

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 12, 2004

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.

OATHS OF OFFICE CEREMONY: Mayor Charles F. Tooley administered the oath of office to Councilmembers Gaghen, Brewster, Ruegamer, Boyer and Clark.

ELECTION of Deputy Mayor and Mayor Pro Tem: Mayor Tooley called for nominations for the position of Deputy Mayor. Councilmember Iverson nominated Councilmember Brewster, seconded by Councilmember Gaghen. Councilmember Poppler nominated Councilmember Jones, seconded by Councilmember McDermott. There were no other nominations. Nominations were closed. On a show of hands, Councilmember Brewster was selected as Deputy Mayor on a 6 to 5 vote.

Mayor Tooley called for nominations for the position of Mayor Pro Tem. Councilmember Ruegamer nominated Councilmember Iverson, seconded by Councilmember Gaghen. Councilmember Clark nominated Councilmember McDermott, seconded by Councilmember Brown. Councilmember McDermott nominated Councilmember Brown, seconded by Councilmember Poppler. There were no other nominations. Nominations were closed. On a show of hands, Councilmember Iverson was selected Mayor Pro Tem on a 7 to 4 vote.

CALL TO ORDER: 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 Peggie Gaghen.

ROLL CALL: Councilmembers present on roll call were: Gaghen, McDermott, Brewster, Brown, Ruegamer, Iverson, Boyer, Poppler, Clark and Jones.

MINUTES – December 8, 2003. APPROVED as printed.

PROCLAMATIONS – Mayor Tooley. NONE

BOARD & COMMISSION REPORTS - Community Development Board

Community Development Board Chairman Aldo Rowe acknowledged the work of the Community Development Board members noting Harry Anderson's eight years of service. He welcomed new member Dorothy Nelson, who will be appointed this evening. Mr. Rowe thanked Councilmember Gaghen for her participation as Council liaison. He summarized the purpose of the board, noting that some of its goals are: to promote affordable housing city-wide, preserve and upgrade existing housing, revitalize older neighborhoods and assist and improve economic conditions for low-income members of the community. Mr. Rowe reviewed last year's accomplishments highlighting the 2003 budget allocation process. He commented on the committee's work to implement changes to the Volunteer Demolition Program and acknowledged Jean Neyrinck's efforts on the affordable housing reduction report. Mr. Rowe also noted the success of the King's Green affordable housing project. He said there was only one negative in the year's accomplishments - the cancellation of the tree removal program due to new HUD regulations. He said another option would be presented to the Council in the coming year.

Mr. Rowe reminded the Council that the 2004 budget allocation process for CDBG and HOME funding would begin with non-profit applications due January 26th. The budget hearings are scheduled for March 25th and 26th and the recommendations and public hearing will be brought to Council at the April 26th meeting, with final Council action on May 10th.

COURTESIES - Newly elected and re-elected Councilmembers thanked their supporters and acknowledged family members and friends in the audience.

ADMINISTRATOR REPORTS – Kristoff Bauer.

- Mr. Bauer congratulated the newly elected and re-elected Councilmembers. He said he looked forward to working with them in the future.
- He noted there was a proposed "alternate" resolution that was distributed to the Councilmembers in their Friday Packets for Item #13 - the General Obligation Bond Issue for Cobb Field and the Family Aquatic Facility. This alternate resolution is what is being recommended for approval this evening.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1, 11, 12 and 13. (Comments here limited to 1 minute per speaker. Comment on public hearing items will be heard ONLY during the time of public hearings on respective items.)

- **CLAYTON FISCUS**, 1236 GRUBSTAKE CIRCLE distributed a "report on Agenda Item (M)" and said the franchise fee has been ruled as illegal. He said the fees for both the Water/Wastewater Utility and Solid Waste Operations are this type of fee and should not be raised. He said there should be a public hearing to repeal the fees. Mayor Tooley clarified that the Public Utilities or Cable Television fees were not addressed as franchise fees in the lawsuit that Mr. Fiscus referred to. He said the City is operating in full belief that these are legal fees.
- **BRUCE SIMON**, 217 CLARK AVENUE, said the Council should carefully examine whether the fees associated with the Water and Wastewater Utility and Solid Waste Operations are a legal fee. He said the fee is a "difference without a distinction" and appears to be a percentage of the operations. Under the law, when the money is dedicated to the General Fund it becomes an illegal sales tax. He urged the Council to be careful as they proceed with these fees. (NOTE: re: Item M)
- **TOM ZURBUCHAN**, 1747 WICKS LANE, spoke on both Items #11 and #13. He said the Cobb Field construction and the Aquatic Facility in the Heights should be two separate items to avoid both issues failing at the ballot because of one or the other. He said they are independent issues and should stand or fall on their own. He said he has concerns about the Barry Acreage Tracts item of changing Erin Street to a private access road and how that affects the construction of the fence around the access to the trailer court that was mandated but still not built.
- **ART MATTHEIS**, 903 NORTH 31ST, said the Cobb Field bond issue should be city-wide and the Aquatics Facility should be a Heights bond issue because it would only benefit people in the Heights. (NOTE: re: Item #13)

CONSENT AGENDA:

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

	Name	Board/Commission	Term	
			Begins	Ends
1.	Owen Neiter	Aviation & Transit Board	01/01/04	12/31/07
2.	Leo Wohler	Aviation & Transit Board	01/01/04	12/31/07
3.	Dan Wagner	Board of Adjustments	01/01/04	12/31/07
4.	Paul Cox	Board of Adjustments	01/01/04	12/31/07
5.	Scott Chartier	Board of Appeals	01/01/04	12/31/07
6.	Robert Tehle	Board of Appeals	01/01/04	12/31/07
7.	Douglas Carr MD	Board of Health	01/01/04	12/31/06
8.	Dorothy Nelson	Community Development	01/01/04	12/31/07
	Name	Board/Commission	Term	Name
			Begins	Ends
9.	Jean Neyrinck	Community Development	01/01/04	12/31/07
10.	Ryan Walker	County Water District	01/01/04	12/31/09
11.	Erica Limberhand	Housing Authority	01/01/04	12/31/05
12.	Lynda Moss	Housing Authority	01/01/04	12/31/08
13.	Mary Lou Affleck	Housing Authority	01/01/04	12/31/08
14.	Virginia Court	Library Board	01/01/04	12/31/07

15.	Gene Burgad	Parking Advisory Board	01/01/04	12/31/07
16.	Denice Johnson	Parking Advisory Board	01/01/04	12/31/07
17.	Ed Hudson	Police Commission	01/01/04	12/31/06
18.	Ben Pretlow	Police Commission	01/01/04	12/31/06
19.	Dick Beulke	Public Utilities Board	01/01/04	12/31/07
20.	Eric Coobs	Public Utilities Board	01/01/04	12/31/07
21.	Jill Krueger	Traffic Control Board	01/01/04	12/31/07
22.	Paul Daniels	Yellowstone Historic Preservation Board	01/01/04	12/31/05
23.	Armand Lohof	Yellowstone Historic Preservation Board	01/01/04	12/31/05
24.	Paul Whiting	Yellowstone Historic Preservation Board	01/01/04	12/31/05
25.	Virginia Smith	Yellowstone Historic Preservation Board	01/01/04	12/31/05
26.	Kevin Guenther	Yellowstone Board of Planning (Ward II)	01/01/04	12/31/05
27.	Mike Boyett	Zoning Commission	01/01/04	12/31/07
28.	Ed Workman	Zoning Commission	01/01/04	12/31/07
29.	David Gelder	Zoning Commission	01/01/04	12/31/07

B. Bid Awards:

- (1) **New Rooftop HVAC Unit for Logan International Airport.** (Opened 11/25/03). Recommend Empire Heating and Cooling, \$11,909.00.
- (2) **New Current Model 2004 Truck Mounted 120-gallon Paint Striper.** (Opened 12/2/03). Recommend Mark Rite Lines, \$140,682.00.
- (3) **Wastewater Treatment Plant Switchgear Modifications.** (Opened 12/23/03). Recommend Yellowstone Electric Co., \$179,481.00.

C. C.O. #2 for Airport Improvement Project (AIP 21) Taxiway "J" Relocation and Commuter Air Carrier Ramp Rehabilitation, Empire Sand and Gravel, (\$304,768.91).

D. Amendment #1, W.O. 04-01: 2004 Water & Sewer Rehab Project, HKM Engineering, Inc., \$88,000.00.

E. Approval of Assignment of Delta Air Line's Scheduled Airline Operating Agreement and Terminal Building Lease to SkyWest Airlines, (\$10,500 decrease - to be offset when Delta starts new seasonal service to Cincinnati, OH in April 2004.).

F. Approval of Assignment of Alex Hilsendeger's Commercial Non-Aviation Ground Lease to Yellowstone Bank as security for funding to complete warehouse construction, \$0.

G. Acceptance of 2003 Technology Grant Award to expand scope of Mobile Technology project by adding New World Systems in-car report writing and Automatic Vehicle Location (AVL) technology, U. S. Department of Justice, \$298,050.00.

H. Approval of Law Enforcement Personnel Reimbursement Agreement with the Transportation Security Administration (TSA), \$195,767.91 for period 10/1/03 through 9/30/04.

I. Memorandum of Understanding with Montana Department of Transportation for three Public Works projects: North 5th/Divison, Curb & Gutter on 1st Avenue North, and a signal at 6th/Central Avenue, \$712,000.00 to be 100% reimbursed from MDT.

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J. **Acknowledge receipt of petition to Annex:** (#04-01), Tracts 2A-1, 3A-1, C/S 1876, generally located at 4125 Grand Avenue, King of Glory Lutheran Church, Inc., petitioner, and setting a public hearing date for 1/26/04.

K. **Approval of Underground Electrical Power Line Easement** with NorthWestern Energy for the New Air Traffic Control Tower, \$0.

L. **Approval of Route Alternatives Study** for the Bike/Pedestrian Connector from Coulson Park to Downtown, Alternative #6, \$15,817.07 plus purchase price of ROW.

M. **Adoption of Franchise Fee/Convenience Fee Schedule of Events** on water and wastewater utility and solid waste operations and setting a public hearing date for 2/23/04. (NOTE: See comments during "Public Comment" period above.)

N. **Accept dedication of the public rights-of-way on four (4) separate amended subdivision plats for Rehberg Ranch Estates Subdivision, 1st filing:**

- (1) Lots 23-27, Block 5, Rehberg Ranch Estates Sub., 1st filing
- (2) Lots 30, 31, 33, Block 5, Rehberg Ranch Estates Sub., 1st filing
- (3) Lots 8-10, 13, Block 6, Rehberg Ranch Estates Sub., 1st filing
- (4) ~~Lots 3-7, Block 9, Rehberg Ranch Estates Sub., 1st filing~~

O. **Approval of Annexation Agreement and Waivers** for Annexation #03-09, Emmanuel Baptist Church.

P. **Approval of Revolving Loan Fund** recommendations for L & L Development Venture, L.P., \$150,000.00 to renovate the building at 2624 Minnesota Avenue.

Q. **Approval and Authorization of Transfer** of \$100,000.00 in Gas Tax funds from CIP projects ENG61 to ENG99, restoring funding to ENG 99 – the 13th and Poly project.

R. **Confirmation of Officer:** Gearold McComb.

S. **Authorize Submission of Application** for a \$5,500.00 Certified Local Government (CLG) Grant from the Montana State Historical Preservation Office.

T. **Street Closure request** from Black Heritage Foundation for January 19, 2004 annual pedestrian march in observance of Martin Luther King Jr. Day, 6:30 p.m.-6:50 p.m., Court House lawn, North 27th Street, 3rd Avenue North, North 29th Street to Lincoln Center.

U. **Resolution 04-18054** relating to financing of certain proposed projects; establishing compliance with reimbursement Bond Regulations under the Internal Revenue Code, re: Transportation Bond projects.

V. **Resolution 04-18055** relating to \$10,200,000 Higher Education Revenue Bonds – Rocky Mountain College Project and any other ongoing bond projects, authorizing the City Administrator or designee of the City Administrator to sign documents on behalf of the City in lieu of the Director of Administrative Services.

W. **Resolutions 04-18056, 04-18057 & 04-18058** relating to authorized signatories on bank accounts:

- (1) US Bank (2 resolutions)
- (2) Buchanan Capital Investment Account (1 resolution)

X. **Resolution of Intent 04-18059** to de-annex Tract 2B, C/S 2218 from the City, Eileen and Steve Solberg petitioners, and setting a public hearing for 2/09/04.

Y. **Resolution of Intent 04-18060** to create Park Maintenance District #4019 for Rolling Hills Park and setting a public hearing date for 2/9/04.

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Z. Resolution of Intent 04-18061 to create Park Maintenance District #4020 for Dokken Park and setting a public hearing date for 2/9/04.

AA. Resolution of Intent 04-18062 to sell City-owned property (6 unimproved residential lots described as Lots 1-6, Block 3, Alkali Creek Subdivision) and setting a public hearing date for 2/9/04.

BB. Final Plat of Village West Subdivision.

CC. Final Plat of High Sierra, 3rd filing.

DD. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brown separated Item M from the Consent Agenda. Councilmember Gaghen moved for approval of the Consent Agenda with the exception of Item M, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item M of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown said a Supreme Court ruling said it is illegal for a city to collect taxes that are income taxes or sales taxes. He said this ruling applies to this item as the City Water Department is under the jurisdiction of the City of Billings. He said he believes this is an illegal fee and that the people have voted against it. City Attorney Brent Brooks clarified that the Supreme Court ruling on what was the Right-of-Way Ordinance was limited in scope. He said the opinion of the Supreme Court does not address the specific issue of this being a franchise fee. City Administrator Kristoff Bauer noted that the Council action this evening is to set the schedule of the public involvement process and is not the final adoption of the fees. The schedule includes the dates of public notices and public hearings that would address the issues raised by Councilmember Brown. On a voice vote, the motion was approved with Councilmembers Brown, McDermott, Jones and Poppler voting "no".

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward III to include recently annexed properties described as: Tracts 1-4, C/S 2064 and Tract 1, C/S 3125 (Annex #03-07). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

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

3. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward V to include recently annexed property described as: Tracts 5A-1 and 5A-2, C/S 1648, 3rd Amendment, (Annex #03-09). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

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

4. PUBLIC HEARING AND RESOLUTION 04-18063 regarding proposed General Fund Budget amendment to implement Police Union Contract and provide last half of funding for Air Pollution Control Board. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

City Administrator Kristoff Bauer said there are two amendments to the General Fund Budget. The first is the Police Union Contract that was negotiated and finalized late last year. The amendment was not brought forward at that time. He said the amount is consistent with the settlement amount. The other amendment is additional funding for the Air Pollution Control Board. The

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budget provided for funding for the first half of the year to provide funds while negotiations with Yellowstone County and others to develop a new interlocal agreement to provide for this service were underway. He noted the City is in the process of developing this agreement, with the first draft being negotiated by Mr. Kirkpatrick, representing the City/County Department of Health. This will come to Council soon. Mr. Bauer said the amendment would provide funds for the last half of the year for the operation of the Board while this agreement (requested by the Council) is being processed. Councilmember McDermott asked if the City of Billings is going to be the primary funding source for this Board. Mr. Bauer said included in the discussions for the agreement were proposals for the Air Pollution Control Board to initiate discussions with customers as to funding requests according to the level of services. This would involve an annual discussion of what services were provided and what expenses were incurred for those services.

Councilmember Brown said there is a State law that provides for a separation of these two amendments for separate discussion and voting. City Attorney Brent Brooks said the Council is entitled to separate the discussion and vote on these amendments. Councilmember Gaghen asked if the Air Pollution Control Board has made an effort to move into the Courthouse to conserve costs. Mr. Bauer said there has been discussion, but he was unaware of the outcome of those discussions. He said there have been discussions that it would be more appropriate for them to reside with the Yellowstone County Health Department. He added that they are trying to reduce their costs with one of these options.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brown moved for approval of the Police Union Contract amendment, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

Councilmember Brown moved for approval of the Air Pollution Control Board amendment, seconded by Councilmember Jones. Councilmember Brewster said he was opposed to this amount of money in the budget during the budget process. He said the amount of funding for this Board far exceeds the amount of services. He said he opposes this amendment and encouraged the Council to do the same. On a roll call vote, the motion failed 5-6 with Councilmembers Gaghen, Brown, Ruegamer, Boyer and Mayor Tooley voting "yes" and Councilmembers McDermott, Brewster, Iverson, Poppler, Clark, and Jones voting "no".

5. PUBLIC HEARING AND SPECIAL REVIEW #747: A special review to allow the location of a full beverage license with gaming in a Highway Commercial zone. The property is located at 405 Main Street, currently the MacKenzie River Pizza Company. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Juliet Spaulding said this special review is for full beverage licensing with gaming at 405 Main Street, described as Lot 1, Block 1, Heights Town Center Subdivision, currently the location of a MacKenzie River Pizza Company. The site is 1.4 acres and the current zoning is Highway Commercial. She said the Zoning Commission is recommending conditional approval with three conditions:

1. There shall be no amplified or live music on the outdoor patio. Only background music shall be allowed.
2. The 600-foot separation requirement from any school, playground, public park, public recreation area, church or other public building be waived.
3. This Special Review approval only applies to the area of the shopping center currently occupied by MacKenzie River Pizza Company. Any additional liquor license would require separate special review approval.

Ms. Spaulding said there are two parcels within the 600 foot separation, a church site on the west side of Lake Elmo Drive that will eventually be split out and subdivided and an undeveloped County-owned property along Alkali Creek that is part of the Metra Park property with no current public usage. It is not likely to develop as a public use park space. In addition, Main Street functions as a physical barrier from the church. She said the Zoning Commission is recommending waiving the 600-foot rule. Councilmember Brown asked if the park is within 600 feet of the special review. Ms. Spaulding said that portion is not used as a park, but as a storage maintenance facility area. There is no current public use. Councilmember Brewster said that area is used as drainage for Lake Elmo. There is a path and some residents do use it as a park as it can be accessed from the Bike Path.

Councilmember Jones asked when the church site would be split out. Ms. Spaulding said this was in preliminary review in December, 2003 and the applicants have three years in which to file the final plat. Councilmember Brewster said the church actually lies outside of the 600 feet separation, but the commonly owned adjacent property is within that 600-foot separation.

The public hearing was opened. JAMES HALLOW, 1215 15TH STREET WEST, said Steve Shuel, one of the owners, is his client. He noted there are several casinos in the area. He said Mr. Shuel's marketing policy is to meet the competition head on and this is what he is seeking to do at this location. The size of his operation will not change and the liquor and gaming portion will be unobtrusive as with his other operations. He intends to run a high-class operation. He urged the Council to approve the special review.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Zoning Commission recommendation, seconded by Councilmember Iverson. Councilmember Jones said he would support this special review, but noted that he would not vote in most instances for a waiver of the 600-foot separation. He noted that Main Street does serve as a physical barrier. Councilmember Poppler agreed with Councilmember Jones' comments adding that this is a policy that the Council should be very careful about changing as it protects parks, churches and schools. The Main Street barrier does however make sense.

Councilmember Brewster said it is sad to see another family restaurant lost to gambling. He said he would support the special review however. Councilmember McDermott said she thought when the ordinance was amended, the Council would not see as many requests of this nature. She noted that this is not the case. She said she would not support the special review because it does not meet the criteria. She added that the ordinance may need to be revised again.

Councilmember Clark suggested the rule about the 600-foot separation could be revised to include situations where a barrier such as Main Street are present. Planning Director Ramona Mattix said that a situation like a barrier in the form of an arterial such as Main Street is a reason to allow a variance. If those situations occur, the Planning Department is likely to recommend the variance be allowed. Councilmember Brewster said the intent of the ordinance was to "weed out" those requests that were not a "close call". He said this special review is one of those "close call" situations where the "park" is not really a park, but is used as one and the church property as developed is not within the 600-foot separation. He added that the church is an old mortuary and could be returned to that use. On a voice vote, the motion was approved with Councilmember McDermott voting "no".

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #723: A zone change from Controlled Industrial to Highway Commercial on property described as Lot 2, Block 1, Strong Subdivision and located at 1824 King Avenue West. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Juliet Spaulding said this zone change is from Controlled Industrial to Highway Commercial on Lot 2, Block 1, Strong Subdivision. She said the owner is currently Texas Roadhouse Restaurant, residing on the 1.76 acre parcel. Adjacent properties are the Incredible KIA Dealership, HuHot Restaurant and a hotel that is still under construction. She said the Zoning Commission is recommending approval of the zone change based on the twelve criteria from State law. It is consistent with the Growth Policy in encouraging business location in Billings and the gateway area. The proposed zoning fits the property because Highway Commercial focuses on businesses that serve highway traffic. Councilmember Jones asked if the zone change request is due to a sign "issue". Ms. Spaulding said there are no intentions by the owners of changing the sign. She noted there is a billboard on the property that is serving their needs.

Councilmember Boyer said she has concerns about the area with regard to parking and questioned the need for a zone change. Ms. Spaulding said the zone change request is to allow the business to be more compatible with what is on the site. The adjacent hotel has gone through their own site review that would address the parking requirements. Councilmember McDermott noted the zoning stays with the property and the current owner or any future owner could change the sign with that new zoning. Ms. Spaulding stated that was correct.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Iverson moved for approval of the Zoning Commission recommendation, seconded by Councilmember Clark. Councilmember Clark said he was present for the Zoning Commission hearing. He said in conversations with the owners, it was explained that alterations of the sign would be blocked on the south side by the billboard. Councilmember Brewster said he is still unclear as to why the owners are requesting the zone change if it doesn't allow the owners to improve or change anything, unless it is to alter the sign. Councilmember Jones agreed with Councilmember Brewster's comments and asked for additional information. Ms. Spaulding said the petitioners wanted the Highway Commercial zoning to protect the value of their investment and be more compatible with the use. She said the Controlled Industrial zoning allows more heavy use that is not compatible with a restaurant. Mr. Bauer noted there were no recommended conditions for approval.

Councilmember Brown offered a substitute motion to postpone a decision to allow time to receive more information, seconded by Councilmember Jones. Mr. Bauer encouraged the Council not to look at what the current applicant is trying to accomplish, but that the zoning request is consistent with what is most appropriate for the uses in the area. Councilmember Clark said this zone change actually lowers the type of business that could operate there. He added that a change in the sign would not affect the area in any great manner. Councilmember Iverson said the restaurant and hotel are good assets to the area and the highway zoning is appropriate. On a voice vote, the substitute motion failed, with only Councilmembers Brown, Brewster and Jones voting "yes".

Councilmember Brewster asked what the zoning is for the area behind the hotel. Mr. Bauer said it is Controlled Industrial. On a voice vote on the original motion, the motion was approved with Councilmembers Brewster, Jones and Brown voting "no".

7. PUBLIC HEARING AND RESOLUTION 04-18064 relating to a project on behalf of HW Billings/Western View Limited Partnership and the issuance of revenue bonds to finance the costs, approving the project and authorizing the issuance of bonds. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. The public hearing was opened. CORT GROSS, NO ADDRESS GIVEN, said he works in partnership with HomeWord and is speaking on their behalf. He thanked the Council and Staff for working with them on this project. He said everything is moving forward and hoped the Council will approve this next step. This project preserves 84 units in the Rimrock neighborhood as affordable housing for low-income residents for another ten years.

BONNIE DURAY, 915 NORTH 32ND, said she is on staff at HomeWord/Billings. She thanked the Council and urged them to preserve this affordable housing that is desperately needed in this community. She said 30% of the residents are seniors and 80% are in the low to moderate-income bracket. She noted that if this goes into the open market and a for-profit investor purchases it, the rent would revert to commercial rates. Eighty percent of the residents could not afford these rates.

There were no other speakers. The public hearing was closed. Councilmember Boyer moved for approval of the staff recommendation that includes the negotiated payment in lieu of taxes and not approving the waiver of the City's fees as part of the fee for payment in lieu of taxes, seconded by Councilmember Iverson. Councilmember McDermott asked for clarification of the waiver and payment in lieu of taxes negotiation. Mayor Tooley said the City intends to received payment in lieu of taxes, and not approve the waiver. Mr. Bauer said the applicant asked that the processing fee be credited to them as an offset in lieu of taxes. He said the Staff's recommendation is to not approve that request, but require the standard transaction fee. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND RESOLUTION 04-18065 to create Park Maintenance District #4024 for maintenance of the Walden Grove Park. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

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

9. PUBLIC HEARING AND APPROVAL OF RESOLUTION 04-18066 for additional Weed Assessments for 2003. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. The public hearing was opened. DIANE BURRIGHT, 4611 CHEYENNE TRAIL, said her name is on the list for additional assessments for property that they own on Dorothy Lane. She said she did not receive prior notice of the cutting of the weeds on that land until she received a bill in the mail for \$756.00. She has communicated with City by letter about the lack of notice, asking for proof of prior notice and has not received a response. She requested that her name be removed from the list before it is applied to her taxes.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the Staff recommendation with the exception of the two listings for the Burrights to be put on hold for further information, seconded by Councilmember Brewster. Mr. Bauer said a transaction of a property sale occurred causing the notification to be sent to the prior owner of the property. When this occurs the City waives the assessment because the new owner did not receive the notification. He suggested that the Council remove the Burright's assessments from the listing. Councilmember Brown asked if the notification procedure of the 30-day requirement is being followed and that required signage is being placed at the sites. He also asked if certified mail is being used. Mr. Bauer said certified mail is not being used because of the problems that occur when a recipient is notified of the certified letter, it is refused, thereby notification is not made. He said he is not aware that the property is being posted. Councilmember Clark amended his motion to remove the Burright assessments from the assessment list, seconded by Councilmember Boyer.

Councilmember Poppler asked if removal of those entries will bring more objections and requests for removal. Mr. Bauer said this was the only objection that has been received. He added that this removal action is not inconsistent with past practices. On a voice vote, the motion was unanimously approved.

10. PUBLIC HEARING AND RESOLUTION 04-18067 adopting the water and wastewater rate schedule adjustments: Schedule VI, Water System Development Fees; Schedule VI, Wastewater System Development Fees; Schedule VII, Water-

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Interior and Local Mains Construction Fee; and Schedule VII, Wastewater-Interior and Local Mains Construction Fees.
Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Mr. Bauer said this was a continuation of a public hearing held on December 8, 2003. He said this is not a proposed fee increase for the general rate payer, but rather a fee increase for new connections to system in the form of System Development Fees.

The public hearing was opened. TOM LLEWELLYN, 1650 SWANSON LANE, said this item is the result of a two-year process between the stakeholders, the developers/builders and the City of Billings. He said the process has been a good one with a true accounting of the costs. The study was done fairly and the stakeholders were involved in the selection of the consultants, meeting with them several times during the process. He commended the City Staff for working through the problems with the stakeholders and reaching a successful conclusion with them and the people that pay these fees. Mr. Llewellyn said the adjustments meet all of the criteria of the US Supreme Court regarding proportionality and nexus. This does not put a burden on the general rate payers of the City with regard to water and sewer fees. He said the City of Billings does a good job of maintaining the system so that there is a system for the builders to "buy into". The fees are spread over a four-year period for the final rate. He noted that it has been 18 years since these fees have increased. Mr. Llewellyn said it may not be popular but it is a reasonable process to buy into an existing system. Councilmember Brown asked if this fee can only be charged within the City. Mr. Llewellyn said it is charged where there is City water and sewer or in the West End where water and sewer is within 500 feet and connection and payment is required.

BOB GLASGOW, 909 AVENUE B, said he is a past president of the Home Builders Association. He said two years of discussion has provided a solution to the rate adjustments that the homebuilders and City Staff can accept. He thanked City Staff for allowing input into these discussions.

RAY MAHRER, 3175 MACMASTER ROAD, said he is also a past president of the Homebuilders Association. He said he was present for the beginning of these discussions with the City. He said it was a joint endeavor to make sure nexus and proportionality were covered. This means the fair share for a new connection of and provision for water and sewer is paid by the new construction. He said he was initially concerned about going 18 years without an increase. He said the City Staff told him that user fees have been sharing in the cost of the system development during this time. He suggested that user fees need to be reviewed now that system development fees paid by the developer community have been raised.

RON HILL, 2202 WEST SKOKIE DRIVE, said he is also a past president of the Homebuilders Association. He thanked the City Staff for "coming to the table" and working with the stakeholders on this issue. He said these increases are a significant increase and the slower rate of implementation will have a easier impact on the home buyers and the home builder industry.

GLENN OPPEL, 1643 LEWIS AVENUE, said he is the government affairs director for the Billings Association of Realtors. He said the membership of realtors support the fee increases and believe they reflect the quality of life principles, to build better communities. A good infrastructure helps the community and the economy to grow. He said the fee structure should be user based. He said affordable housing concerns can be addressed through agencies such as supported by the Community Development system. **CLAYTON FISCUS**, 1236 GRUBSTAKE CIRCLE, distributed a study that he prepared. He said he has been a realtor for 29 years. He said he is concerned about first time home buyers that will bear the burden of these fees. He said this is outrageous and will prohibit affordable housing. **Mr. Fiscus said if these fees are found to be illegal the Council could be liable for millions of dollars.** He said these fees punish building and will encourage sprawl. He said it would cost "\$10,000 for someone to buy into this program" and that burden should not be shifted from the developer to the first time home buyers. He added that the public meeting was not noticed.

There were no other speakers. Councilmember Gaghen moved to approve the Staff recommendation, seconded by Councilmember Brewster. Councilmember Jones said he is concerned about the 4% issue and would like clarification on the City's position. He said there is now a difference in the water and wastewater rates that were contained in a study done by professionals. He said he will support the increase because he is concerned that we will be sued because someone is being served by one and not the other service. He suggested that we review the issues Mr. Fiscus brought up. Councilmember Boyer said the stakeholders and the City Staff did a great job with this process. Councilmember Brewster requested explanation in detail at the next public hearing for an increase in the franchise fees. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Mayor Tooley called for a recess at 8:10 P.M.

Mayor Tooley reconvened the meeting at 8:15 P.M.

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11. PRELIMINARY PLAT of Amended Lot 4, Barry Acreage Tracts Subdivision, 3rd filing, generally located on the northeast corner of Bitterroot Drive and Erin Street. Staff recommends conditional approval of the plat and approval of the requested variance. (Action: approval or disapproval of Staff recommendation.)

There was no staff report.

VARIANCE REQUEST

- A variance from Section 23-601(k) BMCC, which states that principal arterial streets shall have a right of way or 120 feet, or 60 feet half-width.

Bitterroot Drive is classified as an arterial street. In 1966 when the original Barry Acreage Tracts, 3rd filing was platted, 40 feet of right-of-way was dedicated for Bitterroot Drive. In recent years City Engineering has continued to request the dedication of only 40 feet (half width) of right of way for Bitterroot Drive, instead of the 60 feet required in the subdivision regulations. They feel that 40 feet is adequate to accommodate future improvements to this street, and acknowledge that all the other properties along Bitterroot that have dedicated street right of way, have given 40 feet or less. Therefore, staff is supportive of this variance request.

CONDITIONS OF APPROVAL

1. The following changes shall be made to the Subdivision Improvements Agreement (SIA):
 - a. Item #1 of the SIA shall state that a Variance from Section 23-601(k) has been requested and granted. *(Recommended by City-County Planning & City Engineering)*
 - b. The following note shall be added to Item #2 B. i. "The property has not previously participated in the construction of any sanitary sewer and is subject to sanitary sewer construction fees. Application for connection to the sanitary sewer with the applicable construction fees will need to be submitted to Public Works – Distribution and Collection for processing." *(Recommended by City Public Works and City-County Planning)*
 - c. The SIA shall contain language regarding the vacation of Erin Street and the immediate creation of a private street and public utility easement there after. It shall furthermore indicate the method by which the new private street and public utility easement shall be maintained. *(Recommended by City Public Works and City-County Planning)*
2. The dedicated right of way of Erin Street shall be vacated prior to final plat approval. A 60-foot wide private road easement (for the benefit of the subject lots, as well as Lot 2, 3, and 4 of Cherry Creek Estates) and public utility easement shall be filed with the Clerk and Recorder upon vacation of Erin Street. The private road and public utility easement document number shall appear on the face of the final plat.
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.
4. 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.

BILLINGS CITY COUNCIL

FINDINGS OF FACT

The City-County Planning staff has prepared the Findings of Fact for Amended Lot 4, Barry Acreage Tracts Subdivision, 3rd Filing for review and approval by the Billings City Council. These findings are based on information received from the subdivider, their surveyor, 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 vacant one-acre lot has not been used for agriculture in recent years and is in an area undergoing significant residential development. It will not have an impact on agriculture.

2. Effect on agricultural water user facilities

The lot does not have any irrigation ditch rights, so therefore will not have an effect on agricultural water user facilities.

3. Effect on Local Services

- **Water and Sewer Service.** The proposed lots shall be served by the Heights Water District for water service and by the City of Billings for sanitary sewer service. The Heights Water District has given the developers its tentative approval of annexation into the water district. Furthermore, they noted that water service can be provided as soon as the Bitterroot main extension is completed. Also the City Public Utilities Department noted that the property has not previously participated in the construction of any sanitary sewer and is subject to sanitary sewer construction fees. Also, application for connection to the sanitary sewer with the applicable construction fees will need to be submitted to Public Works – Distribution and Collection for processing. It is recommended as a condition of approval that these comments from Public Works be added to the SIA. It is also recommended as a condition that a public utility easement document be filed with the Clerk and Recorder prior to final plat approval.

- **Storm Water Drainage.** Storm water shall remain on site. Upon new construction, the property owners will have to comply with the City of Billings' Storm Water Management Manual. Presently, this property is not served by storm drain facilities. A waiver of the right to protest an SID for improvements such as storm drain facilities shall be filed with the final plat.

- **Public Streets and Roads.** The subject property is located at the north east corner of Bitterroot Drive and Erin Street. The proposed lots take access off of Erin Street. Erin Street is a 32-foot wide asphalt street with a 5-foot thickened edge sidewalk on the north side. The street was constructed by the developers when it was in the County's jurisdiction, in order to provide access to the newly developed Cherry Creek Estates. At the time this parcel was annexed by the City, Public Works had recommended that Erin Street be vacated and then turned into a 60-foot wide private road and public utility easement that would connect up to the private road "Cherry Creek Loop" that serves the Cherry Creek Estates manufactured home park. It is recommended as a condition of approval that this street vacation be done prior to final plat approval and that the SIA specify the maintenance details of the private road.

Bitterroot Drive is a paved principal arterial street that is within a 60 to 80 foot right-of-way. It does not have curb, gutter and sidewalk, or storm drains at this location. The subdividers have requested a variance from Section 23-601(k), BMCC, which states that the right of way dedication for principal arterial streets shall be 120 feet, or 60-foot half width. 40 feet of right of way for Bitterroot Drive was dedicated at the time the original Barry Acreage Tracts Subdivision was platted in 1966. City Engineering is supportive of this variance due to the fact that the remaining properties along Bitterroot have right of way dedications of 40 feet or less and future improvements to Bitterroot should be able to be made within an 80-foot right of way. The subdividers have submitted a waiver of the right to protest future upgrades to Bitterroot Drive which includes, but is not limited to, the installation of street lights, street widening, curbs and gutters, sidewalks, driveways.

- **Fire and Police Protection.** The City of Billings Fire Department will serve these lots and did not have any concerns with the plat as proposed. The City Police Department will serve this subdivision. There are adequate provisions for emergency vehicle access.

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

- **Schools.** School District #2 will serve the school-aged children in this subdivision. No comment was received from them at the time this staff report was written. This two-lot residential subdivision should have a minimal impact on schools.
- **Parks.** Parkland dedication is not required for minor subdivisions.

4. Effects on the Natural Environment

The subject parcel is located off of a principal arterial street in an area that has both urban density residential development and some areas of small pastureland. The addition of four more dwelling units to this one-acre site is not likely to have a substantial effect on the natural environment. Both lots will be served by public water and sewer systems.

5. Effects on Wildlife and Wildlife Habitat

The subject parcel is located off of a principal arterial street in an area that has both urban density residential development and some areas of small pastureland. 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.

B. **Environmental Assessment** [Section 23-304(c)(2), BMCC; 76-3-210(1), MCA]

An Environmental Assessment is not required for minor subdivisions pursuant to MCA 76-3-210(1). Should there be any further subdivision of these lots, an Environmental Assessment may be required at that time.

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

2003 City-County Growth Policy

The proposed subdivision conforms to the following goals and policies of the *2003 Growth Policy*:

a. **New development that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.** (p. 6)

The proposed subdivision would create two lots in an area that is experiencing infill residential development. These lots would be compatible with surround uses.

b. **Contiguous development focused in and around existing population centers separated by open space.** (p. 6)

The proposed two-lot subdivision is within an urbanized area and would not encourage sprawl. There has been a recent increase in development of the surrounding area, and municipal services are already adjacent to the property.

c. **More housing and business choices within each neighborhood.** (p. 6)

This subdivision will create two lots and the new owners will develop a duplex condominium on each lot. This development should offer some different and potentially affordable housing choices in this neighborhood.

Billings Urban Area 2000 Transportation Plan and BikeNet

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

D. **Compliance with the Montana Subdivision and Platting Act and local subdivision regulations.** [Chapter 23, BMCC]

The Amended Lot 4, Barry Acreage Tracts Subdivision, 3rd Filing 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.

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E. 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.

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

The lot is zoned Residential-7000 which requires a minimum of 7,000 square feet of lot area for each single-family lot and 9,600 square feet of lot area for each two-family lot. The developers have indicated their plans to construct a duplex on each new lot. The proposed lot sizes (21,011 and 22,569 square feet) meet the sizes required by zoning.

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

Both MDU and Northwestern Energy currently serve the property. They have reviewed the preliminary plat and are satisfied with the proposed utility easements provided on the face of the plat.

H. 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 Erin Street. All streets leading up to Erin Street are dedicated to the public.

CONCLUSIONS OF THE FINDINGS OF FACT

The Planning Department staff has determined that the Amended Lot 4, Barry Acreage Tracts Subdivision, 3rd Filing 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 substantially complies with the 2003 Growth Policy, and the Billings Urban Area 2000 Transportation Plan. Recommended conditions of approval would help to mitigate any potential effects on local services and bring the subdivision into compliance with state law and local subdivision regulations.

Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Brewster asked that Staff respond to Tom Zurbuchan's comments about the fence on the south side of Erin Street and will Erin Street be the responsibility of the subdivider. Mr. Bauer said that Erin Street would be a private street and would be the responsibility of the subdivider and is included in the agreement. Planning Department Director Ramona Mattix said the fence has been financially secured and the security instrument is appropriate. On a voice vote, the motion was unanimously approved. (NOTE: See also comments under "Public Comment" at beginning of the meeting.)

12. PRELIMINARY PLAT of Amended Lot 5, Block 3, Midland Subdivision, 3rd filing, generally located at 920 S. 24th Street West. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)

There was no staff report.

RECOMMENDED CONDITIONS

1. The Subdivision Improvements Agreement shall identify the bikeway/walkway maintenance responsibilities.
Requested by the Planning Department so that perpetual maintenance is ensured and the trail remains a safe and useful amenity for this property and the public
2. The plat and/or Subdivision Improvements Agreement shall identify the Canyon Creek Irrigation Pipeline, easement and water rights/shares disposition.
Required by BMCC 23-603(b) and MCA 76-3-504
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.

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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.

VARIANCES

1. A variance from BMCC 23-602 requiring alleys in commercial and industrial districts. The properties are large enough to accommodate deliveries and parking and are covered by reciprocal access easements that ensure free access to all of the property. Public health and safety will not be compromised by granting this variance.
2. A variance from BMCC 23-605(d) requiring no-access to arterial streets. 24th Street West is an arterial street, but a single, shared driveway access is the only feasible public street access for this property. This access was permitted when the subdivision was originally created in 1994. Public health and safety will not be compromised by granting this variance.

Findings of Fact

Midland Subdivision 3rd filing, amended lot 5, block 3

January 12, 2004

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

1. Effect on agriculture and agricultural water users' facilities

This subdivision will have no effect on agriculture or agricultural water users' facilities. The property hasn't been farmed or ranched for many years. The Canyon Creek Ditch (pipeline) crosses the property. All downstream users have wells or were monetarily satisfied so that the ditch could be terminated. Water rights/shares on the property should be severed and the disposition of the pipeline and easement should be clarified in the SIA and/or on the plat.

2. Effect on local services

- a. Utilities – Water and sewer lines and a storm drain are in place in 24th Street West. The property will connect to the facilities. The utilities have adequate capacity to serve the properties' needs. Private utilities will provide service to the new lot under their operating procedures.
- b. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - No street construction is necessary because the street was improved when the original subdivision was created in 1994. That subdivision approved the driveway approach that will be shared by these two lots. A variance from BMCC 23-605(d) is necessary to allow the driveway on an arterial street.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #5 on South 24th Street West. The Fire Department stated that it has no issues with the proposed. Police response will depend upon officer availability and location when a call for service is placed. AMR provides medical care and transport and response would probably come from the west station on Grand Avenue.
- e. Schools – The subdivision is in the Elysian and School District 2. Since this is commercial property, there should be no direct impact on the schools.

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- f. Parks and Recreation – There is no parkland dedication requirement because this is a minor plat and commercial property. There should be no impact on parks and recreation because there won't be any residents in this subdivision. The subdivider recently installed a concrete bike/pedestrian path and extensive landscaping within a proposed public access easement. The trail will provide recreation and can be a transportation route.
- g. MET Transit – S. 24th Street West is one of MET's routes. This subdivision should not significantly impact MET service.

3. Effect on the natural environment

This subdivision should have only minor effects on the natural environment. There will be some short term air and noise pollution during construction activities. However, the property is within an urbanized part of the city and these effects should be small.

4. Effect on wildlife and wildlife habitat

This subdivision should not adversely affect wildlife or habitat. The property is within the urbanized area of the city, is vacant and has no unusual or attractive habitat. There are no known endangered or threatened species on the property.

5. Effect on the public health, safety and welfare

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

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

An Environmental Assessment is not required because this is a minor plat.

C. Does the subdivision conform to the 2003 Growth Policy and the Urban Area 2000 Transportation Plan? [BMC 23-304 (c) (3)]

1. Growth Policy

The proposed subdivision conforms to the following land use goals of the *Yellowstone County – City of Billings 2003 Growth Policy*.

- a. Predictable land use decisions that are consistent with neighborhood character and land use patterns.
The proposed subdivision is consistent with the neighborhood character of large retail outlets, restaurants and other commercial land uses.
- b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.
The proposed development is entirely surrounded by other commercial uses.
- c. Contiguous development focused in and around existing population centers separated by open space.
The proposed subdivision is infill development, utilizes existing infrastructure and does not contribute to urban sprawl. There are no open space buffers planned but a landscaped bike/pedestrian trail has been constructed on the property's north border.
- d. More housing and business choices within each neighborhood.
The property is zoned Community Commercial and will be developed with additional commercial/retail uses.

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. S. 24th Street West is a principal arterial street. No additional improvements are anticipated for this subdivision, but Traffic Accessibility Studies may be required upon lot development. Any improvements recommended by the TAS will be required before building permits are issued.

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3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. The property isn't identified in the Plan as a trail corridor, but the owners constructed a trail across this property and the property to its west.

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

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

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

The property is served by municipal water, sewer, storm drain and solid waste services and these services will be extended to the new lot. All services are approved and regulated by state and federal authorities.

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

The property is in the Controlled Industrial zoning district and the subdivision conforms to the zoning. Residential development in this zone requires a Special Review.

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

The subdivision adjoins a public street right of way that provides space for utility installations and the easements that are shown are acceptable to the utility companies.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and BMC 23-304 © (8)]

South 24th Street West provides legal and physical access to both lots.

CONCLUSIONS OF FINDING OF FACT

- The overall conclusion of the Findings of Fact is that the proposed Midland Subdivision 3rd filing amended lot 5, block 3 does not create any adverse impacts that warrant denial of the subdivision.
- There should be little effect on local services because this is an infill proposal and services are already provided to the property and surrounding properties.
- The proposed subdivision conforms to several goals and policies of the 2003 Yellowstone County – City of Billings Growth Policy and doesn't conflict with the Transportation or BikeNet Plans.
- The proposed subdivision complies with state and local subdivision regulations, sanitary requirements, zoning and provides legal and physical access to each parcel.

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

13. RESOLUTION 04-18068 submitting the question to City of Billings' voters for the issuance of: \$12,500,000 General Obligation Bonds for the demolition of the existing Cobb Field baseball stadium, design, construction and equipping a new professional baseball stadium in Athletic Park AND \$4,500,000 General Obligation Bonds for design, construction and equipping a new outdoor family aquatic facility off Governor's Blvd/Wicks Lane at a special election on June 8, 2004. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Parks and Recreation Director Don Kearney summarized the Blue Ribbon Advisory Committee's recommendation to replace Cobb Field and to construct a new outdoor pool in Billings Heights. The Blue Ribbon Committee was appointed because the two projects were significant community facilities with complex proposals involving alternatives that needed to be studied at length by community members. He introduced the members of the committee appointed by both the Mayor and City Council in the audience.

The committee was charged with determining the appropriate proposal to submit to the voters of how best to provide for the replacement of Cobb Field and the new outdoor pool in the Heights and to submit this recommendation to the City Council for consideration. The recommendation is that Council approve the resolution authorizing the submission of one question to the City of Billings voters to consider approving the issuance of General Obligation Bonds in the amount of \$17 Million (\$12.5 for Cobb Field and \$4.5 for the outdoor swimming pool in the Heights). A study by CTA Architects in 2001 to determine costs of the structural integrity and continued use of the stadium supports this recommendation. The study determined that: 1) the stadium was not structurally sound, 2) immediate structural repairs were necessary prior to the 2002 season, 3) much of the wooden understructure is rotten and failing, and 4) the stadium was not code compliant.

Historically the stadium has been very expensive to maintain and projected costs to continue operation were:

- Immediate Needs \$425,300
- 3-5 year Planning \$104,700
- Related fees and costs \$ 95,000
- Total to continue as is \$625,000

Mr. Kearney said that CTA also recommended that another \$136, 000 be provided every 5 to 7 years to recoat the stadium's wooden decking. He said the stadium does not comply with the Professional Baseball Agreement (a regulatory document that sets facility standards for professional baseball stadiums). He noted that Billings has not constructed a new swimming pool in years. During that time the city population has nearly doubled. He noted there is only one aquatic facility in the Heights (a small wading pool in Hawthorne Park). One-third of Billings' population is located in the Heights. He said the Rose Park Pool experiences overcrowding. He added that a valid survey showed that 41% of the active voters support paying \$40.00 per year to support these projects. Mr. Kearney stated that the Billings' Parks 2020 Plan adopted in 1997 and the 2001 architectural study performed by CTA Architects both support this recommendation. It is included in the 5-year Capital Improvement Plan FY 2002 to present, the Aquatic and Recreation Facilities Master Plan, and the 2002 and the Neighborhood of Cobb Field Study by Andrews University School of Architecture, 2003.

Mr. Kearney said the financial impact to the property taxpayers is approximately \$34.00 per year based on a home valued at \$135,000 (the current average home price in Billings). He said the Blue Ribbon Committee spent eleven months studying these two projects. Four separate subcommittees looked at multiple combinations of proposals. Those alternatives were:

Alternative	Recommendation	Rationale
Build an indoor pool versus and outdoor because	Build an outdoor pool	An indoor pool requires operational tax support and should be built in the downtown
Alternative	Recommendation	Rationale
Build the pool near Metra Park rather than Governors Boulevard and Wicks Lane	Governors and Wicks site	It is centrally located in the Heights and the land is free
Replace the baseball stadium and not the playing	Replace the stadium and field	A certain amount of the field would be disturbed during demolition of the stadium and would require replacement. Additionally, the cost to replace the field is relatively small compared to the total project cost
Relocate the baseball stadium to another location and keep athletic pool in because	Keep in the same location	Relocation would add significantly to the cost of the project for land purchase and infrastructure. Athletic pool leaks, lacks amenities with the

		mechanical and filtration system currently under the stadium making the two facilities not operationally compatible. One is always closed when the other is operational
Recommend a smaller bond issue and smaller facilities	Do not recommend smaller bond issue and facilities	The current stadium has served the community for 50 years. The proposed facilities are expected to last just as long. The proposed facilities take into consideration future growth and their ability to be self-supporting, ending City subsidies.
Wait until November 2004 to place the question on the ballot	The June primary	November 2004 will have a significant amount of campaign information for the Presidential Election. This would impact the ability to educate and inform the general public about the Blue Ribbon recommendations. The June primary would provide the opportunity for more effective communication to the voters.

Mr. Kearney said after considering all of the alternatives, the Blue Ribbon Committee is recommending this proposal as the one that will best serve the community now and for generations to come. That recommendation is that the Council approve the resolution authorizing the submission of one question to the City of Billings' voters to consider approving the issuance of General Obligation Bonds in the amount of \$17 Million to replace Cobb Field and to construct a new outdoor swimming pool in the Heights.

Councilmember Brewster moved for approval of the Staff recommendation with the alternate resolution, seconded by Councilmember Iverson. Councilmember Iverson said she supports the Blue Ribbon Committee's recommendation and trusts that the voters of the City will make the right choice for the community. She noted that the Blue Ribbon Committee members may not have unanimously agreed on each alternative, but ultimately agreed to be unified in their recommendation. It is the Council's responsibility to put this question to the voters.

Councilmember McDermott said she would support the project in spite of her concerns about the costs. She said replacement of Athletic Park needs to be considered, but at a later date. Councilmember Gaghen said she supports the project and hopes there is a potential to replace Athletic Park Pool. Councilmember Brewster said he has heard from many constituents on this issue. In the long term this recommendation is appropriate according to the growth of the City. He said both facilities would serve the community for a very long time and he encouraged the Council to support the resolution. Councilmember Ruegamer spoke with a Blue Ribbon Committee member about his many questions. Those questions were answered to his satisfaction and he stated that both projects are worthy to put before the voters.

Councilmember Brown said the cost of the pool proposed in the Heights is outrageous. He said \$12.5 Million for Cobb Field is a tremendous expense for the taxpayers of the City when only 8,000 of them attend the games. He said there should be another method for funding. He said he would however support this being placed on the ballot for the voters to decide.

Councilmember Clark said he supports placing this on the ballot but noted that it is quite expensive and may have a better chance of passing if the bond issue amount was smaller. Councilmember Poppler said she is very much in support of this recommendation. She said she was thankful to the generation that financed her ability to enjoy watching the ballgames and swimming in all of the pools. She said the cost per taxpayer is small compared to the benefit received. She noted that the Council is approving the financial portion of the plans and not the plans themselves.

Councilmember Jones said these are two great projects that are well planned. He said he would not support the recommendation because he hopes that the City can get to the place where private participation for funding is available for these

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types of projects. There is a reason these issues come to the Council and it is the Council's responsibility to make those decisions. Councilmember Boyer said these projects can generate a lot of economic development. She said she supports the recommendation.

Mr. Bauer noted that there is a change in the ballot language to clarify the number of mills estimated to be added to the City's levy authority if this measure passes. The language says 14.8 additional mills (based on current assessed evaluation) would be levied to pay for principle and interest on the bonds.

Councilmember Poppler asked if a certain percentage of voters are required for passage of this bond issue. Mr. Bauer said he believes it is a majority vote and does not have the validation requirement. On a voice vote, the motion was approved with Councilmember Jones voting "no". (NOTE: Also see comments under "Public Comment" at beginning of the meeting.)

14. PUBLIC COMMENT. (Restricted to Non-Agenda Items; comments limited to 3 minutes per speaker.)

- ROB PASQUARELLO, 2159 WHITEWATER CIRCLE, spoke regarding the proposed Arlene Corridor. He said the City has not allowed any meaningful input regarding the alignment of the corridor or possible buffering from citizens affected by the proposal. He said he hopes the Council is interested in the surrounding neighborhood's thoughts and input. He said the public meetings that were held occurred after the alignment was already chosen and the decision made not to build a buffer. Mr. Pasquarello said he understands the road will be built but noted that 10,000 cars a day traffic this close to their houses is unreasonable. He said the landscaping is not an adequate buffer. He suggested that the City change the alignment to a point farther from their properties or build a wall to buffer noise and for property/citizen safety.
- BURT REYES, 2120 WHITEWATER CIRCLE, said the current alignment that was chosen is not the first alignment that was considered and presented to the surrounding residents. He spoke about his meetings with former Acting Public Works Director Brian Borgstadt regarding this alignment. He said the original plan was much less intrusive than the current plan. He asked the Council to listen to the residents, gather input and consider alternatives before going ahead with the Arlene Corridor project.
- KEVIN NELSON, 2110 WHITEWATER CIRCLE, said the main purpose of the corridor was to alleviate traffic and improve safety in residential neighborhoods including Will James Middle School. He said the proposal would relocate that traffic to the Whitewater residential area, defeating the purpose of the corridor. He noted that the first alignment was different and he said he would not have bought his home if the present alignment was the one that was shown to him at the time of his home purchase. He requested that the Council move the corridor further from their property or build a wall as a buffer. He asked the Council to begin a process that considers their concerns.
- TOM SAWATZKE, 2140 WHITEWATER CIRCLE, said he previously asked the Council for assistance on the Arlene Corridor issue. He said the City should seek input from affected residents and give due consideration to that input. He said he was informed by City officials after the bond issue was approved, that no more public hearings would be held and that the alignment would not be changed. He requested that the alignment be moved or a buffering wall built for the safety of the concerned residents. He asked the Council to begin the process to consider alternatives and seriously consider this input. Councilmember Poppler asked what kind of barrier he was proposing. Mr. Sawatzke said it should be some type of safety barrier constructed of masonry that would deflect the noise.
- CALVIN TYSON, 2170 WHITEWATER CIRCLE, spoke about the connection of Colton Boulevard to east side of the Arlene Corridor. He said the City is not going to make the connection at Golden Avenue as previously planned. He noted that petitioners do not want the connection at Golden Avenue. He asked the City to keep this commitment. He noted the Golden Avenue configuration makes additional traffic a hazard. He said that the safety of a lot of children on Golden Avenue is at stake. He asked the Council to stay with the current plan on the east side of the corridor.
- RON SANCHEZ, 2160 WHITEWATER CIRCLE, also spoke about the plan to not make a connection of Colton Boulevard to the Arlene Corridor. He said a connection at Colton would direct traffic to Golden Avenue and Golden Avenue cannot support large amounts of traffic. He said the safety of the neighborhood children is critical. Mr. Sanchez said there are also a number

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of sensible reasons to support building a buffering wall. This would be a remediation that would solve the possible devaluation of surrounding homes. He said the Whitewater Circle community is a unified voice and wants to be included in the process because they are directly affected by the decisions on the Arlene Corridor. Mr. Sanchez noted that not including public input invites problems.

- DAVE CELLAN, 2331 GOLDEN BOULEVARD, said he opposes the alignment proposal because of the increase in traffic to his neighborhood. He said he supports the connection of the corridor at Colton.
- ED JANCA, 1824 HAMPTON PLACE, said he speaks for the elderly citizens residing south of Golden Boulevard who are concerned about the possible devaluation of their homes due to the proposed Arlene Corridor. He said he is also concerned about keeping traffic from the private road that he lives on. He added that the senior citizens are also concerned that Golden Avenue would be turned into a thoroughfare with the current proposal.
- RANDY REGER, 2708 PALM, spoke about the lack of written policies and procedures for the City of Billings, most notably in the area of the Public Utilities Department and the System Development Fees. He said he was told three years ago that this was in process. He said he has spoken with officials at Public Works-Belknap and was told those policies are still in process and only in draft form at this time. As a developer, he said you "need to know where you are at and where you are going."

Council Initiatives

COUNCILMEMBER JONES: Councilmember Jones asked that the 4% franchise fee issue be addressed. Councilmember Jones moved to direct staff to come back to Council at a Work Session with further information re: the rationale for the Arlene Corridor alignment and an analysis of the options offered by the public speakers and the cost impacts, seconded by Councilmember Boyer. He added that this meeting should be noticed for the benefit of the affected neighborhoods. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER GAGHEN: Councilmember Gaghen added that she had received calls regarding saving the natural habitat that would be affected in the construction of the Arlene Corridor. She asked that this concern be added to Councilmember Jones' initiative.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 9:15 P.M.

THE CITY OF BILLINGS:



By: 

Charles F. Tooley MAYOR

ATTEST:

BY: 

Susan Shuhler, Deputy City Clerk

CITY 004334