

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **July 8, 2002**

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 Ohnstad.

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

**MINUTES – June 24, 2002.** Approved as corrected.

### **COURTESIES** –

- Councilmember Don Jones introduced Kristoff Conought from France who is visiting with the Jones' family for a few weeks this summer.
- Community Development Manager John Walsh thanked VISTA Volunteer Shirley Hoffert for her year of service. Her work involved implementing the recommendations contained in the 1999 Task Force Enhancement Study with the Neighborhood Task Forces.

### **PROCLAMATIONS** – Mayor Tooley.

- MONTH OF JULY: Parks and Recreation Month to recognize that parks and recreation services are essential to the quality of life.

**BOARD & COMMISSION REPORTS.** None

### **ADMINISTRATOR REPORTS** – Dennis Taylor.

- Mr. Taylor thanked the Council and staff on behalf of Officer Paulson and Administrative Services Director Robert Keefe for their kind thoughts and prayers. He said that Officer Paulson suffered critical injuries as a result of a motorcycle traffic stop. Mr. Taylor reported that the two surgeries performed were successful and he is making remarkable and steady progress. Mr. Keefe is recovering from surgery performed on Friday and is also making steady progress.
- Mr. Taylor reported that he, Mayor Tooley, and Assistant City Administrator Kristoff Bauer would travel to Helena on Friday to meet with representatives from Montana's largest cities to discuss impact fees, building codes, annexation, planning and zoning issues. There will also be discussions consuming the bulk of their time on the effects the state budget deficit has on local government issues. One proposal by a legislator is a request to revisit the formula for state shared revenue that was adopted in House Bill 124. He said the City receives approximately \$4 Million from this formula.

**CONSENT AGENDA:**

**1. A. Mayor's Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Dr. Tasneem Khaleel	Human Relations	07/01/02	12/31/06

**B. Bid Awards:**

**(1) Concourse Elevator Project.** (Opened 6/18/02). Delayed from 6/24/02. Recommend General Contractors Construction, \$320,639.00.

**(2) Cobb Field Structural and Deck Waterproofing Rehabilitation.** (Opened 6/25/02). Recommend Fischer Construction, Schedules 1-3, negotiated amount of \$69,020.00.

**(3) Janitorial Services, 302 Edwards Building.** (Opened 7/2/02). Recommend R & M Service, \$21,960.

**(4) Roof Coating for IP 1-4 for Billings Logan International Airport.** (Opened 6/25/02). Recommend delaying award to 7/22/02.

**C. W.O. 02-07: Central Avenue Widening from the BBWA Canal to 29<sup>th</sup> Street West:**

(1) Development Agreement with Jim and JoAnn Boyer

(2) Professional Services Contract with Engineering Inc., \$65,227.04.

**D. Memorandum of Understanding** with School District #2 for School Resource Officers, \$110,000.00.

**E. Vehicle Lease Agreement** with Underriner Motors for CCSIU vehicles, 6 vehicles at \$18,000, term: 7/1/02 to 6/30/03.

**F. Contract for Professional Services, W.O. 01-10: School Route Sidewalk Prioritization Revision,** Kadrmas Lee & Jackson, Inc., \$65,000.00. (Delayed from 6/24/02).

**G. Contract Amendment** between MET Transit Division and Montana Dept. of Public Health and Human Services – Developmental Disabilities Division, extending contract term one additional year through 6/30/03.

**H. Contract Amendment** with HDR Engineering for engineering services, \$844,759.00, for:

(1) Rimrock Road Water and Sewer (\$336,531.00),

(2) King Avenue Water Sewer (\$283,778.00),

(3) Ultraviolet Disinfection Facilities design (\$150,000.00, and

(4) Wastewater Cost of Service Study (\$74,450.00).

**I. Contract Amendment** with Host International, Inc. for restaurant concession at the Airport Terminal Building through September 30, 2002, \$2,000.00 to \$3,000.00 per month.

**J. City/State Agreements for FY 2003 with Montana Dept. of Transportation:**

- (1) City/State Maintenance Agreement.
- (2) City/State Contract Overlay Agreement.

**K. SID 1354: Improvements to King Avenue East**

- (1) Waiver and Quitclaim of all Ditch Rights: Jerry F. Thiel, C/S 2324, Tracts A and B, \$2400.00.
- (2) Waiver and Quitclaim of all Ditch Rights: Michael L. McCarthy, Lots 38-39, Block 3, Streeter Brothers Subdivision, 2<sup>nd</sup> filing; \$1700.00.
- (3) Waiver and Quitclaim of all Ditch Rights: Jason T. and Alicia M. McKittrick, Lots 36-37, Block 3, Streeter Brothers Subdivision, 2<sup>nd</sup> Filing, \$1700.00.

**L. Authorization for On-Line Application** for 2002 Local Law Enforcement Block Grant AND acceptance of funds, \$85,232 grant monies; City match = \$9,470.00 from Drug Forfeiture Fund.

**M. Exchange City Golf Corporation (ECGC) request** to provide \$17,500.00 to Newman Elementary School for playground renovations over the next three (3) years.

**N. Resolution 02-17861** authorizing a change in the annual salary of the City Judge by adjusting the base salary by the same 3.25% COLA authorized for non-union management employees, effective 7/1/02.

**O. Resolution 02-17862** authorizing the transfer of the cable franchise (provided under Ordinance #88-4772) from Billings Tele-Communications, dba AT & T Broadband to Bresnan Communications.

**P. First reading ordinance** amending BMCC Section 2-706, providing that a city official or employee may accept a gift or favor of food, merchandise or services whose cash value is less than \$50.00, and setting a public hearing date for 7/22/02.

**Q. First reading ordinance** adding recently annexed property to Ward II: (Annex 02-13), Tract 2B and 3, C/S 3011, Roy and Jock Clause, petitioners and owners, and setting a public hearing date for 7/22/02.

**R. Big Sky State Games** annual road closures, equipment and facility usage for 2002 event, July 10-21, 2002.

**S. Final plat** of Rehberg Ranch Estates, First Filing.

- T. **Final plat** of Schuyler Subdivision.
- U. **Bills and payroll.**

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Item M. Councilmember Ohnstad moved for approval of the Consent Agenda with the exception of Item M, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Ohnstad moved for approval of Item M, seconded Councilmember Larson. Councilmember McDermott asked whether this item would be affected by the renewal of the contract that expires in December of 2002. City Administrator Dennis Taylor said Council approval of this item would extend beyond the expiration of the contract. Councilmember McDermott noted that she would like to see this income redirected to City Parks and the Cemetery in the future. She said she doesn't think the City should be providing the matching funds. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

2. **PUBLIC HEARING AND RESOLUTION 02-17863 creating SILMD #277 in Forest Park, 4<sup>th</sup> filing.** Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Staff Engineer John Nowak said this is a NorthWestern Energy District created at the request of the property owners in Forest Park Subdivision. He said this would complete the installation of lighting in the area. He noted that no protests have been received. The public hearing was opened. There were no speakers. The public hearing was closed.

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

3. **PUBLIC HEARING AND SECOND/FINAL READING ORDINANCE 02-5213 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 ordinance on second/final reading.)

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

4. **PUBLIC HEARING AND SECOND/FINAL READING ORDINANCE 02-5214 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 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 Brown. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND SECOND/FINAL READING ORDINANCE 02-5215 adding recently annexed property to Ward V: Tract 2, C/S 1648 Amended (Annex #02-12), Dorn/Lowe, LLC petitioner. Staff 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 Brown moved for approval of the ordinance on second reading, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND CHANGE ORDER relating to the South 25<sup>th</sup> Street Bike Lane. Change order for \$72,510.00 with 5 calendar days. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Staff Engineer John Nowak said the option that staff is recommending for Council approval involves installation of a 12 foot strip of new paving adjacent to the existing curb and gutter on both sides of South 25<sup>th</sup> Street. He said this is the best option that will address the concerns of the residents in the area and provide a bike lane with the construction currently in progress. The 12-foot strip of asphalt would be salvageable in a future project that would include the remainder of the street section of South 25<sup>th</sup> Street. He noted the water main, located in the center of the street, needs to be replaced before the remainder of the street is replaced, however the paving of the side strips will not be impacted by the rehabilitation of the water line. Councilmember Ohnstad said other portions of the bike lane are one 10-foot lane and asked why this option included two 5-foot lanes. Mr. Nowak said that generally bike paths or lanes are located in both lanes of traffic so that bicyclists are never traveling counter to traffic. Councilmember Iverson asked what the reduction in cost to property owners is by doing the 12-foot strip. Mr. Nowak said it would be approximately 50%. Councilmember Brown asked if parking would be made available with the bike trail. Mr. Nowak said the 12-foot strip would accommodate both parking and the bike lane. Councilmember McDermott asked what percentage this proposed change order is of the total cost of the 25<sup>th</sup> Street project. Mr. Nowak said without the change order the cost is 11-12% of the cost of the project and with the proposed change order it is 20% of the total cost of the project. The total cost including the change order is \$144,000. Councilmember Poppler asked about the configuration of the bike trail/parking lane. Mr. Nowak said the cars will park immediately adjacent to the curb and the remaining portion of the 12-foot strip would be striped for bike travel. Councilmember Jones asked whether the funds for this project would come out of the General Fund rather than funds allocated for bike paths. Mr. Nowak said that because the bike lane includes parking the General Obligation Bond monies and CTEP monies cannot be used for this project. Therefore the only

option available is the General Fund. He added that because South 25<sup>th</sup> Street is not an arterial, gas tax funds cannot be used. City Administrator Dennis Taylor said this would be a re-allocation of General Fund dollars for construction projects in this year's budget. He noted this could affect the City's ability to finish other projects that are associated with General Fund dollars. Mr. Nowak added there may be excess contingency money that could be used on this project if bids for other construction projects come in lower than expected. Mr. Taylor added that if bids come in higher than expected, a project may have to be re-budgeted next March for FY 2003 construction season. Councilmember McDermott asked how long the City can hold onto CTEP funds. Mr. Nowak said CTEP funds can be held until this project is complete, which is expected within a couple of months. He said if the CTEP funds are not used in a timely manner the monies will go back into a pool for Yellowstone County and re-allocated to other projects. The money in this pool must be obligated in three years from the time it is allocated by the federal government. He noted that CTEP stands for Community Transportation Enhancement Project and are funds that are set aside for traffic enhancement, particularly pedestrian or bicycle type enhancements. Councilmember Jones asked if the base on the sides of the street will have to be replaced. Mr. Nowak said the project will install a base section with an asphalt top course so this will not be done in the future. He noted there is adequate base under the northern section of South 25<sup>th</sup> Street, however south of 3<sup>rd</sup> Avenue South it is evident that there is a base failure as the street is falling apart. To overlay that portion will only add a short life span to the road.

The public hearing was opened. GRANT HUSBY, 910 10<sup>TH</sup> STREET WEST, APARTMENT #203, said he depends on his bicycle for transportation and supports the bike lane.

BETH AGNEW, 255 ALTA VISTA AVENUE, said she is a bike rider and would love to ride to work, but the downtown connection from the Heights does not exist. She strongly endorsed this project that would provide this connection.

SUZANNE MCKIERNAN, 2931 TARTAN ROAD, said she is president of BikeNet and spoke in favor of the project. She said the vision of BikeNet is a community that is connected and accessible by bike trails to everyone in the community. She said her view is for all trails to be accessible to all members of the community regardless of age or ability. She noted that the City has done a fine job in communicating with the residents and businesses in the area to develop this project. She noted that a marked bike lane would alert car traffic to look for bicyclists. She said that the South 25<sup>th</sup> Street route was thought out thoroughly, having a very low traffic usage compared to South 27<sup>th</sup> Street. She urged the Council to further the vision of BikeNet through the connection of trails.

NEIL STESSMAN, 1106 MOON VALLEY ROAD, said he is a bicycle rider. He considers bike trails an essential component of the infrastructure of a modern city. He said he thinks that employers look for this type of facility when they evaluate the quality of life amenities of cities that they are considering for potential location. He said the Kiwanis Trail, east of Bench Boulevard from Mary Street past the Metra to Coulson Park is a well utilized trail. Mr. Stessman said Billings needs the downtown connection portion of this trail, which will provide another link connecting the Heights to downtown Billings. He said he appreciates the concerns of the business and light industrial people

along South 25<sup>th</sup> Street, but said he feels this street offers the best alternative route for the river corridor to downtown Billings. He complimented the City staff for the innovative compromise that they developed. He recommended the Council approve the change order relating to the South 25<sup>th</sup> Street Bike Lane.

KIM OKRAGLY-PRILL, 2115 PARK RIDGE LANE SOUTH, said she represents her family who are bicycling enthusiasts. She noted the mission statement for the City of Billings is “to deliver cost effective public services that enhance our community’s quality of life” and said the BikeNet Master Plan addresses those issues. She reminded the Council that CTEP funds are specifically for alternate modes of traffic that help citizens use healthier methods of travel. She said the trail system will attract new businesses to the area. She said in her investigation with some of the owners along South 25<sup>th</sup> Street, the biggest issue was safety. Ms. Prill said this issue is not unique to Billings and there are ways to mitigate the safety issue with signage at the egress/ingress outlets that alerts truck drivers and motorists to the bicycle traffic in an industrial area. Other mitigation can be education for cyclists as to other measures they can take to prevent unsafe riding conditions. She supports the connection and sees it as a good economic tool for the City of Billings.

SHELLY KIRKNESS, 3361 DRIFTWOOD LANE, LOCKWOOD, said she supports the downtown Billings connection of the bike trail. She said she will appreciate this portion of the bike trail as it will provide an important connection for her travel to work. She noted bike trails provide a smooth and safe path for bicyclists. She said in her real estate business she finds clients are concerned about the lack of bike trails in Billings. She asked the Council to move forward with this project.

GRANT HARRIS, 412 NORMANDY DRIVE, spoke on behalf of the BikeNet bike trail. As an avid cyclist, he said he is a proponent of the bike trail. He said the bike trail through the downtown area would greatly increase the safety of motorists and cyclists in that area.

SANDY FISCHER, 2644 WOODY DRIVE, said she supports the bike trail and the recommendation from the City staff. She said she is the author of the BikeNet Plan and has played a role in the implementation of the trails from 1994 to the present. She said she has been involved in the feasibility study regarding alignment and pointed out that one reason South 25<sup>th</sup> Street was chosen is that it is signed in several locations with “No Trucks” signs. Ms. Fischer said bike trails are an essential infrastructure for a good community. She said experts in planning from other areas, such as Denver, Seattle and Boulder helped with the early planning stages of the trail systems. She noted that several different alignments were considered, however the traffic counts on South 25<sup>th</sup> Street were lower and the connection of the bridge at 25<sup>th</sup> would be a link to the historic district.

PAT CASEY, 1209 17<sup>TH</sup> STREET WEST, said he is for the BikeNet, but not down South 25<sup>th</sup> Street. He said several businesses have recently moved into the South 25<sup>th</sup> Street area and there is more truck traffic. He said he thinks that truck parking will be lost because there is not enough room for a truck and a bike path in the 12-foot lane. Mr. Casey said he has a business on South 25<sup>th</sup> Street and has talked with all of the other business owners and stated that none of them have been contacted regarding any planning of the bike trail or associated compromises. He noted that the sewer line does not run under the center of the road, but rather under the proposed bike

path. He asked the Council to step back and take another look at this process and the circumstances as they are today and not eight years ago when this project was started.

BOB ESSER, 4617 LUX AVENUE, said he is the owner of a business at 317 South 25<sup>th</sup> Street. He said he is not against the bike path, just against the location of it on South 25<sup>th</sup> Street. He noted that Conoco offered to build a tree barrier and suggested putting the bike path along that. He said his business has been there since 1968 and the City has not done any improvement to the streets in this area since then.

PENNY CASEY, 1209 17<sup>TH</sup> STREET WEST, said she works at 305 South 25<sup>th</sup> Street and spends most of her daytime there. She said the trucks that use the businesses along South 25<sup>th</sup> Street will not be able to park in the parking/bike path lane nor will they be able to see the bicyclists using the bike path. She said she has heard that the bike path will not be used that much and wonders why the City is spending this much money on something that will not be utilized. Ms. Casey also noted this portion of the bike path starts nowhere and goes nowhere. She said the businesses on South 25<sup>th</sup> Street will be the only ones suffering the added expense, inconvenience and the problems the bike path will create. She said she doesn't think it is right to take other people's land for the entertainment and transportation of bicyclists.

WALLACE HALL, 1006 1<sup>ST</sup>, LAUREL, said he has been a co-owner of a business located on South 25<sup>th</sup> Street for nineteen years. He noted that the business owners have asked the City for improvements for streets, curbs, gutters and sidewalks for years, and "haven't been able to get them and don't like to be put off." He said traffic counts may be low with the streets in disrepair, however if they would be repaired motorists would start using them at a higher rate. Money has always been the issue regarding the lack of repair to the streets in this area, and he said he wonders why there is money for a bike path. He also stated this is a bicycle path from nowhere to nowhere and runs directly into a 4-lane State highway with an uncontrolled intersection. He said it is a tremendous liability to run bicycles across this highway.

MIKE SCHAER, 1109 NORTH 32<sup>ND</sup> STREET, spoke in favor of the bike path connection. He said his company, Computers Unlimited, is funding a portion of the bridge portion of the bike path project. He said the reason for this is to have access to parking on the south side of the railroad tracks, which is the only significant parking lot in the area. He said he owns two businesses on North 25<sup>th</sup> Street and the streets are in good condition and the traffic control is not a problem. The reason for this is that 95% of the property owners put together a plan to tax themselves and combined with CTEP monies paid for improvements that solved their problems. He noted the project took 2-1/2 year. He said this has increased their property values. Mr. Schaer said this bike path will provide his employees with a route to and from work. There were no other speakers. The public hearing was closed.

Councilmember Iverson moved for approval of the staff recommendation, seconded by Councilmember Kennedy. Councilmember McDermott asked what funding would be potentially lost if the Council waited to approve this project after the Master Plan is completed. She said she would like to see if there is a better route in the Mater Plan. Staff Engineer John Nowak said the CTEP funds are the funds that could be potentially lost. The General Fund money would not necessarily be lost, however restrictions on the timeliness of the use of the funds can cause complications. The



CTEP funds, if not used for this project, will go back into a pool and this project will be competing with other projects within Yellowstone County for those funds.

Councilmember McDermott asked if the Engineering Department has investigated the possibility that the Conoco Triangle may have a better and safer route. Mr. Nowak said this is a fairly new consideration and was looked at briefly, however this would involve a change to an already designed bike lane on a street that will involve a new design across vacant and unimproved land, requiring additional funds to modify the design. This would push construction off further, he added. He also noted that CTEP funds would be lost because the scope of the proposed project has already been approved by CTEP and any modification outside of the scope would not allow CTEP to extend the scope.

Mayor Tooley asked for clarification on two remarks made during the public hearing process. The first one concerns 26<sup>th</sup> Street as opposed to 25<sup>th</sup> Street and the second remark is "it comes from nowhere and goes to nowhere". Mr. Nowak said technically the proposed path does not start anywhere or go anywhere. He said it is one phase of a multi-phase program to get the entire downtown connector built. Right-of-way negotiation issues and eminent domain issues continue to hold up portions of this project. He said these processes take time. He also noted the bridge to span the railroad tracks is another portion of the project that has complications. Mr. Nowak said the intention will be for the two ends to connect to future phases of the bike path. He noted, regarding the first remark, the north end of 26<sup>th</sup> Street does not permit an easy connection across the railroad tracks. He said 25<sup>th</sup> Street is the best alternative from a planning standpoint. He said, while the character of 25<sup>th</sup> Street may have changed in the past few years, the original planning effort is still valid. Councilmember Brown asked if eminent domain actions have been started and does it appear to be necessary that it be done. Mr. Nowak said the City has not started eminent domain proceedings. He noted the only actions, in that regard, have been on the part of Yellowstone County. He added that using the Conoco Triangle as a possible site would not avoid eminent domain issues.

Councilmember Poppler asked if the Post Office has refused to give an easement through their land. Mr. Nowak said the local officials have continued to refuse the easement, however initial approval was given and since September 11, they indicated they have had second thoughts. He said he hopes the City and the Postal Department could work through those issues. Councilmember Poppler asked if the 21<sup>st</sup> Street underpass has been considered. Mr. Nowak said "yes, as a temporary alternate route until the northern piece (the bridge across the railroad) is constructed." Councilmember Poppler asked about easements concerning the proposed bridge. Mr. Nowak said that is why 25<sup>th</sup> Street is the preferred route, because there is sufficient vacant area to place a bridge and the corresponding spiral ramps. He said the Engineering Department is waiting for funding to be in place before engineering the final design. Councilmember Poppler asked why this portion of the bike path is being proposed now if there are so many other issues that are unsolved regarding other portions of it. Mr. Nowak said this portion of the bike path can still be used and the idea is to build portions of the system as funds are available. Councilmember Poppler said this seems to be money wasted if the other portions can not be completed due to the

easement issues. Mr. Nowak said, technically speaking, “yes, but the intent is to get the easements and make the connections.”

Councilmember Larson said there was confusion in opposing testimonies given. He said one person noted there are “no trucks” signs posted on 25<sup>th</sup> and another person noted there will be a problem with truck parking on 25<sup>th</sup> due to the bike lane. He asked for a clarification on the disparity between those two presentations. Mr. Nowak asked Traffic Engineer Terry Smith to respond. Mr. Smith said there is no documented proof, but to his remembrance there were complaints about truck traffic in this area and South 25th Street was posted in an attempt to confine truck traffic. He said as the Master Plan is evolving it may not be appropriate to have this signage today. Councilmember Larson asked about the problem concerning the width of trucks (8’ wide) parked in the bike path lane encroaching on the bike lane portion. Mr. Smith confirmed that the 12 ft. bike lane would accommodate an 8 ft. wide truck and leave only 4 ft. for the bike usage, which will be “less comfortable for bike riders”, but the plus is that the bike lane will be delineated and reserved for bikes. Councilmember Jones asked how wide the bike lane striping would be. Mr. Smith said it would be 4 ft. wide.

Councilmember Brown asked what the potential dollar loss amount would be by not going ahead with this project. Mr. Nowak said there is still the obligation to fill the potholes on South 25<sup>th</sup> Street that have been created for a cost of \$36,000 coming from the General Fund because the construction would not be construction of a bike path. This will leave a narrow strip of asphalt not adjacent to the curb that would be considered wasted, he added.

Councilmember Jones asked if business access will be blocked during construction. Mr. Nowak said JTL, Group, Inc. has assured the City they would work with the individual property owners to minimize the access problems. Some blocked access is bound to occur during the milling operation as it passes in front of each drive approach. He said the intent is to coordinate with the businesses to block access when businesses experience slower traffic flows.

Councilmember Poppler asked how easements are obtained. Mr. Nowak said it varies. He explained that easements allow the property owner to retain ownership and allow use of the property for the City to locate their facilities on the property. He said construction amenities that would benefit the property owner are offered. He noted Right-Of-Way agreements actually change ownership of the property. If money is offered for easements, it is typically less than the amounts offered for Right-Of-Way agreements. Councilmember Poppler asked City Attorney Brent Brooks if condemnation actions could become part of the bike path issues. Mr. Brooks said there must be a public need established before condemnation procedures could take place.

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

**7. Preliminary Plat of High Sierra Subdivision, 2<sup>nd</sup> Filing, generally located at the corner of Wicks Lane and High Sierra Boulevard. Staff recommends conditional approval of preliminary plat and findings of fact. (Action: approval or disapproval of staff recommendation.)**

Planning Staff Member Candi Beaudry said this is a City-initiated 5-lot subdivision on City-owned land. It is a 188-acre parcel that was analyzed for possible

resale or use of City resources. She said the staff is recommending conditional approval. She explained that the City cannot enter into an agreement with itself, nor can it become party to a Homeowner's Association. To overcome these restrictions and still ensure that improvements are constructed and financially secured, subdivision improvements and supplemental requirements are listed in the Conditions of Approval and not in a Subdivision Improvements Agreement. Furthermore, the City avoids having to create a Homeowner's Association to enforce development specifications by placing Deed Restrictions on each lot. The conditions of approval are as follows:

- I. To minimize the effect on local services, the subdivider shall construct all required improvements prior to filing the final plat or financially guarantee the construction and installation of all required improvements in conformance with all policies, standards and ordinances adopted by the city.

The Subdivider shall guarantee all improvements for a period of one year from the date of final acceptance by the City of Billings Public Works Department.

- II. To minimize the effect on the natural environment, the Subdivider shall provide for the restoration of the construction sites disturbed during construction of the improvements outlined herein, as follows:

- A. Broadcast Seed

- B. Seed Type and Rate

- Smooth Bromegrass 8 lbs per Acre
- Crested Wheatgrass 4 lbs per Acre
- Winter Wheat 10 lbs per Acre

- C. Fertilizer

- 100 lbs of 0-45-0 Phosphate per Acre

- D. Roller pack after broadcasting to pack seed ¼-inch into soil.

- E. Seed November to March or as authorized by the Yellowstone County Weed District.

- F. Seed must be certified noxious weed seed free.

- G. All noxious weeds on the latest Yellowstone County Noxious Weed List must be controlled on all properties in the Subdivision. All cost of noxious weed control on private lots is the responsibility of the property owners of record.

- H. Weed height control restrictions shall be duly noted and adhered to on all properties and rights-of-way.

- III. To comply with the Montana Subdivision and Platting Act and the City of Billings Subdivision Regulations the subdivider shall construct the following improvements as required and in conformance with the City of Billings Subdivision Regulations:

- A. STREETS

1. Four hundred ten feet (410') of High Sierra Boulevard shall be built to collector street standards including boulevard sidewalks from the

existing terminus of High Sierra Boulevard to the projected intersection of Sierra Grande Boulevard. A temporary cul-de-sac shall be constructed in accordance with subdivision standards to provide physical access to Lot 1, Block 1. The design cross-sections of said streets shall be submitted to, and approved by the City Engineer.

2. *Rights-of-way* Rights-of-way for the local streets, including Sierra Granda Boulevard and Siesta Avenue shall be dedicated on the final plat but not constructed. The right-of-way for the potential extension of Wicks Lane shall also be dedicated on the final plat but will not be constructed. All street dimensions and curves shall be designed to accommodate future right-of-way improvements. Specifically, the 10-foot radii at the intersections may be insufficient for future right-of-way improvements. If necessary, 'chamfer' the corners or increase the radius dimensions. Also, the 300-foot radius on Sierra Granda Blvd. will not meet collector street design standards. A 470-foot radius is required to maintain a standard crown section.
3. *Interior Sidewalks.* Boulevard sidewalks, curbs, and gutters shall be installed along the extension of High Sierra Boulevard in accordance with collector street standards.
4. *Street Name Signs.* Street name signs for streets within the Subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the City of Billings Public Works Department, Engineering Division.
5. *Traffic Control Devices.* The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.
6. *Access Easement.* The subdivider shall grant to the public a 120 foot wide access easement from Wicks Lane to the west boundary of High Sierra Park coincident with the existing dirt track and north park boundary. The easement shall be shown on the face of the plat and an easement document shall be filed separately with the County Clerk and Recorder.

The right-of-way easement, MB-130-4 shown along the south boundary of Lot 1 Block 4 will be identified by document number.

A one-foot "no access easement" shall be provided along both sides of Wicks Lane. The easement shall wrap around intersecting streets an appropriate distance from intersections.

## B. UTILITIES

1. *Water and Sewer Service.* Subdivider will install, at its expense, water and sanitary sewer mains or services within the extension of High Sierra Boulevard. Said mains or services will be connected to existing mains at appropriate places, sizes, locations, and standards as approved by the Public Utilities Director and shall be installed in conformance with the design standards, specifications, rules and regulations of the City of Billings and the Montana Department of Environmental Quality.
2. *System Development Fees.* The Subdivider acknowledges that the Subdivision shall be subject to applicable System Development Fees in effect at the time new water and/or sewer service connections are made.
3. *Other Facilities.* All telephone, gas, electrical power, and cable television lines shall be placed or in designated easements outside of the right-of-way and shall be installed underground prior to surface improvements. The location of all such facilities shall be subject to approval of the City Engineer.
4. *Lateral and Trunk Sewer Fees.* It is acknowledged that the properties subject to this Subdivision Improvements Agreement shall be subject to Lateral and Trunk Sewer Fees in affect at the time service extension is requested. All fees paid to the Public Utilities Department are subject to a 4 percent Franchise Fee.
5. *Lateral and Trunk Water Main Fees.* It is acknowledged that the properties subject to this Subdivision Improvements Agreement shall be subject to Lateral and Trunk Water Fees in affect at the time service extension is requested. All fees paid to the Public Utilities Department are subject to a 4 percent Franchise Fee. Said fees are more particularly detailed in the attached contribution and fees summary exhibit and shall be due at time of Final Plat approval.
6. The property owner shall make application for extension/connection of water and sanitary sewer to the Public Utilities Department. The extension/connection to water and sanitary sewer is subject to the approval of the applications and the conditions of approval. Applications will need to be submitted for processing prior to the start of any construction.

## C. STORM DRAINAGE SYSTEM

Storm drainage and surface flow shall be provided by a combination of surface drainage, curbs and gutters, temporary detention areas, and future storm drain lines. The sizing, number of laterals and their location will be subject to review and approval by the City Engineer and in conformance with the *Stormwater Management Manual*.

D. UTILITY EASEMENTS

The subdivider shall show 8' utility easements on the face of the plat in the locations specified by the gas and electrical utility companies.

- E. IMPROVEMENT CONSTRUCTION The subdivider shall notify the Public Works Department of the date and hour construction is anticipated to begin on the required improvements and to keep same informed of the progress of construction. If the construction is stopped for any other reason than overnight, holidays and weekends, the Subdivider agrees to notify the City of Billings Public Works Department of stoppage. Further, Subdivider agrees to notify the City of Billings Public Works Department not less than four (4) hours before construction is scheduled to resume.

While the improvements are being constructed hereunder, the construction site shall be kept free and clear of all unsightly accumulation of rubbish and debris, and the public shall be protected by the use and maintenance of sufficient and proper barricades, lights, and related construction items as specified in the Manual of Uniform Traffic Control Devices during the course of construction.

- F. FINAL PLAT The final subdivision plat shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal City Code and the Rules, Regulations, Resolutions, Policies, and Ordinances of the Public Utilities Department and Public Works Department, and the laws and administrative rules of the State of Montana.

FUTURE IMPROVEMENTS : The subdivider shall place deed restrictions on each lot to ensure that future lot improvements are coincident with the platted streets.

The Findings of Fact for High Sierra Subdivision, Second Filing, have been prepared by the City/County Planning Staff. The City of Billings Subdivision Regulations require that the local government assess the subdivision's effect on the primary review criteria specified in 76-3-608, MCA.

**Primary review criteria** (Sec. 23-304 (c) BSR, 76-3-608 (3)(a) MCA)

1. Effect on agriculture The original tract is not being used for agricultural purposes but adjoining parcels to the north are part of the Dover Ranch and are currently used for cattle grazing. A dirt path leads from the proposed subdivision to the State property to the west through a barbed wire fence and

gate. The gate will continue to be accessible because a public right-of-way will be dedicated along the same alignment as the dirt path. Conflicts with adjoining agricultural operations will be minimized because of continued access and existing fencing.

2. Effect on agricultural water user facilities There are no agricultural water user facilities present.
3. Effect on local services  
**Schools** School District 2 responded that a five-lot subdivision would not significantly affect their school system.

**Fire** The Billings Fire Department serves this property and will continue to provide services after it is subdivided. The Department did not consider this proposed subdivision a problem at this time. However, future subdivisions and/or developments must be required to install properly designed roads and ensure a water source.

**Police** The Billings Police Department does not anticipate an increase demand in service resulting from a five-lot subdivision. As with the Fire Department, it anticipates addresses safety issues at the time.

**Streets** The street network shown on the preliminary plat is acceptable by the City Traffic Engineer. Several design issues will need to be addressed at the time of future resubdivision or development. The Traffic Engineer agrees with the concept of controlling the layout and traffic circulation by dedicating right-of-way at this stage and allowing all or partial segments of streets to be constructed later. However, parts of the design did not meet City standards and needed to be addressed in the Conditions of Approval.

**Storm Drainage** Storm drainage and surface flow shall be provided by a combination of surface drainage, curbs and gutters, temporary detention areas, and future storm drain lines. The sizing, number of laterals and their location will be subject to review and approval by the City Engineer and in conformance with the *Stormwater Management Manual*.

**Water** City water lines are located within the rights-of-way of High Sierra Boulevard and lines are stubbed into the unsubdivided parcel at Andele, Del Mar, and Siesta Ave. This subdivision will extend a water main north to the intersection of Sierra Granda and High Sierra Boulevard.

The City maintains a Water tower and pump station just east of High Sierra Park on Lot 1, Block 5. An existing pipeline and utility easement is located from High Sierra Boulevard along the section line to the facility. The easement document also specifies continued access along a "prairie road".

The easement will be shown on the final plat and will not be blocked or altered by the subdivision.

**Sewer** Municipal sewer lines extend along High Sierra Boulevard and Siesta Avenue. As a condition of final plat approval, the City will extend sewer north from Siesta Avenue to Sierra Granda along High Sierra.

**Parks** The second filing of High Sierra Subdivision is a minor subdivision and is not subject to the park land dedication requirements. High Sierra Park, a city park located on the south edge of Lot 1, Block 1 can be accessed only through the proposed subdivision. To ensure continued public access, the City will establish a permanent access easement from Wicks Lane to the north end of the park. This easement must be 120' wide in order to accommodate the future extension of Wicks Lane if necessary.

4. Effects on the natural environment Most of the property is level but drops off steeply to the west towards Alkali Creek. The soil layer is fairly thin and overlies flat-lying sandstone bedrock that crops out along hillsides and on flat surfaces. The land is currently vacant, open grassland. Scars from human disturbance and off-road vehicle use are detectable on aerial photographs. The development of the subdivision will permanently alter the surface environment but will not create a hazard to health or safety.
5. Effects on wildlife and wildlife habitat The Montana Department of Fish, Wildlife & Parks commented on the presence of antelope in this area. They believe that "prospective homeowners should be advised that current residents in this area are experiencing problems with antelope that eat flowers, shrubs and gardens. FWP does not remove wildlife from residential areas unless there is a threat to physical safety. Since this subdivision is in and adjacent to occupied antelope habitat, this problem will continue for sometime."

The subdivision will occupy antelope habitat, as does much of Billings Heights. However, because the subdivision is contiguous with urban development the habitat will be reduced but not fragmented. Similar landscape continues for considerable distance north and west of the proposed subdivision which helps minimize the loss of 188 acres of wildlife habitat.

6. Effects on public health and safety A high voltage powerline, steep slopes and shallow bedrock pose the greatest constraints and potential hazards to development. The high voltage powerline bisects the property from northwest to southeast. High Sierra Park, the water tank and the cell tower are located southwest of the powerline. Most of the developable land is located northeast of the powerline. The one lot that contains most of the potential hazards is the least developable although any future development will need to address these hazards in future subdivision or improvement agreements.



**Environmental assessment** A minor subdivision is exempt from an environmental assessment if it occurs within a master planned area.

**Conformance with local comprehensive plan and transportation plan.**

1990 Yellowstone Comprehensive Plan

The proposed subdivision is located on property that is currently undeveloped but exhibits high development potential because it is adjacent to existing utilities, streets, schools and parks and it is within the City limits. These characteristics also make the proposed subdivision consistent with the development goals stated in the 1990 Comprehensive Plan. Included in these goals are the desires to:

- Retain and improve existing residential neighborhoods and develop new residential areas in an orderly and financially sound manner.
- Protect against the encroachment of incompatible or unrelated uses.
- Curb urban sprawl and discourage leapfrog development.
- Encourage a high quality landscape with consideration of natural physical constraints.

**Billings Urban Area 2000 Transportation Plan**

The 2000 Transportation Plan identifies two streets that cross the subdivision as Collectors and the extension of Wicks Lane as a Principal Arterial. Because the alignment of Wicks Lane has yet to be determined, a corridor will be dedicated to the City that can accommodate arterial standard improvements along one potential alignment. The other potential alignment would coincide with an existing dirt path leading to High Sierra Park and parking lot. This alignment will be preserved with an access easement, wide enough to also accommodate arterial standard improvements. The two Collectors identified by the plan are High Sierra Boulevard and Sierra Granda Boulevard. Both routes will be preserved with dedicated right-of-way. Four hundred seventy feet of High Sierra Boulevard will be improved to collector standards.

**Montana Subdivision and Platting Act and Local Subdivision Regulations**

The City has complied with the preliminary plat application process and will bring the final plat into compliance with the MSPA and local subdivision regulations prior to applying for final plat approval.

**Sanitary requirements**

Sanitary sewer will be provided by the City of Billings. The City will ensure that sewer can be extended to all lots.

**Zoning requirements**

The property is zoned R-9600, a zoning district that is consistent with the neighborhood. No zone change is planned.

### **Planned utilities**

Northwestern Energy and Montana-Dakota Utilities both have requested that utility easement be granted in specific locations along the boundaries of the proposed lots. These easements will be shown on the final plat.

### **Legal and physical access**

Legal and physical access to all lots is provided by Siesta Boulevard, a City street. Approximately 470' of collector must be constructed to ensure physical access to Lot 1, Block 1. The City will be responsible for constructing or securing the cost of constructing this roadway. The City will also be responsible for installing or securing the cost of installing a temporary cul-de-sac to enable emergency turn-around.

Ms. Beaudry said the City will not be building the improvements as shown on the preliminary plat, however they will be secured with a bond. The purpose of the subdivision is to obtain revenue for the SID Revolving Fund, that is a safety net for properties that default on SIDs. She said as a minor subdivision it does not require a public hearing.

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

### **8. Preliminary Plat of Ironwood Estates Subdivision, 1st Filing, generally located northwest of Yellowstone Country Club Estates. Staff recommends conditional approval of preliminary plat and findings of fact. (Action: approval or disapproval of staff recommendation.)**

Planning Staff Member Gail Kenson said this is a major subdivision plat located northwest of the Yellowstone Country Club on 62<sup>nd</sup> Street West and Molt Road. The Planning Board has recommended conditional approval and acceptance of the findings of fact. She said this is a 100-lot subdivision and is the first filing, with several filings following. It is zoned Residential 9,600 and will be developed as residential. A parkland dedication of 14 acres is included in the plan. The conditions of approval are:

#### **1. SIA Streets**

- a. Change the first sentence in Item b. to "Ironwood Estates Subdivision will impact the Rimrock Road/Zimmerman Trail Intersection".
- b. Clarify Item c. Provide documentation as to how the amount \$24,700 was determined.
- c. Revise Item f to read: "Development of this subdivision will result in an increase in traffic volumes at the intersection of Rimrock Road and 62<sup>nd</sup> Street West. The Subdivider shall pay 82.8% of the costs of a detailed traffic study to recommend appropriate geometric improvements and traffic controls at the intersection. The scope of the study shall be approved by the City Traffic Engineer prior to final plat approval and the Subdivider's share of the cost of the study shall be included in the

monetary security guarantee referenced in Item 5 below. Completion of the study shall be considered the full contribution for mitigation of impacts from this Subdivision at this intersection. Subdivider shall not be responsible for any construction costs related to implementing recommendations from the traffic study. The traffic study shall be completed by July 1<sup>st</sup>, 2003.”

**2. Storm Drain System**

- a. Add the following language: “The storm drainage master plan shall be approved by the City Engineer’s Office prior to final plat approval. The master plan shall include driveway culvert sizes.
- b. Clarify Item 5. The current language indicates that the storm drain master plan, the plat, and the private contract have all been approved by the City of Billings.

**3. Cove Creek**

- a. The developer shall note in the SIA and on the face of the plat the potential for the flooding of Cove Creek.

**4. Montana Department of Transportation**

The developer will obtain all necessary approvals and permits from the Montana Department of Transportation for the approach at Ironwood Drive prior to commencement of construction.

**5. Declaration of Covenants, Conditions, and Restrictions Guidelines**

Article 5

- a. Add to Item 7 “Culverts required for drainage under driveways shall be constructed in strict conformance with the storm drain master plan approved by the City Engineer. And require a permit from the City Engineer’s Office.”
- b. Change the first sentence in Item 10 to read “All site grading shall be done in strict conformance with the storm water master plan approved by the City Engineer and by the appropriate regulating authority, if applicable.”

Article 7

- c. Add the following sentence “Review and approval by the Design Review Committee does not relieve the owner from obtaining approval of site plans from the City of Billings”.

**6. Minor wording.** Minor wording changes hereafter shall be made in the SIA and documents, as requested by the City Engineer’s Office and Planning Office, to

clarify the documents and bring them into the standard, acceptable format.

7. **Compliance.** If approved, the final subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal City Code, and Rules, Regulations, Policies, and Ordinances of the City of Billings, and the Laws and Administrative Rules of the State of Montana.

The Findings of Fact for Ironwood Estates Subdivision, First Filing have been prepared by the City-County Planning Staff for review and approval by the City-County Planning Board. These findings are based on information received from the subdivider, their engineer, city departmental review, and Planning Staff evaluation. The findings address the review criteria required by the Montana Subdivision and Platting Act (76-30608, MCA) and the City of Billings Subdivision Regulations (Section 23-304(c))

- A. **Primary Review Criteria** [Article 23-300, Section 23-304 (c)(1)] [MCA 76-3-608 (3)(c) BMCC]

1. **Effect on Agriculture**

The site is currently in non-irrigated hay production. The agricultural production will be discontinued gradually as development occurs. The first filing will take 81.12 acres out of agricultural production. However, as the land transitions from agricultural to residential the taxable value will increase.

2. **Effect on agricultural water user facilities**

This development will not affect any agricultural water user facilities.

3. **Effect on Local Services**

**Water and Sewer Service.** City water and sewer will serve the development. The subdivider will install, at his own expense water and sanitary sewer mains or services within and/or adjacent to the subdivision to serve the lots therein. Said mains or services will be connected to existing mains at appropriate places, sizes, locations, and standards as approved by the PUD Director and shall be installed in conformance with the design standards, specifications, rules and regulations of the City of Billings the Montana State Department of Environmental Quality (DEQ).

**Storm Water Drainage.** Storm drainage and surface flow shall be provided by a combination of surface drainage, storm piping, swales to natural drainage ways and detention created in drainways within the park. The sizing and location of swales and drainage paths will be subject to review and approval by the Engineering Department and in conformance with the *Stormwater Management Manual*. A storm drainage master plan report has been prepared for this subdivision and will need to be approved prior to final plat approval.

**Public streets and roads.** All streets shall be built to grade with a satisfactory sub-base, base coarse, and asphalt surface. The design cross-sections of said streets shall be submitted to, and approved by, the City of Billings Public Works Department.

Standard sidewalks, curbs, and gutters within the Subdivision will not be installed except for the length of Ironwood Drive, which shall include 5-foot curvilinear sidewalk, to be separated from the road surfacing and running along both north and south sides of the road right-of-way. Pedestrian/bike paths as well as hard and rural surface trails shall be constructed in the linear park area in lieu of sidewalks throughout the remainder of the subdivision.

A Traffic Accessibility Study has identified the following improvements. The improvements shall include, but not be limited to the following:

- a. Ironwood Estates Subdivision will compose 13.8 percent of the total projected traffic at the Rimrock Road/Shiloh Road intersection. Based on this the Developer shall make a mitigation contribution not to exceed \$23,000 for the improvements at this location. Said contribution is to be paid in installments with each phase. The installment percentage shall be determined by taking the ratio of the total lots in the filling to the total lots in the Master Plan. The total contribution for this item for First Filing is \$7,419.35.
- b. Ironwood Estates Subdivision will impact the Rimrock Road/Zimmerman Trail Subdivision. As the 32<sup>nd</sup> Street Extension Project is preceding, the Developer shall make a mitigation contribution, not to exceed \$10,000 for the improvements at this location. Based on the above calculation methods, the total contribution for the First Filing is \$3,225.80.
- c. Ironwood Estates Subdivision will compose 38 percent of the impact to the Rimrock Road/54<sup>th</sup> Street West intersection. The Developer shall make a mitigation contribution, not to exceed \$24,700 for the improvements at this location. Based on the above calculation methods, the total contribution for the First Filing is \$7,967.74.
- d. Ironwood Estates Subdivision will be required to build a right-turn lane on Molt Road for northbound traffic. The entire cost of this work shall be the responsibility of the Developer. The Developer shall be responsible for obtaining the necessary Montana Department of Transportation permits for this work.
- e. 62<sup>nd</sup> Street West from the south boundary of the Subdivision to Sam Snead Trail will serve as a secondary emergency access only. The Developer shall provide a minimum 14-foot wide, 12-inch thick gravel access road with a break away gate located at the south boundary of the Subdivision.
- f. The intersection of Rimrock Road and 62<sup>nd</sup> Street West has been identified as substandard. In order to identify the appropriate design, the Developer agrees to participate in a traffic study of the

62<sup>nd</sup> Street West and Rimrock Road intersection as requested by the City of Billings. Participation in funding this study will release the developer from further traffic impact mitigation measures that might result from the study. This study shall be completed within one year of the final plat approval.

The subdivider has requested a variance from the following sections of the City of Billings Subdivision Regulations:

- Section 23-601(k) requiring a collector street right-of-way width of 80 feet, to provide a 60-foot width.
- Section 23-601(k) requiring a collector street width 49-feet from back of curb to back of curb, to provide a 28-foot asphalt concrete surface, plus 2-foot concrete ribbons each side.
- Section 23-601(k) requiring a local residential street width of 37 feet from back of curb to back of curb, to provide a 28-foot asphalt concrete surface, plus 2-foot concrete ribbons each side with and 8-inch wide white shoulder stripe to separate two 11-foot travel lanes from shoulders.
- Section 23-601(k) requiring a cul-de-sac, serving less than 10 living units, width of 29 feet from back of curb to back of curb, to provide a 24-foot asphalt concrete surface, plus 2-foot concrete ribbons.
- Section 23-601(k) requiring the platting of an arterial connector from Molt Road to Highway 3 as previously identified in the Transportation Plan, to a local collector as identified in Marvin & Associates Study and Addendum.
- Section 23-702(e) requiring standard integral curb and gutter to be placed on collector streets, and standard or drive-over curb to be placed on residential streets, to provide a 2-foot concrete edge ribbon.
- Section 23-703(e) requiring sidewalks on both sides of all streets, to provide on and off street corridors, (for bicycle and pedestrian usage), accessing all parks and on street sections herein listed above. All pedestrian facilities shall be designed to be compliant with applicable ADA Standards.

**Fire and Police Protection.** The City of Billings Fire Department and Police Department will provide fire and police service. The development has adequate fire hydrant locations to meet the needs of fire suppression within the development. There is adequate access to the development for all types' emergency vehicles.

The City of Billings Fire Department has recommended that all structures install internal sprinkler systems. If such systems are to be installed, plans shall be reviewed by the City of Billings' Fire Marshal and shall meet all applicable NFPA, UBC, and national standards.

**Emergency Medical Service.** American Medical Response will provide ambulance and EMS service along with emergency response units from the City of Billings Fire Department. Again, there is adequate access to the development for emergency vehicles.

**Solid Waste Disposal.** The Billings Solid Waste Department will provide solid waste hauling; the Billings Landfill has adequate capacity to provide landfill disposal service.

**Schools.** No response was received from School District #2. It is estimated that at build out of the first filing there may be up to 200 school children. The closest elementary school is Arrowhead School which is at capacity. It is not know at this time whether elementary school children would attend Arrowhead School or be bussed to another elementary school that is not at capacity. It is assumed that middle school students would attend Will James and the high school student will attend West High School.

**Historic Features.** A cultural resources study which was done in conjunction with the Northwest Urban Planning Study identified multiple cultural or historic sites on the lands to the north of this residential development. The subdivider acknowledges the finding in this report and the requirement, that should any such sites or artifacts be unearthed in the course of project development, that any such findings should be protected and mitigation measures will be put in place if required by the State Historic Preservation Office.

**4. Effects on the Natural Environment** This project is mostly in dry land hay production. There are areas of native vegetation such as native grasses, sagebrush and pine trees. The proposed layout of the development is intended to preserve as much as the natural vegetation as possible. Storm drainage and surface flow shall be provided by a combination of surface drainage, storm piping, swales to natural drainage ways and detention created in drainways within the park. The developer will be required to meet all requirements of the City's *Stormwater Management Manual*.

**5. Effects on Wildlife and Wildlife Habitat** The development may have the following affects on wildlife and wildlife habitat. Game species identified or that would be expected to use the area include antelope, mule deer, turkey, sharp-tail and sage grouse, and Hungarian partridge. Because this parcel is currently in agricultural production it does not represent a great loss of wildlife habitat. It is doubtful that wildlife will be eliminated from the area. As with all developments that occur in the urban/wildland interface area there are some concerns that included wildlife/human encounters, vehicle/animal collisions, and the loss of upland birds and other small animals. Additionally, there may be a conflict between wildlife and landscaping installed by homeowners as development occurs as well as pet/wildlife encounters.

**6. Effects on Public Health and Safety** There will not be any construction in areas that may pose a hazard, such as the

Cove Creek floodway or on the steep slopes within the subdivision. Traffic and pedestrian safety will be assured through the implementation of traffic improvement that meets city standards.

**B. Environmental Assessment** [Article 23-300; Section 23-304(c)(2) BMCC][MCA 76-2-210(1)]

This proposed subdivision prepared an environmental assessment which was used to address many of the issues in these Findings of Fact.

**C. Conformance with the Yellowstone County Comprehensive Plan, West Billings Plan, and Billings Urban Area 2000 Transportation Plan.** [Article 23-300, Section 23-304(c)(3) BMCC]

**1. 1990 Yellowstone Comprehensive Plan**

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

- a. **Require that geologic hazards such as expansive/contractive soils, rockfall, steep slopes and landslide areas be addressed in the development review process. (J-1)**

The developer has placed a notice in the SIA noting that the site may have expansive/contractive soils and will require the appropriate structural design.

- b. **Protect against the encroachment of incompatible or related uses. (K-5)**

The proposed development is adjacent to existing large lot residential developments and will not conflict with the existing uses.

- c. **Eliminate development in designated floodways and limit development in the flood fringe area. (J-4)**

This development is in the Cove Creek drainage. The developer has set aside this area as open space.

- d. **Promote the necessary measures to reduce the risks associated with development in wildfire hazard areas.**

The developer will work with the City of Billings Fire Department to determine which lots are identified as being in the wildland/urban interface and will require defensible space plans prior to construction.

- e. **Preserve areas of open space within areas of urban development and promote access by non-motorized traffic. (K-11)**

This subdivision is providing three times the amount of parkland/open space than is required under the subdivision regulations. Additionally much of this open space can be accessed through the linear trail system throughout the subdivision.

- f. **Promote orderly and rational land use during the various stages of economic and residential growth cycles. (K-12)**

This project is creating additional housing.



**2. West Billings Master Plan**

The proposed subdivision complies with the following goals and policies of the West Billings Master Plan:

- a. **Establish development patterns that use land more efficiently.**  
This subdivision is developing to urban densities with city services.
- b. **Obtain linear parks and rights-of-way, easements ...and other continuous linear features lending themselves naturally to the creation of a non-vehicular transportation network...**  
This subdivision provides for a BikeNet connection as well as several linear paths to provide pedestrian and bike connections throughout the subdivision.
- c. **Increase residential densities within the West Billings planning area by approving requests for residential zoning that are consistent with this plan.**  
The zoning on this parcel changed from R-15000 (2 lots/acre) R-9600 (4 lots/acre)
- d. **Reduce sprawl and development pressure on agricultural lands, conserve irrigated farmland, and increase the density of new residential development by requiring new subdivision in the West Billings Plan are to be served with municipal or approved community water and sewer systems.**  
This subdivision is not taking any irrigated agricultural land out of production and is being served by municipal water and sewer.
- e. **Development in the West Billings planning area shall provide for a variety of residential types and densities.**  
The master plan for this development provides for varying densities and types of residential dwelling units.
- f. **Development of non-irrigated farmland within the appropriate zoning designation is considered a priority.**  
This parcel is non-irrigated agricultural land currently in hay production.
- g. **Identify and protect open spaces, flood channels, waterways, and scenic resources in West Billings.**  
This development is within the Cove Creek drainage. The drainage is being preserved as open space and will provide as passive recreational area. The area adjacent to the Rims is being preserved as open space.

**3. Billings Urban Area 2000 Transportation Plan and BikeNet**

The proposed subdivision is within the jurisdictional area of the Billings Urban Area 2000 Transportation Plan and the 1995 BikeNet Plan and conforms to these plans by providing for safe and efficient traffic circulation.

This subdivision, through the annexation agreement, will provide a connection from Montana Highway 3 to Molt Road. The first filling has provided potential connections for the collector road within the existing street system. Should the connector alignment fall

outside of the first filing but within future filings, the developer has agreed to develop the subsequent filings to accommodate the connector.

The RFP for the corridor study is currently being reviewed and advertisement of the RFP should occur within the next thirty days. It is anticipated that once the consultant selection process has occurred, the corridor alignment study should take approximately three to four months to identify the most feasible alignment.

**D. Compliance with the Montana Subdivision and Platting Act and local subdivision regulations.** [Article 23-200, Section 23-201, BMCC] [Article 23-300; Section 23-304(c)(4) BMCC]

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

**E. Sanitary requirements.** [Article 23-200, Section 23-201, BMCC] [Article 23-300; Section 23-304(c)(5) BMCC]

The City of Billings Public Utilities Department will provide both domestic water and sanitary sewer service. Their facilities meet all of the requirements of the State of Montana.

**F. Zoning requirements.** [Article 23-200, Section 23-201, BMCC] [Article 23-300, Section 23-304(c)(6) BMCC]

This site is currently zoned Residential-9600. The subdivision will comply with all of the R-9600 zoning requirements.

**G. Planned utilities.** [Article 23-300; Section 23-304(c)(7) BMCC] [MCA 76-3-608(3)(c)]

Utilities will be extended to the subdivision within the utility easements as shown on the preliminary plat.

**H. Legal and physical access.** [Article 23-300; Section 23-304(c)(8) BMCC] [MCA76-3-608 (3)(d)]

Legal and physical access to this subdivision is provided by Molt Road. All roads providing access to and within this subdivision are currently dedicated to the public.

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

**9. CONSIDERATION of a Council Initiative by Councilmembers Poppler and Brown to create a Council Budget/Finance/Audit Committee. (Action: decision on committee creation and direction to staff.)**

Councilmember Brown moved to consider the Council Initiative to create a Council/Finance/Advisory Committee, seconded by Councilmember Poppler. Councilmember McDermott said she has always been impressed with the amount of information that she received when serving on other committees and boards. She noted that a constituent called and said he feels that all board and committees need to be more involved in the budget and with staff than in the past. She said the Council should look at how the boards, committees and commissions are functioning.

Councilmember Kennedy asked Councilmember Brown what the scope of this committee would be. Councilmember Brown said to advise the Council on financial information that is requested by the Council from the City staff. He said he has questions on subjects that are not covered in the current audit information supplied by the Finance Department. Councilmember Kennedy said his experience with Eide Bailey, the audit company contracted with by the City, has been that they are very thorough and any questions from Council have been satisfactorily answered. He stated he wasn't certain what this proposed advisory committee will do for the Council other than take away some of the Council's duties which he said was not appropriate. Councilmember Brown said he would like to have a professional person, not connected with the City, to speak to, that has the knowledge, education, and ability to understand the finances of this City. Councilmember Kennedy said the people at Eide Bailey are not employed with the City, but rather contracted with by the City. "At what point in time do we start taking the word of just somebody? It seems odd that you don't believe in an accounting firm that is held in prestige throughout the City and to rigid standards by GWAP", he stated. He also asked who would be appointed to this committee, because each Councilmember might look at the same person in a different light. Councilmember Kennedy said Eide Bailey is a good resource for the Council to use in interpreting the financial aspects of the City. He asked Councilmember Brown to put something in writing to present to the Council that would include a scope of work, how the members would be appointed and how the committee would function. Councilmember Brown said he is looking for an answer to the problem of understanding the finances of the City. He is concerned that something like the Enron scandal could happen here. Councilmember Iverson pointed out that Councilmembers are entitled to take the entire budget to anyone and ask for advise. She reminded the Council that the Finance Department conducted ten meetings to explain the budget to the Council.

Councilmember Larson said the comparison of what happened at Enron to the City of Billings does not make sense to him. There is a tremendous amount of transparency in terms of the ability of the Council to find information. He said it is the councilmembers' obligation to "be the barrier", not another committee. He said the scope of this proposed committee says there is no trust in the City staff, nor the auditors, but only with this committee. He said he is not sure what the real issue is, but rather than discuss this now it may be more appropriate to discuss at the next retreat. He said he is concerned that this committee will not have a clearly defined mission.

Councilmember Brown said the City spent \$170 Million on services to the community in a year's period of time. He said he questions whether it is spent wisely. He noted the bike trail is a good example of this. He would like someone to advise him on those types of issues. Councilmember Larson said a finance committee has "no

business telling the Council” that the decisions they make are appropriate; this is what the constituents elect the Council to do.

Councilmember McDermott said she does not view this proposed committee as an audit committee and agrees that the Council is the audit committee. She said she sees this committee as a finance advisory committee, to advise the same way the Planning Board advises the Council regarding zoning issues. She noted that the Council can accept or reject the advice of the boards, commissions and committees. She said she sees no problem with this proposed committee. Councilmember Ohnstad said he sees a problem with getting someone to give this type of technical advice when they would be “out from under the protection of their umbrella of liability coverage” whereas the auditor hired by the City is insured.

Councilmember Jones said this committee would just be a “datapoint”; a resource for the Council when they must consider something that is beyond their understanding. He said he is concerned about the committee and agrees it needs to be defined further.

Councilmember Iverson said our staff is working with a skeleton crew and this will add additional work to an already overworked staff. She said she objects to the whole concept.

On a voice vote, the motion failed with only Councilmembers McDermott, Brown, Poppler and Jones voting “yes”.

### **Council Initiatives:**

Councilmember McDermott proposed that the Council meet with the auditors prior to the audit to talk about the scope of work and provide Council direction. City Administrator Dennis Taylor said the audit team meets with the Finance Director, the Finance staff, and the City Administrator to talk about the scope of the audit and what additional areas their attention may need to be directed to. He noted that a meeting with the auditors and the Council prior to the audit could be arranged if the Council has specific directions for the audit. He presented several meeting options that could be considered. He noted this might have some price consideration due to deviation from the required audit. Mr. Taylor said the audit team will be here the week of the 19<sup>th</sup> of August and the last two weeks in October. Mayor Tooley asked if there is a three year agreement with the auditing firm. Mr. Taylor said the City was in the second year of a three year agreement. He added that the Council could consider adding another budget analyst to the Finance staff to prepare detailed reviews of specific issues and areas of the budget. He said these measures could improve areas of effectiveness, efficiency and save money while having a “sentinel” effect for fraud or abuse. Mr. Taylor said Assistant City Administrator Kristoff Bauer will research the present contract with the auditors to ascertain options available to the Council.

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 9:22 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Susan Shuhler, Deputy City Clerk