

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## April 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 27<sup>th</sup> Street, Billings, Montana. Mayor Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by Boy Scout Troop #6, followed by the Invocation, which was given by Councilmember Nancy Boyer.

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

**MINUTES – March 22, 2004.** Approved as printed.

**COURTESIES** - NONE

### **PROCLAMATIONS – Mayor Tooley.**

- April 16: Foster Grandparent Day
- April 18-25: Days of Remembrance of the Victims of the Holocaust
- April 18: Uri Barnea Day
- April 24: Billings Youth Build Day
- April: Billings Child Abuse Prevention and Awareness Month

### **BOARD & COMMISSION REPORTS**

- **Board of Adjustment** – Danny Graves, a member of Board of Adjustment gave a brief annual report of the Board's activities. He noted the number of variances considered in 2003 and their dispositions. He said the board held a public forum for the Billings Operation Center and the "land contrary to zoning" issue. It concerned the zone boundary of a lot that had split zoning. He noted the appeal was unsuccessful, but the owner applied for a zone change that was approved by the Council and had the same effect as approval of the appeal. Mr. Graves said there are 7 board members that meet monthly. He noted several board members have concerns about the process or lack of inspection required prior to the placement of manufactured homes. The board members are hoping the Council would act favorably on the review of these lots to insure that sufficient lot requirements are met before these manufactured homes are placed.
- **Downtown Billings Partnership** – Greg Krueger, Executive Director  
Mr. Krueger gave a summary of the 3<sup>rd</sup> Quarter Report from the Downtown Billings Partnership. He referred to the 2003 Goals of the DBP. He noted the Framework Plan of the DBP is also the mission of the DBP. The Partnership provides an open forum for diverse views and consensus building. Mr. Krueger said the Partnership asked citizens to review the accomplishments of the DBP. One hundred and fourteen respondents expressed the same ideas, ranking the DBP for managed programs, events and programs as #1, the grants program as #2 and the large project grant development program as #3 toward accomplishing its goals. They also indicated that additional downtown parking, the housing

project, the Skypoint gathering space and MSU-B's downtown campus are some of the "high points". Mr. Krueger said the respondents stressed future goals should include promotion of events, managing the grants program and business recruitment. The board of directors has developed a process to conclude the Tax Increment District in 2008. This process should include: learning how to say "no" when necessary, to define business recruitment, to continue working on consistent two-way communication and to work on the growth of the taxable value of the district. It was also suggested that the DBP develop a 4-year plan and budget and explore alternate sources of funding.

**ADMINISTRATOR REPORTS – Kristoff Bauer.**

- Mr. Bauer noted the first of several public forums regarding the potential development of the city-owned property at 4<sup>th</sup> and Broadway would be Tuesday, April 13<sup>th</sup> at the Billings Depot at 6 P.M. He said the City is looking for input from concerned citizens.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1, #9, and #10 #11 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on public hearing items will be heard **ONLY** during the designated public hearing time on each respective item.)

*(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

- TIM GOODRIDGE, 2990 LOHOF DRIVE, asked the Council to consider and approve the amendment to extend the street closure for the Magic City Blues Festival. This is a good event and there is hope that it would become better with each year. By allowing the street closure, this lets other organizations showcase their offerings to the community. He said the festival has the support of the major stakeholders on Montana Avenue for the street closure the entire weekend. In five years, this event will be something the City can be proud of as well as a good source of revenue, he said.
- PETE HANSEN, 1435 WICKS LANE, said the Height's Task Force has been working on the Meadowlark Park project for four years. The wetlands issue has changed the master plan to include a wildlife park and not a formal park like others in the area. There are walking paths planned and minimal maintenance requirements. He said the vision is for an outdoor nature park. He added that the surrounding residents are agreeable to forming a park maintenance district.
- LYNNEA FORSETH, 1711 BROADVIEW DRIVE, said she is a member of the Billings Heights Task Force and involved in the Meadowlark Park Master Plan. She said the master plan is an excellent one that provides for recreation, education, consideration for the wetlands, wildlife benefits as well as meeting the needs of the neighborhood. Both Mayor Tooley and Councilmember Brewster commended Ms. Forseth on her dedication to the work of the Master Plan.
- ERWIN SMITH, 2082 SWANSON LANE, said the City should let every property owner contribute to the construction of Shiloh Road, as it is a unique and heavily

used road by all of the city residents. He said his second choice would be for Alternative #4 - spreading the assessment to the east and west; third choice would be Alternative #5 and fourth choice would be Alternative #6 to delay and do further study on other funding opportunities. He noted the commercial traffic is heavy and has damaged the road. Mr. Smith said the usage of the road should be determined before assessing a small number of residents for improvements to a road that is used by all residents in the surrounding area.

- RHONA GLASSING, 4135 JUNE DRIVE, said she agrees with Mr. Smith's comments, noting that he explained well the concerns with which the adjacent neighborhood is faced. She commended the Council and Staff for their work on developing the alternatives. She urged the Council to consider Alternative #4 that taxes the majority of the people who use the road. Alternative #5 is her second choice until a better solution is found.
- BILL PATERSON, 712 PARK LANE, said he is not a resident of the area affected by SID #1361. He said he speaks as a concerned citizen however. He said the assessment policy is not equitable when the road is used as a public highway. He said the levy should be against the many users. He noted that the 93 affected residents don't need the improvements. Mr. Paterson urged the Council to change the method of assessment.
- BONNIE KELLISON, 2076 SWANSON LANE, said the City needs to assess all the users of Shiloh Road. She noted the is road unique and heavily used by commercial vehicles because of its access to the Interstate. She urged the Council to postpone action until better alternatives are researched and other funding, whether county, state or federal is available. Ms. Kellison noted that the road is being destroyed by the heavy commercial traffic.
- LINDA RIDER, 3981 AVENUE D #14, said she lives in the Circle 50 Subdivision. She said the SID assessment to her townhome is very unfair. She noted the Circle 50 Subdivision residents don't even have access onto Shiloh Road. She said a city bond would be the best way to fund this SID. Ms. Rider urged the Council to adopt Alternative #4 that assesses all properties east and west of Shiloh Road.
- TONI MURRAY, 3981 AVENUE D #11, noted the original proposal for SID 1361 has been turned into 6 proposals. That first proposal was an unfair solution. She said the City should continue the creative trend and find a new way to fund heavily used major arterials. She said Alternative #5 is the option to use while continuing to look for a new solution for funding these types of SIDs.
- SHERRIE MURRAY, 3981 AVENUE D #7, asked the Council not to consider the original proposal, i.e. - Alternative #1. She said it is unfair to ask 93 residents to pay for the expansion, noting that daily commercial traffic far outweighs the percentage of usage by those 93 residents. Ms. Murray said the Council should consider expanding the assessment area to the east and west as stated in Alternative #4.
- JERRY GOODMAN, 7361 FRITZ ROAD, gave a brief history of Shiloh Road and its connection to Zimmerman Trail. He said commercial vehicle traffic is very heavy on Shiloh Road. Mr. Goodman said the improvements need to be done and urged the Council not to postpone the SID.

- DONNA RILEY, 3953 PARKHILL DRIVE, said she is speaking for KEVIN AND DEBBIE PRICE, LOT 1A, BLOCK 17, CIRCLE 50 SUBDIVISION. She said they object to all of the proposals recommended with the exception of the original proposal. She said she personally does not understand the SID and the 400' designation to the east of Shiloh Road and suggested the road be a toll road to obtain funding for the improvements.
- DOUG MILLER, 1931 TANNER LANE, said he is in the transportation business. He said Shiloh Road is a commercial road with heavy commercial traffic. He said the nature of the road with all of its accesses to main routes needs to be considered. He asked if State or Federal funding could be provided for this heavily used road. Mr. Miller said the assessment of the Circle 50 residents is unfair. He supported Alternative #5.
- JOELLEN SNOOZY, 3981 AVENUE D #10, said she understands that Shiloh Road needs to be improved. She didn't realize the local residents would be "hit so hard" because it is such a busy arterial. She noted the road is heavily used by commercial vehicles because of its access to Zimmerman Trail and the Interstate. It is a busy street with many vehicles exceeding the speed limits. She noted it is also not policed well.
- TRUDY KOSTER, 2404 SHILOH ROAD, said a Laurel resident called her and said he agrees with her comments in the news recently that the SID should be "spread equally around". This resident noted that it should be a state or county SID. She asked the City to take the citizen's concerns into consideration.
- DON BOESPFLUG, 3925 PARKHILL DRIVE, said he has looked through his files on his home purchase and cannot find a waiver of protest for the SID on Shiloh Road. He said he has paid an SID already. He asked the Council to look at Alternatives #5 and #6. Mr. Boespflug said "if the City doesn't have the money, don't spend it."
- DOROTHY EMMETT, 3949 FAIRMEADOW DRIVE, said SID 1361 is unfair in requiring a small number of people to "take care of a road that is used by everyone in town and Montana". There is commercial truck traffic on it both day and night, she said.
- TRACY CRUDAK, 3884 FAIRMEADOW DRIVE, said she cannot afford this SID because she is a single mom with two kids.
- JAMES PENNINGTON, 4015 CORBIN DRIVE, said he grew up west of the Shiloh Road area. He noted there are only three north/south arterials and many east/west arterials. There have been lots of improvements to those east/west arterials, but none on the north/south ones. He said the residents are paying for a problem that should have been taken care of many years ago. He said the burden should not be on the 93 residents of Shiloh Road. He said 85% of the usage of this road is not from the local residents, but from citywide users.
- RANDY SWENSON, 4570 HI-LINE DRIVE, said he is the owner of TenderNest in the Shiloh area. He said in talks with a Councilmember and staff engineer, this SID issue is admittedly not a consistent policy and there is no easy answer for this SID. Mr. Swenson said asking 93 residents to support this SID is unfair. He acknowledged however that the improvements need to be made and supports

Alternative #5 or #6. He said he is willing to participate in the improvements. The 400' extension of the participating boundary is a much fairer proposal, he added.

**CONSENT AGENDA:**

**1. A. Bid Awards:**

(1) **W.O. 03-05: Downtown Railroad Crossings.** (Opened 3/23/04). Recommend J & J Concrete, \$57,962.00 and 35 calendar days.

(2) **Marlex 90-Gallon Refuse Containers.** (Opened 3/23/04). Recommend Roto Industries at \$59.75/container.

(3) **W.O. 02-04: 13<sup>th</sup> Street West and Poly Drive Reconstruction.** (Opened 3/23/04). Recommend Alternate A to JTL Group, Inc., \$435,730.70.

(4) **2004 Water Service Replacement Project.** (Opened 4/06/04). Recommend delaying award until 4/26/04.

(5) **Motor Pool/Administrative Building – Billings Operations Center, Furniture Procurement Project.** (Opened 4/06/04). Recommendation to be made at meeting Peterson Quality Office Furniture and Equipment, \$157,507.14.

(6) **One New Current Year Model 16' Large Area Mower.** (Opened 3/23/04). Recommend Midland Implement Co., \$57,838.00.

(7) **Point-to-Point Wireless System.** (Opened 4/06/04). Recommend delaying award until 4/26/04.

**B. Contract Amendment #2 – Hazardous Waste Collection Events, Philip Services, \$40,000.00.**

**C. W.O. 04-11: South Billings Boulevard, Professional Services Contract, Morrison Maierle, Inc., \$164,000 including the Alternate totaling \$10,000 for a total cost of \$174,000.**

**D. Contract for Financial Advisor Services for Debt Issuances, Springsted, Inc., fees according to sliding scale based on size of debt issues.**

**E. Professional Services Contract** for architectural services for the Rose Park Building replacement, High Plains Architects, \$13,100.00.

**F. Extension of Electrical Contract** with Northwestern Energy for SILMD #97, 18-month extension.

**G. Assignment** of Telecommunications Easement in Swords Park to Sprint.

**H. Acceptance of Highway Traffic Safety Law Enforcement Equipment Contract #2004-13-04-26** in the amount of \$18,600 for 3 radar units and 15 portable breath testers.

**I. Resolution of Intent 04-18106** to dispose of city-owned property: Lots 8-10, Block 164, O.T. and setting a public hearing date for 5/10/04.

**J. Resolution of Intent 04-18107** to dispose of city-owned property: Lots 1-12 and Lots 20-21, Block 245, Billings Original Town and setting a public hearing date for 5/10/04.

**K. Resolution 04-18108** rescinding Res. 03-18051: annexing Blocks 2 & 3 and a portion of Block 1, Golden West Estates Sub. (Annex #03-06).

**L. Resolution 04-18117 forming a Council Sub-Committee** to consider revisions to the park permitting processes.

**M. Resolution 04-18109** adopting the Meadowlark Park Master Plan.

**N. Approval of Annexation Agreement** for Annex #03-08: Lot 4, Block 2 Barry Acreage Tracts Subdivision, 3<sup>rd</sup> filing and portions of Bitterroot Drive and Erin Street Right-of-way, Roy and Jock Clause, petitioners.

**O. Confirmation of Police Officers:**

- (1) Justin Jagers
- (2) Michael Robinson
- (3) Shane Winden

**P. Purchase of Five (5) Transit Buses**, option price from Gillig Corporation for Phase III of the bus replacement program, \$1,356,275.00.

**Q. Revolving Loan Fund** recommendations:

- (1) FP Properties, Inc. dba Mailing Technical Services, \$250,000.00
- (2) Urban Frontier Development Venture 2, LP, additional \$30,000

**R. Adoption** of revised Council Coals for FY2004-05.

**S. Amendment** to Magic City Blues Festival Street Closure: August 13-15, 2004.

**T. Acknowledging petition to annex:** #04-04, an unplatted parcel in the NE4 of Section 32, T1N-R25E, Zimmerman Family, LTD partners Jim Bromenshenk, Betty A. Teigen and Jerry Lee Zimmerman, petitioners, and setting a public hearing date for 4/26/04.

**U. Second/final reading ordinance 04-5270** amending BMCC Sections 24-401, 24-433, 24-1007 and 24-1008 providing clarification as to places where parking is prohibited, fines that can be assessed for certain violations, where a vehicle can be immobilized and providing that moving an immobilized vehicle is a misdemeanor.

**V. Second/final reading ordinance 04-5271 for Zone Change #727:** A zone change from Residential-9,600 to Residential-7,000 on Lot 4A, Block 1 of

Hancock-Grand Subdivision Amended. The subject property is located at 1749 - 38<sup>th</sup> Street West. Hancock Development, Inc., owner; Engineering, Inc., agent.

**W. Second/final reading ordinance 04-5272 for Zone Change #728:** A zone change from Residential-9,600 to Residential-7,000 and Residential Multi-Family-Restricted on an unplatted portion of NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Section 12 T.1S. R.25E., less Emerick Subdivision and Certificate of Survey No. 1702. The subject property is generally located on the southeast corner of 32<sup>nd</sup> Street West and Central Avenue (portions of proposed Lots 2 and 3 of Summer Ridge Subdivision). The Estate of Pauline and Dennis Emerick, owner; Myles Egan, agent.

**X. Second/final reading ordinance 04-5273** adopting the Billings, Montana Extended Tax Increment Finance District Plan and establishing the mechanism for allocation of taxes, commonly known as Tax Increment Financing, within a redevelopment district within the City of Billings.

**Y. Final Plat** of Mattson Acres Subdivision.

**Z. Final Plat** of Parkland West Subdivision, 6<sup>th</sup> filing.

**AA. Final Plat** of Summer Ridge Subdivision.

**BB. Final Plat** of Midland Subdivision, 3<sup>rd</sup> filing, Amended Lot 4B.

**CC. Bills and Payroll.**

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

Councilmember Brewster separated Items F and S from the Consent Agenda. Councilmember McDermott separated Items L and 1A5 from the Consent Agenda. Councilmember Gaghen separated Item 1A2 from the Consent Agenda. Councilmember Jones separated Item Z from the Consent Agenda. Councilmember Jones moved for approval of the Consent Agenda with the exceptions of Items 1A2, 1A5, F, L, S, and Z, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item 1A2 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Gaghen commended the Solid Waste Department for their efficient services. She noted that the bid decreased from last year. On a voice, the motion was unanimously approved.

Councilmember Jones moved for approval of Item 1A5 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott asked what the amount was of the CTA portion of this bid and why their services were required in the review and tabulation process. She asked for a quick review of the equipment that is being purchased. Assistant City Administrator Tina Volek said CTA was paid \$10,000 for their

work on the design specifications, design of the floor plan and the bid process and award. CTA was chosen because of their expertise and experience with this type of equipment. The plan maximizes the space and ensured the proper equipment was being provided. She noted the list of equipment is quite extensive, including 4 management workstations and approximately 33 support workstations. Councilmember McDermott asked why new furniture is needed when the employees that are moving to this building already have furniture. City Administrator Kristoff Bauer said there are two reasons for the new equipment. In the old space there were permanent walls, a type of construction that is very expensive and inflexible. In the new space, there are no walls creating an open space that allows more flexibility and functionality, but requires cubicle systems to provide for separation in workspaces. This bid award provides component system furniture to be used in the open space. He noted the open space design reduced the cost of construction and allows flexibility over time. Additionally, the current equipment is very old and not well suited for current uses. Councilmember McDermott asked if this is the total of furniture to be ordered. Mr. Bauer replied "yes". Councilmember Clark asked if this includes the Police area. Mr. Bauer said this equipment is for the main building. Councilmember Clark asked to whom the bid specifications were sent. Mr. Bauer noted the bid request was advertised and was sent to everyone who requested it. Councilmember Boyer noted CTA has design personnel on their staff that can manage and utilize space in a productive way. Mr. Bauer said the City staff feels that the \$10,000 paid to CTA was well invested in having a third party design the floor plan and manage the bid specifications. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item F of the Consent Agenda, seconded by Councilmember Iverson. Councilmember Brewster said he would abstain from the discussion and voting. Councilmember McDermott commended the Staff for their work to bring about a good negotiation and agreement. On a voice vote, the motion was unanimously approved. Councilmember Brewster abstained.

Councilmember Jones moved for approval of Item L of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott said she favors the formation of a Council Sub-Committee with Councilmembers only for this project. She said the Park and Recreation Board should be used as a liaison only. She suggested option #2 of the alternatives analyzed in the staff report. Councilmember Jones asked about the need for a resolution. Mr. Bauer said the resolution is there as an alternative to facilitate option #1. He noted the recommendation is for option #2, a Council Sub-Committee that does not require a resolution. On voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item S to approve the amendment and reject the Staff recommendation, seconded by Councilmember Boyer. Councilmember Brewster said this is a great event and extending the time will bring a diverse group of people to this area. The traffic concern only occurs on Friday afternoon and there is appropriate signage to redirect traffic. Councilmember Gaghen said having the area closed for the long weekend will only enhance the opportunities the festival brings to the City. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item Z with SIA item A6 deleted of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Jones said he is concerned about not having stop signs for accesses onto major streets such as Central Avenue and 32<sup>nd</sup> Street West. Mr. Bauer said the absence of this paragraph would leave



the determination of appropriate signage up to review during the permitting process. He said the Public Works Department would ensure that what needs to be there will be installed. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND RESOLUTION 04-18110 approving the Tax Increment Fund (TIF) budget amendment for FY 2003/04. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. GREG KRUEGER, EXECUTIVE DIRECTOR OF THE DOWNTOWN BILLINGS PARTNERSHIP, 2906 3<sup>RD</sup> AVENUE NORTH, said he supports this amendment. The DBP reviews their budget annually and this request is an annual one. He noted the major portion of the funding request has to do with the Large Project Gap Funding Program that would fund four (4) major projects this fiscal year. Those projects will increase the tax base of the Tax Increment District and bring \$200,000 to \$300,000 in incremental growth which will ultimately be used for investments. He said the budget has been thoroughly reviewed and finalized, making good use of public dollars. There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Staff recommendation, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

### **3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #725: A zone change to modify an existing Planned Development to increase the density by two housing units on Tract 3B, C/S 2991, located on the north side of Monad Road between S. 29<sup>th</sup> Street West and S. 30<sup>th</sup> Street West. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Nicole Cromwell said this zone change will increase the density by one duplex unit. The Development Review Committee reviewed this application and requested 5 comments be resolved by the applicant. Those five comments were acted on. She said there is a modified Development Agreement that has been signed. The condominium documents increasing the unit number have been revised and a landscaping plan for the common areas has been completed. She noted that a temporary turnaround for fire fighting proposed at the northwestern terminus has been designed. Ms. Cromwell said the Zoning Commission held a public hearing and has recommended approval on a 5 to 0 vote.

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

### **4. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include the recently annexed properties of Annex #04-03: C/S 680 Amended included Tract A-2. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Nicole Cromwell said this is the site of the former SunSilks building. The annexation was approved on March 22, 2004 and this represents a ward boundary change to include that annexation. She said this will be known as the Fast-Break Auto Glass location.

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

**5. PUBLIC HEARING AND RESOLUTION 04-18111 ANNEXING a 50' x 150' portion of Government Lot 3 in the SE4 of T1S-R26E-S9, (Annex #04-05) (located at 412 Hallowell Lane at the NE corner of Optimist Park). Staff recommends approval of the public services report, acceptance of the waiver, and approval of the resolution. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Manager Candi Beaudry said this annexation is a wholly-surrounded county island. She said the annexation petition includes a single property of 7,500 square feet located at 412 Hallowell Lane. She noted there is a single-family residence currently on the property. All City departments that responded to the annexation petition have responded favorably in that there would be no significant impacts to City services. The property currently has City water and is petitioning for annexation to secure a sewer connection. Ms. Beaudry said the petitioner will pay taxes and fees. This annexation does conform to several land use goals of the Growth Policy and the Annexation Policy and is within the sphere of influence. She said the Staff recommendation is for approval of the annexation. She noted that the Staff requested and received a signed Waiver of Protest.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brown 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 04-18112 creating SID 1358: Lake Hills Subdivision. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said Lake Hills Subdivision SID #1358 includes 157 properties on Lake Hills Drive, Broadmoor Drive, Pebble Beach Road, Clubhouse Way, Black Diamond Road, Oakmont Road, Iverness Drive and Greenbriar Road. The SID is estimated at \$2.1 Million. There were 20 protests representing 13% of the properties. He said the SID will improve the streets, curb and gutter, sidewalk and storm drainage. Mr. Mumford said the maximum estimate per lot is \$16,000 on the Lake Hills Drive collector street. He noted the RFP for the finish design consultant still must be advertised.

The public hearing was opened. DENNIS BOYD, 1682 LAKE HILLS DRIVE, said the assessment is unfair and too high. The estimates are vague because it has not been "bid out to any contractors yet". He noted that a private contractor bid price for similar work done for three homes was less than ½ of the proposed assessed price. In the proposed assessments there is no written provisions to handle the current speeding problem. He

suggested speed-reducing dips, three-way stops at Lake Hills Drive and Clubhouse Way and increased police patrol of the speed limits. With the proposed assessments, the residents will look forward to increased traffic and no increase in City benefits – such as snow removal, plowing, sanding, police patrols and street upkeep.

KEN PETERSON, ATTORNEY, NO ADDRESS GIVEN, said he represents Snyder Enterprises in a protest of SID #1358. He noted Mr. Snyder has provided the Council with materials regarding his protest. He said Mr. Snyder and his father developed Lake Hills Golf Course fifty years ago. At that time they paid the taxes and SIDs on properties in that area for over forty years. They pay approximately \$50,000 per year. He said they have paid approximately \$1.2 Million on SIDs alone. He said the SIDs seem to never end in that area and likened it to the situation on Shiloh Road where the improvements are being “born on the backs” of the local residents. Mr. Peterson said the SID is too large and too expensive.

JIM NOVOTNY, 1648 LAKE HILLS DRIVE, said his property is being assessed \$16,500. He paid \$126,000 for his home last May and percentage wise will not recoup this loss. He said there are too many questions on the assessment method that need to be answered. He noted that the proposed process will cause the street to be torn up for storm sewer and double the pavement costs. He asked who proposed the SID.

RAINA CUNNINGHAM, 2004 WENTWORTH DRIVE, said she owns four lots that will be impacted by assessment #3 of the SID. She supports the assessments for those lots. She said the asphalt surface will benefit the homes that are presently on gravel roads and benefit the entire neighborhood. Ms. Cunningham said former SIDs in the area are comparable to these assessments while the lot values have increased since that time.

BRUCE HOWICK, 1674 LAKE HILLS DRIVE, asked the Council to reject the resolution to create SID #1358. He said the residents of Lake Hills Drive will not be the beneficiaries of the SID. The developers and the new residents of new subdivisions behind Lake Hills Golf Course will benefit. He also said this SID is “riddled with ambiguities”.

RON HILL, 2202 WEST SKOKIE, said this is a confusing group of assessments. He said it appears that this is a lot of leapfrog improvements on collector streets. As a developer he is being asked to pay for the external improvements around the outside of Deep Powder Drive. While there is no value for him in this, he said he supports it. Mr. Hills said he hopes the actual costs will come in less than estimated because they are too high. It is however a necessary improvement.

DAVID CUNNINGHAM, 2004 WESTWORTH DRIVE, requested that the Council send this SID out for an engineering RFP.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Brewster said a constituent living in the affected area asked that he present pictures of the significant drainage problems that demonstrate the concerns and need for the SID. She is in support of this SID, he said. Councilmember Poppler said the Council must find a more equitable way to fund these SIDs. Councilmember Brown noted that SID assessments are deductible. He said it is a good time to take advantage of the low interest rates to pay for the assessments. Councilmember Brewster said nearly everyone in the City has paid for these development costs whether through an SID or the initial price of a new home. He said a citywide tax on arterial and collector streets would not help residential streets such as the ones in this SID. Councilmember Poppler said this

issue is difficult, but noted that some of the burden must fall on the homebuyers who should investigate future improvements before buying. Councilmember Brewster agreed that the option to buy a house on a developed street will avoid any “surprises” regarding future improvement assessments. Mr. Bauer said SIDs are an opportunity for the property owners to request improvements that will benefit their properties and to control the timing of the improvements. He said in a generalized program of city-wide assessments, the Council would be required to decide who would get the benefit of those assessed dollars. With the current system, it allows the property owners to make those decisions.

Councilmember Poppler asked what percentage of protest is required to stop an SID. City Attorney Brent Brooks said the Montana Code Annotated states 50% of the cost or 50% of the property owners over 50% of the area in the proposed SID. Councilmember McDermott said the current SID process is probably the most equitable method the City has. On a voice vote, the motion was unanimously approved.

The Mayor called for a recess at 8:22 P.M.

The Mayor reconvened the meeting at 8:27 P.M.

**7. PUBLIC HEARING AND RESOLUTION 04-18113 creating SID 1365: Lake Heights Drive in Lake Hills Subdivision, 25<sup>th</sup> filing. 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 Iverson moved for approval of the Staff recommendation, seconded by Councilmember Jones. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND RESOLUTION 04-18114 annexing Tracts 101 & 124 of Sunny Cove Fruit Farms, generally located at the northwest corner of Grand Avenue and 58<sup>th</sup> Street West. (PH and action tabled from 3/8/04). Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Manager Candi Beaudry said this annexation was before the Council previously. She noted the Council denied the expansion of the Urban Planning Area causing the original petition to be modified eliminating Tract 123 of Sunny Cove Fruit Farms. This petition includes only Tracts 101 and 124 and is located at the northwest corner of Grand Avenue and 58<sup>th</sup> Street West, approximately one mile from the existing city limits. There are approximately 19 acres and the zoning is Agricultural-Open Space for this property and the surrounding area with the exception of Residential 15,000 in the Sunny Cove Fruit Farm area and Residential 9,600 to the north. The land is vacant and proposed for residential land use. Ms. Beaudry said the public service report identified no objections from City departments with the exception of Fire and Police who stated that additional staff will be needed to serve the area. There will be a higher response time for city services and the distance from the city limits will increase the cost of other city services. She said existing utilities are at Grand Avenue and 58<sup>th</sup> Street West. She noted that a residential development rarely pays its way, but this development will contribute to reimbursing the City’s investment in water and sewer infrastructure.

Ms. Beaudry said conformance with the Annexation Policy is mixed. It lies within the sphere of influence and the future subdivision is proposed at urban densities. It is

larger than ten acres and has regular boundaries in the form of existing streets on the south and east sides. It is not a wholly-surrounded county island and does not presently receive city services. The proposal meets the Growth Policy goal to provide more housing choices, but the higher density is not in character with the surrounding neighborhood. She added that it is not contiguous to the existing population centers and constitutes leapfrog development. Ms. Beaudry said the Staff is recommending approval of the annexation with the condition that a Development Agreement be included stipulating specific infrastructure improvements and provides guarantees for those improvements, or a Subdivision Improvements Agreement and a Waiver of Right to Protest for the future subdivision.

Councilmember Brewster asked if the property would be annexed into the City under Residential 9,600. Ms. Beaudry said "yes" and noted there is a zone change application in process. Councilmember Boyer asked about a reduction in the densities. Ms. Beaudry said the petitioner has submitted a Preliminary Plat application for 41 lots, reducing the previous proposal from 474 units to less than 100 units.

Councilmember Jones asked about the transportation issue regarding Grand Avenue. Ms. Beaudry said the Planning Staff will require an upgrade of 58<sup>th</sup> Street West to a collector street standard at the time of final plat approval. The requirements for Grand Avenue are still not certain, but the subdivider will have to improve it to a certain standard. At the time of the Subdivision Preliminary Plat a proposal will contain the recommendations for the road standards.

The public hearing was opened. RICK LEUTHOLD, ENGINEERING, INC., NO ADDRESS GIVEN, said he is representing Mark Kennedy the developer of the property. He noted this proposal was before the Zoning Commission at their last meeting with no opposition to the proposed zone change. The property will come into the city as Residential 9,600. He noted the Preliminary Plat will be reviewed at the 4/13/04 Planning Board meeting. Mr. Leuthold said the sizing of the roads has not been determined. He noted that the developer is considering a cash contribution in lieu of deferring the cost of future improvements to property owners. A Traffic Accessibility Study has been done and if it is ascertained that the development is impacting the road, the adjacent landowners will have to contribute to the improvements. He noted there are county roads in the area and decisions will have to be made. Councilmember Gaghen asked Mr. Leuthold to review the change in the density proposal. Mr. Leuthold said the original plan proposed Residential 7,000 and multi-family housing. It has been revised to single-family or duplex housing with lower density that is much more palatable to the neighborhood.

MARK KENNEDY, PRESIDENT KENMARK HOMES, NO ADDRESS GIVEN, said he has been involved in several developments that were originally considered leap-frog development and are now surrounded by city property. He said that leapfrog development is how cities develop. He considers himself a responsible developer and noted that the development community thought the extension of city services signaled the desire of the city to extend in that direction.

TOM LLEWELLYN, 5819 RIMROCK ROAD, said he is concerned about how development is handled in this community. The Growth Policy that adopted the West End Plan says that properties within 500 feet of city services must be connected. He said the concern for the City now is how to recoup the \$7 Million investment in infrastructure to the Ironwood Subdivision. He said it should be with one piece of property at a time. The City

needs to honor its commitment and decisions to accept the West End Plan and the Growth Policy and the installation of the \$7 Million infrastructure project.

There were no other speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Staff recommendation, seconded by Councilmember Iverson. Councilmember McDermott said she is opposed to leapfrog development, but \$7 Million of taxpayer's money needs to be recouped. The reduction in services to current residents is another concern. Councilmember Boyer said the City sent a clear message to the development community by running the water and sewer out to 58<sup>th</sup> Street West. This is an integrity issue with this developer and she said she would support the annexation. Councilmember Ruegamer said perfect growth block by block is never going to happen. He agrees with the developer's ideas about growth. He said it is a good development and he will support the annexation. Councilmember Brewster noted the last work session discussed drawing a line (the sphere of influence) with regard to future annexation. He said if the Council agrees with the line, they should support this annexation and recoup the City's investment in infrastructure. It is a real stretch of city services, but he said he is hopeful the area will fill in. Councilmember Gaghen said the Council needs to be logical about diluting City services. Councilmember Poppler is concerned about the 10-acre lots that would be faced with a possible zone change. Councilmember Brewster said he did not think the City would want to annex those 10-acre lots with single-family homes without their request. Councilmember Clark said it was a huge mistake to run the sewer and water out to 58<sup>th</sup> Street West, but it must be utilized. Councilmember Boyer said the Council must start saying "no". Councilmember Jones said the plan being presented tonight is more manageable. He said he will support this annexation to recoup the \$7 Million investment. On a voice vote, the motion was approved with Councilmembers Brown, McDermott and Poppler voting "no".

**9. RESOLUTION 04-18115 establishing a Policy related to the use of Employee & Employer contributed funds for the provision of health care benefits to City Employees. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Deputy City Administrator Bruce McCandless said he is presenting a recommendation to adopt a resolution that will establish a policy concerning the City's health insurance fund. There are three benefit plans the City and employees contribute to. Increases over the past years have been shared equally by all entities. The issue tonight concerns the governance of the health fund. He noted the Health Insurance Committee was formed in 2001 and reached agreements with the three unions - the Teamsters, Fire Fighters and Police that represent a major portion of the City's employees. These agreements gave certain duties to the Health Insurance Committee. He noted the committee was able to eliminate the health insurance issue out of the annual bargaining contract by sharing some of the governance of the health plan. He said there are nine (9) members on the committee, one from each of the unions and six employees (5 active and 1 retired) appointed by the City Administrator. Their duties include monitoring the health plan and the health insurance industries to maintain operation on a sound actuarial basis and establish the plan benefits, premiums and cost sharing. He said the benefit of the governance sharing is to provide more employee choice and ultimately help the City to save money with the reserves almost restored to its former level.

Mr. McCandless said the contracts do not state specifically how the assets of the health fund are to be used or ensure that they won't be diverted to other City uses. State law protects both the employer's and the employees' contributions in the State plan, but the employee's contributions are not protected in local governments. The committee is proposing a resolution to reaffirm the committee's role and protect both employees' and employer's contributions and reserves from diversion to other priorities. He said the Staff recommendation is to adopt the resolution.

Councilmember Brewster said when the Council adopts the budget, they automatically provide for the City's contribution to the plan. He asked if the Council is contributing to budget obligations without any control. Mr. Bauer said the union contracts place obligations on the City to fund the plans. He noted they are both in and out of the Council's control in some respect. To change this would require changing the language in the contracts. He said the focus of this resolution is to provide policy direction for how the contributions should be used for the benefit of the plan and not available for other uses. Councilmember Gaghen said the operation of the committee is a workable solution and the resolution has the oversight of the council. Councilmember Jones said the purpose of this resolution is to ensure that health contributions are only spent on healthcare and this is a reasonable request. Councilmember Poppler moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**10. RESOLUTION 04-18116 creating SID 1361 to construct public improvements generally consisting of water, sanitary sewer, storm drain and street improvements on Shiloh road from Avenue B to and including Rimrock Road. (PH held 3/8/04; action delayed from 3/8/04). Staff will make a recommendation following the Work Session of April 5, 2004. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford reviewed the options for improvements to Shiloh Road from Grand Avenue to Rimrock Road. The road has not been improved for over 20 years. Engineering, Inc. was hired to review and design the reconstruction according to safety requirements, capacity, pavement life and pedestrian facilities for a period of twenty years and beyond. He noted the public hearing was held at the March 8<sup>th</sup> Council meeting. The residents' concerns and ultimately the Council's request asked the Engineering Department to consider other options for constructing and funding the SID. He said the original proposal capped square footage assessment at 7,328 square feet on non-condominium residential properties. Condominiums were capped at 4,882 square feet for assessment purposes. Commercial properties were assessed up to a maximum of 14,656 square feet. These methods have been used in the past on previous SIDs.

Mr. Mumford said properties adjacent to Shiloh Road were considered for assessment. The residential properties would be assessed on a ½ street portion of 11 feet of roadway construction, curb, gutter, and sidewalk adjacent to residential properties. Commercial properties would be assessed on a ½ street portion of 15 feet of roadway construction, curb, gutter and sidewalk adjacent to commercial properties. The City would assess itself for the remaining ½ street portion that makes this road an arterial. He noted the water, sanitary sewer, storm drain, traffic signal, street lighting, signage or striping and the extra materials required to make this an arterial street were not being assessed.

Mr. Mumford explained the six alternatives to the original proposal for assessment. They were: 1) Alternative #1 – create SID 1361 as originally proposed with additional funding from the Public Works Department for water and sewer improvements, 2) Alternative #2 - expand the boundary of SID 1361 to include those properties that have Waivers of Right to Protest for the Shiloh Road improvements, 3) Alternative #3 – expand the boundary of SID 1361 to include properties behind those along Shiloh Road, considering a “layering” scheme, 4) Alternative #4 – expand the boundary of SID 1361 both east and west, to include properties that use Shiloh Road for travel and access, 5) Alternative #5 – construct a portion of the project – intersection of Shiloh Road and Rimrock Road, including a traffic signal, and 6) Alternative #6 – do nothing , do not create SID 1361 and do not construct any improvements to Shiloh Road and Rimrock Road at this time.

He said Alternative #1 would propose an average residential assessment of \$8,672. This is a decrease of \$1,845 from the original proposal. The advantages would be construction of the project as originally proposed and continuation of the SID process so construction could start this summer. The disadvantage is there is not a major change in assessment for condo properties. There are 93 residential properties in this alternative. He noted the Mission United Church gave a cash contribution in lieu of assessment at the time of their development.

Alternative #2 would propose an average residential assessment of \$5,367 and the average assessment for Circle 50 residents would be \$1,411 (these properties were not previously included). This is a decrease of \$5,150 from the original proposal. The advantages would be construction of the project as originally proposed and a decrease in assessments to properties along Shiloh Road. The disadvantage would be re-creation of the SID, delaying the start of construction to late July or early August.

Alternative #3 would propose average residential assessment for properties within 400 feet of Shiloh Road at \$5,627 and non-adjacent residential assessments at \$6,820. He noted the first 25 feet adjacent to the improvements are assessed at 2/3 and the remaining would be assessed at 1/3 under State law. This is a decrease of \$4,890 to the average residential assessment. The advantages would be completion of the project as originally proposed and decreasing assessments to properties along Shiloh Road. The disadvantages are greater assessments in the non-adjacent properties and delay of construction to late July or early August because of recreation of the SID.

Alternative #4 would substantially lower the assessment because it is adding properties to the east of 46<sup>th</sup> Street West, west of 38<sup>th</sup> Street West, north of Avenue B and south of the Rims that use Shiloh Road for travel and access. The average residential assessment would be \$1,419 and the average expanded assessment would be \$500. This decreases the assessment from the original proposal of \$9,098. The advantages are completion of the project as originally proposed and decreasing assessments to properties along Shiloh Road. The disadvantages would be requiring the SID process to be restarted, delaying the start of the project until late July or early August.

Alternative #5 would not require adjacent property assessment because the City can accomplish the reconstruction of the Shiloh Road and Rimrock Road intersection including the traffic signal from funds available. The advantages are eliminating assessments to properties along Shiloh Road and reduced time for completion of construction. The disadvantages are completion of only a portion of the project from Poly



Drive to Rimrock Road. Shiloh Road south of Poly Drive would remain in the same state - which is breaking up and creating hazardous driving. This may set a precedent for not assessing along arterial roadways and would impact handling of Alkali Creek Road and South Billings Boulevard.

Alternative #6 leaves Shiloh Road and Rimrock Road in their present state. The advantage is no assessments to the Shiloh Road properties. The disadvantage is that a safety issue at this intersection requires some action.

Councilmember Boyer asked why Alternative #2 was not considered originally. Mr. Mumford said it has not been past practice to assess residents that are not adjacent to the street. Councilmember McDermott asked if the same residents could have two SIDs on their residential streets if Alternatives #2, 3 or 4 are considered. Mr. Mumford said there are some residents that may have two SIDs because their areas are not currently improved. Mr. Bauer noted the current resolution for SID 1361 that is being considered includes Alternative #1. The Council's options are to adopt that resolution or direct the Staff to proceed in another direction. Councilmember Brown asked what the assessment equates to in monthly payments. Mr. Mumford said over 15 years the payment could be \$100 to \$125 per month. Councilmember Jones asked what projects are being delayed to give this project priority. Mr. Mumford said the Capital Improvement Plan ranked this project five years ago as a high priority. It does not displace anything in the CIP. Councilmember Jones asked where the cash contribution in lieu of assessment is included. Mr. Mumford said it is included in the amount of contributions that offset the property owner's assessments. It is held in an account that can only be used for this project. Mr. Bauer noted surface water drainage costs are not being assessed to the residents. Mr. Mumford said these improvements are being funded through the storm drain maintenance fees. Councilmember Gaghen asked how the cash contributions are estimated several years in advance. Mr. Mumford said the estimate is projected into today's dollars. Councilmember Boyer asked what happens if the estimate is low. Mr. Mumford said the Subdivision Agreement establishes the amount and if the price of construction is significantly increased the City absorbs those costs. Councilmember Boyer asked if there are any state or federal funds available for the project. Mr. Mumford said the five-year plan from the policy committee does not include funding for any other projects. Another project would have to be delayed to shift the funding from it to this project. Mr. Bauer noted that federal funding would create more costs in environmental studies and delay of the project for up to two years.

Councilmember Clark moved to take from the table and approve the resolution creating SID 1361, seconded by Councilmember McDermott. On a roll call vote, the motion failed 5-5 with Councilmembers McDermott, Brewster, Brown, Poppler and Jones voting "yes" and Councilmembers Gaghen, Ruegamer, Iverson, Boyer and Clark voting "no". Because of a possible financial impact from one of the alternatives, Mayor Tooley abstained from voting.

Councilmember Clark moved to reconsider the motion, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved. Councilmember Clark made a substitute motion for approval of Alternative #2, seconded by Councilmember Ruegamer. Mr. Bauer noted that this alternative would re-create the SID and delays the start of the project to late July and construction to next summer.

Councilmember Clark withdrew his motion, Councilmember Ruegamer withdrew his second.

Councilmember Boyer moved for a substitute motion for approval of Alternative #5, seconded by Councilmember Gaghen. Councilmember Jones asked if with this alternative the funding available to subsidize the project would be spent now and future reconstruction of Shiloh Road would require higher assessments to cover construction costs. Mr. Mumford said the section south of Poly Drive would require assessments from those adjacent property owners and a change in the Capital Improvement Plan would be required to allocate monies for that portion of the project. It would be more expensive to do this construction in two parts because there is always cost savings with larger projects. Councilmember McDermott said the only fair alternative is Alternative #1 because of the other SIDs that were approved this evening. With Alternative #5 and 6, Shiloh Road would lose the large contribution from the CIP because it would move to another project. On a roll call vote, the motion failed 3-7 with Councilmembers Gaghen, Iverson and Boyer voting “yes” and Councilmembers McDermott, Brewster, Brown, Ruegamer, Poppler, Clark and Jones voting “no”. Mayor Tooley abstained.

Mayor Tooley said the Council is back to considering the original motion of Alternative #1. Councilmember Jones noted that failure to approve Alternative #1 would be selecting Alternative #6. Councilmember Ruegamer made a substitute motion for approval of Alternative #2. The motion died for lack of a second. On a roll call vote on the original motion, the motion was approved 7-3 with Councilmembers McDermott, Brewster, Brown, Ruegamer, Poppler, Clark and Jones voting “yes” and Councilmembers Gaghen, Iverson and Boyer voting “no”. Mayor Tooley abstained.

Mayor Tooley called for a recess at 9:50 P.M.

Mayor Tooley reconvened the meeting at 9:54 P.M.

**11. PRELIMINARY PLAT of Ironwood Subdivision, 2<sup>nd</sup> filing. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Nicole Cromwell said this subdivision contains 112 new lots. It consists of a 10-acre lot on Molt Road and 111 residential lots to the south and east of the 1<sup>st</sup> filing, Ironwood Drive from Molt Road to the east. There is one lot for a communications building and several public parks. She said the largest residential lot is 37,000 square feet and the smallest is 17,000 square feet. She noted the 62<sup>nd</sup> Street access is pertinent in the conditions for approval. Ms. Cromwell said the recommendation from the Planning Board is to conditionally approve the subdivision with the following conditions:

1. SIA-3.B.(7) – Change second sentence to “...agreeable site for the new reservoirs is...”. (*this wording change is required by Public Works Collection & Distribution Division BMCC 23-705*)
2. A water main will need to be extended in Molt Road to the south property line of Lot 14, Block 6. (10-acre lot) This water main extension can be constructed at the time the lot is to be developed. (*this added condition is required by Public Works Collection & Distribution Division BMCC 23-705*)

3. A one-foot no access strip will be shown along the entire Molt Road frontage Lot 14, Block 6. *(this condition is required by Public Works Engineering Division BMCC23-601(d))*
4. A street right of way will be shown and named to provide physical access to Lot 14, Block 6 located south of Ironwood Drive. *(this condition is required by Public Works Engineering Division BMCC 23-605(h))*
5. The developer will obtain a zone change for the utility lot (Lot 76, Block 1) from Residential 9,600 to Public zoning. *(this condition is required by the Planning Department BMCC23-304)*
6. SIA- 3.A. Streets (11) (pg 4) A secondary access road will need to be installed to meet City and State requirements to allow emergency access to the subdivision. The road shall be designed to a minimum unobstructed width of not less than 20 feet and shall be constructed to adequately support a 30-ton vehicle with a surface so as to provide all-weather driving capabilities. Gates or other approved barricades shall be required at either end of the road to restrict through traffic. A sign shall be fixed to each gate in a conspicuous manner. The sign shall read "EMERGENCY ACCESS ONLY" using red letters not less than two (2) inches wide and six (6) inches high on a white reflective background. A cross-sectional design of the road including location, sections, surfacing, drainage and design of gates and barriers shall be submitted to and approved by the Billings Fire Department and the City Engineer's Office prior to actual construction. The construction and upgrade of this emergency access road shall be completed prior to the filing of the Final Plat. *(This condition is required by the Fire Department, Public Works Engineering Division and the Planning Department. BMCC23-601(a)(m). The location and design are not specified in order to allow the developer, the Engineering Division and the Fire Department to consider all possible alternatives for all-weather secondary access points.)*
7. Street name signs for streets within the 1<sup>st</sup> filing of Ironwood Subdivision shall be installed prior to filing the Final Plat for the 2<sup>nd</sup> filing of Ironwood Subdivision. *(this condition is required by BMCC 23-707)*
8. The Park Master Plan shall be approved by the City Council prior to the filing of the Final Plat for the 2<sup>nd</sup> filing of Ironwood Subdivision. *(requested by the PRPL department and a condition of Ironwood Subdivision 1<sup>st</sup> filing)*
9. Installation of walkways, trails, landscaping, irrigation and signage in the public park areas designated in Ironwood 1<sup>st</sup> filing shall be completed or monetarily guaranteed prior to filing the Final Plat for the 2<sup>nd</sup> filing of Ironwood Subdivision. *(requested by PRPL to assure actual construction of these park improvements)*
10. 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.*

11. 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.*

Ms. Cromwell suggested the Council change the language of condition #6 to include “the storm drainage design shall account for a 10-year storm event with no encroachment of the travel way”.

The Planning Board considered and is recommending approval of the following requested variances:

- Section 23-601(k) that requires a collector street right of way be 80 feet in width. Subdivider is proposing a 60-foot right of way.
- Section 23-601(k) that requires a pavement width of 49 feet from back of curb to back of curb. The subdivider proposes a 28-foot pavement width plus a two-foot concrete ribbon on each side for total width of 32 feet.
- Section 23-601(k) that requires a local residential street width of 37 feet back of curb to back of curb. The subdivider proposes a 28-foot pavement width plus a two-foot concrete ribbon on each side for total width of 32 feet.
- Section 23-601(k) that requires a short cul-de-sac to provide a pavement width of 29 feet back of curb to back of curb. The subdivider proposes a 24-foot pavement width plus a two-foot concrete ribbon on each side for total width of 28-feet.
- Section 23-702(e) that requires curb and gutter on collector streets and drive-over curbing on residential streets. The subdivider is proposing a two-foot concrete ribbon with adjacent swales to accommodate storm water drainage.
- Section 23-703(a) that requires sidewalks on both sides of all streets. The subdivider is proposing a series of linear parks, bike trails and a sidewalk on the north side of Ironwood Drive to provide pedestrian mobility within the subdivision.

The Planning Board found granting of these variances will not be detrimental to the public health, safety or general welfare, the particular physical surroundings involved an undue hardship if the strict letter of the chapter was enforced, the variances would not create a substantial increase in public costs and do not place the subdivision in nonconformance with the zoning regulations or the adopted growth policy. (BMCC Section 23-1401).

The findings of fact are:

**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

There will be no effect on agriculture and agricultural water users. The property is 74.98 acres in size and has been out of active agricultural use for a number of years. It is located in a rapidly developing part of Billings and is no longer suitable for agriculture.

2. Effect on local services

- a. Utilities – Water and sanitary sewer facilities will be extended by the developer to serve this subdivision. All stormwater will be retained and then discharged to Cove Creek through a series of swales and detention ponds. Private utilities will be extended to this property under the companies' operating rules.  
Encroachment agreements with Conoco Phillips have been executed for all areas where public improvements for the 1<sup>st</sup> and 2<sup>nd</sup> filings of Ironwood have been or will be constructed in their pipeline easement. Water pressure zones #4 and #41/2 are included within the Ironwood Subdivision. The City is negotiating with an owner to site new water reservoirs to serve these pressure zones.
- b. Solid waste – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - The subdivider will construct the internal streets to match the streets in the 1<sup>st</sup> filing: the collector and local streets will have a 28 foot wide paved surface with 2 foot concrete ribbons on each side and the short cul-de-sacs will have a 24 foot wide paved surface with 2 foot concrete ribbons on each side. Traffic from this subdivision will use Ironwood Drive to enter and leave the subdivision. The emergency access road (Bushwood Drive/62<sup>nd</sup> Street West) constructed as part of Ironwood 1<sup>st</sup> Filing does not provide all-weather emergency access because during storm events Cove Creek flows across this road. In addition, Cove Creek can experience flash flooding, nullifying the utility of the emergency access at this location. The developer, the Fire Department and the Engineering Division will work to develop a design and location for an all-weather secondary access road. A sidewalk will be constructed on the north side of Ironwood Drive.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #3, located at Parkhill and 17<sup>th</sup>, which is approximately 5.5 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 Avenue at about 25<sup>th</sup> Street West.
- e. Schools – The subdivision is in School District 2. Elementary students will be assigned to Arrowhead Elementary and Will James for Middle School and West High School. The School District replied to a request for comments. They will work with the subdivider to designate an elementary school bus route through Ironwood.
- f. Parks and Recreation – Because this is a major plat the subdivider must dedicate parkland or cash in lieu of parkland. The subdivider is providing 9.02 acres of parkland. The property will be included in a Park Maintenance District that will include all of the parkland and bikeways to be developed and maintained in Ironwood Subdivision. The subdivider will complete and have the Park Master Plan approved the City Council prior to filing the Final Plat for Ironwood 2<sup>nd</sup> filing Subdivision.

### 3. Effect on the natural environment

There should be a small effect on the natural environment. 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. Stormwater runoff is regulated by City and state authorities.

4. Effect on wildlife and wildlife habitat

There will be a small effect on wildlife and its habitat. The land is non-irrigated farmland and indigenous species may periodically inhabit the site. There are no known threatened or endangered species on the property.

5. Effect on the public health, safety and welfare

There is a mapped floodway and flood plain for Cove Creek and will be noted in the SIA and on the plat. There are also potentially expansive soils and future owners will be notified in the SIA and on the plat. There is a 4-inch Conoco pipeline that runs from the northeast to the southwest through the subdivision. Encroachment agreements have been executed for any improvements within the easement for this pipeline. An all-weather secondary access for emergency purposes will be developed at a location to be determined by the developer, the Fire Department and the Engineering Division.

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

An Environmental Assessment is not required because the subdivision is entirely within a master planning area and the City has adopted zoning regulations and a capital improvements plan.

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

1. Comprehensive Plan:

The subdivision meets the following goals/policies of the growth policy

- a. Predictable land use decisions that are consistent with neighborhood character.
- b. New developments that are sensitive and compatible with existing development.
- c. Rational consideration of neighborhoods for parks.
- d. Recreational facilities that serve the diverse needs of Billings.
- e. Accessible public lands including trails near the rims.

The subdivision does not meet the following goals/policies of the growth policy

- a. Contiguous development focused in and around existing population centers.
- b. Affordable housing for all income levels
- c. More housing & business choices within neighborhoods.
- d. Unobstructed views of the rimrocks surrounding the City of Billings.

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. An "inner-belt" collector street is designated for this area. A preliminary feasibility study

identified three possible routes. These routes are north of the proposed subdivision but may be in future Ironwood Subdivision filings.

### 3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. There are a number of bikeways planned within the subdivision that will allow connections to the rims. A direct connection to Yellowstone Club Estates is not planned at this time. The only connection to the south will be the emergency access road.

#### **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 subdivision will use City water, sanitary sewer, storm sewer and City solid waste collection and disposal services. All services are approved and regulated by state and federal authorities.

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

The property is in the Residential R-9600 zoning district. The proposed subdivision except for the proposed utility lot does conform to the existing zoning. The subdivider has submitted a zone change for the utility lot and the public park parcels to change these from R-9600 to Public zoning. In addition, a zone change from R-9600 to Residential Professional is planned for the 10-acre lot that has frontage on Molt Road.

#### **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 proposed facilities.

#### **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 Ironwood 2<sup>nd</sup> 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 2003 Growth Policy and doesn't conflict with the Transportation or BikeNet Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning (except as noted), sanitary requirements and provides legal and physical access to each parcel.

Councilmember Jones moved for approval of the Staff recommendation with a change to condition #6 to account for a 10-year storm even with no encroachment of the travel way, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**12. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.  
(Restricted to Non-Agenda Items only; comments limited to 3 minutes per speaker. )**

- TIM CRANSTON, 1400 POLY DRIVE #6A, spoke on the potential purchase or municipalization of the Northwestern Energy transmission assets. He said he shares the concerns of the Council for the current high energy costs and volatility. He also shares the concern that Billings could be left out of the decision-making process of the consortium if it were formed and the bid was successful. Mr. Cranston said those concerns can be addressed in a far less risky manner to the City of Billings and their ratepayers. He submitted three major reasons why this purchase should not go through: 1) volatility in energy, 2) uncertain nature of the high cost of the purchase for the City, and 3) lack of experience of operating, managing and owning an enterprise of that nature. He said there are few success stories in other municipalities implementing such a massive undertaking. He suggested the City research other municipalities that have implemented efforts to acquire and manage power assets since the 1996 deregulation. He noted there are two purchases that he is aware of that have not been successful. He cautioned the Council to enlist a reputable engineering firm to look at best practices in recent municipalizations and the lessons learned.

### **Council Initiatives**

**COUNCILMEMBER RUEGAMER:** Councilmember Ruegamer moved to direct staff to develop and bring back to Council for consideration, an ordinance amendment exempting Christmas Tree Lot temporary uses on lots owned by the Permit applicant from the requirement to secure a \$1,500 bond or other guarantee as a condition of that permit, seconded by Councilmember Jones. On a voice vote, the motion was unanimously approved.



MINUTES: 04/12/04

COUNCILMEMBER GAGHEN: Councilmember Gaghen moved to hold a Public Hearing at the April 26<sup>th</sup> Council Meeting to hear comment regarding the inclusion of the City of Billings in the formation of an entity to purchase assets from Northwestern Energy and to consider action if the Councilmembers deem necessary, seconded by Councilmember Iverson. Councilmember Jones suggested that concerned citizens could make their comments and concerns known during the Public Comment period instead. Councilmember Brown noted there has been no “grass roots” effort to overturn the previous action of the Council. This would lead him to believe the will of the voters is what the Council’s conclusion was. On a roll call vote, the motion failed 5 to 5 with Councilmembers Gaghen, Ruegamer, Iverson, Boyer and Mayor Tooley voting “yes” and Councilmembers McDermott, Brown, Poppler, Clark and Jones voting “no”. Councilmember Brewster abstained.

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 10:43 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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