

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

April 14, 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 Mayor Tooley.

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

MINUTES – March 24, 2002. Approved as corrected.

COURTESIES – Billings Police Department – Chief Ron Tussing

- Tico the K-9 Officer is retiring and was recognized for her years of service.
- Larry and Lisa Green received a Citizens Award for their assistance in the apprehension of a robber.
- Volunteer Bob Holt (Animal Shelter) received the Paul Reeder Volunteer Award of the Year for his work at the Animal Shelter to help in maintaining an aging building. Pauline Liming (Police Records) received a volunteer award and plaque for her service in preparing records for microfilming.
- Employee of the Year Award was presented to Suzette Palmer for her efforts and expertise with fingerprinting and image enhancement.
- Supervisor of the Year Award was presented to Sgt. Scott Forshee for his work in the City/County Special Investigations unit. He has also served as a supervisor on the SWAT team that works on major crime scenes.
- Medals of Valor were presented to Officers Jeremy House and Brett Krueger for their response to a domestic dispute where a large suspect armed with an 8-inch knife, using a 3-year old child as a shield, met them. The incident ended with no one being hurt.

PROCLAMATIONS – Mayor Tooley.

- FOSTER GRANDPARENT DAY – April 24th
- HOMEOWNERSHIP EXPO DAY – April 24th
- KEEP AMERICA BEAUTIFUL GREAT AMERICAN CLEANUP MONTH – April
- ARBOR DAY – April 25th
- DAVID L. DUNN DAY – April 15th

BOARD & COMMISSION REPORTS – Over, Under and Around the Railroad Tracks Committee. Marion Dozier said the committee has been working for over 3 years on this issue. She noted they have recently received \$100,000 through the assistance of Senator Burns' to fund a study for relocating the tracks.

- Councilmember Brewster thanked the Gazette for their publication of the new Heights insert in recent issues of the Gazette.
- Councilmembers Gaghen and McDermott commented on the Railroad Track issue and the dedication of the committee to try to find a much-needed solution, emphasizing that it has been a long time coming.

ADMINISTRATOR REPORTS – Kristoff Bauer.

- Mr. Bauer said there were no administrative reports, but he did have an update on the Legislature. The session is winding down and all the bills that had been presented to the Council to watch, oppose or support had either been passed or defeated. The issues before the Legislature now revolve around budget issues – notably SB407, which would adopt a limited sales tax. He noted also that HB758 regarding local authority on smoking regulations passed and was on its way to the Governor, who indicated she would sign it.

CONSENT AGENDA:

1. A. **Legislative Report and direction to Staff.**
- B. **Bid Awards:**
 - (1) **Supplying Work Uniforms to the Public Utilities Department.** (Opened 3/25/03). Recommend Big Sky Linen Supply, \$41,080.
 - (2) **Hawthorne Lane Secondary Truck Storm Drain Project.** (Opening 4/1/2003). Recommend ~~delaying award to 4/28/2003.~~ COP Construction, \$607,927.
 - (3) **North Park Playground Improvements.** (Opening 4/8/2003). Recommend delaying award to 4/28/2003.
 - (4) **Sale of Used MET Buses.** (Opened 3/25/2003). Recommend Council approve high bid of Ron Kinsfather for Bus #1842 and grant staff authority to negotiate the sale of remaining buses and components.
 - (5) **Park Irrigation Project Construction-Replace Quick Coupler Irrigation System.** (Opened 3/25/2003). Recommend Porteus & Company, \$2,185,000.
 - (6) **North Park Playground Project Equipment.** (Opened 1/31/2003). Recommend Play Space Designs, Inc., \$63,800.
- C. **Contract Amendment #1, Hazardous Waste Collection Events** for professional services with Philip Services to oversee the ninth annual HHW collection event and the 8th annual CESQG collection event for businesses, \$37,500.
- D. **Contract Amendment #2, W. O. 95-08 with Engineering, Inc.** for professional engineering services for Shiloh Road from Grand Avenue to Rimrock Road,

\$170,600.

E. Contract with Interstate Engineering, Inc. to provide consultant services to complete Rimrock West Park Development project contingent on the creation of the SID to fund it, \$98,000.

F. Ground Lease with Airborne Express, Inc. for 2-year use of the City's facilities and adjacent ground, \$11,126.52 for the first year.

G. Acknowledge receipt of annexation petition #03-03: Tract 1, C/S 2085, Cornerstone Community Church, petitioners, and setting a public hearing date for 4/28/2003.

H. Approval of Downtown Revolving Loans to Venture Theater, Walker's Grill and G & G Advertising in the amount of \$927,000.

I. Subordination of Housing Rehab Loan to Richard Kober, 905 South 28th Street, \$15,000.

J. Approval to submit a Recreational Trails Program Grant for funding a portion of the Stewart Park Trail from Central Avenue to King Avenue requiring a 20% match not to exceed \$8,750.

K. Approval and acceptance of Montana Board of Crime Control Training Grant Supplement/Amendment-Domestic return funding in the amount of \$3,806.32 for three members of the Domestic Violence Unit who attended the National College of District Attorney's Domestic Violence Conference 2002, October 26, 2002-November 1, 2002 in Chicago, IL.

L. Temporary Street Closure: North Broadway between 3rd Avenue No. and 4th Avenue No. for the Little Seeds Early Childhood Center Annual Carnival on June 14, 2003 from 7:00 am to 4:00 pm.

M. Temporary Street Closure: Black Otter Trail from bottom of Black Otter Trail to the intersection where it becomes a one-way for Yellowstone Valley Cycling Mountain Bike Race on May 18, 2003 from 6:00 am to 2:00 pm.

N. Resolution 03-17973 relating to \$8,053,000 Special Improvement District No. 1360 Bonds fixing the form and details and providing for the execution and delivery thereof and security thereof.

O. Resolution 03-17974 relating to \$1,196,000 Special Improvement District Bonds (1349, 1354), Series 2003C, authorizing the issuance and calling for public sale thereof on 5/12/03.

P. Second Reading Ordinance 03-5241 for Zone Change #712: a zone

change from Residential 9,600 to Residential 7,000 on Lot 1, Block 2, High Sierra Subdivision, 2nd filing. The subject property is located at the intersection of High Sierra Boulevard and Sierra Grande Boulevard, Jerry T. Ray, owner.

Q. Second Reading Ordinance 03-5242 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), Tostenrud ETAL, owners.

R. Final Plat of Broso Valley Park Subdivision.

S. Final Plat of Strong Subdivision.

T. Final Plat of Rush Acreage Tracts Subdivision, Amended Tract 1.

U. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Kennedy separated Item N from the Consent Agenda. Councilmember Brown separated Item D from the Consent Agenda. Councilmember Gaghen moved for approval of the Consent Agenda with the exceptions of Items D & N, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item D of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown asked if this represents a completely different project from the one that Engineering, Inc. has been working on. Public Works Director Dave Mumford said this is the Shiloh Road project from Grand Avenue to Rimrock Road. He said the pedestrian underpass has been completed and the road construction is about to begin. This item is a change order for the signal that was installed at Grand Avenue and Shiloh Road. The change order includes Special Improvement District creation services as well as traffic signal installation services.

Councilmember Jones asked if the design includes the road from Grand Avenue to Rimrock Road. Mr. Mumford said the road is in final design and this should be submitted to Public Works later this month. He noted that the design is paid for. Councilmember Jones expressed concerns about the timing of the different portions of work. He suggested that a work session be devoted to informing the Council as to the coordination with the City and State's portions. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item N of the Consent Agenda, seconded by Councilmember Jones. Councilmember Kennedy noted he would be

abstaining from the vote. On a voice vote, the motion was unanimously approved with one abstention.

REGULAR AGENDA:

2. PUBLIC HEARING relating to the proposed cost-of-service wastewater rate adjustments. Staff recommends approval holding the public hearing this evening and continuing it to 4/28/03. No council decision required this evening. Action scheduled for 4/28/03. (Action: ~~approval or disapproval of Staff recommendation public hearing only~~).

Interim City Administrator Kristoff Bauer said this is a public hearing for a rate proposal. He said this has been advertised, as prescribed by state law, however no action is required this evening. The next step in the process would be for the Council to adopt a resolution enacting the rate change. This action is scheduled for April 28th. Mr. Bauer said the staff recommendation is to open the hearing and continue the hearing to April 28th to provide the Council with additional requested details of the proposal. He added that the Council could postpone any action for 30 days from that date if they are not comfortable with the presented information.

Mr. Bauer noted there are three alternatives to consider: 1) a uniform rate increase, 2) a cost-of-service rate with four customer classes and 3) a cost-of-service rate with three customer classes. He explained that the uniform rate has no customer classes with commercial customers paying the same rate as residential customers. There is a 10.63% increase with the uniform rate proposal. He said the cost-of-service with four customer classes would use the "strength of effluent" as a criteria for rating and charging the commercial customers, with a "low strength" commercial customer seeing a 7.26% increase, a "medium strength" customer would see a 42% increase and a "high strength" customer would see a very significant increase. The average rate increase for a residential customer would be 9.49%. Mr. Bauer said the cost-of-service with three customer classes would be the same as previously stated with the "high strength" customer class eliminated. He noted the Public Utilities Department has recommended the cost-of-service with three customer classes rate increase.

Mr. Bauer said a work session would be scheduled to relate information about policy issues that are inherent in the revenue data. He said revenue requirements and the increases in costs that are driving the rate increase proposal would be discussed. This would also include any proposed increases in subsequent years. There would be an opportunity to entertain questions from the Council and an opportunity to research those questions and relate the answers to the Council prior to the scheduled Council meeting. Councilmember Brewster asked if Mr. Bauer could provide an estimate of the revenue for each proposal by class. Mr. Bauer replied "yes". Councilmember Kennedy requested information on the types of businesses and their usage that would fit into the classes.

Mr. Bauer requested that the Council open the public hearing and identify any other issues at the work session. The public hearing was opened.

TOM ZURBUCHEN, 1747 WICKS LANE, questioned the transfer to replacement fund (capital outlays) in Table 3.6. He asked that those outlays be identified and become part of the record. He said he hopes they are not installation of trunk lines or

enlarging lines to service customers. He said these rate increases should not be used to pay for expansion of the service. He also noted Tables 4-1 and 4-12 showed service outside of the City. He said the rates for those services outside the City are the same as services inside the City. Some of those facilities are commercial and are not paying City taxes yet they are receiving services at the same rate as City taxpayers. He noted there is no incentive for them to become part of the City.

Mayor Tooley noted that the previous speaker touched on a policy issue regarding system development fees that the Council has been discussing for some time.

There were no other speakers. The public hearing is continued until the April 28th Council Meeting.

The Public Utilities Department received two written comments to be entered into the record. THOMAS LUND, 526 ALDERSON AVENUE, wrote, "I would prefer that the City of Billings adopt a Cost-of-Service rate schedule for wastewater service by the City of Billings."

APRIL LYNN COUNTS, 1823 DOGWOOD DRIVE, wrote, "I wish to have it entered into the meeting minutes, that if there is to be a change, then I prefer the COS system. It just makes good sense and promotes fairness."

3. PUBLIC HEARING AND RESOLUTION 03-17975 relating to the vacation of a portion of Monad Right-of-Way along Sysco Food Services of Montana property. Staff recommends approval. (Action: approval of disapproval of Staff recommendation).

There was no staff report. 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.

4. PRELIMINARY PLAT of Amended West ½ of Lot 4, Wolf Subdivision. Planning Board recommends conditional approval. (Action: approval of disapproval of Planning Board recommendation).

There was no staff presentation.

The conditions of approval are:

1. 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.
2. A lot size and setback variance for the proposed lots shall be approved by the City Board of Adjustment prior to filing of the final plat.
3. The final subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal City Code, and Rules, Regulations,

Policies, and Ordinances of the City of Billings, and the Laws and Administrative Rules of the State of Montana.

The City-County Planning Board has prepared the Findings of Fact for the Amended Lot 4, Wolf 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).

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

1. Effect on Agriculture

This parcel is in a developed urban area. It should 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 impact on these facilities.

3. Effect on Local Services

- **Water and Sewer Service.** The structures on the proposed lots are currently being served by the City of Billings for water and sanitary sewer service. These lines exist in both the Colton Boulevard and Boulder Avenue rights of way.
- **Storm Water Drainage.** Storm water runoff shall be contained on site. There are no existing storm drains located in Boulder Ave. or Colton Blvd. 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.** Lot 4A takes access off of Boulder Avenue. Lot 4B takes access off of Colton Blvd. Boulder Ave. is a two-lane paved street. It does not have curb gutter and sidewalks at this time, but these improvements have been included in the waiver of rights to protest the creation of an SID. Colton Blvd. is a two-lane paved street with curb, gutter and sidewalks on both sides of the streets. With this plat, the developer has dedicated an additional 30 feet of right-of-way to Colton Blvd.
- **Fire and Police Protection.** The City of Billings Fire Department reviewed the preliminary plat application and had no concerns with the proposal. 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 as the structures are existing, and no new dwellings will be built.
- **Parks.** Parkland dedication is not required for minor subdivisions.

4. Effects on the Natural Environment

The subject parcel is located within a densely populated urban area. The four-plex units are 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 within a densely populated urban area. 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).

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 in an area that has existing residential development of similar density and the proposed lots are compatible with their surroundings.
- b. Curb urban sprawl and discourage leapfrog development. (K-7)**

This subdivision is the amendment of a lot in an existing subdivision. The 4-plex dwellings are existing, and this subdivision would allow them to be sold separately. This subdivision would not create urban sprawl.

c. Encourage and direct urban growth to urban infill areas and contiguous lands to maintain a strong economy and accomplish a sound transition of agricultural land. (I-3)

The proposed subdivision would allow the existing 4-plex dwellings to be sold separately.

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 are currently 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 and BikeNet.

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

The Amended Lot 4, Wolf 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 20,248 square foot subject parcel currently has two four-plex units on it that conform to the R-6000 zoning. The owner is requesting this subdivision in order to sell the buildings separately. The subdivision proposal is to split the original lot into one 9,136 square foot lot and one 9,086 square foot lot. Due to the dedication of right-of-way for Colton Blvd. and Boulder Ave, the lot sizes for these structures will become non-conforming. A lot-size variance is also being reviewed to allow the 4-plexes to remain on lots less than 10,000 square feet in the R-6000 zone.

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

Both MDU and Northwestern Energy currently serve the two dwellings on the proposed lots. They have reviewed the preliminary plat and have no comments.

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 Boulder Avenue for Lot 4A and from Colton Boulevard for Lot 4B.

CONCLUSIONS OF THE FINDINGS OF FACT

The City-County Planning Board has determined that the Amended Lot 4, Wolf 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.

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

5. FINAL PLAT of Cherry Creek Estates Subdivision. (Action: approval of disapproval of Staff recommendation).

Planning Staff Member Bruce McCandless said the public input that was received at the preliminary plat stage created the need for a final plat presentation. He said he would review the conditions of approval and noted that the documents submitted with the final plat conform to those conditions.

Mr. McCandless said the preliminary plat was approved on October 15, 2002. He said the property is located south of Wicks Lane on the east side of Bitterroot Drive. It is a five lot minor subdivision, with three lots in the City and two lots will remain in the county. Two of the lots in the City will be devoted to the Manufactured Home Park. There are 116 acres total in the subdivision with 81 acres in the Residential Manufactured Home zone. Other zoning includes Residential 9,600 and Residential 7,000 which includes single-family residential and one and two-family residential respectively.

The principle documents submitted with the final plat are the plat mylars, the Subdivision Improvement Agreement and the Development Agreement. He said the staff's responsibility is to check all documents for compliance with State laws, City policies and other associated regulations to meet all of the conditions of preliminary plat approval. At this point the staff cannot add or change conditions with the final plat. He noted that one of the primary concerns of the preliminary plat was that there be sufficient financial and other guarantees in place to ensure that the subdivider would conform to all of the conditions at the time of the final plat filing. He said the Planning staff worked hard to insure that all of the documents do address those issues. He noted that Lots 1, 2 and 5 are likely to be replatted in the future because they are too large for single-family development. Mr. McCandless said Lot 3 is referred to as Phase I in the documents and Lot 4 is referred to as Phase II.

Mr. McCandless said the conditions of approval are as follows:

1. Submit a stormwater management report for City Engineer review and approval.
2. Provide utility easements along rear Lot lines as requested by MDU
3. Provide a 40' right of way dedication from Lot 1 and a 60' right of way dedication from Lot 2 along Bitterroot Drive to maintain the required arterial road right of way width.
4. Controlled access shall be permitted from Bitterroot Drive to Lots 1 and 2 upon review and approval of the City Traffic Engineer.
5. A 10' road easement on the north side of Lot 1 along Wicks Lane shall be granted to the City and shown on the plat. If the easement is not needed for the future construction of Wicks Lane the easement will be vacated.
6. Install a landscape buffer of coniferous trees, deciduous trees, or a mixture of both around the perimeter of Lots 3 and 4 to ensure adequate screening to a density of one tree per linear feet. Existing vegetation material may be used and incorporated into the buffer area but not counted toward the requirement in areas with existing landscaping. The developer shall submit a landscape plan, including irrigation, to the City-County Planning Department to be approved prior to commencement of Phase I construction. The landscape material may be installed in phases as approved by the City-County Planning Department.
7. The SIA shall be modified to include the requirement for the landscaped buffer and the requirement for the financial guarantee of any landscaping material that will not be installed with Phase I improvements.
8. Install one deciduous street tree per manufactured home site to reduce the amount of radiant heat from the streets, to preserve open space, and provide adequate on-site drainage through percolation on the site.
9. Enter into a development agreement, enforceable by the City-County Planning Department outlining the process for the review of the placement of manufactured homes on each site to ensure appropriate setbacks from the front, rear and sides of each site; to ensure appropriate fire separation between each manufactured home and any accessory structures; to ensure that all accessory structures are permitted and approved by the City of Billings; and to ensure that the manufactured homes placed on the site are in compliance with the rules and regulations of the manufactured home park.
10. Limit Phase I of the manufactured home development on Lot 3 to a total of 189 units. City Council will review Phase II on Lot 4 prior to its development. If Phase I is developed in accordance with the Development Agreement conditions the City Council will approve Phase II development for 174 additional manufactured dwelling units. If the compliance criteria are not followed in Phase I, the City Council may restrict the total number of manufactured dwelling units in the development to no less than 300 units. (Criteria have been established as: 1) perform according to Development Agreement and SIA and 2) traffic no more than 10% greater than predicted by the TAS)

11. The developer shall place a fence along the ~~eastern~~ western property line of Lot 5 and that portion of ~~Lot 4~~ Lot 3 that is east of the emergency access to prevent vehicular traffic accessing River View Drive. (Compass direction and Lot number were incorrectly stated in the staff report and City Council conditions of approval)
12. Minor wording changes may be made in the SIA and documents as requested by the City Engineering Division and Planning Department, to clarify the documents and bring them into the standard, acceptable format.
13. The final subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal Code, and rules, regulations, policies and ordinances of the City of Billings, and the laws and Administrative Rules of the State of Montana.

Mr. McCandless said the following are recommendations for changes: 1) preliminary plat approval was granted on October 15, 2002, and 2) on page 8, paragraph C of Subdivision Improvement Agreement to be amended to state "When Lot 1 is sold or developed, whichever occurs first, the contribution for Lot 1 shall be made by the Subdivider for the improvements at the Hilltop Road/Bench Blvd. and Yellowstone River Road/Hawthorne Lane intersections. This contribution is shown in Table 1 of this Agreement". This language will be known as Amendment Number 1. He said this does not change the intent of the agreement but clarifies the contribution requirement. Councilmember Jones asked if there should be a time limit proposed with the additional language. Mr. McCandless said the payment is typically collected when the final plat is recorded or before building permits are issued on development of the lots and this is stated in the Subdivision Improvement Agreement and the conditions of development of Lot 1 that includes an unspoken time period for payment of those fees.

Councilmember Brewster asked if the developers must pay those fees on the lots for the manufactured housing development before occupancy permits are allowed. Mr. McCandless said the improvements for Lots 3 & 4 are key to the issuance of building permits or mobile home placement permits. Councilmember McDermott asked if conditions would be placed on the water that is being sold to the County from Billings Heights Water Association. Mr. McCandless said the water would be sold by Billings Heights Water Association, without conditions, to individual users who will occupy the five lots in Lot 5 and not sold to the County. Mr. Bauer confirmed that the City does not have control over the policies of Billings Heights Water Association and how they extend service to their customers. Councilmember Brewster asked if Lot 5 will be developed with sanitary sewer service as called for in the Subdivision Improvements Agreement. Mr. McCandless said it could not until it is annexed to the City and there has been no annexation petition submitted. He said the language in the Subdivision Improvements Agreement was difficult because of the two lots that are remaining in the County. He said there would be approved systems for every lot regardless of what the Subdivision Improvements Agreement does or does not say about Lots 2 or 5. City Attorney Brent Brooks said this situation is not uncommon and confirmed that he was "comfortable" with Mr. McCandless' explanation.

Interim City Administrator Kristoff Bauer called attention to Page three, number 7 of the Development Agreement. He said a proposed amendment would preserve the

Council's discretion by allowing for a review of Phase II prior to development. Changes would include Item number 4) stating that "when Phase I is developed in compliance with this Development Agreement the City Council will give approval to 111 units of Phase II", Item number 5) "If the City Council finds that the compliance criteria have not been followed in Phase I, the total number of the units in the development shall be limited to 300 units in Phase I and II combined", Item number 6) "If the City Council finds that the compliance criteria have been followed during the development of Phase I and that impacts from Phase I have not resulted in any unforeseen impacts on fire protection, municipal services and traffic, then the City Council may, but shall not be required to, approve the development of no more than an additional 63 units, or a total of no more than 174 units, in Phase II." Mr. Bauer said this gives the Council the option to increase the development of Phase II from 111 units to 174 units if the development criteria are met. Item number 7 establishes the criteria for review in part (a) compliance pertaining to site review, building permit review, installation, maintenance and/or financial guarantee of any infrastructure or improvements required under the recorded Subdivision Improvements Agreement and Traffic Accessibility Study and (b) whether actual traffic generation exceeds the volumes estimated by the TAS by more than ten percent. In summary, the amendment stated by Mr. McCandless is for Council consideration and the proposed amendment that Mr. Bauer enumerated is an additional amendment. Councilmember Kennedy asked if the developer must agree to these amendments. Mr. Bauer said on-going discussions occur between developer and the staff regarding the language in the Development Agreement whereas the execution of the Development Agreement is a condition of plat approval. If the developer does not agree to the Development Agreement approved by Council, the plat will not be approved, he added.

Councilmember Brewster asked if the additional 10-foot easement on Wicks Lane is included on the plat. Mr. McCandless said there is a 10-foot easement on the south side of Wicks Lane along the entire frontage of Lot 1 and will be used for improvements to Wicks Lane. Councilmember Brewster asked why the fencing requirements adopted with the preliminary plat were radically changed. Mr. McCandless said the minutes of that meeting were reviewed with the staff report and it was presumed the staff was following the Council's directions. He said the fencing would be along the western and southern boundaries of Lot 5 with a gate at the emergency access easement and continuing on to the northern boundary of Lot 3. He noted the emergency exit would not allow access to Riverview Estates for everyday traffic. The boundary between Lot 2 and Lots 3 and 4 did not require fencing as part of the conditions. Councilmember Brewster said his intention at the preliminary plat approval meeting was to require fencing "around the entire perimeter including the two entrances up to the street". Councilmember Brewster commented that the proposed amendment to the Subdivision Improvements Agreement is basically requiring that each lot contribute to the infrastructure, clarifying previous language.

Councilmember Iverson moved for approval of the staff recommendation, seconded by Councilmember Larson. Councilmember Brewster moved to amend the motion to include Amendment Number 1 (page 8 of Subdivision Improvements Agreement, paragraph 4C), seconded by Councilmember Brown. On a voice vote, the motion to amend was unanimously approved.

Councilmember Brewster moved to amend the motion to include proposed language from Mr. Bauer concerning the review process, seconded by Councilmember Gaghen. Councilmember Larson said he is concerned about the Council imposing additional conditions that it cannot defend. Councilmember Brewster said the original intention was to limit this development to 300 units and this motion would allow the developer to increase that amount with Council review. This is the check and balance to be sure the development criteria is followed. He said the existing language did not insure this. On a voice vote, the motion to amend was unanimously approved.

Councilmember Brewster moved to amend the fence requirement to include fencing the entire boundary of the Residential Manufactured Home zoning, including the 2 entrances except for the cliff face and bike trail easement areas, seconded by Councilmember Gaghen. Councilmember Brewster also noted that the requirement for separation and placement of unattached structures was less than for attached structures. On a voice vote, the motion to amend was unanimously approved.

On a voice vote for the motion as amended, the motion was unanimously approved.

Council Initiatives

- **COUNCILMEMBER MCDERMOTT** moved to name the small turnaround driveway at 9th Ave N and N. 27th St. by Athletic Park as “Dave McNally Drive”, seconded by Councilmember Gaghen. Both the Parks Department and the Task Force concur with the proposal. The American Legion, who requested the change, would like to have approval by May 16th when Mr. McNally’s number is retired. Mr. Bauer clarified that naming the “driveway” does not change the status of it or make it a “street”. On a voice vote, the motion was unanimously approved.
- **COUNCILMEMBER GAGHEN** noted the great need to replace the wading pool that was removed from Highland Park. The neighborhood is now willing to go with the spray park and she requested that staff prepare an amendment to the 2004 CIP for \$100,000 from the General Fund for this spray park and bring it to the Council, seconded by Councilmember McDermott. Councilmember Brewster clarified that this initiative would come back before Council as a staff recommendation. On a roll call vote the motion was approved 8-2; with Councilmembers Brown and Iverson voting “no”.
- **COUNCILMEMBER BROWN** moved to direct Mr. Bauer to discuss with the owner of the Big Ditch use of the ditch banks within the City for bike trails and running trails, seconded by Councilmember Gaghen. Councilmember Larson noted that recent legislation has relieved ditch companies of liability when they allow this type of activity. Mr. Bauer noted that the ditch company’s primary concern is for the damage to crops if the ditch water must be interrupted to conduct any rescue efforts. On a voice vote, the motion was unanimously approved.

- MAYOR TOOLEY noted the success of the Downtown Billings Partnership in recommending projects for loan funding by the TIF loan program. The dollars set aside for this loan program have been exhausted and he requested staff to try to find a way to renew and fund that program again, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 8:17 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

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