Mr. Moore said he thinks that pet owners with problem dogs think they are "special" and ignore the bad behavior of their pets. He asked where the Animal Shelter would find the personnel to enforce the ordinance.

There were no other speakers. The public hearing was closed. Councilmember Jones noted that the last Council meeting scheduled the second reading of this ordinance for October 27<sup>th</sup> so that the Council could have time to review the materials and deliberate at that time. Mr. Bauer clarified that the current recommendation is based on the fact that the Council has satisfied all the statutory requirements for ordinance adoption. He said the Council could adopt the ordinance at this point or postpone action to the October 27<sup>th</sup> meeting. Councilmember Jones said he is prepared to follow the Council's action at the previous meeting; to hold a public hearing tonight and postpone action to October 27<sup>th</sup> to have additional time to review the input and materials provided by the public speakers.

Councilmember Brewster asked if the insurance requirement in the ordinance is legal. Mr. Bauer said the insurance requirement is pre-existing and the only change is adjusting the amount based on insurance requirements and state law. He added that the City has reviewed this with the MMIA insurance attorney and they assured the City that this is appropriate.

Councilmember Brewster asked if the complainants of a barking dog have to come to the Animal Shelter to submit their written complaint or can this information be taken over the telephone. Animal Shelter Supervisor Dave Klein said the first complaint is generally taken over the telephone and this would generate a letter to the owners of the offending dog, explaining the complaint and the options to correct the problem. If a second complaint is received, an Animal Control officer is dispatched to talk with the pet owner and discuss the options available to them. The neighborhood is canvassed at that time to document further proof of the complaint. Councilmember Brewster asked what the time frame is between the first complaint and issuance of the first letter. Mr. Klein said the letter is usually sent the same day of the complaint and contact with the owner is made within 2 or 3 days. If the pet owner has not properly addressed the complaint, contact is made with the owner in another 5 days. Canvassing the neighborhood is time consuming and can take up to 3 days. Councilmember Brewster said this process is not forceful enough, as evidenced by the number of phone calls and public speakers that are concerned about the noisy dog problems. He suggested that the Bozeman ordinance be reviewed as an example of a more streamlined approach to deal with this problem.

Councilmember Brown asked if the citations would be burdensome for Animal Control officers that must appear in court. Mr. Klein said that barking dogs are the most frequent call that is received at the shelter. He said if the ordinance is approved, the officers would be issuing citations for quite some time.

Councilmember Gaghen asked how the problem of having several dogs in one location is addressed. Mr. Klein said that issue is addressed through the small animal permit process. The permit is a tool to gain access to a property that has four or more dogs in residence, to investigate concerns (including barking and odor). He added that there are responsible pet owners that can handle a larger number of dogs. He said the Animal Shelter officers need stricter laws to address the irresponsible people that ignore their pet's bad behavior. He added there are no laws prohibiting large numbers of dogs at one residence. There are sometimes individual subdivision regulations that address this issue.

Councilmember Jones asked when the \$20 noisy animal fine is imposed. Mr. Klein said this is imposed after conviction in court. Mr. Bauer said the \$20 is a minimum the judge can fine and reminded the Council that the original amount was \$50 because of the significant effort that is involved in proceeding to the citation phase. Councilmember Jones suggested clarification as to when the fine for noisy animals is imposed.

Councilmember Brewster moved to delay action to the October 27<sup>th</sup> Council meeting, seconded by Councilmember Jones. Councilmember Brewster said he would like more information on confinement history. Mr. Klein said confinement addresses bite victims that are bitten by dogs that do not have a clean history of rabies vaccination. The quarantine time has been reduced from 14 to 10 days as required by state law and requires that the animal be confined at the Shelter or at a veterinarian. This generally does not happen with the first bite. He said there were references to animals being held for six months and those are animals that most likely have had several bite complaints lodged against them. He added that, in most cases, the owners are allowed to visit quarantined animals. He said the City has not refused admittance of owners to the kennels, but the County has different rules and may not grant owner visitations.

Mr. Bauer reminded the Council that animal owners and citizens have been engaged in the process of reviewing these changes in the proposed ordinance for a period of time and the request of several public speakers to form a committee has already been addressed. He noted that there have been requests for alternative language suggestions such as streamlining the barking dog ordinance and clarifying when penalties are imposed. He asked the Council to identify any other areas where modifications in language are required. Councilmember Gaghen said she thinks the Council should consider raising the fine back to \$50. Councilmember Brown said dog droppings in public areas should bring a fine of \$100. On a voice vote, the motion to delay was unanimously approved.

**5. PRELIMINARY PLAT of Amended Lot 16, Mattson Acreage Tracts. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Department Director Ramona Mattix said this subdivision is 1 acre in size and is being subdivided into five lots. It is located at 1754 Bench Boulevard. This subdivision will maintain its residential zoning.

**RECOMMENDED CONDITIONS**

1. The final plat shall show building envelopes for lots 16-B and 16-D  
*Arterial setback and yard setback requirements of BMCC Article 27 severely limit the building space on these two lots. Showing building envelopes will disclose the limits to prospective lot purchasers.*
2. Yard and arterial street setback variances for the house on lot 16-B and the accessory building on lot 16-C shall be obtained, the structures shall be moved to comply with setback requirements or the structures shall be removed from the property before final plat approval.  
*The structures encroach on setbacks and must be granted variances, be moved or removed to comply with BMCC Article 27 (zoning).*
3. The existing structure on lots 16-A and 16-C shall be moved to comply with zoning or shall be removed from the property before final plat approval.  
*The structure straddles the common boundary line and must be moved or removed to comply with BMCC Article 27(zoning).*
4. Utility easements will be shown along all common lot lines and the west property line of the subdivision.  
*Requested by utility companies and required by Section 23-603.*
5. The Subdivision Improvement Agreement and Waiver of Rights to Protest will be brought into standard acceptable format and the waiver will include facilities such as sidewalks, parks and park maintenance.  
*Guarantees for public facility improvements are required by Sections 23-303 and 23-503.*
6. 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.*
7. Subdivider shall comply with all applicable federal, state and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations.  
*This condition informs the subdivider that all local and state laws and policies apply to the subdivision even if they are not specified in the documents.*

**VARIANCE**

Section 23-601(k) requires a 120' right of way for principal arterial streets, so the half-width dedication requirement is 60'. The subdivider proposes to dedicate 50' for Bench

Blvd., a principal arterial street. The adjacent Wal-Mart subdivision dedicated 50' and Public Works recommends a 50' dedication for this property. Public health, safety and welfare should not be compromised if this variance is granted.

### Findings of Fact

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

##### 1. Effect on agriculture and agricultural water users' facilities

This subdivision will have no effect on agriculture or agricultural water users' facilities. The property was developed for residential use many years ago and the subdivision simply re-divides the property.

##### 2. Effect on local services

- a. Utilities – Water and sewer lines are in place in Mattson Ln., Bench Blvd. and Lambrecht Ln. This property is in the Billings Heights Water District. New development will connect to the water and sewer facilities. Storm water will be retained on site. 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 - Mattson Ln. was improved with the Wal-Mart construction work in 2000. Curb, gutter and pavement wrap around the corner onto Bench Blvd. The subdivider needs to improve the Bench Blvd. frontage to match the earlier improvements or pay the estimated costs of improvements that will be installed with the Bench Blvd. improvement project that is programmed for FY 2007. Lambrecht Ln. can remain gravel because it is a dead-end street and serves few residences. Bench Blvd. is a principal arterial street and the standard dedication is 60' half-width right of way. The subdivision would create a 50' dedication and it is recommended by Public Works.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #6 on St. Andrews Dr. 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 main station located on 4<sup>th</sup> Avenue North.
- e. Schools – The subdivision is in School District 2. The District didn't respond to a request for comments so it is assumed that it has adequate facilities to serve the subdivision. The District won't directly benefit from higher taxable value on the property.

- f. Parks and Recreation – There is no parkland dedication requirement because this is a minor plat. The nearest public parks are Lake Elmo State Park and Hawthorne Park, although Bitterroot Elementary School is located across Bench Blvd. from this property.
- g. MET Transit – This property is on MET routes 16P, 17P and 18M. 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 partially developed and this is in an urbanized part of the city.

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. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties. There are no other obvious threats to public health, safety or welfare.

**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 is within the City of Billings.

**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. Bench Blvd. is a principal arterial street. A reconstruction project is planned for FY 2007. The subdivider can make the adjacent improvements to Bench or may pay cash to the City to satisfy the property's responsibility for future street improvements.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. Bench Blvd. is an arterial district connector that should be used only until alternative routes are developed. No immediate improvements are necessary.

**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 with the noted exception for street R/W. 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 property is served by municipal water, sewer, storm drain and solid waste services and these services will be extended to the new lots. 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 (c) (6)]**

The property is in the Residential-6000 zoning district and conforms to the zoning requirements. The subdivision puts all three structures on the property into a non-conforming position. Bench Blvd. is a principal arterial street and has an 80' arterial setback. The setback allows a buildable area on lot 16-B that is 27.5' wide and 32.5' wide on lot 16-D. These narrow building envelopes should be shown on the final plat so that lot purchasers are aware of the limitations. The existing house on lot 16-B encroaches on the arterial setback and the front or side yard setbacks. One of the existing accessory structures encroaches on the side yard and possibly the rear yard setback on lot 16-C. Both structures can remain on the property but setback variances should be obtained to ensure their continued use. The other accessory structure straddles the lot lines between lot 16-A and lot 16-C and should be moved to comply with zoning or be removed from the property.

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

The subdivision adjoins a public street right of way that provides space for utility installations but easements should be provided along common lot lines and the west property boundary. All the required utilities are located in the adjacent public streets.

**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 (c) (8)]**

The lots border Mattson Ln., Bench Blvd. and Lambrecht Ln., all of which are public streets that provide legal and physical access.

**CONCLUSIONS OF FINDING OF FACT**

- The overall conclusion of the Findings of Fact is that the proposed Mattson Acreage Tracts amended lot 16 does not create any adverse impacts that warrant denial of the subdivision.
- There should be little effect on local services because only four small single family dwelling lots are being created and services are already provided to the partially developed 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 with the notes exception, sanitary requirements and provides legal and physical access to each parcel. Zoning compliance can be obtained by completing the recommended conditions of preliminary plat approval.

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

**6. AUTHORIZATION FOR ADDITIONAL WORK under Change Order #4, 2003 Water & Sewer Replacement, Schedule II, Chief Construction, up to \$80,000.00. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

City Engineer Vern Heisler said Change Order #4 concerns the 2003 Water and Sewer Replacement, Schedule II. He said this dollar amount requires Council approval and time is critical with the construction season coming to a close. He said the best estimate for the change order was \$75,000, however the figures show that the amount is closer to \$80,000 at this time. The funding would come from the Water/Sewer Repair/Replacement Fund with adequate funding to cover this change order. The location of this work is on Lewis Avenue between 5<sup>th</sup> and 7<sup>th</sup> Streets. He said in the process of sanitary sewer installation, 20 lead water service lines were found that

needed replacement. Lead has a tendency to leak and poses health problems. He added that an overlay from 5<sup>th</sup> Street West to 16<sup>th</sup> Street West would be scheduled for the summer of 2005 to cover the patchwork that this work will cause. Mr. Bauer added this is now a policy that the City has established to take corrective measures whenever problems in water or sewer services are found during installation of other utilities. Councilmember Poppler moved for approval for Change Order #4 for the 2003 Water/Sewer Replacement Project, Schedule II in the amount of \$80,000 and 0 calendar days, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

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

**Council Initiatives**

**COUNCILMEMBER POPPLER:** Councilmember Poppler moved to direct staff to draft an ordinance addressing panhandling, with the provision that panhandling is deemed a “simple assault” and if convicted, the penalty would include a requirement to work on “clean up” crews, cleaning up litter around the City, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**ADJOURN** –With all business complete, the Mayor adjourned the meeting at 9:00 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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