

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 25, 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 Mick Ohnstad.

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

MINUTES – November 12, 2002. Approved as printed.

COURTESIES – Jack Eagle of the Exchange City Golf Corporation presented the Mayor with a check for \$40,000 for this year's annual proceeds from the golf course operations. This will be utilized for future parks and recreation improvements and development.

PROCLAMATIONS – Mayor Tooley. None

BOARD & COMMISSION REPORTS. None

ADMINISTRATOR REPORTS – Dennis Taylor.

- Mr. Taylor informed the Council that last week's Council Initiative to advertise for membership on a Blue Ribbon Committee for the Parks Bond Issue has been done. The advertisement is also on the City's website. The deadline for applications is December 13, 2002.

CONSENT AGENDA:

1. **A. Contract** with Emergency Services Education & Consulting Group (ESECG) for a Fire Station Location and Staffing Study, not to exceed \$42,025.00.

B. Temporary Use Agreement with Big Sky Economic Development Authority (BSEDA) for use of city-owned land on the southwest corner of 2nd Ave. S and S. 26th St. for temporary parking for the Deering Clinic facility.

C. Supplement to H.T.E. Software License and Services Agreement to acquire the Tax and SID software module, \$62,800.00.

D. Renewal of the Exchange City Golf Corporation (ECGC) Management Contract, term: 5 years ending 12/31/07.

E. Approval of the 2003 Exchange City Golf Corporation (ECGC) Annual Budget.

F. Allocation of HOME funds to Irma House for the acquisition of property and site clearance at 502 S. 33rd St., \$30,000.00.

G. Second/final reading ordinances 02-5227 and 02-5228 expanding the boundaries of Ward IV to include recently annexed property in Annex. #02-14 and #02-15: that portion of Yellowstone Club Estates north AND south of Hagen Drive and adjacent properties north of Rimrock Road.

H. Second/final reading ordinance 02-5229 expanding the boundaries of Ward I to include recently annexed property in Annex. #02-16: Tract 1B, C/S 1446 Amended (Less the Interstate 90 right-of-way) and Block 1, Lot 4, Cereus Subdivision, both located in NE4, Section 17, Township 1 South, Range 26 East.

I. Resolution 02-17926 relating to \$784,000 Special Sidewalk, Curb, Gutter, and Alley Approach Bonds, Series 2002B, creating Special Sidewalk, Curb, Gutter and Alley Approach Fund and prescribing covenants for the security of the holders of the bonds.

J. Resolution 02-17927 relating to \$7,135,000 Tax Increment Urban Renewal Refunding Bonds, Series 2002, in estimated aggregate principal amount of \$7,135,000, authorizing the issuance and calling for the public sale thereof on 12/09/02.

K. Resolution of Intention 02-17928 to create PMD #4014 and repealing Res. 02-17917 for a park maintenance district in Rush and Shiloh Point Subdivisions and setting a public hearing date for 1/13/03.

L. Resolution of Intention 02-17929 to create PMD #4018 for a park maintenance district to maintain Frances Park on Burning Tree Road in Block 56 of Lake Hills Subdivision, 24th Filing, and setting a public hearing date for 1/13/03.

M. Bills and payroll.

(Action: approval or disapproval of Consent Agenda.)

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

Councilmember Larson moved for approval of Item 1A, seconded by Councilmember Brewster. Councilmember McDermott asked if this is the contract that the Council allocated \$150,000 for in the Capital Improvement Plan. City Administrator Dennis Taylor replied "yes". He said this is the actual bid received while the Capital Improvement Plan amount was only an estimate. On a voice vote, the motion was unanimously approved.

Councilmember Larson moved for approval of Item 1B, seconded by Councilmember Brown. Councilmember McDermott asked why the City is allowing this

parking area to be utilized without the benefit of “blacktopping”. City Administrator Dennis Taylor said it is his understanding that this Council action is an interim measure until the Deering Clinic finalizes its plans to expand its facility. Their plan provides for purchase of other permanent parking. He said he does not anticipate this will last longer than 1-2 years. Councilmember Brown asked why the City is renting this parking area for \$1.00 rather than what it is worth. Mr. Taylor said it is because the Deering Clinic serves a large population of our community and the City/County Health Department and this is a way to assist them with their parking problem while they look for a long-term solution. Councilmember Brown said he feels it is the duty of the City to make the best use of their property from a financial standpoint. Mayor Tooley said this is a value decision to help support an institution that provides services to the community. Councilmember Jones asked who paid for the recent placement of materials and grading. Mr. Taylor said it was paid for by representatives of Big Sky EDA and not by the City. Councilmember Jones asked if this exception would be provided to a non-governmental entity. Mr. Taylor said “no, probably not”; this was an exception to regular business practices. Councilmember Poppler asked if blacktopping will be provided or will only the gravel remain. She said she agrees with Councilmember McDermott that this will create a muddy mess. Mr. Taylor said this is for a six-month period and there will be no further improvements to the parking area. On a voice vote, the motion was passed with Councilmember Jones and Brown voting “no”.

Councilmember Larson moved for approval of Item 1D, seconded by Councilmember Brewster. Councilmember McDermott stated that this money is generated from park land and any money generated should be returned to City park land. Councilmember McDermott moved to amend the agreement in Item 7 by striking the words “within the City of Billings and/or”, seconded by Councilmember Gaghen. Councilmember Larson said under the current agreement the Exchange Club is required to do a certain amount of maintenance on the golf course. He noted they return a substantial amount of money, witnessed with tonight’s presentation of \$40,000, that goes into City parks. He said this amendment would take away the Exchange Club’s discretion of how to allocate funds. Councilmember McDermott said her amendment is intended to establish perimeters and not to take the decision process from the Exchange Club. On a voice vote, the motion to amend failed. On a voice vote to renew the contract, the motion was unanimously approved.

Councilmember Larson moved for approval of Item 1E, seconded by Councilmember Kennedy. Councilmember Jones noted the proposed rate change is a \$2.00 increase for both 9-hole and 18-hole fees. Councilmember Jones amended the motion to increase the 9-hole fee by \$1.00 and the 18-hole fee by \$2.00, seconded by Councilmember Poppler. Councilmember Jones said he would like to keep the fees affordable for families and youths that use the course often. Councilmember Larson noted that the City has formed a public/private partnership and the management group of the golf course has prepared a budget that was researched and studied in detail. He said he thinks the Council is second-guessing their efforts with this motion and he is hesitant to do this without further examination. He said he thinks the Council should take this into consideration before adjusting their budgetary efforts. Councilmember Brewster asked when the last rate increase was instituted. City Administrator Dennis Taylor noted that according to the Parks and Recreation Director, it was three years ago. Councilmember

Jones said this is entertainment for a lot of kids during the summer. He said he feels that the City would still get a return with a \$1.00 increase and wants to make sure this City owned property is available at a reasonable cost. Councilmember Brown called for the question, seconded by Councilmember McDermott. On a voice vote to stop the debate, the motion was approved with Councilmember McDermott voting "no". On a roll call vote, the motion to amend the fee increases was approved 6-5 with Councilmembers McDermott, Gaghen, Brewster, Poppler, Ohnstad and Jones voting "yes" and Councilmembers Brown, Iverson, Kennedy, Larson and Mayor Tooley voting "no". On a voice vote for the amended main motion, the motion was unanimously approved.

REGULAR AGENDA:

2. DISCIPLINARY HEARING pursuant to 7-22-3124 MCA on the disciplinary action for City of Billings Fire Fighter Michael Stief. Staff recommends approval of the disciplinary action. (Action: approval or disapproval of staff recommendation.)

Upon request of Mr. Stief's attorney, the hearing was closed to recognize the individual's right to privacy. Council granted the request to close the hearing and moved the item to the end of the agenda for hearing and action.

3. Allocation of HOME funds and Housing Development Agreement with Community Leadership Development Inc., (CLD) for the development of affordable housing in Chrysalis Acres Subdivision, \$200,000.00. Staff recommends approval of the Development Agreement. (Action: approval or disapproval of staff recommendation.)

Councilmember Jones moved for approval of the staff recommendation, seconded by Councilmember Larson. Councilmember Gaghen said the Southwest Corridor Task Force has gone on record as being opposed to this development and asked what the plans would entail to best serve this funding. She asked if the \$200,000 over 2 years benefitting four homes would be as beneficial as the King's Green Development. Community Development Joe Burst, HOME Program Coordinator, said the King's Green Development and the Chrysalis Acres Subdivision are very similar in that they will have the same impact on affordable housing, which was assessed in 1999 as Community Development's most critical need. He noted there is no housing being constructed under \$100,000. He added the staff thinks the need is so critical that both projects need to be supported and both are very feasible. He noted that funding for this project has come from St. Vincent's and the Murdock Foundation. Councilmember Gaghen asked when this project would begin. Mr. Burst said it would begin in the Spring of 2003. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION 02-17930 levying a special tax upon certain property owners to defray the cost of cutting/exterminating weeds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Administrative Services Director Robert Keefe said these assessments are for weed maintenance that took place too late to meet the deadline for the annual assessments done a few weeks ago. He said it creates problems when these late

assessments are held over to the next year because certain properties get sold in the meantime and the new owner is assessed for the former owners' actions. He noted the County has agreed to send out amended tax statements for the properties involved.

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. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC Sections 24-401 –403, 412, 428, 429, 454, 456, 463, 464, 467 and 472; repealing Sections 24-430, 432, 444, 463.5 and adding Section 24-1011 providing for changes to the parking ordinances. Staff recommends approval. (Action: approval or disapproval of ordinance on first reading.)

Parking Supervisor Liz Kampa-Weatherwax introduced Dan Berry, Chairman of the Parking Advisory Board. Mr. Berry said these changes are primarily housekeeping changes. The major change is to eliminate the 2-hour meter plugging allowance. This was a test to see if people would be "good neighbors" in the downtown area and leave the meters for the shoppers. He said this was found not to be the case and the proposed change would correct that issue. He noted that all of the recommended changes were unanimously supported by the Parking Advisory Board. Councilmember Brown said the fines are increasing significantly and he asked if there would be exceptions made for stalled cars. Mr. Berry said Ms. Kampa-Weatherwax has discretionary powers to waive fines in certain special circumstances. Ms. Kampa-Weatherwax noted there are forms to document these occurrences that are specifically for that purpose and are used on a weekly basis. She noted that the back of the parking tickets advise the correct procedure to follow in these instances. Councilmember Kennedy noted that the downtown parking enforcement has never been handled so well or expediently before. Councilmember McDermott asked if the downtown merchants have given their support to these changes. Mr. Berry said "yes". Councilmember Jones asked if the parking during the Farmer's Market will be addressed. Mr. Berry said this is the same challenge with every downtown event. Ms. Kampa-Weatherwax noted this still a work in progress.

Ms. Kampa-Weatherwax reiterated that this recommendation has been created from input from the Parking Advisory Board, the Traffic Control Board and City staff and has been an on-going project since 1997. A portion of the original recommended changes was adopted in April 2001.

She said that consistency was the main objective. The first group of corrections pertains to *technical corrections*. There are a number of section changes that reword the language, changing titles or headings that will clarify the City Code. Some sections are being repealed to avoid unnecessary repetition. Another section is being amended to reflect the actual time limit provided for delivery vehicles.

She said the next group of changes pertains to *courtesy tickets* that included repealing a section that deals with the "out of county/out of state" courtesy tickets and adding an escalating fine structure. However she added, if an out of county/out of state driver parks in an un-metered zone they are ticketed as a regular parker. These changes would allow officers to give one courtesy ticket to all offending drivers in both metered and un-metered zones every 30 days. She also noted that this will discourage abuses to the

courtesy ticket system by out of county drivers who work in Billings.

Mr. Kampa-Weatherwax said in *un-metered time zones* the recommendation would expand the escalating fine system to un-metered zones to improve the consistency in ticketing. This system begins with a courtesy ticket each 30 days.

She said *Meter Plugging* allows patrons to extend the parking time beyond the established maximum time allotted and was repealed in April 2001. The Parking Advisory Board recommends restoring this section to encourage the use of off-street parking.

Ms. Kampa-Weatherwax said there is no consistency in stating fines or *fine increases*. She said the recommendation is to clarify the fine structure and create one specific section where all parking-related fines could be found. This will include a violation chart with cross-referencing section numbers. The four main goals of fine increases are 1) improve consistency in violations, 2) deter violators of safety-related zones, 3) deter habitual offenders, and 4) be more consistent in fine structure with comparable cities.

She discussed safety-related violations and cited the number of tickets issued for those violations in the past year. She also compared fines in other cities according to the International Parking Institute's June 2001 report. She showed the violation chart that includes the different fine increase recommendations. She explained the difference between a "loading zone" violation and "no delivery permit" violation in answer to Mayor Tooley's question. Councilmember Brown asked if there was ever a point where a ticket is purged from the system. Ms. Kampa-Weatherwax said "yes" and noted there is a possibility that habitual offenders would be turned over to collections and include late fee charges.

She noted taking into consideration that this action should increase the level of deterrence, the Parking Division's revenue could increase as much as \$78,000.

The public hearing was opened. GREG KRUEGER, DIRECTOR OF THE DOWNTOWN BILLINGS ASSOCIATION, 2906 3RD AVENUE N, said the Downtown Billings Association is a private non-profit membership organization representing approximately 200 businesses in the downtown area. He said working with the City staff and Ms. Kampa-Weatherwax on many occasions has been a wonderful experience. He noted that the merchants have reviewed the changes and support the recommendations. He said he is glad to see the meter plugging going away. He said the parking staff have become ambassadors for the downtown area, handing out maps, directories and parking tokens. There were no other speakers. The public hearing was closed.

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

6. PUBLIC HEARING AND RESOLUTION 02-17931 annexing Tracts 2A, 2B, 2D and 3C, C/S 2991, (Annex #02-17). Staff recommends conditional approval of the public services report, the annexation agreement and the resolution. (Action: approval or disapproval of staff recommendation.)

Planning staff member Bruce McCandless said Legacy Homes, Inc. has petitioned the City to annex this property in order to obtain utility services. He said the staff recommends that the City Council approve this public service report, the annexation agreement and the resolution annexing this property, with the following conditions:

1. That the draft annexation agreement be modified as follows and any minor wording changes that are necessary to bring the agreement into general conformance with other agreements and City policies:
 - a. All of the property described as Tracts 2A, 2B, 2C and 3C C/S 2991 must be included in and covered by the agreement.
 - b. Paragraph 5, Park Improvements, shall require the owner to dedicate parkland or cash in lieu of land for the entire property as though all such property were included in a subdivision.
 - c. In accordance with the Annexation Policy, all of the property will participate in an SID and/or PMD for park development and maintenance on this property or for nearby parks that benefit future residents of this property.
2. The annexation agreement must be approved by the Planning and Community Services Department and executed by the owner and Mayor before the annexation resolution is recorded.
3. That prior to development of the site the following shall occur:
 - a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - b. A Subdivision Improvements Agreement (S.I.A.) and Waiver of Protest to SID and PMD shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.
4. All of the adjacent Monad Road along with private property shall be annexed.

He said the total area to be annexed is approximately 35 acres and is located on Monad Road at 30th Street West. The present zoning is Residential 9,600 and the proposed land use is for single and two-family dwellings. He noted that Zone Change #707, that will be before the Council at their next meeting, will rezone three tracts from Residential 9,600 to Residential 7,000 with the remaining tract will be rezoned Residential Multi-Family Restricted.

Mr. McCandless said the Planning staff prepared a public services report that give a brief analysis of predicted services and facilities impacts. He noted that this property is conducive to providing all the City services. Most of the financing comes from the developer or will be assessed to future owners through SIDs, which include trunk extension fees for water and sewer trunk lines, park improvements, stormwater drains and street improvements.

He said this annexation is consistent with the 1990 Yellowstone County Comprehensive Plan as it is an infill project on a wholly surrounded county island. It is also consistent with the Annexation Policy in four ways: 1) it is within the sphere of influence, 2) it is contiguous to the City as it is a wholly surrounded island, 3) it is larger than 10 acres and 4) it may help to support relatively affordable housing.

Mr. McCandless said a fiscal impact analysis was prepared. He said this development may not supply enough taxes and fees to support some of the general City services such as Fire and Parks. He noted the analysis is based only on assumptions and has a limited scope and there are many variables.

He said the Annexation Agreement is necessary because not all property will be subdivided and the Planning staff wanted to ensure that all of the properties are subject to the same rules that are applied to a subdivided property. This agreement will help to mitigate any potentially negative impacts from the development, mainly focused on the external and internal facilities. Councilmember Brewster asked if the developer would contribute funds to the signal at 32nd and Monad Road. Mr. McCandless said "yes".

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

7. PUBLIC HEARING AND SPECIAL REVIEW #730: A special review to allow the location of an automobile service station in the PD-1 zone (underlying zoning of Neighborhood Commercial) on Lots 26A, 26B and 27-31, Block 4 of Yellowstone Addition. The subject property is located at 750 Broadwater Avenue. JWL Enterprises, Inc., owner; Richard Larsen, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this special review is located at the southeast corner of Broadwater Avenue and 8th Street West. The underlying zoning is Neighborhood Commercial due to a use that is no longer there, a car rental operation. The new request is for an automobile service station to perform minor automobile repair, thereby requiring the special review. He said the Zoning Commission has reviewed this and recommends conditional approval as follows: 1) The "service station" uses allowed on the property include minor automobile repairs such as oil changes, lubrication, air conditioning service, tune-ups, diagnostics, brake jobs, alignments, etc. Uses that are specifically prohibited include the following: engine overhauls, painting or body work, drive-train repair and rebuilding, 2) the hours of operation for the service station use shall be limited to between 7 a.m. to 7 p.m., and 3) the landscaping on the site shall be brought into compliance with the approved site plan from the Planned Development approval. This will involve the planting of additional bushes and trees and replacing any dead vegetation. Any new vegetation shall conform to the minimum sizes stated in the landscaping regulations, BMCC 27-1109, at the time of planting.

The public hearing was opened. DICK LARSEN, 1733 PARKHILL said he represents the petitioner. He said the basic hours of operation would be from 8 AM to 6 PM, however the Zoning Commission allowed for early drop-offs and late pick-ups that the hours would extend from 7 AM to 7 PM. He noted there was no opposition from the neighborhood task force. Councilmember Gaghen asked if there would be pumps on the north and west side of the building. Mr. Larsen said there would be no pumps; it is a service station without gas. There were no other speakers. The public hearing was closed.

Councilmember Brown moved for approval of the Zoning Commission recommendation, seconded by Councilmember Larson. Councilmember Larson asked Councilmember Brown if his motion included the hours stated on page two that read 7 AM to 7 PM rather than the hours on page three that state 8 AM to 7 PM.

Councilmember Brown said his motion includes the 7 AM to 7 PM hours. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #705: A zone change within the Briarwood Planned Unit Development from Residential-9,600 to Residential-7,200 on a portion of the remainder of Tract 10A of Certificate of Survey No. 2544, 3rd Amendment (Lot 27 of proposed Ridgewood Estates, 2nd Filing). The subject property is generally located at the end of Macmasters Road, north of Briarwood Boulevard. Ridgewood, LLC, owner; Bert Lane and Ray Mehrer, agents. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff member Juliet Spalding said this zone change request is from Ridgewood LLC to change from a Planned Unit Development with underlying Residential 9,600 to Planned Unit Development with underlying Residential 7,200. She said the site is located 3 miles south of Billings in the Briarwood community on the very west end of McMasters Road and is 3.7 acres in size. The site is currently vacant and the planned use is for 11 duplex condominiums and 3 single condominiums for a total of 25 units. She noted that some of the surrounding zone classifications are Residential 9,600, Residential 7,200, Residential 6,000, Neighborhood Commercial and Multi-Family Residential. The vast majority of Briarwood is developed as single-family residential. She noted there are areas that are zoned Planned Unit Development with underlying "Park" to the south of this parcel that accommodates the 18th hole of the Briarwood Golf Course. To the east is vacant land that is zoned Planned Unit Development with underlying Residential 9,600 and to the north and west is undeveloped land also zoned Planned Unit Development with underlying Residential 9,600. She said the Zoning Commission recommended approval on a 2-1 vote. Councilmember McDermott asked Ms. Spalding to explain the one opposition vote from the Zoning Commission. Ms. Spalding said 3 persons spoke in opposition at the Zoning Commission meeting, and were concerned that the duplexes would be designed and used for rental units. She said the developer explained that they would be owner occupied duplex units.

The public hearing was opened. KEITH BROWN, BROWN AND ASSOCIATES, 105 SHRINER ROAD, PARK CITY, said he is the project engineer for this project. He said these units were planned to accommodate persons who desired residences with less yard maintenance. There is a big demand for these "condominium-ownership" with a "duplex layout" type units. He noted that this is an area that will not impact existing homes due to its location. Councilmember Gaghen asked about the designation of condominium duplexes. Mr. Brown said they are called duplexes, but it just means two units are joined together on a common ground with common rules. He said they are meant to be individually owned. Councilmember Gaghen asked about the price range. Mr. Brown said they are lower than the cost of a full-sized single-family house. Councilmember Larson asked if this developer did previous condominium development in Briarwood. Mr. Brown said "yes". He noted the insurance industry has made it harder to build condominiums. There were no other speakers. The public hearing was closed.

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

9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #706: A zone change from Agricultural-Open Space (County) to Public and Entryway General Commercial on Tract 1-B of Certificate of Survey No. 1446 Amended and Lot 4, Block 1 of Cereus Subdivision. The subject property is generally located at 5062 South Billings Boulevard. City of Billings and Robert Studer, owners. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this zone change is on property located on the southwest corner of the South Billings Boulevard Interchange and Interstate 90 and includes 28 acres. In October the County Commissioners approved a change in the South Billings Boulevard Interchange Master Plan for the property north of Midland Road to be zoned Entryway General Commercial and south of Midland Road to be Public. He said the area zoned for Public will become the site for the City Operations Center. He said the development of this property would provide for the extension of Midland Road. He noted that the City is close to closing on a land trade with the owner of Lot 4, Block 1 of Cereus Subdivision for Lots 1-3, Block 1 of the new subdivision. Mr. Bollman said the Zoning Commission, by a vote of 2 to 1, has recommended denial for the following reasons: 1) It is not an appropriate place for the City Operations Center, and 2) because of the proximity to the interstate, this property would be more valuable as commercial development that would add to the tax base. He said the staff is recommending approval of the zone change.

The public hearing was opened. RICHARD CLARK, 1207 25TH STREET WEST, said he feels this is a very valuable piece of commercial property with the extension of Midland Road. He said he thinks the City Operations Center should be built in a less desirable area. There were no other speakers. The public hearing was closed.

Councilmember Iverson moved for approval of the ordinance on first reading, seconded by Councilmember Larson. Councilmember Larson said he understands the concerns of the Zoning Commission, but the "valuable property" has been vacant for a long time. He noted that commercial development won't occur until development prompts the extension of Midland Road which will improve the value of the properties west of South Billings Boulevard. Another consideration is the opportunity that is given to Sysco to expand their operations and provide needed jobs for this area. He said this zone change supports that critical need. Councilmember McDermott said she also understands the concerns of the Zoning Commission but feels there is value to the City by locating in this central area. Councilmember Gaghen said she supports the zone change and noted that anything that facilitates the Sysco expansion is a plus for Billings. Councilmember Brown said he was concerned about more land coming off of the tax rolls, with 14 acres of land owned by the City. He said he will support the zone change because of the extension of Midland Road. Councilmember Jones said he has concerns because this is a good piece of land for commercial development and about what the City plans to put there. On a voice vote, the motion was unanimously approved.

10. PRELIMINARY PLAT of Yellowstone Ridge Subdivision. Planning Board recommends approval of the proposed findings of fact and the preliminary plat. (Action: approval or disapproval of Planning Board recommendation.)

Planning Staff Member Bruce McCandless said this property is located on the east side of 54th Street West and north of Rimrock Road. The present zoning is Residential 9,600 and the property is presently vacant and has not been actively farmed for a number of years. He said the area is 28-1/2 acres and the proposal is to develop 40 residential lots that will remain single-family residential. The lot sizes will be 10,000 to 45,000 square feet. He said there are public dedications that will equal 8 acres that meet the requirements for a park. He noted that a number of public support letters have been received concerning this subdivision and in particular the park land dedication and continued public access to the trail and the Rims. He said the staff recommends approval with the following conditions:

1. Submit a summary Environmental Assessment before final plat approval. *The EA is required to meet MCA 76-3-210(a), BMC 23-1101 and Attorney General Opinion #49-023 unless the subdivision is exempt under state or local codes.*
2. Minor wording changes may be made in the final documents upon request of the Planning or Public Works Departments to clarify the documents and bring them into standard, acceptable format. The changes are not intended to alter the intent or extent of the documents. *Standard condition that permits minor changes to the final plat documents without requiring the subdivider to repeat the subdivision review and approval process.*
3. Subdivider shall comply with all applicable federal, state and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations. *This condition informs the subdivider that all local and state laws and policies apply to the subdivision even if they are not specified in the documents.*

The City/County Planning Staff has prepared the Findings of Fact for the Yellowstone Ridge Subdivision and the Yellowstone County Board of Planning recommends that the City Council adopt them. 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, subdivisions must meet the provisions of Billings Municipal Code (BMC) 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? [BMC 23-304 (c) (1) and MCA 76-3-608 (3) (a)]

1. Effect on agriculture

This subdivision will have no impacts on agriculture. This is dry land pasture that hasn't been actively used for at least the past two years. The Natural Resources Conservation Service responded to a request for comments and reported that the land is suitable for rangeland. There are no apparent irrigation or other agricultural users' facilities.

2. Effect on local services

- a. Utilities – The closest water and sewer facilities are in the adjacent Yellowstone Club Estates (YCE). Since the YCE was annexed by the City on October 28, 2002, the subdivider intends to connect to water and sewer facilities that serve that subdivision. All extension costs will be paid by the subdivider and the work must meet City and state construction standards.
Stormwater flows from off-site (north) through a ravine on this property. The ravine will be contoured and continue to carry that stormwater as well as water that falls on this property. It will be impounded by Rocky Mountain Blvd. and retained on-site. Storm drains will be constructed in this area sometime in the future that will accept this storm flow. Stormwater along 54th Street West will continue to flow south in the borrow ditch and will eventually enter Cove Creek. The ravine side slope will be used for trails.
Private utility companies will provide services 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 - Approximately 2,900 lineal feet of public streets will be built in this subdivision. The traffic from this property will exit to the west onto 54th. Future improvements will be required at the 54th/Rimrock intersection and the subdivider will contribute funds for their construction proportionate to the predicted subdivision impact on the intersection. 54th north of Rimrock is classified as a collector street and as a minor arterial south of Rimrock. Rimrock is classified as a principal arterial street. 54th will be widened adjacent to the subdivision and all interior streets will be built by the subdivider.
- 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 St. West and it is approximately 5 miles from this property. Police response will depend upon officer availability and location when a call for service is placed. The Police Department responded to a request for comments and didn’t object to the subdivision but did point out that additional development in this location will increase demand on services and extend the department’s patrol responsibilities. AMR provides medical care and transport and response would probably come from the west end station that is located on Grand at 25th Street West.
- e. Schools – The subdivision is in School District 2. The subdivision residents will attend Arrowhead Elementary, Will James Middle and West High School. The district did not respond to a request for comments, so it is assumed that the facilities are adequate to serve the proposed subdivision.
- f. Parks and Recreation – The subdivider initially proposed to dedicate parkland within the subdivision, mostly the ravine that traverses the property from north to

south. The PRPL Department requested that this property owner work with surrounding owners to develop a proposal for a larger and more centrally located park that could include some active recreation play/sports area. The discussions weren't fruitful so the developer proposed to dedicate some parkland and some cash in lieu of land. The PRPL Department rejected the land as unsuitable for park development. The subdivider then proposed to pay cash in lieu of parkland dedication. The Planning Department and subdivider hosted an informal neighborhood meeting on November 4th. About 60 residents of nearby neighborhoods attended the meeting and they expressed their concerns for continuing hiking/biking access across the property and to the Rimrocks. The subdivider responded to that input by redesigning the lots to assure public access across the entire subdivision (E-W) and preserving open space on a high plateau on the northeast corner of the property. The PRPL Department agreed to accept this land as the subdivision's parkland dedication. About 35 neighborhood residents attended the Planning Board hearing and voiced their support for the redesigned subdivision and its dedication of open space. The subdivider may formalize and stabilize the trails on this land but no other improvements are planned. The City recently approved an agreement with Forbeses for their donation of land to the City to be known as Cottonwood Park. The land is located on 54th Street West, south of Rimrock Road. One stipulation in the agreement is that the City will endeavor to assess park development and maintenance costs to all properties within 1-½ miles, which includes this subdivision.

- g. MET Transit – MET's closest service is to the St. John Lutheran Home, located at Rimrock and Shiloh Rd. The predicted development density and relative affluence of the area probably won't support public transit services

3. Effect on the natural environment

There should be little impact on the natural environment. Because of the steep slopes and to conform to state law, erosion controls will need to be used during construction. There may be minor increases in air pollution during construction and from additional vehicle traffic in the area.

4. Effect on wildlife and wildlife habitat

There will be little impact on wildlife or wildlife habitat. The regional office of Fish Wildlife and Parks had no specific comments on the subdivision. There are no known endangered or threatened species on the property.

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.

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

An Environmental Assessment is required but it has not been submitted or reviewed. The subdivider claimed a state law exemption that would not require an EA because the land is within a master planned area. Since the MCA 76-3-210(a), amended by the 1999 Legislature, and AG opinion #49-023 eliminated this provision and instead requires a compliant growth policy to claim the exemption, the subdivider is required to prepare an EA. The EA is not expected to raise environmental concerns and since this is a new requirement, Planning Staff recommends that the EA be submitted in a summary form and that its submittal and approval be postponed until the final plat submittal.

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

1. Comprehensive Plan:

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

- a. Encourage a variety of housing types and/or styles within proposed housing developments. C-2
- b. Safe, energy efficient and sanitary housing. C-6
- c. Capitalize on existing public water supply systems. H-2
- d. Capitalize on existing public sewage systems and improve sewage systems in areas not currently served by public systems. H-4
- e. 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
- f. Curb urban sprawl and discourage leapfrog development. K-7

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

None

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. No improvements are planned for 54th except widening adjacent to the subdivision. Traffic control improvements at 54th and Rimrock will be constructed in the future and the subdivider will contribute to the improvements. Internal streets to serve the lots will be constructed by the subdivider using a private contract.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. This and adjacent land is used heavily by bicyclists and pedestrians and many informal trails have developed over the years. A trail will be built within the drainage ravine and continued across the dedicated park/open space to provide access to the talus slope and other parkland above this property. The land dedication and retaining access to informal trails may set a precedent for future subdividers in the vicinity.

4. West Billings Plan

The subdivision is within the West Billings Plan study area and conforms to the following goals and policies:

Planned Growth Goal 1, Policies L & P – Subdivisions should be approved with central water and sewer systems or provide for their future connection. This subdivision will be served by City water and sewer.

Planned Growth Goal 1, Policy A – Establish development patterns that use land more efficiently. If the subdivision remained in the County and had septic and well systems, no more than approximately 20 lots could be created. Developing within the City permits higher density, in this case 40 lots compared to 20.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMC 23-304 (c) (4)]

This proposed subdivision meets the requirements of the Montana Subdivision and Platting Act and the local subdivision regulations with the exception that concerns the Environmental Assessment. The subdivider and the local government have complied with the subdivision review and approval procedures that are set forth in the local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? [BMC 23-304 (c) (5)]

The subdivision will use City 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? [BMC 23-304 (c) (6)]

The property is in the Residential 9600 zoning district and this subdivision will conform to that zoning.

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

The subdivision 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 BMC 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 Yellowstone Ridge 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, when the vacant parcel is developed it will pay property taxes and fees that should help to support those services.
- The proposed subdivision conforms to several goals and policies of the Yellowstone County Comprehensive Plan and the West Billings Plan and doesn't conflict with the Transportation or BikeNet Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, sanitary requirements and provides legal and physical access to each parcel.

He said the following clause was submitted by Bill Cole after the staff report was prepared and will be part of the final Subdivision Improvement Agreement. "It is also the City's intention to create one or more special improvement districts in an area that includes this subdivision to fund the construction and maintenance of Cottonwood Park (54th Street and Colton Avenue) as the City determines that development in the area justifies creation of such districts. Additional information concerning Cottonwood Park and the City's obligation to develop the park is contained in the Charitable Gift and Cottonwood Park Development Agreement, a copy of which is on file with the Yellowstone County Clerk & Recorder."

Mr. McCandless said the subdivision conforms to State laws, subdivision regulations, and zoning and does provide utility access and public access to all lots. There will be local service impacts but he said local fees and taxes will provide for this. Councilmember McDermott asked if the future residents would have to participate in two park maintenance districts, one for Cottonwood Park and the other for the access to the bike trails. Mr. McCandless said that is a possibility but said there is the possibility that the maintenance districts would be very low in cost because it is intended to remain a natural area and not a developed park. Councilmember Poppler asked if this would prohibit homes being built on top of the Rimrocks. Mr. McCandless said the Rimrocks are not a part of the property and there is a public park in the vicinity of the Rimrocks.

Councilmember Kennedy expressed concern about the requirement in Mr. Cole's suggested additional wording to the agreement. Mr. McCandless said the City is not obligated to create the SID to develop Cottonwood Park, but is strongly encouraged that it be accomplished. Councilmember Gaghan asked how close the homes would be located to the trail. Mr. McCandless said the distance would be approximately 100 to 150 feet and would be on a different elevation. Councilmember Kennedy asked if the Planning Board approved the additional language from Mr. Cole. Mr. McCandless said the addition was made after the Planning Board recommended approval. He said

similar language was discussed at the Planning Board meeting. He noted it was a request to the City Council to add the language to the Subdivision Improvement Agreement.

Councilmember Kennedy moved for approval of the Planning Board's recommendation, seconded by Councilmember Larson. Councilmember Kennedy amended the motion to add Mr. Cole's proposed language, seconded by Councilmember Larson. Councilmember McDermott asked if a precedent was being set by not having the Planning Board review the added language. Mayor Tooley said the City Council has the final authority to offer amendments to other City board and commission approvals and said he does not think this is a precedent. Councilmember Iverson asked Planning Department Director Ramona Mattix her opinion on this amendment. Ms. Mattix said the amendment is consistent with the Planning Board's recommendation, just a little more detailed. Councilmember Jones noted that the Cottonwood agreement was approved and signed and he said this amendment connects the two agreements together, which is a good idea. On a voice vote for the amendment, the motion was unanimously approved. On a voice vote for the motion as amended, the motion was unanimously approved.

11. PRELIMINARY PLAT of Rimrock West Subdivision, 5th Filing. Planning Board recommends conditional approval of the proposed findings of fact and the preliminary plat. (Action: approval or disapproval of Planning Board recommendation.)

Planning Staff Member Bruce McCandless said this is a request for conditional approval of a preliminary plat of Rimrock West Subdivision, 5th filing. The property is located south of Rimrock Road and north of the Big Ditch between 43rd and 46th Streets West. He said the present zoning is Residential 9,600 and the land encompasses 16.3 acres and is vacant. There is a proposal for 39 lots with 3 acres of streets and no parkland, as this requirement has been met with previous filings of the subdivision. He said this filing does require development of a 10 acre park in the southwest corner of the subdivision. He said the recommendation is for conditional approval and the conditions are:

1. Revise SIA 2.B. to require that the Larchwood Lane water and sewer services be installed to serve lots in the adjacent Rush Subdivision 6th filing. An alternate funding source for these services is being investigated. *BMC 23-704 & 705 require that complete sanitary sewer and water facilities be installed. The installation in the adjacent subdivision is requested by the Engineering Division in order to avoid excavating a new public street to install services at a later time.*
2. Submit a summary Environmental Assessment before final plat approval. *The EA is required to meet MCA 76-3-210(a), BMC 23-1101 and Attorney General Opinion #49-023 unless the subdivision is exempt under state or local codes.*
3. Minor wording changes may be made in the final documents upon request of the Planning or Public Works Departments to clarify the documents and bring

them into standard, acceptable format. The changes are not intended to alter the intent or extent of the documents. *Standard condition that permits minor changes to the final plat documents without requiring the subdivider to repeat the subdivision review and approval process.*

4. Subdivider shall comply with all applicable federal, state and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations. *This condition informs the subdivider that all local and state laws and policies apply to the subdivision even if they are not specified in the documents.*

The City/County Planning Staff prepared the Findings of Fact for the Rimrock West Subdivision 5th filing and the Yellowstone County Board of Planning recommends that the City Council adopt them. 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, subdivisions must meet the provisions of Billings Municipal Code (BMC) 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? [BMC 23-304 (c) (1) and MCA 76-3-608 (3) (a)]

1. Effect on agriculture

This subdivision will have no impacts on agriculture. The property hasn't been used as cropland for several years and grass/weeds are mowed as needed. The Big Ditch is located on City parkland that is immediately south of the property. The ditch will continue to be used by upstream and downstream customers and the ditch will be maintained by the ditch company. A proposed bike trail on the City park property may improve the ditch company's access to the ditch.

2. Effect on local services

- a. Utilities – Water and sewer facilities are partially in place within the subdivision and will be extended by the developer to serve this filing. The adjacent property to the east, described as Rush Subdivision 6th filing, does not have sewer tees and water or sewer service lines extended to it. In order to avoid excavating the street to be constructed with the Rimrock West development, the tees and services should be installed for the Rush 6th lots. The owner of that property has been asked to participate in the construction cost and to install the services when the Rimrock West property is being developed. If he can't be persuaded to participate, other financing will be investigated to pay for the tees and services. A storm drain is in place in Larchwood Lane and it continues to the east and south. Most of the subdivision drains to a retention pond in the park, at the southwest corner of the subdivision. This filing is responsible for constructing a stormwater pipe from the pond to connect to the existing stormwater drains. Private utilities are installed in the previous filings and will be extended to this property under the companies' operating rules.

- 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 - Approximately 2,350 lineal feet of public streets will be built for this filing. They will connect to existing streets. Most of the traffic from this property will exit to the east on Poly to Shiloh Road or to the north on 46th Street West to Rimrock Road. Both Shiloh and Rimrock are classified as arterial streets. A TAS was prepared for the entire subdivision and it covers this filing. The subdivider will contribute to installing a traffic signal at the intersection of Shiloh Rd. and Rimrock but further improvements aren’t required to serve 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 St. West which is approximately 4 miles from this property. Police response will depend upon officer availability and location when a call for service is placed. AMR provides medical care and transport and response would probably come from the west end station that is located on Grand near 25th Street West.
- e. Schools – The subdivision is in School District 2. The subdivision residents will attend Arrowhead Elementary, Will James Middle and West High School. The district did not respond to a request for comments, so it is assumed that the facilities are adequate to serve the proposed subdivision.
- f. Parks and Recreation – This subdivision is the fifth and final filing of the Rimrock West Subdivision. In 1986 the property owners deeded 10 acres to the City to meet the parkland dedication requirements for the entire subdivision. In 1995 the owners agreed to prepare a park master plan and to improve the park through an SID when the last phase was developed. The master plan was prepared and approved and the PRPL Dept. is preparing the documents to solicit proposals to do the final design and create an SID.
- g. MET Transit – MET’s closest service is to the St. John Lutheran Home, located at Rimrock and Shiloh Rd. This subdivision isn’t expected to impact MET because its low density and predicted income levels don’t support MET ridership.

3. Effect on the natural environment

There should be little impact on the natural environment because the property is part of a larger subdivision that is partially developed. There may be minor increases in air pollution during construction and from additional vehicle traffic in the area. Erosion control during construction is required by state law.

4. Effect on wildlife and wildlife habitat

There will be little impact on wildlife or wildlife habitat because this and surrounding property contain many housing units. A corridor along the Big Ditch will be maintained, which may serve as a corridor for deer and other wildlife to move within the area. There

are no known endangered or threatened species on the property. Montana Fish Wildlife and Parks had no specific comments on the subdivision.

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.

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

An Environmental Assessment is required but it has not been submitted or reviewed. Previous filings didn't require an EA because they met the state law exemption of being within a master planned area. Since the MCA 76-3-210(a), amended by the 1999 Legislature, and AG opinion #49-023 eliminated this provision and instead requires a compliant growth policy to claim the exemption, the subdivider is required to prepare an EA. The EA is not expected to raise environmental concerns and since this is a new requirement, Planning Staff recommends that the EA be submitted in a summary form and that its approval be postponed until the final plat submittal.

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

1. Comprehensive Plan:

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

- a. Encourage a variety of housing types and/or styles within proposed housing developments. C-2
- b. Safe, energy efficient and sanitary housing. C-6
- c. Capitalize on existing public water supply systems. H-2
- d. Capitalize on existing public sewage systems and improve sewage systems in areas not currently served by public systems. H-4
- e. 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
- f. Curb urban sprawl and discourage leapfrog development. K-7

The subdivision does not meet the following goals/policies of the comprehensive plan
None

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Rimrock Road and Shiloh Road are arterial streets and are on the urban system. Shiloh Road is expected to be improved next year and Rimrock is being improved incrementally. A new traffic signal will be installed at the intersection of Rimrock and Shiloh Road and the subdivider will contribute to its construction. Internal streets to serve the lots will be constructed by the subdivider using a private contract.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. A corridor along the Big Ditch was preserved with the 3rd filing. A bike path will be constructed as part of the park SID. In the future it will connect with the paths in adjacent subdivisions, to the Shiloh Road tunnel and the Poly-Vista Park.

4. West Billings Plan

The subdivision isn't within the West Billings Plan study area.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMC 23-304 (c) (4)]

This proposed subdivision meets the requirements of the Montana Subdivision and Platting Act and the local subdivision regulations except for the Environmental Assessment discussed above. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? [BMC 23-304 (c) (5)]

The subdivision will use City 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? [BMC 23-304 (c) (6)]

The property is in the Residential 9600 zoning district. The previous filings and this filing conform to that zoning.

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

The subdivision 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 BMC 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 Rimrock West Subdivision 5th filing 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, when the vacant parcel is developed the homeowners will pay property taxes and fees that should help to support those services.
- The proposed subdivision conforms to several goals and policies of the 1990 Yellowstone County Comprehensive Plan and doesn't conflict with the Transportation or BikeNet Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, sanitary requirements and provides legal and physical access to each parcel.

He said any impacts on local services will be covered by fees and taxes. He reiterated that the 5th filing requires the development of the park and with that an SID and PMD would be created. He said the Parks Department is currently involved in this process. He said this subdivision conforms to a number of long-range plans, including the bike trail. Mr. McCandless said the subdivision conforms to State laws, subdivision regulations, and zoning and does provide utility access and public access to each of the lots. The recommendation is based on the findings of fact. Councilmember Poppler asked if this plat would affect the ditch in anyway. Mr. McCandless said this plat will not interfere with the operation of the ditch. Councilmember Poppler moved for approval of the Planning Board recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

12. PRELIMINARY MINOR PLAT of Amended Lot 1, Ware Subdivision. Planning Board recommends conditional approval of the variance and the preliminary plat. (Action: approval or disapproval of Planning Board recommendation.)

Planning Department Staff Member Juliet Spaulding said this is a preliminary minor plat creating 2 lots on a 19,204 square foot site that is zoned Residential 9,600. It is located on the south side of Rimrock Road in the 2100 block. She noted there is a variance request from Section 23-601(k) Billings Montana City Code, which states that the right-of-way width to be dedicated for Rimrock Road (a principal arterial) shall be 120 feet, or 60-foot half-width. The request is to allow for a 40-foot half-width dedication instead. She said City Engineering has reviewed and approved the request. She noted that parcels around the site have only 30-foot dedications of road width. Ms. Spaulding said the staff is recommending conditional approval. The conditions are:

1. To bring the subdivision into compliance with state law and local subdivision regulations, the following is required:

a. Minor wording. Minor wording changes hereafter shall be made in the SIA and documents, as requested by the City Engineering Division and Planning Department, to clarify the documents and bring them into the standard, acceptable format.

b. 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 City-County Planning Board has prepared the Findings of Fact for the Amended Lot 1, Ware Subdivision for review and approval by the City Council. 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 (76-3-608, MCA) and the City of Billings Subdivision Regulations (Section 23-304(c), BMCC).

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

1. Effect on Agriculture

This parcel is within an urban neighborhood and will not affect agricultural uses or production.

2. Effect on agricultural water user facilities

The parcel does not have any agricultural water user facilities on it, and will therefore not have an effect on these facilities.

3. Effect on Local Services

Water and Sewer Service. There are existing water and sanitary sewer main lines in Rimrock Road. The City Engineering and Public Utilities Departments did not have any comments on the provisions of water and sanitary sewer to the new lots. The parcels are subject to all applicable water and wastewater fees and charges.

Storm Water Drainage. Any existing stormwater retention facility located within or adjacent to the subdivision is an integral part of the street drainage system and shall remain so until such time as a storm drain trunk system becomes available and is utilized by the subdivision. A waiver of the right to protest the creation of an SID for the construction of improvements such as storm drains is included in the subdivision packet.

Public Streets and Roads. The two proposed lots will front on Rimrock Road, which is a principal arterial. Improvements to Rimrock Road currently

include a paved surface, and street signs. The subdividers have submitted a waiver of the right to protest future upgrades to Rimrock Road which include, but is not limited to, the installation of street lights, street widening, curbs and gutters, sidewalks, driveways, storm drains. The developer has requested a variance from the City Subdivision Regulations Section 23-601(k), requiring the 60 feet half-width dedication for Rimrock Road, a principal arterial. They have requested to dedicate 40 feet which is the width dedicated by adjacent properties. City Public Works recommends approval of the variance request.

Fire and Police Protection

The Fire Department reviewed the preliminary plat application and had no comments. Street widths, lot access, and fire hydrant location comply with all City of Billings Fire Department requirements. The City Police Department will serve this subdivision. No comment was received from City Police.

Emergency Medical Service

Ambulance service and emergency medical response is currently and will continue to be served by American Medical Response. No comment was received from AMR.

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

School District #2 will serve all school-aged students. No comments on this subdivision were received from the school district. The addition of two new residences will have minimal impact on the schools.

Parks

Parkland dedication is not required for minor subdivisions.

4. Effects on the Natural Environment

The subject parcel is located in an existing urban density neighborhood off of a principal arterial street. The effects on the natural environment should be minimal.

5. Effects on Wildlife and Wildlife Habitat

The subject parcel is located in an existing urban density neighborhood off of a principal arterial street. The effects on wildlife or wildlife habitat should be minimal.

6. Effects on Public Health and Safety

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

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

1990 Yellowstone Comprehensive Plan

- (K-5)
- a. **Protect against the encroachment of incompatible or related uses.**
The proposed subdivision is in an existing residential subdivision.
 - b. **Curb urban sprawl and discourage leapfrog development. (K-7)**
This project is an infill project. It is within an existing residential development.
 - c. **Encourage and direct urban growth to urban infill areas and contiguous lands to maintain a strong economy and accomplish a sound transition of agricultural land. (I-3)**
The proposed subdivision is within the Ware subdivision. It is an infill project in an urban neighborhood.
 - d. **Capitalize on the use of existing public sewage systems and improve sewage systems in areas not currently served by public systems. (H-4)**
The new lot will be served by city services.

Billings Urban Area 2000 Transportation Plan and BikeNet

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

Compliance with the Montana Subdivision and Platting Act and local subdivision regulations. (Chapter 23, BMCC)

The Amended Plat of Lot 1, Ware 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 has requested a variance from Section 23-601(k), BMCC, which states that the right-of-way width to be dedicated for Rimrock Road (a principal arterial) shall be 120 feet, or 60-foot half-width. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

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

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

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

The subdivider has complied with the lot size requirements for the R-9600 zoning district.

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

Both MDU and Montana Power Company have reviewed the preliminary plat.

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

Legal and physical access is available to the subdivision from Rimrock Road.

CONCLUSIONS OF THE FINDINGS OF FACT

The City-County Planning Board has determined that the Amended Lot 1, Ware Subdivision will not significantly affect agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat or public safety. In addition, the subdivision complies with the 1990 Comprehensive Plan, and the Billings Urban Area 2000 Transportation Plan.

Ms. Spaulding said this is an infill development and complies with the Comprehensive Plan. Councilmember Poppler asked why the 30 foot right-of-way is needed from Rimrock Road. Ms. Spaulding said it is a requirement for a right-of-way for the roadway. She added the property is south of Rimrock Road and would not affect any future development. Councilmember Jones clarified that there would be enough room for two lanes and a turn lane with the conditions of the variance. Ms. Spaulding said "yes". Councilmember Ohnstad moved for approval of the Planning Board recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

13. 5th AMENDED PRELIMINARY MINOR PLAT of Briarwood Subdivision, 2nd Filing. Planning Board recommends conditional approval of the proposed findings of fact and the preliminary plat. (Action: approval or disapproval of Planning Board recommendation.)

Planning Staff Member Juliet Spaulding said this is a minor plat creating 2 lots on a 1.82 acre site. The site is currently zoned Planned Unit Development with underlying Residential 9,600. She said it is located in the Briarwood Planned Unit Development, three miles south of Billings. She noted there is a variance request from Section 23-605(h), Billings Montana City Code, requiring all lots to front or abut on a street that is to be dedicated to the public. This request is to accommodate the existing access easement. The City Engineering Department approved the variance request. She said the staff is recommending conditional approval, with the following conditions:

- 1. To assure the subdivision does not adversely affect the public health, safety and welfare, agriculture, local services, the natural environment, wildlife and wildlife habitat, the following changes shall be made to the SIA:**
 - a. Add:** Kincaid Road shall be restored to its original condition after the utilities are installed for Lot 21A-2A-1. *(Section 23-700 BMCC; Recommended by City Engineering and City Public Works)*
 - b. Add:** Lot 21A-2A-1 development shall comply with the City of Billings' Storm Water Management Manual (SWMM). *(Section 23-706 BMCC; Recommended by City Engineering)*

- c. **Add:** The subdivision may be required to participate in a future area wide storm drain SID.” (Section 23-706 BMCC; Recommended by City Engineering)
 - d. **Add:** Owners of lots within this subdivision shall be advised that in accordance with the 1972 Yellowstone County Soil Survey, there exists the potential for variable soils conditions within this area. There may be possible geotechnical issues with soils that need to be considered in design of structures. All lot owners and developers are advised to consider this in their overall design. (Section 23-304(c)(1); Recommended by City-County Planning Board)
2. **To bring the subdivision into compliance with state law and local subdivision regulations**, the following is required:
- a. The SIA shall be written to reflect review and approval by the City of Billings City Council.
 - b. **Minor wording.** Minor wording changes hereafter shall be made in the SIA and documents, as requested by the City Engineering Division and Planning Department, to clarify the documents and bring them into the standard, acceptable format.
 - c. **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 City-County Planning Board has prepared the Findings of Fact for the Briarwood Subdivision 2nd Filing, 5th Amended for review and approval by the City Council. 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 (76-3-608, MCA) and the City of Billings Subdivision Regulations (Section 23-304(c), BMCC).

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

1. Effect on Agriculture

This parcel is not in agricultural production and will not affect agricultural uses or production.

2. Effect on agricultural water user facilities

The parcel does not have any agricultural water user facilities on it, and will therefore not have an effect on these facilities.

3. Effect on Local Services

Water and Sewer Service. There is an existing 8-inch diameter water main and an 8-inch diameter sanitary sewer line Kincaid Road, which borders this property's northern boundary. The existing home on the proposed south lot has water and sanitary sewer services provided by the South Hills Water and Sewer District. A 30-foot utility easement has been provided for these lines where they run through the proposed north lot and is shown on the face of the plat. The proposed north lot has direct access to the existing water and sewer lines in Kincaid Road. The City Engineering and Public Utilities Departments commented that when water and sanitary sewer services and other utilities are installed for the northern lot, Kincaid road will need to be cut, and then restored after installation. A note in the SIA stating this has been added as a condition of approval. In the near future, the City of Billings will assume water and sewer service to the Briarwood Subdivision. The parcels are subject to all applicable water and wastewater fees and charges.

Storm Water Drainage. Stormwater runoff calculations provided by the developers' Engineer show that the increase in runoff due to the development of an additional lot is minimal (increase of .03 cfs). Any existing stormwater retention facility located within or adjacent to the subdivision is an integral part of the street drainage system and shall remain so until such time as a storm drain trunk system becomes available and is utilized by the subdivision. City Engineering commented that Lot 2 development shall comply with the City of Billings *Stormwater Management Manual*. In addition, they noted that the subdivision may be required to participate in a future area wide storm drain SID. Both of these comments have been added as conditions of final plat approval. In addition, a waiver of the right to protest the creation of an SID for the construction of such improvements is included in the review packet.

Public Streets and Roads. The required public right-of-way has been dedicated with the original filing of Briarwood Subdivision, 2nd Filing. All required improvements have been installed. The developer has requested a variance from the City Subdivision Regulations Section 23-605(h), requiring all lots to front or abut on a street that is to be dedicated to the public. The existing house on the proposed southern lot takes access off of Tartan Road using an access easement that was filed while the property was in the County's jurisdiction. City Public Works has approved of this existing access for the southern lot, and recommends approval of the resulting variance request.

Fire and Police Protection

The Fire Department reviewed the preliminary plat application and had no comments. Street widths, lot access, and fire hydrant location comply with all City of Billings Fire Department requirements. The City Police Department will serve this subdivision. No comment was received from City Police.

Emergency Medical Service

Ambulance service and emergency medical response is currently and will continue to be served by American Medical Response. No comment was received from AMR.

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

School District #3 (Blue Creek) will serve elementary students. School District #2 will serve middle and high school students. No comments on this subdivision were received from either district. The addition of one residential lot will have minimal impact on the schools.

Parks

Parkland dedication is not required for minor subdivisions.

4. Effects on the Natural Environment

The subject parcel is located in an existing urban density subdivision, and consists mainly of rolling hills with slopes of 10 to 20%. The Natural Resources and Conservation Service suggests installing erosion control measures during the construction period, and maintaining them until permanent desirable vegetative cover is established. These issues may be addressed at the time of construction permitting. City Engineering commented that it appears the driveway grade off of Kincaid Road for the northern lot may have slopes of 18-20%. Special construction considerations will need to be taken for this driveway, and will be considered at time of approach permitting.

The soils in this area have been identified in the 1972 Yellowstone County Soil Survey as variable, and there as a result there may be a possibility of geotechnical issues when building structures. These conditions must be considered when designing structures. Planning Board has recommended that language advising future lot owners/developers of these soil conditions be added to the SIA as a condition of final plat approval.

5. Effects on Wildlife and Wildlife Habitat

This area is surrounding by existing residential development. Montana Fish, Wildlife, and Parks had no specific comments about this proposed subdivision. It is unlikely that there will be a significant impact to wildlife or wildlife habitat.

6. Effects on Public Health and Safety

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

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

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

The proposed subdivision is in an existing residential subdivision.

b. Curb urban sprawl and discourage leapfrog development. (K-7)
This project is an infill project. It is within an existing residential development.

c. Encourage and direct urban growth to urban infill areas and contiguous lands to maintain a strong economy and accomplish a sound transition of agricultural land. (I-3)
The proposed subdivision is within the Briarwood subdivision. It is an infill project in an area that is not used for agriculture.

d. Capitalize on the use of existing public sewage systems and improve sewage systems in areas not currently served by public systems. (H-4)
The development will soon be served by city services.

Billings Urban Area 2000 Transportation Plan and BikeNet

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

Compliance with the Montana Subdivision and Platting Act and local subdivision regulations. (Chapter 23, BMCC)

The Briarwood Subdivision, 2nd Filing, 5th Amended meets the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider has requested a variance from Section 23-605(h), BMCC, which states that every lot shall front or abut on a street that is to be dedicated to the public. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

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

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

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

The subdivider has complied with the lot size requirements for the Briarwood PUD with underlying R-9600 zoning.

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

Both Montana Dakota Utilities and Yellowstone Valley Electric Coop. have reviewed the preliminary plat.

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

Legal and physical access is available to the subdivision from Kincaid Road and Tartan Road.

CONCLUSIONS OF THE FINDINGS OF FACT

The City-County Planning Board has determined that the Briarwood Subdivision 2nd Filing, 5th Amended will not significantly affect agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat or public safety. In addition the subdivision complies with the 1990 Comprehensive Plan and the 2000 Billings Urban Area Transportation Plan. The few impacts not addressed in the subdivision application can be addressed through reasonable measures as conditions to final plat approval.

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

Council Initiatives:

- **COUNCILMEMBER KENNEDY:** the Tavern Owners' Association is interested in bringing forward to this community the process involving the Indoor Clean Air Act and to be part of that process. Councilmember Jones asked why this is not done at the county level. Councilmember Kennedy noted that most of the tavern ownership is in the City. City Administrator Dennis Taylor said the county does not have ordinance making authority for this subject matter. They are a general powers government and it would require the legislature to give them this authority. Councilmember Larson said the Council needs time to consider this issue. He said he would like to review what statewide legislation will come from the State Legislature concerning this issue. Councilmember Brown noted that he is concerned about private property rights and the Council taking a position of telling individuals what they may do with their private property. Councilmember Kennedy noted that the Great Falls ordinance allows the businesses to decide for themselves. Councilmember Larson moved to direct staff to provide the information from the Tobacco Coalition as well as the Great Falls and Bozeman ordinances concerning a no-smoking ordinance, with a future work session for discussion of this issue seconded by Councilmember Brewster. On a voice vote, the motion was approved. After review by the Council, a future work session may be scheduled to discuss consideration an ordinance in this community.

ADJOURN —With all business complete, the Mayor adjourned the open portion of meeting at 9:30 P.M. The Council reconvened in closed session to conduct the hearing listed as Item 2 at this time.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

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