

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 24, 2003

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Mick Ohnstad.

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

MINUTES – March 10, 2002 – Approved as printed.

COURTESIES –

- Community Development Manager John Walsh recognized the Billings Depot Inc. as the recipient of the 2003 Governor's Special Award for Historic Preservation. Harry Gottwals displayed the plaque that was presented by Governor Judy Martz on January 15, 2003 to the Billings Depot, Inc. at a special ceremony in Helena. Mr. Walsh said the restoration project has made the area a tourist attraction. Mr. Gottwals said he is honored to be a steward on behalf of the City of this property. He said the architects are 50% complete with the plans for the next phase and are hopeful that construction will begin at the end of the year with a tenant in the building by mid-year of 2004. Landscaping is in process. There will eventually be life-sized sculptures depicting people from life in the 1920's, 1930's and 1940's. Mayor Tooley thanked Mr. Gottwals for all of his hard work.
- Assistant City Administrator Kristoff Bauer announced the following retirements from the Public Utilities Department:
 - Management Information Coordinator Delvin Gebhardt, who has been with the City for 30 years. He was responsible for programming the City's first IBM computer with 8 K of memory that served the City until 1999 when it had to be replaced because of Y2K compliance.
 - Mike Thomas, Inspector for the Water Treatment Division has worked for the City for 41 years. He has won several awards and honor during his tenure.
 - Joyce Pirrie, Senior Administrative Coordinator began with the City 38 years ago when the Water Department was located at City Hall and has worked with 4 Public Utilities Directors during her career.Mr. Bauer thanked them for their long and faithful service.

PROCLAMATIONS – Mayor Tooley.

- Administrative Professionals Week – April 20th – 25th
- Fair Housing Month – April
- Arbor Day – April 25th

- National Library Week – April 6th – 12th
- Parkinson’s Disease Awareness Month – April

BOARD & COMMISSION REPORTS – NONE

ADMINISTRATOR REPORTS – Kristoff Bauer.

- Mr. Bauer noted that Item I of the Consent Agenda would need to be removed. The Public Utilities Department is not ready with prior improvements associated with this work order and the item will need to be delayed until next spring.
- Mr. Bauer reported on the progress of the Council Initiatives from the previous meeting. Jani McCall, our lobbyist in Helena is working on the Veteran’s Cemetery/Nursing Home initiative. The nonconforming use issue is being considered and studied by the Planning staff. Mr. Bauer said the staff would like to wait until the end of the legislative session to see what changes in the State regulations will need to be included in any smoking ordinance. He noted the City Attorney’s office will bring the final information to the Council. Councilmember Kennedy noted that the hearing for the statewide ordinance will be Wednesday morning.

Councilmember Kennedy moved to remove Item I from the Consent Agenda, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved. Item I was removed from consideration.

CONSENT AGENDA:

1. **A. Legislative** Report and direction to Staff.

B. Mayor’s Appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Jill Krueger*	Traffic Control Board	01/01/03	12/31/03
2	Leon Pattyn**	Board of Adjustments	01/01/03	12/31/05*

C. Bid Awards:

- (1) **One Tow Behind Stump Cutter.** (Opened 2/25/03). Recommend Vermeer Sales & Service, \$22,324.00.
- (2) **Gabel Road Corridor and South 29th Street West Properties (SID 1360).** (Opened 2/25/03). Recommend JTL Group, Inc., \$5,133,572.70.
- (3) **Overhauls of MET Transit Detroit Diesel Engines.** (Opened 3/4/03). Recommend Interstate Detroit Diesel, Schedule I: \$27,168.93; Schedule II: \$24,007.29 and Schedule III: \$12,300.42
- (4) **Chemicals – Chlorine.** Opened 3/11/03). Recommend DPC Industries for one-year contract with option to renew for a total of 3 years.

- (5) **\$8,053,000 SID 1360: Gable Road Bonds.** (Opened 3/24/03). Recommend D. A. Davidson, jointly with US Bancorp/Piper Jaffrey and RBC Dain Rauscher. Net Effective Interest Rate 5.627%.

D. Contract for W.O. 03-12: Billings Mobile Mapping & Asset Extraction Project, Lambda Tech International, \$122,270.00.

E. Extension of contract with Unique Management Services for collection services for the Library.

F. Approval of Maintenance Facility (Car Wash) and Ground Leases with Four Car Rental Concessionaires, \$47,290.00, 4-yr term.

G. Amendment #6 to Professional Services Agreement with HDR Engineering for services for: Contract XIII, Phase II Water Plant Improvements; Zone 4 Water Reservoir; 62nd Street West Sewer; and 54th Street West Water and Sewer, \$423,633.

H. Acknowledging Receipt of Petition to Vacate a portion of Monad Road Right-of-way along Sysco Food Services of Montana property and setting a public hearing date for 4/14/03.

~~**I. Resolution of Intention** to order in W.O. 02-02, #2: Broadwater Subdivision Improvements, Phase V and setting a public hearing date for 4/28/03.~~

J. Resolution of Intention 03-17971 to order in W.O. 03-02, #1: 2003 Miscellaneous/Developer Related Improvements and setting a public hearing date for 4/28/03.

K. Approval of purchase of property at 400 – 410 N. Broadway (aka Veeder Law Firm/McBride Optical), \$727,500.00, for future construction of a parking facility.

L. Establishing the value of an Easement from Yellowstone County for the site of the 62nd St. West Wastewater Lift Station, \$24,247.00.(C/S 1261, Tr 9)

M. Approval of grant application through Montana State Historic Preservation Office for a \$4,125.00 Certified Local Government grant for historic preservation activities.

N. Approval of grant application through Montana Board of Crime Control for continuation of a subgrant for Enforcing Underage Drinking Laws, \$62,011.00.

O. Approval of Yellowstone County request for \$40,000 of Tax Increment Funds for redevelopment of the 400 Block of S. 27th Street by providing up to \$20,000 to acquire the West 110 feet of Lots 13-14 and \$20,000 for site clearance improvements on property previously acquired by the County for future expansion of the Youth Treatment Center.

P. Joint Resolution of Intention 03-17972 to Create RSID 691 with Yellowstone County for public improvements to Sun Valley Road.

Q. CITY ADMINISTRATOR VACANCY/SEARCH:

1. Appointment of Interim City Administrator. Staff recommends the appointment of Assistant City Administrator Kristoff Bauer as the Interim City Administrator at a salary negotiated by the Mayor. **(Action:** approval or disapproval of Staff recommendation.)

2. Selection of an Executive Search Firm to conduct the search process for a new City Administrator. Staff recommends The Mercer Group, Inc. (Action: approval or disapproval of Staff recommendation.)

R. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brewster separated Item K from the Consent Agenda. Councilmember Brown separated Item C1 from the Consent Agenda. Councilmember McDermott separated Items B and J from the Consent Agenda. Councilmember Kennedy separated Item C5 from the Consent Agenda. Councilmember Jones separated Items D, G, and L from the Consent Agenda. Councilmember Kennedy moved for approval of the Consent Agenda with the exceptions of Items B, C1, C5, D, G, J, K and L, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item B, seconded by Councilmember Iverson. Councilmember McDermott said the code book indicates that Board and Commission positions are filled during January and July unless there is the lack of a quorum. She asked if this was the case. Mayor Tooley said these were January appointments that could not be made due to lack of applications to the Traffic Control Board and the Board of Adjustment. This was discovered after January had past. Mayor Tooley said he looked at the surplus of applications for other Boards and Commissions and asked the potential nominees to consider serving on these two boards. This caused the delay to March. City Attorney Brent Brooks confirmed that this would be allowed according to the code. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item C1, seconded by Councilmember Brewster. Councilmember Brown said there was \$5,000 difference in the bidders and asked what the difference was between the prospective equipment. Parks and Recreation Director Don Kearney said the City staff has gone through the demonstration process on both items considered and found the larger horsepower, gear driven model to be the best choice to meet the needs of the department. Councilmember Jones asked if the horsepower was the criteria that eliminated the lower bid. Mr. Kearney said the minimum specifications were 48 horsepower and the rejected bid was for a stump grinder with 43 horsepower. On a voice vote, the motion was unanimously approved.

Councilmember Ohnstad moved for approval of Item C5, seconded by Councilmember Brewster. Councilmember Kennedy noted he would be abstaining due to a conflict of interest. On a voice vote, the motion was unanimously approved, with one abstention.

Councilmember Kennedy moved for approval of Item D, seconded by Councilmember Iverson. Councilmember Jones asked the staff why there were no competitive bids on this project. Public Works Director Dave Mumford said there are other companies that can provide this service, however Lamba Tech International was the only company to respond to the advertisement of bids. Responding to questions by Councilmember Brewster and Brown, Mr. Mumford explained a portion of how the mobile mapping operates and that it is compatible with the County and State GIS systems. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item G, seconded by Councilmember Iverson. Councilmember Jones asked about the water installation of the 54th Street portion of the amendment. Public Utilities Director Carl Christensen said the water line was extended on Rimrock Road and 54th Street, but on 54th Street between the "Rims" and Rimrock Road neither water nor wastewater has been installed. Because there is already construction on 54th Street West, the Public Utilities Department wanted to install the water line at the same time and avoid tearing up the street twice. In answer to Councilmember Jones' second question, the agreement with HDR Engineering is on a three-year basis that did go through the bid process. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item J, seconded by Councilmember Iverson. Councilmember McDermott asked about the "past Council policy" to allocate CDBG funds for corner lot frontage. She said she is unfamiliar with any policy of using CDBG funds for the corner lot programs. She said her understanding was that those low-income persons needing assistance would apply for special assessment grant funds. She said it is not an appropriate use of CDBG funds. She requested review of this policy. Councilmember Kennedy said this corner lot policy was in place in 1995 where the Task Force was instrumental in bringing this to the Council's attention. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item K, seconded by Councilmember Iverson. In response to Councilmember Brewster's question, Mr. Bauer noted that a memo in the Friday Packet contained the information about the second appraisal. He said the first appraisal was \$640,000 and the second was \$675,000 and the proposed price of \$727,500 would be 7.8% higher than the highest appraisal. It meets the criteria set forth in the resolution on acquisition of property, which is to be within 10% of the appraised value. Councilmember Brewster said he is frustrated when someone expects payment well above market or appraised value. He said he is inclined to "let the whole project rest" until a decent price is agreed upon. Councilmember McDermott said the final piece of property on the block is the most expensive and agreed that the purchase price is above appraised value, but said it is important that the property be purchased. Councilmember Brown said paying more than appraised value is not a good practice. Administrative Services Director Robert Keefe said that the property was sold last year to the current owner for \$725,000, and the owner is reluctant to sell for less than this amount. Councilmember Jones asked if the City was negotiating at the time of that sale. Mr. Keefe said there had been discussion about purchasing the property previous to the sale. The previous owner had at the time of those discussions, already entered into a contract with the current owner. Mr. Keefe noted that the appraisers felt the \$725,000 was higher than the market value, but the rationale was based on the lease agreement where one of the

occupants of the building was also an owner of the building. Councilmember Gaghen asked if the Downtown Billings Partnership could share in the “overage of cost” of the site, as they share an interest in it. Mr. Keefe said it is an option, but noted that the Partnership’s money is City money. On a voice vote, the motion was approved with Councilmember Brewster voting “no”.

Councilmember Kennedy moved for approval of Item L, seconded by Councilmember Iverson. Councilmember Jones asked if the appraised amount has been negotiated with the County. Mr. Christensen said the value for the easement has already been approved by the County. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently annexed property described as: A tract of land situated in the East 1/2 of Section 27, T1N, R25E, more particularly described as: Zimmerman Trail Subdivision, A Planned Unit Development; Amended Plat of Lots 10 and 11, Block 1, Zimmerman Trail Subdivision, A Planned Unit Development; Brovista Subdivision; Amended Plat of Lot 1, Block 1, Brovista Subdivision; Tract 1-A of Amended Tract 1, Certificate of Survey 1358; containing 21.199 acres, more or less. (Annex #03-02). 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 Ohnstad 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 FOR ZONE CHANGE #712: A zone change from Residential 9600 to Residential 7000 on property located on the east side of High Sierra Boulevard, north of Siesta Avenue. The subject property contains 16.5152 acres of area. Additionally, a valid protest has been received. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this zone change request from Residential 9,600 to Residential 7,000 is located on the east side of High Sierra Boulevard, north of Siesta Avenue. The surrounding area is mostly Residential 9,600 with Agricultural-Open Space to the north and Public to the south. Mr. Bollman said two different owners that are within 150 feet of the subject property sent in letters of protest, one owner representing 13 lots, which triggered the valid protest. He noted that the Council would have to have a 2/3 majority vote (6 members) in favor to override the valid protest. Mr. Bollman said the Zoning Commission is recommending approval of the zone change. Councilmember Jones asked if the lots that are involved with the protest are undeveloped. Mr. Bollman said the lot on the northwest corner is developed and the remaining lots are not.

The public hearing was opened. JOHN STEWART, ENGINEERING, INC., 1001 SOUTH 24TH STREET WEST said he represents the current owner of the property

requesting the zone change. He said the owner's intention is to tailor the lot sizes to accommodate affordable homes that are in the area. He asked for the Council's approval.

There were no other speakers. The public hearing was closed. Councilmember Jones moved for approval of the Zoning Commission recommendation, seconded by Councilmember Brewster. Councilmember Brewster said most of the lots adjacent to this property have been developed with affordable housing and are compatible with the zone change request. Councilmember McDermott said there are still single-family dwellings allowed in the Residential 7,000 as in Residential 9,600, presenting no major problem with the zone change. On a voice vote the motion was unanimously approved.

4. PUBLIC HEARING on the environmental assessment related to the installation of the Coulson Park Boat Ramp. (Action: public hearing only.)

There was no staff report. The public hearing was opened. DOUG HABERMAN said he is the Regional Parks Manager for Fish, Wildlife and Parks in Billings. He said this is a good project and a good opportunity to work with the City.

There were no other speakers. The public hearing was closed.

5. PRELIMINARY MINOR PLAT of Bedrock Subdivision. Planning Board recommends conditional approval. (Action: approval or disapproval of Planning Board recommendation.)

Planning Staff Member Juliet Spalding said this is a 2 lot minor plat of a 1 acre vacant parcel. She said one lot is approximately 14,000 square feet and the other lot is just under 25,000 square feet. The site is zoned Residential 7,000 and is located on the south side of Wicks Lane west of Bitterroot Drive. She said much of the area to the west is developed in similar lot sizes. The Cherry Creek Estates is to the east of the parcel.

Ms. Spaulding said there are two variance requests with the subdivision: 1) A variance from Section 23-601(k), BMCC, which states that the right-of-way width to be dedicated for Wicks Lane (a principal arterial) shall be 120 feet, or 60-foot half-width. The developer is dedicating, at the request of City Engineering, a 40-foot half-width to Wicks Lane. Staff recommends approval of this variance request, as the entire length of Wicks is within a 60 to 80-foot right-of-way (30 to 40-foot half width). This width is appropriate at this time, and 2) A variance from Section 23-605(d), BMCC, which states that where an arterial street abuts or runs through any portion of any subdivision, the subdivision plan shall provide for lots to back onto the arterial street and provide a one foot wide no-access strip to prevent vehicle access to the arterial street. Staff recommends approval of this variance request. This lot was created as a part of a Certificate of Survey in 1953 and at that time, no other access point was provided for this lot. City Engineering supports the allowance of up to two drive approaches off of Wicks Lane to serve these lots.

Ms. Spaulding said the staff recommendation is for conditional approval with the following conditions:

1. The following changes shall be made to the Subdivision Improvements Agreement (SIA):

- a. Eliminate the wording "Due to the peculiarities of the site, specifically that:" from the first page.
 - b. Within Section III A.(1), second sentence, add in sidewalks so that it states "There is no curb, gutter and sidewalks in this area ..."
 - c. Add a sentence to Section III A.(1) stating "Driveways shall be restricted to one per lot with a minimum of 25-foot separation between the driveways."
 - d. Add a sentence to Section III A.(1) stating "The owners of the lots will be required to participate in a future SID for the improvement of Wicks Lane."
 - e. Eliminate Section III A. (6).
 - f. Move the variance section to the front of the SIA and add a variance for access to a principal arterial street (Section 23-605 (d), BMCC)
 - g. Add a section after Section IX that states that a monetary guarantee is not required at this time due to the nature and time of improvements that are required.
2. An eight (8) foot utility easement shall be shown on the final plat along the entire west property line of Lot 1.
 3. A hammerhead turnaround shall be shown on the final plat at the terminus of the Lot 2 driveway instead of the 30-foot radius cul-de-sac. The design and dimensions shall be approved by the City of Billings Fire Department.
 4. 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.

The City-County Planning Board has prepared the Findings of Fact for the Bedrock Subdivision for review and approval by the 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).

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

1. Effect on Agriculture

Though this parcel is in an area that has mixed residential and small lot agricultural uses, it is within the city limits and zoned R-7000. Given its small

size and proximity to other urban density residential development this parcel will not have a significant impact on agriculture.

2. Effect on agricultural water user facilities

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

3. Effect on Local Services

- **Water and Sewer Service.** The proposed lots would be served by the Heights Water District for water service and by the City of Billings for sanitary sewer service. These lines exist in the Wicks Lane right of way, and the owner will be responsible to pay for the necessary extensions of the lines at the time of hookup.
- **Storm Water Drainage.** Storm water runoff will be contained on site. There are no existing storm drains located in Wicks Lane but the Waiver of Rights to Protest the Creation of a SID that will be filed with the final plat includes the future installation of storm drains.
- **Public Streets and Roads.** The proposed lots will front on Wicks Lane. Because Wicks is a principal arterial street, a variance is needed from Section 23-605(d), BMCC to take access off of it. Approval of this variance is recommended due to the fact that when this parcel was originally platted in 1953, Wicks was the only access given to it. Wicks Lane is a two lane paved street within a 60 to 80-foot right-of-way. It does not have storm drains or curb, gutter and sidewalk. The subdividers have submitted a waiver of the right to protest future upgrades to Wicks Lane which includes, but is not limited to, the installation of street lights, street widening, curbs and gutters, sidewalks, driveways. In addition the subdividers have requested a variance from the Section 23-601(k), BMCC requiring the 60 feet *half-width* dedication for Wicks Lane, a principal arterial. The current right-of-way *half-width* is 30 to 40 feet and City Public Works recommends approval of the variance request.
- **Fire and Police Protection.** The City of Billings Fire Department reviewed the preliminary plat application and has requested that the turnaround located at the base of the driveway for Lot 2 be an approved hammerhead style. The proposed 30-foot radius cul-de-sac would not be functional for turning around large fire apparatus. The hammerhead style turnaround is recommended as a condition of approval. Street widths, lot access, and fire hydrant location shall comply with all Fire Department requirements. The City Police Department will serve this subdivision and had no comment.

- **Solid Waste Disposal.** The Billings Solid Waste Department will provide solid waste hauling. The Billings Landfill has adequate capacity to provide landfill disposal service.
- **Schools.** This two-lot subdivision should have a minor impact on schools.
- **Parks.** Parkland dedication is not required for minor subdivisions.

4. Effects on the Natural Environment

The subject parcel is located in close proximity to urban density residential development off of a principal arterial street. The new homes will be served by public sewer and water. The effects on the natural environment should be minimal.

5. Effects on Wildlife and Wildlife Habitat

The subject parcel is located in close proximity to urban density residential development off of a principal arterial street. The effects on wildlife or wildlife habitat should be minimal.

6. Effects on Public Health and Safety

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

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 would 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]

A review of this subdivision's conformance with the Comprehensive Plan and the Transportation Plan can be found in a previous section of this report.

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

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

E. Sanitary requirements. [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 R-7000 and the lot sizes comply with the requirements of this zone. At the time of house construction on these sites, building permits will be reviewed in regard to lot coverage and setback requirements for this zoning district.

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

Both MDU and Northwestern Energy have utility lines adjacent to Wicks Lane and would serve the two proposed lots. They have reviewed the preliminary plat. As a condition of approval, an 8-foot wide utility easement shall be placed along the entire western property line of Lot 1 to provide utility access to Lot 2.

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 Wicks Lane. A variance has been requested from Section 23-605(d), BMCC, which states that vehicle access to arterial streets should be prevented. Wicks Lane is the only option for access to this parcel and City Engineering recommends approval of the variance request.

CONCLUSIONS OF THE FINDINGS OF FACT

The Planning Department staff has determined that the Bedrock Subdivision will not significantly affect agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat or public safety. In addition the subdivision complies with the 1990 Comprehensive Plan, and the Billings Urban Area 2000 Transportation Plan. 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 McDermott asked if the applicant could use the remaining 10,000 square feet for another lot. Ms. Spaulding said the lot is very narrow and not feasible to have access for more than three lots and that was the reason for the one large lot.

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

6. PRELIMINARY MINOR PLAT of Amended Tract 29A3, C/S 2165. Planning Board recommends conditional approval. (Action: approval or disapproval of Planning Board recommendation.)

There was no staff report. The variance request is as follows:

- A variance from Section 23-605(d), BMCC, which states that where an arterial street abuts or runs through any portion of any subdivision, the subdivision plan shall provide for lots to back onto the arterial street and provide a one foot wide no-access strip to prevent vehicle access to the arterial street.

Staff recommends approval of this variance request. This parcel was created as a part of a Certificate of Survey in 1984 and at that time, no other access point was provided for this lot. There is an existing paved access off of Briarwood Boulevard serving the clubhouse. This access also serves an interior road that provides access to a number of adjacent townhomes. City Engineering supports the continued allowance of this access off of Briarwood Blvd. and requests that the new lot to the south of the clubhouse also use this existing access when development occurs. City Engineering recommends that a one-foot no-access easement be shown on the final plat along the Briarwood Boulevard frontage, except for the location of the existing access road.

The conditions of approval are:

1. A one-foot "no-access" easement shall be shown on the final plat along the Briarwood Boulevard frontage, except for the location of the existing access road, and extending down the common lot line between Lots A & B at least 100 feet from the Briarwood Boulevard right-of-way. *(BMCC Section 23-605(d); Recommended by City Engineering)*
2. The Subdivision Improvements Agreement (SIA) shall be rewritten to address the required variance, all required improvements, appropriate monetary guarantees, and to bring it into conformance with standard City format and wording. *(BMCC Section 23-801; Recommended by City Engineering)*
3. A statement shall be added to the SIA noting that in accordance with the 1972 Yellowstone County Soil Survey, there exists the potential for variable soils conditions within this area. There may be possible geotechnical issues with soils that need to be considered in design of structures. All lot owners and developers are advised to consider this in their overall design. *(Recommended by City-County Planning Board)*
4. The title of the plat shall contain the word "Subdivision." *(ARM 8.94.3003(2)(a); Recommended by City Engineering and City-County Planning)*
5. The Lots created from this subdivision shall be labeled as Lot, not Tract, and numbers instead of letters are to be used to identify the lots. *(BMCC Section 23-605(g); Recommended by City-County Planning and City Engineering)*
6. Utility easements shall be shown on the final plat for the existing lines that cross Lot "B" and as requested by Northwestern Energy and MDU. *(BMCC Section 23-603; Recommended by City-County Planning)*

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

The City-County Planning Board has prepared the Findings of Fact for the Amended Tract 29A3, C/S 2165 Subdivision for review and approval by the City Council. These findings are based on information received from the subdivider, their Engineer, City departmental review, and planning staff evaluation. The findings address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Section 23-304(c), BMCC).

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

1. Effect on Agriculture

This parcel is the site of the Briarwood Country Club clubhouse and is not used for any agricultural purpose. This subdivision will not have a negative effect on agriculture.

2. Effect on agricultural water user facilities

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

3. Effect on Local Services

- **Water and Sewer Service.** The clubhouse located on Lot 29A3-A is currently served domestic water and sewer by the South Hills District (now City of Billings). The main lines exist in the Briarwood Boulevard right of way, and the owner of Lot 29A3-B will be responsible to pay for the water and sewer construction fees and system development fees in effect at the time of development.
- **Storm Water Drainage.** Storm water runoff will be contained on site. There are no existing storm drains located in Briarwood Boulevard but the Waiver of Rights to Protest the Creation of a SID that will be filed with the final plat includes the future installation of area-wide storm drain improvements.
- **Public Streets and Roads.** The proposed lots will front on Briarwood Boulevard. Briarwood Boulevard is a two-lane paved street within a 100-foot right-of-way. It is designated as a Minor Arterial street and has curb, gutter and sidewalk on both sides of the street. To take access off of Briarwood Boulevard, the developer has the need to request a variance from Section 23-605(d), BMCC, which states that where an arterial street abuts or runs through any portion of any subdivision, the subdivision plan shall provide for lots to back onto

the arterial street and provide a one-foot wide no-access strip to prevent vehicle access to the arterial street. One paved approach from Briarwood already exists serving the clubhouse located on Lot 29A3-A. Engineering staff supports the variance for this approach, but would recommend that access for Lot 29A3-B be located off of the existing drive approach to the clubhouse. The location of the additional approach is to be determined at time of Lot 29A3-B development. In addition, City Engineering also recommends that a one-foot no-access strip be placed along the Briarwood Boulevard frontage, except for the location of the existing access road, and extending down the common lot line between Lots A & B at least 100 feet from the Briarwood Boulevard right-of-way. The subdividers have submitted a waiver of the right to protest future upgrades to Briarwood Boulevard and adjoining streets, 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 Fire Department reviewed the preliminary plat application and commented that access to both lots should be clearly addressed in the SIA. They also commented that access requirements will need to be addressed in the future depending on the type of development that occurs on the undeveloped Lot 29A3-B. Street widths, lot access, and fire hydrant location shall comply with all City of Billings Fire Department requirements. The City Police Department will serve this subdivision and also had no comment.
- **Solid Waste Disposal.** The Billings Solid Waste Department will provide solid waste hauling. The Billings Landfill has adequate capacity to provide landfill disposal service.
- **Schools.** This two-lot commercial subdivision will not have an impact on schools.
- **Parks.** Parkland dedication is not required for minor or commercial subdivisions.

7. Effects on the Natural Environment

The subject parcel is currently developed and is the site of the Briarwood Country Club clubhouse. The front lot (29A3-B) is vacant and in its natural state with native grasses and shrubs. To the north of the parcel lies the 18th hole of the golf course. Both Lots have access to public water and sewer systems and any development on Lot 29A3-B would require the review and approval of a storm water management plan. According to the 1972 Yellowstone County Soil Survey, there exists the potential for variable soils conditions within this area. There may be possible geotechnical issues with soils that need to be considered in design of structures. A note to this effect in the SIA is a recommended condition of approval.

8. Effects on Wildlife and Wildlife Habitat

The subject parcel is currently developed and is the site of the Briarwood Country Club clubhouse. The front lot (29A3-B) is vacant and in its natural state with native grasses and shrubs. To the north of the parcel lies the 18th hole of the golf course. The effects on wildlife or wildlife habitat should be minimal.

9. 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 would 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]

1. 1990 Yellowstone Comprehensive Plan

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

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

The proposed subdivision is the current site of the Briarwood Country Club clubhouse. Development of this parcel for commercial purposes is compatible and in compliance with the Planned Unit Development Master and would meet the zoning requirements of the PUD.

b. Curb urban sprawl and discourage leapfrog development. (K-7)

This subdivision is in an existing Planned Unit Development. It is in an area served by municipal water and sewer services and is not leapfrog development.

c. Encourage and direct urban growth to urban infill areas and contiguous lands to maintain a strong economy and accomplish a sound transition of agricultural land.

The proposed subdivision will provide an additional commercial lot in Briarwood, thus potentially providing for infill commercial development.

d. Capitalize on the use of existing public sewage systems and improve sewage systems in areas not currently served by public systems. (H-4)

The proposed lots would be served by city water and waste water services.

2. Billings Urban Area 2000 Transportation Plan and BikeNet

The proposed subdivision is consistent with the Transportation Plan. Briarwood Boulevard is designated in the BikeNet Plan as an on-street district connector and should eventually be striped for bike lanes. This striping could be accomplished through a future Special Improvement District (SID) if and when the project is determined necessary. A waiver of the right to protest future SID's is included in the subdivision application.

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

The Amended Tract 29A3, C/S 2165 Subdivision meets the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Sanitary requirements. [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 Planned Unit Development with underlying "Parks" designation and the lot sizes comply with the requirements of this zone. At the time of further development on these sites, building permits will be reviewed in regard to lot coverage and setback requirements for this zoning district.

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

Both MDU and Northwestern Energy have utility lines adjacent to Briarwood Boulevard and currently serve the clubhouse located on the north lot. They have reviewed the preliminary plat. As a condition of approval, utility easements shall be shown on the final plat for those utility lines that cross Lot 29A3-B and also where requested by MDU and Northwestern Energy.

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 Briarwood Boulevard.

CONCLUSIONS OF THE FINDINGS OF FACT

The Planning Department staff has determined that the Amended Tract 29A3, C/S 2165 Subdivision will not significantly affect agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat or public safety. In addition the subdivision complies with the 1990 Comprehensive Plan, and the Billings Urban Area

2000 Transportation Plan. 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 Gaghen moved for approval of the Planning Board recommendation, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

7. AWARD OF THE BID for the Downtown Skatepark Construction. (Bids opened 3/11/03). Staff recommends Academy/Hardcore Skateparks, \$321,000.

Parks and Recreation Director Don Kearney said the City received three bids for the design/build SkatePark. They were:

California Landscape	\$296,000	
Grindline/Purkiss Rose	\$275,740	
Academy Skatepark Design/Hardcore Skateparks		\$321,000

Mr. Kearney said the square footage of the different designs vary, which means the low bidder is not necessarily the per square foot low bidder. He noted that a late bid bond arrived from California Landscape that disqualified their bid.

Mr. Kearney said the following people were on the Selection Committee: Jim Collin, PRC Board Member, Ernie Dutton, SkatePark Committee Member, Shirley McDermott, City Council Member, Vanessa Olson, SkatePark Committee Member, Mary Westwood, SkatePark Committee Member, Joe Fedin, PRPL City Staff and Don Kearney, PRPL Director. He said the selection process included reviewing the selection criteria, receiving input from the skateboarders at Senior High and reference checks with other cities that have built skateparks and used those companies. He noted that the design by Academy/Hardcore design was overwhelmingly approved by the skateboarders in the community. He said the size of the skatepark is 100 feet by 150 feet. Mr. Kearney said there were a number of cities and towns that have used both Academy and Hardcore for development of their skateparks. Those cities and towns include Gilbert, Phoenix, Apache, Tucson, Prescott Valley and Chandler in Arizona, Northbrook, Illinois, Louisville, Missouri (known as one of the best skateparks in the country), and Boulder, Colorado.

Mr. Kearney said the project time line is for final design approval on May 15, 2003. Construction could potentially begin on or about June 1, 2003 with project completion by August 31, 2003. He noted that the plan is to install right-of-way improvements prior to the contractor arriving on the site. He said the Parks and Recreation staff recommendation is to accept the design/build bid of Academy Skatepark Design/Hardcore Skateparks in the reduced amount of \$300,000 for 14,250 square feet of Skatepark. He said the basis for accepting the bid was that the contractor met the criteria of the design/build bid, was a unanimous recommendation of the selection committee, the skaters overwhelmingly preferred the design and the reference checks were excellent.

Councilmember Brown asked if there would be rules and regulations that need to be followed in connection with the park and hours of operation. Mr. Kearney said there would be skatepark rules and regulations that govern the use of the park posted at the site. He said he anticipates that the curfew would be 10 PM with the option to extend the hours in certain circumstances. Councilmember Brown asked about drainage to prevent freezing in the lower portions of the park. Mr. Kearney said there are drains that will drain

the entire site connecting to City storm drains. Councilmember Brown asked why the downtown or other property owners didn't build this skatepark avoiding the use of General Fund money. Mr. Kearney said the reason for the skatepark was to give the skaters a place to skate and restrict the downtown area from the hazard of skaters using the downtown district. He noted there have been donations from the downtown business owners to this project. Councilmember McDermott said the committee has done a wonderful job and said she is impressed with the amount of donations that have been received. She noted that several Task Forces came forward with Community Development money and there were matching dollars from the Parks Department. Councilmember Gaghen commended everyone involved in this effort.

Councilmember McDermott moved for approval of the staff recommendation, seconded by Councilmember Gaghen.

Councilmember Jones said this is a great project but has concerns about building a skatepark across the street from an adult bookstore.

On a voice vote, the motion was approved with Councilmembers Jones, Kennedy and Brown voting "no".

Council Initiatives NONE

ADJOURN —With all business complete, the Mayor adjourned the meeting at 7:41 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Susan Shuhler, Deputy City Clerk