

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

June 24, 2002

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 Mark Kennedy.

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

MINUTES – June 10, 2002. Approved as printed.

COURTESIES –

- City Administrator Dennis Taylor introduced Richard Coffey, General Manager of AT & T Broadband. Mr. Coffey introduced William Bresnan of Bresnan Communications, the firm who will be purchasing the cable service from AT & T Broadband. Mr. Bresnan spoke briefly about his cable experience and expressed his desire to be a good corporate citizen in this community.
- **Freedom Shrine.** Art Geiger of the Downtown Billings Exchange Club gave a brief background on the nation's Exchange Clubs – their history, purpose and activities noting that the main purpose of the clubs is community service. He noted there are four (4) Exchange Clubs, with over 200 members in Billings. Mr. Geiger said it was their pleasure to be able to sponsor the latest Freedom Shrine – installed in the Council Chambers, noting that they document many landmarks of democracy and freedom in our nation's history.

PROCLAMATIONS – Mayor Tooley.

- June 2002 as National Homeownership Month

BOARD & COMMISSION REPORTS. None

ADMINISTRATOR REPORTS – Dennis Taylor.

- Mr. Taylor reminded the Council of the Joint City/County meeting this week on Thursday, June 27th at 5:30 p.m. at the Airport in the small meeting room downstairs.

CONSENT AGENDA:

1. A. Mayor's Appointments:

	Name	Board/Commission	Term	
			Begins	Ends

1.	James Thompson	Board of Ethics	07/01/02	12/31/06
2.	Gayle Tompkins	Human Relations	07/01/02	12/31/06
3.	Eran Thompson	Human Relations	07/01/02	12/31/06
4.	Donald Allen	Library Board	07/01/02	12/31/06
5.	Virginia Court*	Library Board	07/01/02	12/31/03
6.	Arlene Becker	Yellowstone County Planning Board	07/01/02	12/31/04
7.	Gay Easton	Yellowstone Conservation District Board	07/01/02	12/31/05

*Filling unexpired term of Lou Aleksich.

B. Bid Awards:

(1) Airport Metasys System Upgrade. (Opened 5/28/02). Delayed from 6/10/02. Recommend Johnson Controls, \$31,946.00.

(2) Miscellaneous Concourse Remodel for Billings Logan International Airport. (Opened 5/28/02). Delayed from 6/10/02. Recommend Markley Construction, \$36,271.00.

(3) Firearms Training Simulator. (Opened 6/18/02). Recommend Advanced Interactive Systems, \$90,000.00. (See also related Item R below).

(4) South Hills Water Line Extension. (Opened 6/18/02). Recommend COP Construction for Schedule I: \$1,209,338.00; Schedule II: \$382,480.00; Schedule III: \$747,719.00; Deduct \$20,000.00 for a total of \$2,319,537.00.

(5) Wastewater Treatment Plant Electrical Transformer Replacement. (Opened 6/18/02). Recommend Yellowstone Electric Co., \$62,100.00.

(6) Concourse Elevator Project. (Opened 6/18/02). Recommend delaying to 7/08/02.

C. Change Order #1, Staples Reservoir Repair, COP Construction, \$44,536.84 and 0 days.

D. Change Order #1, Contract XIV, Wastewater Treatment Plant Improvements – Sludge Drying Beds, Hardy Construction, \$20,292.96 and 0 days.

E. Change Order #5, SID 1346: Broadway Streetscape, JTL Group Inc., \$70,878.35 and 7 calendar days.

F. Change Order #1, SID 1353: Circle Fifty and Hancock Grand Sub., JTL Group Inc, \$7,500 and 0 days.

G. Change Order #2, SID 1357: Lillis Heights Sub., COP Construction, \$1,200 and 0 days.

H. Change Order #1, W.O. 96-08: 2000 School Route Improvements, Rock Pile, Inc., \$55,000.00 and 7 calendar days.

I. Change Order #1, Cell 1 Excavation and Phase 1 Closure of Landfill, 21 Construction, \$352,800.00 and 70 calendar days.

J. Contract for Professional Services, W.O. 01-10: School Route Sidewalk Prioritization Revision, Kadrmas Lee & Jackson, Inc., \$65,000.00.

K. Contract for Professional Services, W.O. 02-06: Hawthorne Lane Secondary Trunk Storm Drain, HKM Engineering, \$169,983.00.

L. Annual Contract with Downtown Billings Partnership for implementation of the Downtown Billings Framework Plan, \$277,500.00, Term: 7/01/02 to 6/30/03.

M. 2002/03 Landfill Use Agreements:

- (1) Bighorn County
- (2) Town of Bridger
- (3) Carbon County
- (4) Town of Columbus
- (5) Town of Fromberg
- (6) Town of Hysham
- (7) Town of Joliet
- (8) City of Laurel
- (9) Musselshell County
- (10) City of Red Lodge
- (11) Stillwater County
- (12) Treasure County
- (13) Amendment #2 – Yellowstone County

N. Extension of Lease on Historic Maverick Fire Station, with Yellowstone County Youth Court Services, \$1.00, additional six months with term ending 12/31/02.

O. Contracts for Veterinary Services:

- (1) Victoria C. Hamer, DVM
- (2) Mark Francis, DVM
- (3) Amy Lamm, DVM

1-year contracts, term: 7/1/02 to 6/30/03.

P. Amend Park Use Agreement, Amend Park Development Council.

Q. Grant Application: Local Government Boating Improvement Program, \$25,600.00.

R. Grant Application: Department of Justice 2002 Technology Grant, for purchase of Firearms Training Simulator. (See also related bid award above).

S. Acknowledging receipt of petition to vacate alley right-of-way in Block 273 O.T. and setting a public hearing date for 7/22/02.

- T. Montana Family Practice 3rd Annual 5K Fun Run/Walk, June 29, 2002.**
- U. Deaconess Billings Clinic Classic, annual street closure and block party, August 23-25, 2002.**
- V. Changes to CDBG Rehabilitation Program Guidelines** regarding \$345,000 for Housing Rehabilitation Program, Minor Home Repair Program and Tree Trimming/Planting Programs.
- W. Amendment #2, Engineering Services Agreement, AIP 23 and 24, Morrison Maierle, Inc., \$1,191,214.00; (City's share: 10% = \$119,121.00).**
- X. AIP Grants 23 and 24, for engineering, planning, terminal security, airfield related equipment purchases and construction projects; total grants = \$5,069,830.00; (City's share is 10% = \$563,314.00).**
- Y. Resolution 02-17847** closing Special Improvement District/Sidewalk Funds to SID Revolving fund, \$368,746.70
- Z. Resolution of Intent 02-17848** to sell, dispose or lease City property: parcels undesirable for future parkland and 188 acres subdivided into 5 lots known as High Sierra Subdivision, and setting a public hearing date for 7/22/02.
- AA. Resolution 02-17849** amending and repealing Res. 02-17824, establishing fees to be charged at the Animal Shelter and providing an effective date.
- BB. Resolution 02-17850** levying and assessing residential/commercial collection, disposal and landfill fees for FY03.
- CC. Resolution 02-17851** relating to \$1,578,000 Pooled Special Improvement District Bonds – Series 2002A, fixing the form and details and providing for the execution and delivery thereof. (Final bond resolution.)
- DD. Resolution 02-17852** relating to \$1,341,000 Special Improvement District Bonds for SID 1356, fixing the form and details and providing for the execution and delivery thereof. (Final bond resolution).
- EE. Resolution 02-17853** placing a \$12,000,000 Bond Issue on the November 5, 2002 ballot to fund the construction of a new library in downtown Billings.
- FF. First reading ordinance** adding recently annexed property to Ward V: (Annex 02-12), Tract 2, C/S 1648 Amended (Annex #02-12), Dorn/Lowe, LLC petitioner, and setting a public hearing date for 7/8/02.
- GG. Final Plat** of Deep Powder Subdivision.

HH. Final Plat of Kyhl Subdivision, Third Amended Plat of Lot 1.

II. Bills and payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Jones separated Items J, P, and EE. Councilmember Brewster moved for approval of the Consent Agenda with the exception of Items J, P, and EE, seconded by Councilmember Bradley. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item J, seconded by Councilmember Bradley. Councilmember Jones offered a substitute motion to remove this item from the Consent Agenda, seconded by Councilmember Bradley. Councilmember Jones said he does not see the need for this study and said he thinks \$65,000.00 is a lot of money to spend on this item. He noted that the last study resulted in sidewalks being built where schools have been closed. Councilmember McDermott said there are alternative means to getting the information regarding the need for sidewalks near the schools. Her experience found information could be more efficiently gained from talking directly to the school principals. Councilmember Larson suggested that this item should be postponed rather than eliminated, to give staff time to justify the need for the study. He noted that school route money is available for the study purposes and the study does need to be updated. Councilmember Kennedy said that an engineer's recommendation would be based on engineering concepts, whereas a principal's recommendation could be based on emotional issues. He said in order to make educated decisions a study is needed. Councilmember McDermott said engineers can advise as to the quality and quantity of the concrete needed in sidewalk construction, but the observance of the numbers of children using certain sidewalks is not an emotional issue, but a concrete way to determine route patterns. Councilmember Larson amended the substitute motion to delay consideration of Item J to the next Council meeting (on July 8th), seconded by Councilmember Kennedy. Councilmember McDermott asked if the street is not used in the sidewalk program, can the dollars set aside for this study still be used. Public Works Director Dave Mumford said these dollars could be used. On a voice vote for the amended motion, the motion was unanimously approved. On a vote on the substitute motion as amended, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item EE, seconded by Councilmember Bradley. Councilmember Jones offered a substitute motion to pass a resolution placing a \$12.5 Million bond issue on the November 5, 2002 ballot to fund the following: 1) \$6 Million for the Library, 2) \$3 Million for Cobb Field, 3) \$1 Million for Athletic Pool, and 4) \$2.5 Million for the Heights Pool, seconded by Councilmember Bradley. Councilmember Jones explained the rationale for his breakdown. He said the Library and Cobb Field should be a public/private venture and funds raised to supplement the bonds. Mayor Tooley expressed his concern about whether or not what needs to be done on each of these projects could be completed with the dollars suggested in the substitute motion. City Attorney Brent Brooks advised that it might not

be legal to combine all four projects on one issue on the ballot. Councilmember Larson asked what the time frame would be to place this item on the ballot. City Administrator Dennis Taylor said any measures that are going to be ballot issues for the November 2002 election must be submitted to the Election Administrator by August 22, 2002. He noted that the CIP anticipated placing the library bond issue on the ballot this year, and issues for the other projects, named tonight, in later years. Councilmember Larson said he looks at the CIP not as a Council driven process, but a responsibility of each respective board that is seeking to fund their projects. In view of the recently failed Cultural Arts Mill Levy, he said he has doubts that those boards will be able to raise the awareness of the citizens to vote for these issues. The main argument for approving the proposal as it stands is that the Library Board and interested groups have put time and effort and are prepared to present the Library Bond issue to the citizens for vote. He said the Council is merely saying, "here is your shot" and go ahead with your plans. Mayor Tooley said if the Council approves this motion tonight, he was concerned that those groups supporting ballot issues other than the Library would not be prepared to present their appeal to the voters. Councilmember McDermott said she thinks all of the other groups are prepared and wants this item to have the best chance of being supported by the voters and believes this is the best avenue for that.

Councilmember Kennedy said he couldn't support an "eleventh hour approach" that groups these issues into one ballot issue. Councilmember Brown said he thought this would be a good chance to get the Heights Pool going after so many delays. Councilmember Bradley noted the economy in Montana is flat and the poor voter turnout indicates a lack of support for endeavors. He said it would be nice to have the money that is needed for each project. Mr. Taylor said the levels of funding that are suggested by Councilmember Jones' motion will require substantial funding enhancements from other sources than the bond issue. He said if the substitute motion passes it will be saying, in effect, that the City does not have a 5 year Capital Improvement Plan. On a voice vote for the substitute motion, the motion failed 4-6 with Councilmembers McDermott, Bradley, Brown and Jones voting "yes" and Councilmembers Brewster, Kennedy, Poppler, Ohnstad and Larson and Mayor Tooley voting "no".

Councilmember Poppler said the Council should follow through on their promise to put this issue on the November ballot. On a voice vote for the main motion, the motion was approved 6-4 with Councilmembers Brewster, Kennedy, Poppler, Ohnstad and Larson and Mayor Tooley voting "yes" and Councilmembers McDermott, Bradley, Brown and Jones voting "no".

Councilmember Brewster moved for approval of Item P, seconded by Councilmember Ohnstad. Councilmember Jones said he was glad to see this agreement and asked why the City Administrator, rather than the Mayor, is making appointments to Amend Park Development Council. Assistant City Administrator Kristoff Bauer said the appointment is of a staff person to work with the Amend Park Development Council under the terms of this agreement. It is not like a board or commission appointment, but purely an administrative appointment. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. RESOLUTION 02-17854 approving and adopting the FINAL Budget for FY 2003. Public hearing held 6/10/02. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Councilmember Kennedy moved for approval of the staff recommendation, seconded by Councilmember Larson. Councilmember Jones proposed to amend the motion with the following changes to the budget:

- 1) Compensation and classification study to be delayed for one year for further discussion.
- 2) Delete Facilities Manager Supervisor position until after study comes out.
- 3) Delete funding for Baseball batting cages and send out RFP for private operation.
- 4) Delete FTE for Parks Maintenance Districts.
- 5) Delete \$200,000 for implementation of citywide Arterial Light District because the study has been denied.
- 6) Delete funding for Downtown Billings Partnership Budget:
 - a) Civic Center Development (\$60,000)
 - b) Phase II of New Century Project
 - c) Travel budget for consultant on New Century Project
 - d) Phases II & III of the Defining Element.
 - e) Traffic Calming Study for Montana Avenue, and
 - f) BSEDA consulting services.

Councilmember McDermott proposed to add a delay of the 10% Street Maintenance Fee increase. Councilmember Brown proposed to delay the budget to the next meeting. City Administrator Dennis Taylor said it has been the practice of the City of Billings to have a budget in place by June 30th. If the budget decision is delayed, the City will be operating without a budget. Councilmember Larson said he was reluctant to delay the entire budget, but is not as reluctant to delay items brought up for two weeks. He noted there are other funding issues that would be affected by the delay of the entire budget. He said it is not responsible to delay a \$170 Million budget for 1% in changes. Councilmember Kennedy said he would rather see the motion involve a delay of the items for further review and discussion rather than to delete entirely. Councilmember Jones said he would be in favor of a delay. Councilmember Poppler proposed a special meeting to be held next Monday on the separated items of the budget only.

Councilmember Ohnstad offered a substitute motion to approve the budget with the exception of the separated issues identified by Councilmembers Jones and McDermott, seconded by Councilmember Larson. Councilmember Larson amended the substitute motion to move for approval of the budget with the exception of the separated issues identified by Councilmembers Jones and McDermott and to agree to meet next Monday evening, July 1, 2002 at 6:00 P.M. in special session to discuss the separated budget issues, seconded by Councilmember Brown. On a voice vote, the amendment to the substitute motion was approved with Councilmember Bradley and McDermott voting "no".

Councilmember Jones amended the substitute motion to include the Capital Improvement Plan in the list of separated items, seconded by Councilmember McDermott. Councilmember Larson said that motion was inappropriate. Mr. Taylor said that the projects in the Capital Improvement plan are imbedded in every single program and fund for the budget. Many of these projects are ready to start and the construction season is

very limited. To wait another week would be a mistake. He urged the Council to resist the motion to include every item in the Capital Improvement Plan in this delay. Councilmember Kennedy agreed with Mr. Taylor noting that the CIP has been through two public hearings and was approved by the Council. Councilmember Jones said the Council was assured they would have another chance to vote on concerns with the CIP. Mr. Taylor noted that there were no issues raised by any Councilmember with regard to any particular item in the CIP. He said it would be a virtual "train wreck" to stop the many projects by this method this evening. Councilmember Larson also noted that there are federal grant dollars that are involved in many of the projects in the CIP. He said that he was the Councilmember that noted there would be another chance to vote on the CIP. He explained he was referring to the bigger items such as the Library and said this is the time for that vote. On a voice vote, the second amendment to the substitute motion failed 4-6 with Councilmembers McDermott, Bradley, Brown and Jones voting "yes".

On a voice vote for the main motion to approve the budget as amended, the motion was approved with Councilmembers McDermott, Bradley and Jones voting "no".

3. PUBLIC HEARING AND RESOLUTION 02-17855 making annual FY 2001-2002 budget adjustments. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Controller Pat Weber said the staff is asking for approval of adjustments to the FY 2001-2002 budget. The work involved the Larson radio site and complying with various outside parties that caused the project to go over budget. He said 911 funds were used to complete the project because of the importance of the tower. The other portion of the budget requiring adjustments was for security services using off-duty officers for the Conoco Refinery. He noted revenue has been received to cover the increase in the expenditures and the staff is requesting an adjustment to the expenditure budget.

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

4. PUBLIC HEARING AND RESOLUTION 02-17856 ordering the improvements in W.O. 99-07: Lake Elmo Drive Improvements, Phase II. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Public Works Director Dave Mumford said the Phase II portion of Lake Elmo Drive Improvements is a reconstruction of a section from Main Street to Hanson Street. The repairs would include adding curbs, gutter and sidewalks where they are missing, bringing the area into compliance with ADA standards, landscaping, re-grading and elimination of a section of irrigation ditch. He said funding for this project will come from several sources, PAVER funds for the center of the road, gas tax for reconstruction, CTEP for sidewalks, landscaping and driveway re-grading and 80% of the cost of the bike trail, and storm drain funds for inlet and the irrigation ditch. He noted assessments against the property owners of this project would be 50% of the sidewalk and driveway approaches, curb and gutter and part of the street widening.

Councilmember Ohnstad asked if Lake Elmo still carries a fair amount of traffic. Mr. Mumford replied that it does still carry a fair amount of traffic and also serves a large

amount of residential movement that is not being provided for.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the staff recommendation, seconded by Councilmember Larson. Councilmember Larson said the decision to break these projects into 5 phases and to bring the different funds on line to assist the taxpayers in making these improvements has made a substantial difference in the response to this item. Councilmember Brewster said he looks forward to having a bike path on Lake Elmo. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION 02-17857 authorizing the filing of a grant application under Section 5307 of the Federal Transit Act for \$964,059 and authorizing execution of the grant agreement. 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 Jones moved for approval of the staff recommendation, seconded by Councilmember Larson. Councilmember McDermott asked if matching funds were required with this grant. MET Transit Manager Ron Wenger said matching funds were not required; noting an annual operating budget of the size of the City of Billings' is considered the matching funds. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTION 02-17858 authorizing the filing of a grant application under Section 5309 of the Federal Transit Act for \$1,856,305 and authorizing execution of the grant agreement. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Larson moved for approval of the staff recommendation, seconded by Councilmember Brewster. Councilmember Poppler asked what is being purchased with these dollars. Mayor Tooley said the funds are for the MET bus system. City Administrator Dennis Taylor said the bulk of the money goes to the MET bus fleet and van replacement. Councilmember Bradley asked about the transfer study. Mr. Wenger said the study is to be completed this fiscal year. Councilmember McDermott asked for a confirmation of the requirement for matching funds on this grant. Mr. Wenger said there is a 20% matching funds requirement for this grant. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5212 FOR ZONE CHANGE #697: A zone change from Residential-9,600 to Residential-8,000 on Lots 2-6 in Block 14, Lots 7-11 in Block 15, and Lots 1-6 in Block 19 all in Lampman Subdivision. The subject lots are generally located along Rosebud Drive, between South 30th and 32nd Streets West. Matthew & Stephanie Rowan and LAIS Development, Inc., owners; Barbara Hawkins, agent. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second/final reading.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember McDermott moved for approval of the ordinance on

second reading, seconded by Councilmember Larson. Councilmember Poppler asked if this was the same zone change that residents opposed at the last meeting. Mayor Tooley replied “no”. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #699: A zone change from Agricultural-Open Space (County) to Residential-7,000 on Tract 2 of Certificate of Survey No. 1648 Amended. The subject property is generally located on the south side of Central Avenue, approximately 800’ west of Shiloh Road. Dorn/Lowe, LLC, owner; Engineering, Inc., agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this zone change involves a 14 acre tract located on the south side of Central Avenue approximately 800 feet west of Shiloh Road. He said the Council approved the annexation for this property at the last Council meeting and a preliminary major subdivision has been submitted for this tract creating 56 lots. This was an island annexation and utilities are available on Central Avenue to serve this property. He noted the zoning surrounding this tract is Agricultural Open Space on the west and east and Agricultural Suburban on the south and Residential 15,000 to the north. Mr. Bollman said the Zoning Commission has recommended approval of the Zone Change stating it was an appropriate zone change as it complies with the Billings West End Master Plan.

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

9. PUBLIC HEARING AND SPECIAL REVIEW #721: A special review to allow the location of a veterinary clinic with boarding in a Community Commercial zone on Lot 3, Block 1 of Popelka Heights View Subdivision. The subject property is located at 1530 Popelka Drive. Popelka Enterprises, owner; Engineering, Inc., agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this special review is located on Popelka Drive with surrounding zoning being Commercial to the west, Residential 6000 to the north and south and Residential 7000 (undeveloped) to the east. He noted that the special review is for the location of a veterinary clinic with boarding in a Community Commercial zone and the boarding is triggering the special review. He said the only concern from this project involved the property to the south that has a residential use. The conditions to the approval are to mitigate the impacts on those residential properties to the south. He said the Zoning Commission recommends conditional approval with the four conditions being: 1) No boarding of animals shall be allowed outside the main building, 2) Any building used for animal boarding shall be constructed of permanent building materials that have been approved via a City building permit, 3) Use hours for any outdoor exercise area shall be limited to 8:00 a.m. to 6:00 p.m., and 4) The exterior fencing of the exercise area shall consist of a six (6) foot high sight-obscuring solid wood or vinyl fencing material.

The public hearing was opened. KURT THOMPSON, ENGINEERING, INC., 1001 SOUTH 24TH STREET WEST, said he has been working with the owners of the Best Friends Animal Hospital and said there are no objections to the conditions. He said this is a suitable use of the property and a good infill project. There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of the Zoning Commission recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

10. PUBLIC HEARING AND SPECIAL REVIEW #722: A special review to allow the location of an all beverage liquor license and an outdoor patio in a Controlled Industrial zone on Lot 4, Block 4 of Cenex Park Subdivision. The subject property is located at 1200 South 24th Street West. Cenex Harvest States Cooperatives, owner; Al Koelzer, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the property that concerns this Special Review is located on the west side of South 24th Street West where it turns into Gable Road. He said the surrounding zoning is mainly Controlled Industrial with the area supporting mostly commercial and light industry. Mr. Bollman said the proposal is to locate an all beverage liquor license and an outdoor patio in a Controlled Industrial zone. He said the Zoning Commission has given conditional approval to this Special Review, stating it was an appropriate area to locate this type of license. He said the two conditions are: 1) A 4' high minimum wall shall be placed around the entire outdoor patio. Any gates required by building or fire codes shall be used for exit only from the patio, and 2) There shall be no amplified or live music on the proposed outdoor patio. Only background music shall be allowed.

The public hearing was opened. DARRELL KREITZBURG, 71 25TH STREET WEST, said he is a proponent of this project that would be another Jake's Restaurant type of facility. There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Zoning Commission recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

11. PUBLIC HEARING AND FIRST READING ORDINANCE amending the Billings Montana City Code by adding Section 27-622, establishing a procedure to implement 73-3-203 MCA, exemptions for certain condominiums from subdivision review and providing documentation of compliance with the zoning regulations for condominium project. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Candi Beaudry said the 2001 legislature changed the Montana Subdivision and Platting Act to allow an exemption for condominium projects if they comply with zoning. This has a serious impact on the City of Billings as it will allow these type of projects to proceed without allowing the City to require dedicated park land, dedicated right-of-way and other mitigations that are required for subdivisions. This is important to zoning compliance issues regarding condominium projects. She said the Planning Department has determined that an ordinance amendment is necessary to establish a procedure to determine if condominium projects comply with zoning

regulations and are exempt from subdivision review. Ms. Beaudry said the Planning Department has rejected the option of creating a condominium zoning district because it is an ownership issue and not really a building or housing issue that can be conditioned with requirements. She said there would be an indirect financial impact because of the State law, and not because of the ordinance. She stated the Zoning Commission has recommended approval of the text amendment that establishes the procedure for determining compliance. Councilmember McDermott asked if patio homes are similar to condominiums. Ms. Beaudry said condominiums are ownership issues only and can span all types of buildings and patio homes are just one type of building that could be condominiumized.

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

12. PUBLIC HEARING AND RESOLUTION 02-17859 ANNEXING C/S 3011, Tracts 2B and 3, Roy and Jock Clause, owners and petitioners, (#02-13). Staff recommends approval of the annexation services report and annexation request. (Action: approval or disapproval of Staff recommendation.)

Planning Staff Member Gail Kenson said petitioners Roy and Jack Clause are requesting annexation that was previously before the Council in April of this year. She noted that the staff recommends conditional approval. The proposed conditions are: 1) An Annexation Agreement shall be executed between the owner(s) and the City which shall stipulate specific infrastructure improvements and provide guarantees for said improvements. No development shall occur until either the improvements or guarantees for the improvements are in place including, but not limited to, Wicks Lane, and 2) The Council may add additional conditions: a) The Council may initiate a zone change to a different zoning classification after approval of the annexation, and b) The Council may require improvements to be installed within a specific time period. She noted that the surrounding zoning is a mixture of Agricultural Open Space, Public and Residential Manufactured Housing. Ms. Kenson said there is concurrently an application for a preliminary plat that has been delayed indefinitely that will create five tracts that will remain in the County. She said the property owner will provide on-site stormwater management and the plan has been submitted with the preliminary plat. A traffic accessibility study has been submitted with the subdivision plat and is in the review process. She noted that a restriction has been placed on building permits until all improvements have been put in place. She said sanitary sewer service is the major reason that the petitioners are asking for annexation and it is the Planning Department's recommendation that this be done rather than the option of not developing to City standards. She noted that the property is currently served by Billings Heights Water District.

Ms. Kenson said the Council has several options to consider if the annexation is approved. Following the ward boundary extension, the Council may initiate a zone change to change the zoning from Residential Manufactured Housing, as it is an issue. This can only be done after annexation, she noted. The Council may also impose conditions on the plat before approval. Departmental comments were essentially the

same with the exception of the Department of Public Works that recommended the property owner participate in the street maintenance districts and install the infrastructure as required or guarantee those improvements and they should be participating in solid waste collection. She said the developer would be responsible for the cost involved in the public utilities installation. The Fire Department's concern is with the possibility of brush fires on vacant land. There will be a private park in the subdivision and it will be the owner's responsibility to maintain it. Planning Director Ramona Mattix commented that this property is being built to urban density and makes sense to have this type of development built in the City limits to City standards.

Ms. Kenson said estimated revenues are based on vacant land and there are currently no expenses involved. She stated this subdivision complies with the 1990 Yellowstone County Comprehensive Plan and the recently adopted City of Billings Annexation Policy. She noted the property is contiguous to the City of Billings. If this development is annexed it will not cause a decline in services to the existing city residents below baseline levels because the only services the area is not currently receiving is from the Police Department. She said while the proposed development is not located in the West Billings area; it does support the goals and policies of the Billings West End Plan. The area is an abandoned gravel pit and is a good infill development candidate, preventing sprawl and leapfrog development. Ms. Kenson said there are only 313 acres of land that are zoned Residential Manufactured Home as of January 2002 and the neither the City of Billings, nor Yellowstone County, is serving this segment of the population.

Ms. Kenson noted the pending lawsuit that has been brought against Yellowstone County by the United Residents of East Billings Heights regarding the zoning issue of Residential Manufactured Housing. She said the attorney for the residents is present tonight and can give more information regarding the lawsuit. She explained that spot zoning is the rezoning of parcels to the benefit of an owner for a use incompatible with the surrounding uses. Ms. Kenson said the Planning Department does not believe this is spot zoning and noted that the surrounding zoning classifications are not significantly different. She noted there is buffering from the property owners additional property and actual physical barriers to provide some mitigation of the impacts of the density of the property on adjoining parcels.

Councilmember Kennedy asked what percentage of zoning for Residential Manufactured Home is required by State law. Ms. Kenson said the law is ambiguous and there is no set number. Councilmember Brewster asked if there is a difference between renter occupied units and owner occupied units in the proposed development. Ms. Kenson said "no". Councilmember Bradley asked if the owner has plans to follow a certain design criteria in the leased portion of the proposal development. Ms. Kenson said the same process is used for this proposal as for a major subdivision due to Fire Department specifications and requirements.

Councilmember McDermott asked about the extent of the control the City Council has over what is developed on the property. Ms. Kenson said the City Council would have control as long as the owners proceed with the subdivision. The proposed subdivision has requirements regarding open space, parks, and stormwater run-off area.

The public hearing was opened. MAC FOGELSONG, ENGINEERING, INC., 1001 SOUTH 24TH STREET WEST, said he represents the owners and petitioners. He said the developer is asking for annexation of the property for development of a mobile home park. He noted that the Annexation Agreement provides that no building permits will be issued until the Subdivision Agreement that provides for monetary guarantee of any improvements is recorded. The existing zoning that is on the parcel would be well served by City services, he said. He noted that the lot sizes range from 5,000 to 6,000 square feet for approximately 363 total units.

JOCK CLAUSE, 1960 WICKS LANE, said he represents Cherry Creek Development and is one of the owners of the property. He said sewer service is a concern of the neighbors and he wants to provide that with this development.

JO CASEY, ATTORNEY WITH HENDRICKSON, EVERSON, NOENNIG & WOODWARD, PC, said she is with the law firm representing the Citizens of East Billings Heights who support the R9600 not the proposed Residential Mobile Home zoning. She noted that the County initially denied the zone change and after several issues were raised the ultimate outcome was approval without additional hearings, evidence or testimonies. She said the United Residents of East Billings Heights have now appealed to the District Court regarding the procedural issue and a compliance issue on the part of the developer and the issue of spot zoning. She said she feels the District Court will find the procedure flawed or that there is spot zoning or both. Ms. Casey said both sides are waiting for Judge Jones in Stillwater County to decide whether he will have a pre-hearing or decide the issue on the basis of the briefs. She noted that the developer might spend a great deal of money and find that the Court decision sides with the United Residents of the East Billings Heights. She asked the Council to follow their original course and deny the annexation. Councilmember Larson said the issue before the Council is annexation and the Court case is an issue of zoning. He asked if Ms. Casey had something related to annexation that she could include in her testimony that would lead the Council to deny the annexation. Ms. Casey said when the annexation occurs it does so with the zoning that is in place and the zoning issue is subject to the Court's decision. She noted that the developer may be required to remove improvements to the property if the District Court finds the procedures in question were flawed.

PETE HANSEN, CHAIRMAN OF UNITED RESIDENTS OF EAST BILLINGS HEIGHTS, said he represents the 500 petition signers of the petition against the annexation with the zoning of "multi-family mobile home court" that he presented to the City Council. He noted the signers are all property owners in the immediate area. He said the surrounding residents support the R9600 zoning. He said he is surprised at the characterization of the proposal being at "urban densities" and noted that compatible zoning is not, in his opinion, mobile homes.

BRUCE FAIN, OF MURPHY, KIRKPATRICK AND FAIN, PLLP, said he represents the Cherry Creek Developers. He noted that his client recalls that the surrounding residents opposed the R9600 zoning when it was originally proposed. He also noted that the April 2002 Council action failed because of an uncertain vote to approve the annexation and deny the zoning. He said the developers are not parties to the lawsuit by the United Residents. He noted that Mr. Clause is opposed to the R9600

zoning, as he needs to develop this property as a residential Mobile Home for economic reasons.

BILL GRIFFIN, 1817 JANIE STREET, said 380 trailers are too many for this area with no room for green space. He said the road would not handle the amount of traffic that this will generate. He noted that the surrounding residents would not handle the increase in residents and traffic as well.

STAN MCINTIRE, 1425 BITTERROOT DRIVE, said he is a member of the United Residents of East Billings Heights. He said the information on the agenda pertaining to this annexation is confusing. He noted the acre size is stated differently, the financial information is mislabeled and the Annexation Agreement is not available. He is concerned there are other parts of the report that may be wrong. He noted that Judge Barr is the person that kept the developers out of the lawsuit.

HERB GUNSCH, 1539 SHANNON STREET, said the R9600 zoning was approved several years ago.

TOM ZURBUCHEN, 1747 WICKS LANE, said he supported the R9600 zoning and always wanted Single-Family zoning because of the low density. He said the County Commissioners had "all kinds of votes and motions" and finally agreed that a decision to deny the zone change had been made and clarified.

ROGER OSTERMILLER, 1155 BITTERROOT DRIVE, said he just built a new \$200,000 home adjacent to the proposed development. He said he does not feel manufactured housing would be compatible with his home.

EARL BLAKLEY, 1704 MAURINE STREET, said he opposes the annexation primarily because of the potential for a congestion problem. He said there are only two ways out of the area - Yellowstone River Road and Wicks Lane and those are already congested.

BERRY MARSH, 1818 JANIE STREET, said he has 2 acre lots adjoining the proposed annexation. He is concerned about the property values concerning those lots if the annexation is approved.

WAYNE KLUNDT, 1432 DUBLIN STREET, said he is concerned about the property values when "trailers" are put into the proposed development. There were no other speakers. The public hearing was closed.

Councilmember Poppler moved for approval of the annexation services report and annexation request, seconded by Councilmember Kennedy. Councilmember Brewster said he doesn't think the Council is clear on what they are annexing, therefore he thinks this should be denied. Councilmember McDermott said that she prefers to wait until the Court case is settled before approving the annexation. Councilmember Larson asked the City Attorney if legally the presumption is that zoning will remain what it is at the time of annexation. City Attorney Brent Brooks said that the City, upon annexation, would logically zone a property according to the most similar zoning that it had when it was in the County. He said that if the Council applies the Annexation Policy criteria to any annexation, they would be doing what is asked of them as a legislative body. He noted that regarding the "presumptive zoning, that is difficult to say at this point". Councilmember Larson noted that most of the testimony heard tonight has been about the subdivision or the zoning. He said that the proposal for this annexation meets all the criteria of the Annexation Policy and his concern is that the Council would be

liable for another legal battle if the annexation were not approved. He added that he also supports mobile home zoning.

Planning Director Ramona Mattix noted that the window of opportunity for a subdivision to get approval for the final plat is one year. Councilmember Brewster moved to amend the motion to add conditions that require improvements under the Annexation Agreement to be installed within one year, seconded by Councilmember Brown. Councilmember Kennedy said he feels this motion is prejudicial towards the developer. Councilmember Poppler said that if the developer meets the criteria of the Annexation Policy, the proposal should be approved. Councilmember Larson asked staff to describe the Council-initiated zone change process. City Attorney Brent Brooks said the Municipal Code states that the Council can initiate a zone change or zoning map amendments that would go through the Zoning Commission process and would come before the Council as usual. Mr. Taylor noted that a zone change couldn't be initiated on a property that has not been annexed. Councilmember McDermott clarified the time frame for a Council-initiated zone change. Mr. Brooks said the process could be started upon annexation. Councilmember McDermott said she still has concerns about the pending lawsuit. Mr. Brooks said his opinion is that there is minimal risk to the City as long as the Council follows the guidelines of the Annexation Policy of the City. On a voice vote, the amendment failed with only Councilmember Brewster voting "yes".

Councilmember Larson said he would vote to support the annexation, but for the record he "recognizes the zoning is very much in question and part of a pending lawsuit which may be decided to the benefit of either party and any presumption is not assumed by this member of the Council. Therefore there is not a heavy reliance on the zoning but I would like to acknowledge at this point that it is within the power of any member of this Council to bring forward a proposed zone change so that the Council could discuss that issue. The future development of this piece of property is best done with City services under City standards, under the control of the City Council, rather than under the County. That is the intent of my vote and is not in any way guaranteeing the current zoning of this piece of property." Councilmember Jones agreed with Councilmember Larson and reminded the Council that the only issue before them is the annexation. On a voice vote to approve the annexation, the motion was approved with only Councilmember Brewster voting "no".

13. Preliminary Plat of Augusta Ranch Estates, generally located east of Molt Road/62nd Street West and approximately ¼ mile north of Rimrock Road. Staff recommends approval of preliminary plat and findings of fact. (Action: approval or disapproval of staff recommendation.)

Planning Staff Member Gail Kenson noted that all preliminary plats would now be brought before the Council on the Regular Agenda so that the Council can read into the record the approval conditions and the findings of fact into the record. She said this plat is located west of the Yellowstone Country Club Estates and was recently annexed. The subdivision will create 53 single-family lots and 3 single-family condominium lots and will permit the construction of 75 single-family dwelling units. She said the developer intends to plat the entire subdivision in two phases. The zoning is currently

R9600 and surrounding zoning is R9600. Ms. Kenson said there are eight recommended conditions to the approval, as follows:

1. Declarations of unit ownership and owners association by-law documents must be submitted and approved by the Planning Department prior to final plat approval.

This condition is necessary because Lot 1, Block 3 is in the first phase and it will be a unit ownership (condo) lot. The other condo lots are in the proposed Phase 2 development. The City reviews these documents to assure conformance to state law.

2. Vacating portions of Spaulding and Dunlop must be approved by the City Council as part of the final plat.

Portions of the existing Spaulding and Dunlop Avenue rights of way are eliminated by this subdivision. The streets aren't improved, but they exist in the property records. No one at present has addresses on the street, so vacating them should not be a problem.

3. Lots 1 and 2, Block 13 of YCE, 5th filing must be aggregated in conjunction with final plat approval and the street vacations.

These two lots have legal access from a portion of Spaulding that is being vacated and lot 2's only access is from this part of Spaulding. Since legal access will be terminated by this subdivision, the two lots must be joined so that lot 2 doesn't become a nonconforming lot. The property owner (Crippen) is aware of this situation and has verbally consented to the aggregation.

4. The subdivider will, to the extent that he is able when matching existing platted streets, conform to the Fire and Public Works Departments' street naming convention for street names.

These two City departments require that streets carry suffixes (such as Street, Avenue, Court, etc.) that help to identify and locate them for emergency service responders. The street name suffixes in the preliminary plat application may not conform to the approved convention.

5. The subdivider will obtain an appraisal from a Montana licensed/certified appraiser for Tract 1, C/S 828 to determine the fair market value of the land and the amount for the cash-in-lieu of parkland dedication.

The Planning Department believes that recent sale data (< 1 year old) or appraisals by certified appraisers provide the most accurate value estimates. This value is used in the calculation to determine the amount of cash-in-lieu of parkland dedication. The former method was to obtain the fair market value estimate from the Montana Dept. of Revenue, which usually underestimates the pre-development value. In addition, the DOR is becoming reluctant to prepare the appraisal reports that we have used in the past.

6. The subdivider will obtain written agreement/acknowledgement from the Yellowstone Country Club for storm water discharges from the subdivision to the

golf course.

This condition is necessary because historic stormwater flows will be altered by the subdivision. Stormwater presently flows from this property across the golf course in laminar or sheet fashion. When the property is developed, stormwater will be collected and detained at two points but any overflow (> 2 yr. storm) will continue to cross the golf course. The overflow from the detention basins will be more concentrated than it is today, so the subdivider needs to obtain the golf course approval or at least acknowledgement that the stormwater flow conditions will change with this land's development. The subdivider reports that he prepared a draft agreement and presented it to the Country Club.

7. The Subdivider will make the following changes to the SIA:

A. Change SIA.2.B.(d), on page SIA-3, and (e), on page SIA-4, to read:

(d) The Public Utilities Department may participate with the Subdivider to oversize the sanitary sewers and water mains in Masters Boulevard, in a portion of Spalding Avenue, in Aviara Boulevard, and in portions of 62nd Street West to provide for extensions of sanitary sewers and water mains beyond the subdivision.

(e) If the Public Utilities Department constructs the oversized water mains and sanitary sewer the Subdivider will participate in the construction to the extent of the costs that he is responsible for; or the payment of the water main and the lateral sanitary sewer construction fees.

B. Add to SIA.2.A.(4), on page SIA-2, after the fifth sentence:

The City might require the Subdivision to participate in the cost of additional improvements to Molt Road in the future. The future....

C. Add to SIA.2.C, on page SIA-4 :

A Storm Water Design Report shall be submitted to and approved by the City Engineer's Office prior to final plat approval. The design and construction of storm drainage improvements will be in compliance with City of Billings Storm Water Management Manual.

The Subdivision may be required to participate in the costs of future area wide storm drainage improvements, which requirement is hereby acknowledged and included in the Waiver attached hereto and recorded with the final plat.

D. Add to SIA.2.A.(5). On page SIA-2:

Sidewalk shall be constructed, or monetarily guaranteed, on at least one side of Aviara Boulevard, and one side of Masters Boulevard, between Molt Road and Spalding Avenue prior to release of Phase II for development.

E. Add to SIA.2.A, a new section (8) on page SIA-3:

It is the intent to include owners of existing platted lots situated between the two portions of this subdivision within the same private contracts for utilities and streets. If for some reason this does not happen, and Subdivider wishes to proceed, then the existing platted streets will be cut to subgrade, water and sewer installed and base gravel street section built to connect both ends of the Subdivision in each of the two Phases.

This condition is needed to conform to a number SIA revisions that were requested by City staff. The changes are acceptable to the subdivider.

8. Minor wording changes may be made in the SIA and Waiver as requested by the Public Works, Public Utilities or Planning Departments to clarify the documents and to bring them into the standard, acceptable format. The changes aren't intended to alter the intent or extent of the documents.

This condition permits minor wording changes in the final documents without requiring the applicant to repeat the review and approval process.

The findings of fact for this subdivision plat are as follows:

The Montana Subdivision and Platting Act requires that the local government assess the subdivision's effect on the primary review criteria specified in MCA 76-3-608. Likewise the City of Billings Subdivision Regulations require that subdivisions be reviewed under the provisions of BMCC 23-304 (c).

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

1. Effect on agriculture

The effect on agriculture will be small. The property is slightly over 30 acres in size, is vacant and has been used for pasture, but not recently. The Cove Ditch forms the southern boundary of the property and it will continue to be used for agricultural purposes. The subdivider will provide an easement for the ditch and its maintenance.

2. Effect on local services

- a. Utilities – Water is available for the northern portion of the property through the Yellowstone Club Estates system. Additional water system construction by the City's PUD should be completed this fall. Sewer trunk line is being constructed by PUD and should be available this fall. The subdivider will construct the water and sewer systems within the subdivision or if the PUD constructs them, the subdivider will be responsible for his proportionate share of the cost. The subdivider will pay trunk and transmission construction fees. There are no storm drains in the area. Stormwater will be channeled to and collected in two stormwater detention basins located on the property. Stormwater greater than the basin capacity will flow overland across the Yellowstone Country Club. The

City will own and maintain the facilities. Private utility companies will install their facilities and offer service according to their operating policies.

- b. Solid waste – The City of Billings will collect and dispose of solid waste that is generated in the subdivision. The City’s landfill has adequate capacity for this waste.
- c. Streets - Molt Road is a state highway and is under MDT’s jurisdiction. Approach permits for Aviara and Masters have been obtained. No additional improvements to the road are anticipated at this time but future development of this and nearby properties may require future improvements. The subdivider will construct the streets within the subdivision to City standards and the City will maintain them. Street maintenance district assessments will be collected and will help pay for maintaining the streets. The subdivider will contribute to a future traffic signal at Shiloh Road and Rimrock Road to mitigate the impact of traffic from this subdivision.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #4, located at Parkhill and 17th Street West. During the annexation proceedings, the Fire Department testified that the land is 6.2 miles from the nearest fire station and that additional resources will be necessary as this and nearby properties develop. The department also recommended that municipal water be available for fire fighting purposes before any building permits are issued. Police response time will depend upon officer availability and location when a call for service is placed. The Police Department commented on the annexation and suggested that the Yellowstone Club Estates and golf course be annexed so that it doesn’t become a county island within the City. AMR provides medical care and transport. The nearest full-time station is about 10 miles from the property. AMR operates a west Billings station during the high call volume hours and days. It may have a problem meeting the City’s service availability and response time requirement when responding to this property. There will be additional demands placed on the City’s emergency service dispatch personnel.
- e. Schools – The subdivision will be served by the Billings School District #2. The District didn’t respond to a request for comment, so it is assumed that there are adequate facilities to serve the subdivision. Boulder Elementary School, Will James Jr. High School and West High School serve the property. The district is negotiating for a new elementary school site that is approximately 1 ½ miles from this subdivision.
- f. Parks and recreation – The future residents of this subdivision will place new demands on City parks and recreation services and facilities. The nearest developed park is Poly Vista located near the Arrowhead Elementary School. The nearest undeveloped park is the Phipps Ranch park located approximately one mile northwest of this property. The subdivider will donate cash-in-lieu of

parkland for Tract 1, C/S 828. The parkland dedication for the northern part of the site was met when the Yellowstone Club Estates 5th filing was recorded. An appraisal will be necessary to determine the land's value, which will be used in the calculation for cash-in-lieu of land. The PRPL Department is negotiating with a private landowner in the area that may donate approximately 40 acres to be used as a community park. The cash-in-lieu may be used to develop this or other nearby parks that will benefit the future subdivision residents. The Planning Board desires that the cash be used to develop existing parks in the YCE or acquire or develop parks on land that is east of the YCE, a portion of which is owned by this subdivider. The Board approved a letter to the Park Board to that effect.

- g. MET Transit – MET service won't be immediately supplied to this property because residents are not likely to be MET riders and the low population and housing densities wouldn't financially support it. Para-transit services may be provided to eligible residents if resources permit it. Since new residents will be City taxpayers, they will help to support MET by paying the system's 10 mil property tax levy.
- h. Other – The Building, Library and Planning Departments will provide services if the land is developed in either the City or the County. The Library may benefit from the property's development since residents may not demand additional library services, but they will pay the City's 9.5 mil property tax levy. New residents may place some additional demand on the Municipal Court, but the court's fines and fees pay for its costs.

3. Effect on the natural environment

There should be little impact on the natural environment. The subdivision will generate additional traffic that could add to air pollution. Since stormwater is being detained, most pollutants should be retained on the site and there isn't a formal drain system in place. No lakes, streams or reservoirs will be modified or affected by the subdivision.

4. Effect on wildlife and wildlife habitat

There should be little impact on wildlife or wildlife habitat. The land is presently pastureland so it may periodically harbor small mammals or birds and this habitat won't be available after property development. There is an undeveloped county park immediately south of the property and it plus nearby undeveloped privately owned land harbor many birds and animals, especially deer. Increased traffic on Molt Road may create additional animal/vehicle accidents.

5. Effect on the public health, safety and welfare

There are no known health or safety hazards on the property. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties. Nearby Cove Creek periodically exceeds its banks but this property is well above the creek's elevation. Increased traffic may lead to additional

vehicle accidents and injuries, but the subdivider is obligated to participate in roadway improvements that will be designed to help mitigate the effects of more traffic.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC23-304 (c) (1))]

An Environmental Assessment was not required for this subdivision because it is within the City of Billings, it is included in the jurisdictional area of the 1990 Yellowstone County Comprehensive Plan and it is properly zoned.

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

1. 1990 Yellowstone County Comprehensive Plan

The subdivision conforms to the following Comprehensive Plan goals and policies:

None

The subdivision does not meet 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

Meeting the Comp. Plan goals in west Billings has proved to be impractical and the West Billings Plan and City Council approved policies supersede it. The subdivision conforms to the West Billings Plan, which calls for extending City utilities to west Billings properties so that housing can be developed at a higher density than it could if the land remained in the county and was thereby ineligible for city services.

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Rimrock Road to 62nd Street West and Molt Road are identified as principal arterials in the plan. Rimrock Road from Shiloh to 54th Street West may be improved within the next few years using a federal demonstration project grant. No improvements to Molt Road are anticipated at this time.

3. BikeNet Plan

The subdivision is within the jurisdictional area of the BikeNet Plan. No off-street trails are planned for this property, the nearest being along Cove Creek and on top of the Rimrocks. When Phase 2 is constructed the subdivider will build a linear trail in the Molt

Road right of way, subject to MDT approval, that may one day connect to other trails in nearby subdivisions and provide improved bicycle travel and access to Phipps Park and along Cove Creek. The surface material will be asphalt and homeowners will be assessed for maintenance, which they could perform or the City PRPL could be contracted for that service.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMCC 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? [BMCC 23-304 (c) (5)]

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

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

The property is in the R-9600 zoning district. The subdivision conforms to this zoning.

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

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

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 BMCC 23-304 (c) (8)]

All lots will have access to a public street.

CONCLUSIONS OF FINDING OF FACT

- The overall conclusion of the Findings of Fact is that the proposed Augusta Ranch Estates Park Subdivision does not create any adverse impacts that warrant denial of the subdivision.

- The proposed subdivision will impact local services and cause some increase in demand for those services. However, the developer and subsequent property owners will pay taxes and fees that will help to pay for the services.
- The proposed subdivision doesn't conform to several goals and policies of the 1990 Yellowstone County Comprehensive Plan. It does conform to the West Billings Plan, Transportation Plan and the BikeNet Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, sanitary requirements and provides legal and physical access to each parcel.

Ms. Kenson asked the Council to approve the conditions and the findings of fact. Councilmember Ohnstad moved for approval of the preliminary plat, conditions and findings of fact, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Council Initiatives

- Councilmember Poppler moved to hold a special meeting on July 1st the Council to discuss the separated budget items and reopening the neighborhood wading pools that are slated to be closed this summer plus hiring appropriate students and/or seniors to supervise them, seconded by Councilmember Brewster. Councilmember McDermott commented that the spray park at North Park is a failure and the spray park at Central Terry appeals only to an older group of children. She supports the motion to reopen the wading pools for upward of 200 children at each facility. Councilmember Larson requested that financial background that will support the motion be brought to the meeting. Councilmember McDermott said there is money available in the CIP for the wading pool programs. On a voice vote, the motion was unanimously approved. The special meeting will be held at the Community Center, July 1, 2002 at 6:00 P.M.
- Councilmember Jones asked that Councilmember Brown's initiative regarding the audit committee be addressed at the special meeting also.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 10:50 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

MINUTES: 06/24/02

ATTEST:

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