

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 27, 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 Larry Brewster.

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

MINUTES – May 12, 2003. Approved as corrected.

COURTESIES.

- Airport Director Bruce Putnam introduced Mardi Madsen, the City's new Facilities Manager. She has a background in commercial property management and was most recently Operations Manager for Rimrock Mall. She is married and has two children. She and her husband are 4th generation Montanans. Mr. Putnam said her office would be located with the Airport Administration offices.
- Mayor Tooley noted that a long-time, active community citizen of Billings – Vera Gerke recently passed away. She is the wife of former Billings Mayor Harold Gerke.
- Mayor Tooley welcomed Yellowstone County Commissioner Bill Kennedy in the audience.

PROCLAMATIONS – Mayor Tooley. NONE

BOARD & COMMISSION REPORTS.

- Greg Krueger of the Downtown Billings Partnership reported that staff person, Jennifer Henry has been working with MSU-B on the planning for the Economic Development Summit that takes place tomorrow.
- He noted the Partnership has been working with the Over, Under and Around Committee to assist them with an RFP.
- They are working with the County on developing a "quiet zone" around the downtown railroad crossings.
- Mr. Krueger noted the Downtown Billings Partnership is coordinating business recruitment with the Downtown Billings Association to be sure that neither agency is duplicating efforts of the other.
- The DBP is also working with 3 Eagle Scouts on projects downtown. One has to do with staging, another has to do with traffic control and the third one is working with the Fire Department to maintain the flags on the streets.

ADMINISTRATOR REPORTS – Kristoff Bauer.

- Mr. Bauer reminded the Council of the budget meeting this week Thursday, May 29th at 5:30 p.m. at the Community Center. The subject will be enterprise funds, internal service funds, special revenue, debt service and permanent funds.
- He asked the Council to add two items to the agenda this evening: acceptance of an \$1.2 Million EDA Grant for the Billings Operations Center, and approval of the settlement and Development Agreement for Cherry Creek Development.
- City Attorney Brent Brooks reminded the Council that under current rules of procedure, abstentions from voting are generally not allowed unless a conflict of interest exists and the conflict is stated.

Councilmember Iverson moved to ADD as Item #13 the Settlement and Development Agreement for Cherry Creek Development and to ADD as Item #14 approval of the EDA Grant for the Billings Operations Center, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

CONSENT AGENDA:

1. A. Mayor’s Appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Bill Lamdin*	Library Board	05/01/03	12/31/06
2.	Jolene Rieck	Yellowstone Historic Preservation Board	01/01/03	12/31/05
3.	Paul Daniels**	Yellowstone Historic Preservation Board	11/01/02	12/31/03

B. Bid Awards:

- (1) 2003 Water Service Replacement Project.** (Opened 5/6/03). Recommend Sunset Excavation, \$64,875.
- (2) Rehberg Ranch Subdivision Wastewater Treatment Facilities.** (~~Opened 5/27/03~~). Recommend changing bid-opening date to June 3 and delaying award to 6/23/03.
- (3) Water Treatment Plant Switchgear Replacement.** (Opened 5/27/03). Recommend delaying award to 6/9/03.
- (4) Water Treatment Plant Electrical Feeder Replacement.** (Opened 5/27/03). Recommend delaying award to 6/09/03.
- (5) Runway Incursion Prevention Road-AIP 25.** (Opened 5/27/03). Recommend delaying award to 6/09/03.
- (6) Airport Motor Grader.** (Opened 5/27/03). Recommend delaying award to 6/09/03.
- (7) High-Speed Single Purpose Runway Broom with Air Blower System.** (Opened 5/27/03). Recommend delaying award to 6/09/03.
- (8) Taxiway “D” Rehabilitation-AIP 26.** (Opened ~~5/27/03~~ 5/27/13/03).

Recommend delaying award to 6/09/03.

(9) Contract #1, W. O. 03-03, 2003 Street Maintenance. (Opened 5/20/03). Recommend JTL, Inc., \$298,033.90.

(10) MET Transit Procurement for Transit Vehicles. (Opened 5/20/03). Recommend delaying award to 6/09/03.

C. Contract for W. O. 03-06: Professional Services Contract for Swords Park Trail, HKM Engineering, Inc., \$139,689.

D. Contract Amendment #1, W. O. 02-15 with A & E Architects for additional design services for the Billings Operations Center. \$180,000.

E. Agreement with New World Systems for renewal of three-year contract for Standard Software Maintenance, \$36,900 for a 3-year contract.

F. Ground Lease with Alpine Aviation for 5-year renewal of Limited Commercial Aviation Building, \$16,852.80 revenue for first year of the lease.

G. Approval of Grant Application through Universal Hiring Program for funding of ~~three~~ two police officers; requires a City match of ~~\$75,930 that is in the 2003/2004 budget.~~ \$151,860 over a three-year period.

H. Acceptance of Quit Claim Deed for Lot 2B, Block 1 Valley View Subdivision, 5th filing, to merge with existing parkland and amending the plat.

I. Approval of CDBG Volunteer Demolition Program Guidelines for CDBG Volunteer Affordable Housing Preservation and Demolition Program.

J. Resolution 03-17981 accepting the Terms and Conditions of the Parks, Recreation, and Public Land's INTERCAP Loan with the State of Montana, \$2,680,000.

K. Resolution 03-17982 relating to \$1,196,000 Pooled Special Improvement District Bonds, Series 2003C (Special Improvement Districts Nos. 1349 and 1354) fixing the form and details and providing for the execution and delivery thereof and security thereof.

L. Second reading ordinance 03-5244 for expanding Ward IV to include Tract 1, C/S 2085-Annexation #03-03.

M. Time Extension for King Heights Subdivision, 1st filing to record final plat, extending filing to 6/12/04.

N. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Item 1A from the Consent Agenda. Councilmember Jones separated Item D from the Consent Agenda. Mayor Tooley separated Item G from the Consent Agenda. Councilmember Gaghen moved for approval of the Consent Agenda with the exception of Items 1A, D and G, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item 1A of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott noted that the appointments are outside of the January and July appointment cycles as stated in the Billings Municipal Code. She asked if there are problems with filling vacancies. Mayor Tooley said that the Yellowstone Historic Preservation Board appointments are jointly appointed by the City of Billings, the County of Yellowstone, the City of Laurel and the Crow Tribe. He said the City does not have complete control over the cycle of those appointments. Library Director Bill Cochran said the Library Board recently had two members resign and this has created a quorum issue for both the April and May meetings. This causes problems for the business that needs to be conducted, he added. Councilmember McDermott asked if it would be advisable to change the code to allow for these appointments to be made as necessary. Mayor Tooley said that advertising for board vacancies twice a year allows for an appropriate selection of candidates, but the City should retain the ability to fill the occasional need of a vacancy outside of the six month cycle with appointments in the manner that is now available. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item D of the Consent Agenda, seconded by Councilmember Kennedy. Councilmember Jones said he has been concerned about the expense of the Billings Operations Center and that this design fee addition raises the costs to \$17 Million plus. On a voice vote, the motion was approved with Councilmembers McDermott, Brown, Poppler and Jones voting "no".

Councilmember Gaghen moved for approval of Item G of the Consent Agenda with the recommended correction, seconded by Councilmember Iverson. Mayor Tooley said the original request was for grant money to supply 3 police officers, but because one of the officers was not available due to active military duty and has recently become available the request has been reduced to 2 positions rather than 3. Interim City Administrator Kristoff Bauer explained that the grant funding for the officer position that was hired to cover the officer serving his country is not appropriate because he is considered an "over hire". The officer that is overseas will return on June 30th and it is hoped that the officer hired to cover will be retained if the Council authorizes additional positions that are requested in the budget. If the Council does not approve the additional positions, the person filling the "over hire" position would be laid off. Mr. Bauer asked the Council to approve the grant application for 2 officers. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING and Variance OP#03-01: a variance from Section 6-1203(c) of the Site Development ordinance relating to the off-street parking provision with expansion and enlargement of building. The subject property is located at 80 25th Street West, Lot 6B-1B of Amended Plat of Lot 6B-1 of Amended Plat of Lots 6A & 6B of Amended Plat of Lot 6, Block 2, Descro-Central

Subdivision. McNea, Summers Partnership, applicant. Staff recommends denial. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. The public hearing was opened. JERRY JONES, 2225 BRIARWOOD, said he is the president of Jones Construction, the general contractor for the Summers-McNea proposed addition. He said the original building was constructed in 1995 with the future addition plans added at that time. At that time the parking requirement was for 26 spaces and 33 spaces were installed. He said he met with the City County Planning Staff and the Building Department Staff to make modifications to the plan that would create a separation space between the upper and lower levels. He noted there was plenty of parking spaces for the building, including the proposed expansion because the lower level will be used for storage and also due to the small customer volume. He said he thought the meetings concluded with a workable plan and was surprised with the denial recommendation.

LEROY SUMMERS, 2202 WILLOWBROOK WAY, said he is the president of Summers-McNea Company and a partner in the McNea Summers Partnership. He said McNea Summer's sole asset is the building that is leased to Summer McNea. He said since the construction of the building seven years ago, the parking lot has only been filled twice, once at the Grand Opening and the other time for a Christmas Party. He said the majority of the time the lot is less than half full and there is no reason this should change in the future. He said of the nine spaces that are required, seven of them are allotted to the lower level that does not house employees. In his accounting business the lower level is required for paper storage. He said the parking is adequate including spaces for the proposed expansion. He added that many times the accountants are working in the field on audits and are not physically in the office. Councilmember Gaghen asked if the addition would be housing one additional support staff person. Mr. Summers said "yes". Councilmember Gaghen said this is a unique circumstance with a sporadic use of the parking lot that would be more than adequate for their needs. Mr. Summers agreed. Councilmember McDermott asked if they would lose landscaping if they were forced to add additional parking spaces. Mr. Summers replied they would lose landscaping.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the variance, seconded by Councilmember Kennedy. Mr. Bauer cautioned the Council that the requirements do not assess the parking status required by the current use, but by any possible use. He noted if the building were to change hands, the additional parking could become an issue. He added that the Council would not have the right to review the use once it changed hands. Councilmember McDermott said the Council is not setting precedent and she sees no reason to deny the variance. Councilmember Brewster said the location of this business would not demand a "storefront" type of use. He said it would probably always lend itself to a professional type of business.

Councilmember Kennedy agreed with the caution to the Council concerning the problem with future uses of the building needing additional parking. He also said the current use seems a good use of the property. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION 03-17983 creating SILMD 278 on King Avenue West-BBWA to S. 31st Street West. Staff recommends approval. (Action: approval or disapproval of Staff recommendation).

Public Works Director Dave Mumford said the resolution of intent to create SILMD #278 was approved on April 28th. He said there have been no protests or concerns to this Special Improvement Light Maintenance District that will provide for the ongoing energy and City maintenance costs of the street lights recently installed along King Avenue West from the BBWA to South 31st Street West. He asked the Council to approve SILMD #278.

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 Brewster. On a voice vote, the motion to approve was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION 03-17984 to transfer \$20,000 from Council Contingency Budget to PRPL Budget to conduct a Community Poll and retain Professional Services for Cobb Field Stadium conceptual design and cost estimates. Staff recommends approval. (Action: approval or disapproval of Staff recommendation).

Parks and Recreation Director Don Kearney said the Blue Ribbon Committee formed by the Council has been meeting monthly to work on the 2004 proposed bond issue for Cobb Field and Billings Heights Pool. During their discussion they determined the financial need to conduct some community polls to gather citizen views about the project and to enter into a contract for professional services to create a conceptual design with cost estimates. He said Harstad Research, Inc would conduct the polls. The conceptual services would be provided by HOK of Kansas City, MO. He said the committee is also requesting \$500.00 to hire Ann Clancy to facilitate a public forum on the proposed bond issue. He asked the Council to approve the request to transfer \$20,000 from the Council Contingency budget to the PRPL budget for these preliminary purposes prior to final recommendations to Council later this year.

Councilmember Kennedy asked if the poll results would come to the Council and the Blue Ribbon Committee. Mr. Kearney said "yes". Councilmember Jones asked if the poll would be asking the community whether they would rather refurbish the present stadium or build a new facility. Mr. Kearney said the questions would be along the lines of location and design for the new facility. Councilmember Jones asked if the \$9,500 would include renovations. Mr. Kearney said it would only include the preliminary design with basic information such as due diligence on the site. Mr. Bauer said there would not be too much design done before the feedback from the community is reviewed. He said the \$9,500 would be focused more on fact finding - such as the size of the project and an understanding of what is involved in the facility.

Councilmember Brewster asked if the poll would include information on the Heights Pool. Mr. Kearney said "yes".

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Kennedy moved for approval of the staff recommendation, seconded by Councilmember McDermott. Councilmember Poppler asked what type of questions would be included in the poll and would the Council know what the poll results

were before moving forward. Councilmember McDermott said the preliminary plan is needed prior to the poll as something to present to the voters. Mr. Kearney said the purpose of the poll is to make sure we are not heading in a direction not supported by the community. Councilmember Poppler asked if discussion of the North Park Pool would be included. Mr. Kearney said one of the questions drafted for the poll included Athletic Pool, which is related to the major issues of the stadium and the Heights Pool.

Councilmember Jones said he did not want to see the \$9,500 request for HOK grow in small increments and also that local firms be considered when the project gets further along. Mr. Bauer said the Blue Ribbon Committee has recommended that HOK be used throughout the preliminary schematic design process. He said the Council should communicate to the committee that HOK may not be the firm that will continue with all of the work. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #714: a zone change from Residential 6,000 and Residential Professional to Community Commercial on property generally located on the northwest corner of Shiloh Road and Avenue C and described as Lots 1-4, Block 3 of Goodman Subdivision, 2nd filing. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this is a zone change from Residential 6,000 and Residential Professional to Community Commercial on property generally located on the west side of Shiloh Road and north of Avenue C. These lots are part of Goodman Subdivision, 2nd filing with most of the land remaining undeveloped. He said the surrounding zoning contains Residential 9,600 to the north and west, Community Commercial to the south, Residential 6,000 and Community Commercial to the southwest and Community Commercial and Residential Multi-Family Restricted to the east. Mr. Bollman said the Zoning Commission is recommending approval.

The public hearing was opened. BOB SANDERSON, ENGINEERING INC., 1001 SOUTH 24TH STREET WEST, said he is representing Jerry and Theresa Goodman. He said the Goodmans have done a good job of "master planning" the Goodman Subdivision. He noted that the zone change request fits with the surrounding property as the lots would face Sylvan Nursery. He said there are good architectural restrictive covenants already in place that will work for this transition zoning. He noted that the Zoning Commission gave a unanimous recommendation and he asked for the Council's support.

JERRY GOODMAN, 7631 FRITZ ROAD, said his main goal is to do something that supports the neighborhood and that people are proud of. He asked for the Council's support for the zone change.

THERESA GOODMAN, 7631 FRITZ ROAD, asked for approval of the zone change. She noted that the pressures are really great for development in that area. She said they would not do anything that would make the neighborhood unhappy.

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

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #715: a zone change from Residential 6,000 to Community Commercial on property located at 2132 Grand Avenue and described as the north 231 feet of the east 150 feet of the north 346 feet of Lot 7, Arnold Subdivision, 1st filing. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the zone change is from Residential 6,000 to Community Commercial on property described as a portion of Lot 7 of Arnold Subdivision, 1st filing, located on the south side of Grand Avenue between 21st and 22nd Street West. He said the zone change would correct a discrepancy in the zoning of the southern 35 feet of the property that was originally zoned Residential 6,000 in 1959. This area currently contains an equipment compound for a cell tower use and the zone change would allow the property to conform to the zoning that was intended during the special review process. He said the Zoning Commission recommended approval with a 4-0 vote.

The public hearing was opened. J. R. REGER, TRI-STAR COMMUNICATIONS, P. O. BOX 1782, BILLINGS, MT 59103, said he built a 160-foot communications tower on the subject property and Qwest co-located on the tower, placing their equipment in the area leased for that purpose. When Verizon asked to co-locate on the tower, the question of the zoning on the southern 35-foot corner came up. He said this is a housekeeping zone change that will place Community Commercial zoning on the area that has been used as that zoning for a while.

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

7. FIRE STATION LOCATION AND STAFFING STUDY. Discussion item. (No Council Action required at this time.)

Mr. Bauer said there is a growing strain on the Fire Department resources due to recent annexations. The Fire Station Location and Staffing Study was contracted to evaluate and analyze the current response time the City provides and develop options the City may have to provide that level or a different level of service in the future.

Joe Parrott, a former fire chief, of Emergency Services Consulting presented the final report and recommendations. Mr. Parrott said the current fire department environment and performance was reviewed with a look toward what the future will bring by identifying future community growth trends. The next step was discussion with the City leadership of the type and level of service preferred. From this a series of options and recommendations were developed.

He noted the Council conclusions from the last discussion. The conclusions were: 1) that the current fire department services were appropriate, 2) the first responder EMS services should be reviewed for a need to upgrade, 3) the risk mitigation measures should be explored, and 4) the current levels of service (as measured by staffing and response time) were found to be acceptable. He noted that the Council allowed for low cost opportunities to improve this.

Mr. Parrott said the recommendations for risk mitigation to encourage fire sprinkler installation were: 1) eliminating financial disincentive or providing financial incentives, 2) providing awareness education, and 3) providing development standard "trade-offs". He noted that the Council might consider mandating fire sprinkler installation in new developments. The recommendation for management information and data collection is to improve data collection to be more comprehensive through acquiring appropriate hardware and software. He said the recommended mobile computing technology will: 1) provide more accurate data collection, 2) enhance firefighter safety, and 3) improve response time. He said the recommendation is to implement mobile computing technology to improve response effectiveness.

He said there are a number of factors concerned with Response Resource location management. Out-of-position units are a factor in current response time performance and the solutions are: 1) centralize the training center, and 2) video conferencing. The recommendation is to keep response units in their "home" areas.

The question of whether an upgrade of the fire department's Emergency Medical Services capability provides value was asked. He said the bottom line is "yes" for the following reasons: 1) 74% of fire department responses are for medical emergencies, 2) the fire department arrives first on 72% of all emergency medical responses, usually 35% faster than the ambulance and provides only basic life support skills. He said this is a good reason to upgrade the level of care capability on all fire department response units to Advanced Life Support (paramedic). The reasons are that it: 1) delivers care 35% faster than the current system, 2) increases resources for mass casualty incidents, and 3) provides advanced medical care in hazardous environments.

He spoke about the financial benefits of differing work schedules. He noted that it was being presented as a discussion to avoid conflicts with the ongoing bargaining with the firefighters. With a 43.5-hour per week work schedule, 97 persons are needed at a cost of \$5,000,000 whereas on a 53-hour per week work schedule, 78.43 persons are needed at a cost of \$4,800,000 for a difference of approximately \$166,479 per year. He said hourly wages won't change; where the savings is would be on paying benefits on fewer people.

Mr. Parrott said Ladder Trucks are a multi-function unit performing the following functions: 1) ventilation, 2) rescue, 3) salvage and 4) forcible entry. He noted that staffing levels determine effectiveness with a recommendation of 4-5 persons per ladder truck. The recommendation is to increase staffing to ensure at least three, and usually four personnel on the ladder truck. He noted that the cost of this staffing based on a 43.5-hour week is \$445,680 and on a 53-hour week it is \$219,599.

The final review was on Station locations. He said OPTION A, covering 50 square miles with 9 stations, would continue service at the present level. To meet future needs, the recommendation would be to retain the six current station locations and add three new stations over time. Those locations would be at Hesper & 48th, Grand and 54th and at the US 3 and Rod and Gun site to be added in the next 2 to 15 years. He said the cost to implement OPTION A, including capital costs and ongoing costs based on a 43.5 hour work week would be \$3,038,725 and on a 53 hour work week would be \$2, 799,463. OPTION B, covering 54 square miles with 8 stations, recommends retaining three current stations, relocating three stations and adding two new stations over time. The three new stations would be approximately in the same

place as Option A, but some existing stations would be moved to provide better coverage. This would mean building 5 new stations. He said the cost to implement OPTION B, including capital costs and ongoing costs based on a 43.5-hour workweek would be \$2,368,761 and on a 53 hour workweek would be \$2,159,651. He noted that Option A coverage would put the percentage of incidents within two travel miles of a fire station at 91% and Option B would be 94%. Currently the percentage is 88%. Cost per capita to implement the recommendations would be a little over \$100, placing Billings in the middle of several comparable cities. He said implementing the recommendation would place Billings at the lower end of the cost per capita with regard to on-duty staff per 1,000 population.

Mr. Parrott said the implementation should be done when development occurs. He recommends anticipating the following: 1) construct and staff US Highway 3 and Rod and Gun Club Road station within the next 2 – 3 years, 2) relocate stations #2, #4 and #5 within the next 5 to 10 years, and 3) construct and staff Neibauer and 48th Street station when enough development has occurred.

Fire Chief Marv Jochem thanked Mr. Parrott for a job well done. He said he is in total agreement with the results of the presentation. He said the Council will note that some of the recommendations are being implemented in the FY 2003-2004 budget including the Emergency Medical Services and the Ladder Truck staffing. He said the fire department has been and will continue to take incremental steps towards implementing the recommendations. Councilmember McDermott expressed concern about the relocation of the fire stations and what can be done with a station that will be abandoned. Chief Jochem said they could be used for a 911 center or other city building. He noted that the relocation recommendations are an option at this point.

Mayor Tooley called for a short break at 7:55 PM.

Mayor Tooley reconvened the Council Meeting at 8:05 PM.

8. PRELIMINARY PLAT of MHC Subdivision. Planning Staff recommends conditional approval. (Action: approval or disapproval of Planning Staff recommendation.)

Planning Staff Member Candi Beaudry said the MHC Subdivision is a 1.38-acre single lot subdivision located on the corner of Monad Road and South 24th Street West. It is currently zoned Community Commercial with an auto dealership on the corner that will be retained. There is a small right-of-way dedication on the corner as well.

The City/County Planning Staff has prepared the Findings of Fact for the MHC Subdivision. The Montana Subdivision and Platting Act requires that the local government assess the subdivision's effect on the primary review criteria specified in 76-3-608, MCA. The subdivisions must also meet the provisions of Billings Municipal City Code 23-304(c).

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

1. Effect on Agriculture

The proposed subdivision will have no effect on agricultural uses.

2. Effect on Agricultural Water User Facilities

The proposed subdivision will have no effect on agricultural water user facilities.

3. Effect on local services

a. Utilities – The proposed subdivision is currently served by municipal sewer and water services from existing mains located in South 24th Street West and Monad Road. Existing improvements in both South 24th Street West and Monad Road consist of public storm sewer, sanitary sewer, water, paved streets, curbs, gutters, sidewalks, streetlights, and traffic control signals. No new improvements are proposed at this time but are included in a Waiver of Right to Protest the Creation of a Special Improvement District.

b. Solid Waste – The City of Billings will collect and dispose of solid waste that is generated in the subdivision. The City's landfill has adequate capacity for this waste.

c. Streets – No new street improvements are required. The existing rights-of-way widths for Monad Road and South 24th Street West are 80 feet, and do not comply with the City Subdivision Regulations street standards. For that reason, a variance from the arterial right-of-way width standards is requested.

d. Emergency Services – The City Fire Department will respond to emergencies in this subdivision. The nearest fire station is Station #5 located on South 24th Street West, which is less than a mile from the proposed subdivision. Police response time should be rapid because the main staffing facility is located on Monad Road, less than a mile away. The proposed subdivision is located within the service area of American Medical Response, which provides emergency medical care and transport.

e. Schools – No schools will be affected by the commercial subdivision.

f. Parks and Recreation - The proposed subdivision is not expected to interfere with the park or public recreation.

g. MET Transit – The MET bus system serves this property.

4. Effect on the natural environment

No impacts to the natural environment are expected as a result of this subdivision.

5. Effect on wildlife and wildlife habitat

No impacts to the wildlife or wildlife habitat are expected as a result of this subdivision.

6. Effect on the public health, safety and welfare

No impacts to the public health, safety and welfare are expected as a result of this subdivision.

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

The requirements for preparing an environmental assessment do not apply to the first minor subdivision created from a tract of record (76-3-609(3), MCA).

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

1. 1990 Yellowstone County Comprehensive Plan:

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

- By providing sites to maintain a diverse economy and for the relocation or expansion of exiting businesses.
- By locating business uses next to major highways, commercial traffic through residential neighborhoods is minimized and convenience for business customers is maximized.
- Extension of urban services to the site will be efficient and very cost effective because of their proximity to the site.
- By developing within the City limits.
- Having no significant limitations caused by steep slopes, flooding, unstable land, soil conditions or other natural factors, the land itself is well suited to cost effective development.
- There are no natural or wildlife habitat features or environmentally sensitive areas of special interest to be protected or preserved on site.

2. Urban Area Transportation Plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan and will conform to the recommendations of this plan with the exception of existing rights-of-way widths.

3. BikeNet Plan

The BikeNet trail system is not affected by the proposed subdivision.

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

This proposed subdivision meets the requirements of the Montana Subdivision and Platting Act and the local subdivision regulations except for the rights-of-way width standards for arterial streets.

E. Does the subdivision conform to sanitary requirements (23-304(c)(5), BMCC)?

The subdivision will use existing City sanitary sewer service and City solid waste collection and disposal services. Both services are approved and regulated by state and federal authorities.

F. Does the proposed subdivision conform to all requirements of the zoning in effect (23-304(c)(6), BMCC)?

There are no zoning issues for Lot 1, however, the subdivision will create a nonconforming structure located on the remainder parcel. The side yard setback for the Residential Manufactured Home district is eight feet. An existing modular home would end up located on the lot line if this subdivision was approved as proposed. To bring the subdivision into conformance with existing zoning, either the proposed lot line must be moved a minimum of eight feet from the modular home, or the modular home must be moved. The modular home would also be in violation of the building codes if it were located on the property line. For that reason, a variance from the zoning setbacks would not be sufficient to remedy the building code violations.

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

Utilities are already extended to this subdivision.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat (76-3-608(3)(d), MCA and 23-304, BMCC(c)(8)).

The lot has access to Monad Road and South 24th Street West.

CONCLUSIONS OF FINDING OF FACT

It has been determined will have no adverse effects on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and public health and safety.

There is a variance request from the right-of-way width standards to allow for 40-foot half right-of-way widths on Monad Road and South 24th Street West adjacent to the Subdivision (27-601(k), BMCC).

Ms. Beaudry said the Planning Staff recommends the following conditions to deal with the items that result in a non-conforming use. The conditions are:

1. To minimize the effects on local services, the subdivider shall:
 - a. Abide by the Subdivision Improvement Agreement.
 - b. Provide a one-foot no-access strip from the east side of the existing approach on Monad Road to South 24th Street West, then south to the existing approach on South 24th Street West. The one-foot no-access should resume on the south side of the existing approach on South 24th

Street West and continue to the southeast corner of the proposed subdivision, then continue west along the south property line, approximately 85 feet (27-601(k), BMCC).

- c. Acquire the necessary access easement from the owners of the remainder property to access the south portion of Lot 1 from the entrance to Casa Village. The easement shall be shown on the face of the final plat.
2. To bring the subdivision into conformance with the City of Billings Zoning Regulations, the subdivider shall move the existing structure located along the west boundary of Lot 1, to bring it into conformance with RMH setback requirements. The structure must be removed prior to filing the final plat.
3. Minor wording changes may be made in the final documents upon request of the Planning or Public Works Departments to clarify the documents and bring them into standard, acceptable format. The changes are not intended to alter the intent or extent of the documents.
4. The final subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal City Code, and Rules, Regulations, Policies, and Ordinances of the City of Billings, and the Laws and Administrative Rules of the State of Montana.

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

9. PRELIMINARY PLAT of Barry Acres Subdivision. Planning Staff recommends conditional approval. (Action: approval or disapproval of Planning Staff recommendation.)

Planning Staff Member Candi Beaudry said Barry Acres Subdivision is a 2-lot residential subdivision located near the intersection of Bitterroot Drive and Wicks Lane. The two lots created would be less than 7,000 square feet each. She said there is an existing house and garage on one lot. The subdivision is dedicating approximately 40 feet of right-of-way along Bitterroot Drive. Ms. Beaudry said the zoning is currently Residential 7,000 and will create 2 non-conforming lots. There is a request for a *variance from Section 23-601(k) BMCC, which states that principal arterial streets shall have a right of way of 120 feet, or 60 feet half-width.* The owner of the subject parcel currently owns to the centerline of Bitterroot Drive, and has a 30-foot wide road easement for Bitterroot. City Engineering has requested dedication of 40 feet (half width) of right-of-way, instead of the 60 feet required in the subdivision regulations. They feel that 40 feet is adequate to accommodate future improvements to this street, and acknowledge that all the other properties along Bitterroot that have dedicated street right-of-way, have given 40 feet or less.

The conditions for approval are:

1. The following changes shall be made to the Subdivision Improvements Agreement (SIA):
 - a. The SIA shall be written to reflect review and approval by the City of Billings, not Yellowstone County. *(Recommended by City-County Planning)*

- b. Item #1 of the SIA shall state that a Variance from Section 23-601(k) has been requested and granted. *(Recommended by City-County Planning & City Engineering)*
 - c. A note shall be added to the SIA stating that an encroachment permit for the existing garage on Bitterroot Drive shall be obtained and that at the time of road construction the existing garage on Bitterroot Drive will be removed from the right-of-way at the property owner's expense. *(Recommended by City-County Planning & City Engineering)*
 - d. A note shall be added to the SIA stating that Lot 2 does not have a sanitary sewer service stub to the property. The property owner will need to connect to the sanitary sewer in Bitterroot Drive at their expense when service is needed. *(Recommended by City Public Works and City-County Planning)*
2. The subdivider shall petition for annexation into the Heights Water District and pay the buy-in costs, prior to final plat approval. *(City Subdivision Regulations Section 23-705(a); recommended by City-County Planning)*
 3. A lot size variance or zone change shall be obtained for the 2 lots prior to final plat approval. *(Recommended by City-County Planning)*
 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.
 5. 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 staff has prepared the Findings of Fact for the Barry Acres Subdivision for review and approval by the Billings City Council. These findings are based on information received from the subdivider, their surveyor, City departmental review, and planning staff evaluation. The findings address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Section 23-304(c), BMCC).

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

1. Effect on Agriculture

This parcel has an existing house and garage on it and is in a R-7000 zone. It will not have an impact on agriculture.

2. Effect on agricultural water user facilities

The parcel is at the end of a BBWA ditch lateral that spills on its east side. A ditch easement exists for this lateral. This subdivision shall have no impact on downstream users of this ditch.

3. Effect on Local Services

- **Water and Sewer Service.** The proposed lots shall be served by the Heights Water District for water service and by the City of Billings for sanitary sewer service. The Heights Water District has requested that the lots be annexed into the water district, as they are currently not in the district. This has been recommended as a condition of approval. Also the City Public Utilities Department noted that Lot 2 does not have a sanitary sewer stub to the property. It is recommended as a condition of approval that language be added to the SIA stating that the property owner will need to pay for the extension of the sewer line from Bitterroot Drive when sewer service is needed.
- **Storm Water Drainage.** Storm water shall remain on site. Upon new construction, the property owners will have to comply with the City of Billings' Storm Water Management Manual. Presently, this property is not served by storm drain facilities. A waiver of the right to protest an SID for improvements such as storm drain facilities shall be filed with the final plat.
- **Public Streets and Roads.** The proposed lots take access off of Bitterroot Drive. Bitterroot Drive is a paved principal arterial street that is within a 60 to 80 foot right-of-way. It does not have curb, gutter and sidewalk, or storm drains at this location. The subdividers have requested a variance from Section 23-601(k), BMCC, which states that the right of way dedication for principal arterial streets shall be 120 feet, or 60-foot half width. The developers have dedicated with this plat 40 feet of right of way for Bitterroot Drive. City Engineering is supportive of this variance due to the fact that the remaining properties along Bitterroot have right of way dedications of 40 feet or less and future improvements to Bitterroot should be able to be made within an 80-foot right of way. The subdividers have submitted a waiver of the right to protest future upgrades to Bitterroot Drive which includes, but is not limited to, the installation of street lights, street widening, curbs and gutters, sidewalks, driveways.
- **Fire and Police Protection.** The City of Billings Fire Department will serve these lots and did not have any concerns with the plat as proposed. The City Police Department will serve this subdivision. There are adequate provisions for emergency vehicle access.
- **Solid Waste Disposal.** The Billings Solid Waste Department currently provides solid waste hauling. The Billings Landfill has adequate capacity to provide landfill disposal service.
- **Schools.** School District #2 will serve the school-aged children in this subdivision. No comment was received from them at the time this staff report was written. This two-lot residential subdivision should have a minimal impact on schools.
- **Parks.** Parkland dedication is not required for minor subdivisions.

4. Effects on the Natural Environment

The subject parcel is located on a principal arterial street in an area that has both urban density residential development and some areas of small pastureland. The addition of one more dwelling unit to this half-acre site is not likely to have a substantial effect on the natural environment.

5. Effects on Wildlife and Wildlife Habitat

The subject parcel is located on a principal arterial street in an area that has both urban density residential development and some areas of small pastureland. The effects on wildlife or wildlife habitat should be minimal.

6. Effects on Public Health and Safety

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

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

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

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

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 unrelated uses. (K-5)

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

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

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

c. 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)

This subdivision is a good example of urban infill development. It is in an urban setting and puts no development pressure on agricultural land.

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 to be served by the Heights Water District and the City of Billings sanitary sewer services.

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 Barry Acres 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 Residential-7000 which requires a minimum of 7,000 square feet of lot area for each lot. Due to the dedication of 40 feet of street right of way, the proposed lots would be only 6,755 square feet each in size. The developers have submitted an application for a lot size variance and it is recommended as a condition of preliminary plat approval that this variance or a zone change be obtained prior to final plat approval.

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

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

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

Legal and physical access is available to the subdivision from Bitterroot Drive. All streets leading up to Bitterroot Drive are dedicated to the public.

CONCLUSIONS OF THE FINDINGS OF FACT

The Planning Department staff has determined that the Barry Acres 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 Brewster asked what will be done to mitigate the limited sight distance at the bridge on Bitterroot Drive. Ms. Beaudry said “no access” or “restricted access” strips have been applied in the past that would prohibit the amount of driveway approaches. Councilmember Brewster asked if the variance would be processed at a later date. She said the variance will be heard by the Board of Adjustment and will not come to the City Council. Public Works Director Dave Mumford addressed Councilmember Brewster’s concern about the variance request of 40 feet instead of 60 feet for the roadway. He said a five-lane road with sidewalks on both sides could fit within the requested right-of-way variance. This is to stay consistent with what is presently there.

Councilmember McDermott moved for approval of the Planning Staff recommendation, seconded Councilmember Iverson. Councilmember Brewster amended the motion to add a condition of restricted access on Lot 2 frontage, seconded by Councilmember McDermott. On a voice vote, the amendment was unanimously approved. On a voice vote on the motion as amended, the motion was unanimously approved.

10. SALE OF BLOCK 1, LOT 1, HIGH SIERRA SUBDIVISION, 2ND FILING, with minimum offer set at \$9,500. ~~Recommendation to be made at meeting.~~ Recommend Oakland Home Builders Corp, \$527,000. Action: approval or disapproval of Staff recommendation.)

Parks and Recreation Director Don Kearney said this property was listed for sale during the Public Auction in August of 2002. This property did not sell at the auction and has since been publicly advertised for sale again. There were two offers received. The proceeds of this sale will go back into the SID Revolving Loan Fund. He said the staff recommends that the Council award the sale of the property to Oakland Home Builders at a price of \$527,000.

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

11. OPTIONS FOR DIRECTING USE OF TAX INCREMENT FINANCE (TIF) DOLLAR. Discussion item. (No Council Action recommended at this time.)

Interim City Administrator Kristoff Bauer said this issue arises from the recent directorship change at the Downtown Billings Partnership and other issues involving past policy implementation and use of tax increment finance dollars within the last two years. The City’s agreement with the DBP to administer the TIF is up for renewal. He said this item will explore options the Council might consider for changing the City’s agreement with the DBP.

Planning Staff Director Ramona Mattix said the three issues that the Council voiced concerns about were: 1) policy setting for the TIF Fund, 2) investment decisions

for the TIF Fund, and 3) administration of TIF dollars. The four criteria analyzed were: 1) is the desired level of Council participation and oversight provided to the Council, 2) will the implementation of the Framework Plan (pending projects and past successes) continue to be effectively supported by the Council choices, 3) will the creation of a Business Improvement District (BID) be made more likely, and 4) will the change improve the potential for the future creation of other TIF districts to support economic revitalization in economically repressed areas.

Ms. Mattix said that there are four alternatives for the Council to be more engaged in the investment decisions for the TIF District. They are: 1) Joint Council and Partnership Governance, 2) Council Review Committee, 3) Council Appoints all Partnership Board Members, 4) Council Acts as the TIF Board, 5) Council dissolves the Partnership by Funding a New Board, or 6) Leave as is. She said the investment activity for the next fiscal year will amount to \$3,000,750. The alternatives to allow the Council to be more involved in the funding are: 1) elect to limit investment activity to the implementation of the Framework Plan, 2) develop investment goals that would shape project budgets, 3) rewrite the Work Plan, 4) and require quarterly reports from the standing committees.

She noted that the Council has expressed concern with the limited amount of accountability of the Partnership staff to the City. This could be addressed by: 1) transfer of some current functions of the Partnership to entities already engaged in that activity, 2) transfer the administrative assistant and research assistant functions to the City or other entity as staff positions, or 3) leave as it and wait to re-evaluate the DBA staff position in a year.

The final item of concern was the Conflict of Interest. Ms. Mattix said there are three alternatives the Council could consider: 1) change the By-laws of the Downtown Partnership to prohibit any downtown property owners or businesses voting membership on the Board, 2) require that any property owner or business on a Board or its Committees, that may benefit from a decision, refrain from discussing or voting on the matter, and 3) require the Downtown Partnership Board to operate under the same conflict of interest statutory provisions as the Council.

Mr. Bauer said the staff needs direction from the Council as to what changes to the Downtown Partnership contract they would like to see made. This item could be placed on the June 23rd agenda. Mayor Tooley explained the Downtown Billings Partnership was created to implement the Framework Plan and the general concept is sound. He said there may be room for some adjustments in the agreement between the City and the DBP. He said he would not like to see this 30-year TIF District effort terminate 5 years before its completion.

Councilmember Brewster said his major concern was the lack of communication between the representative to the DBP and the Council. Councilmember Poppler said she is pleased to have the brief reports from Mr. Krueger. Councilmember Jones said he does not want to see the City Administrator serve as a voting member on the Board of the DBP. Councilmember Kennedy suggested that a Councilmember be a liaison to the Board to improve communications. Councilmember Brown said he thinks many citizens feel that persons other than ones involved in the downtown should have a say in what the TIF dollars are being spent on. He said he also objects to government entities getting TIF dollars to remodel their facilities. Greg Krueger, of the Downtown Billings Partnership

said there is no authority under the existing law to extend the existing Downtown Business District beyond 2008. He said there is a portion of the proposed Work Plan of the Partnership that is concerned with development of a process to form the boundaries of a new Business Improvement District this year. Councilmember McDermott agreed that the conflict of interest issue needs to be addressed. Mr. Krueger of the Downtown Billings Partnership noted the By-laws already include a conflict of interest clause.

Mayor Tooley suggested that Items #3 (No City Funds may be used for services rendered shall be reduced by 85% of the fund balance as of the previous June 30) and #5 (Any project to be funded by TIF dollars shall involve the appropriate City department beginning at the planning phase and through completion) of the handout memo be included in the review process. Councilmember Kennedy suggested a review of the conflict of interest clause. Mr. Robert Keefe said a concern of Item #2 (Annual operating budget reduced by carryover) is that the Partnership Operating Fund should not be building up an excess of money that could be otherwise used for the projects that are funded by the TIF District. He also spoke of Item #1 (Grants of TIF money) regarding the grant program and suggested associated guidelines are approved by the Council with a dollar amount being established for that approval process. He also noted that Item #4 (Change requirement for progress reports to the City, County and School District from annual to quarterly) suggests a need for more frequent progress reports, such as a quarterly report to all three taxing jurisdictions.

Mr. Bauer summarized the Council's request for a contract to come to Council on the June 23rd agenda with suggested language changes from the council memo and to confirm the issues of conflict of interest. Mayor Tooley suggested that the Partnership give the City feedback as to the importance of a City leadership presence on the board that this point in the life of the Partnership.

12. CONSIDERATION OF REPEALING AQUATIC FACILITIES ASSESSMENT. (Requested via Motion from Councilmember Brown.) Staff recommends Council deny the request to repeal. (Action: approval or disapproval of Staff recommendation.)

Councilmember Brown moved for approval of the staff recommendation, seconded by Councilmember Iverson. Councilmember Brewster said he is frustrated with the timing of the implementation of recommendations and the lack of ability to make changes. He said the report appears to make the staff less reluctant to accommodate changes that the Council wishes to make. Councilmember Iverson noted that the approval of the Aquatic Facilities document was an acknowledgement of receipt of the document, not approval of all the recommendations it contained. Councilmember McDermott asked if this vote will mean leaving the status of the report as it is. Mayor Tooley said this report is not a policy, only a guideline. Councilmember McDermott said she is concerned that projects not in the report seem not to get attention because they are "not in the plan". Mr. Bauer said that it is difficult for the staff to bring proposals to the Council without a document, such as the Aquatic Facilities Assessment, on which to base the proposals. He explained this study is information that the staff uses to develop the recommendations to Council. He said the Council always has the option to review the recommendations and "decide to do otherwise" and direct the staff to seek other options. He recommended that if the Council chooses to remove this assessment as

the basis for planning, that they should provide another basis from which the staff can develop proposals.

Councilmember Brewster said he would like to see plans such as this one given the opportunity to go before the constituents at a Task Force meeting or some other forum where they can provide their input. Councilmember Kennedy noted that this is a planning document only and is subject to change. He said this is a "liquid" document and there should be no "walls of resistance" from the staff regarding implementation of anything in or out of the document. He said the Council is ultimately "in charge" of the staff.

Mr. Bauer noted that the intention of the staff is to bring items to the Council at the Work Sessions to give them time to review and shift the direction before the Council is forced to make a decision at a council meeting.

Councilmember McDermott said she has many concerns with the assessment, but this does not indicate a lack of trust for the good job that the Parks Department is doing. She said the document should be used as a planning document only. Councilmember Brown said he brought this back to the Council to "bring to light some of the problems we have or seem to have" with the assessment. On a voice vote to not repeal the Aquatic Facilities Assessment, the motion was approved with Councilmember Brown voting "no".

~~13. **PUBLIC COMMENT.** (Non-Agenda Items; comments limited to 3 minutes per speaker.)~~

LATE ADDITIONS:

13. SETTLEMENT AND DEVELOPMENT AGREEMENT with Cherry Creek Development. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Deputy City Attorney Kelly Addy said Cherry Creek Development filed suit against the City. He said that he and Planning Staff Member Bruce McCandless met with the principals in the development and their attorneys at the site to go over the terms of the final plat approval to find middle ground for a settlement. He said the developer offered to plant trees at twenty-foot centers to provide a screen on the east and west in lieu of the fence. He said they asked that a couple of pedestrian gates be permitted in the fence on the north side of the development so that deer would not be trapped in the development. He said they offered to plant trees along the northern boundary where the zoning is Agricultural Open Space and where there is a significant grade change. They asked that the fencing on the west side be required only up to Lot 2. Mr. Addy said that he met with Councilmember Brewster at the site to go over the points raised and offers made by the developer. He said Councilmember Brewster then met with the surrounding neighbors to get their input on the proposal. He said the homeowners preferred the fencing rather than the trees and no "deer gates" to prevent additional access roads into the Residential Manufactured Home area.

Mr. Addy proposed to the developer that Phase II could contain the 174 lots if Phase I was completed with all of the requirements and without impacts that were anticipated. He said the fencing requirement would remain as first stated. He noted Mr.

Fain, their attorney said they would agree to fence the entire area. Mr. Addy recommended settlement with those terms.

Councilmember Brewster moved for approval of the Cherry Creek Subdivision settlement, seconded by Councilmember Poppler. Councilmember Brewster noted that this settlement still requires that the Council review whether the developer has met the requirements of the Subdivision Improvement Agreement and the Development Agreement before Phase II. On a voice vote, the motion was unanimously approved.

14. ACCEPTANCE OF \$1.27 MILLION EDA GRANT AGREEMENT for Billings Operations Center. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

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

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

The public comment period was opened.

- Tom Zurbuchen of 1747 Wicks Lane, thanked the Council for their consideration on the Cherry Creek Development. He asked the Council to replace the sound system in the Council Chambers with one that enables everyone in the audience to hear the Council proceedings.

There were no further speakers. The public comment period was closed.

Council Initiatives

- COUNCILMEMBER IVERSON: Councilmember Iverson moved to direct staff to look at the Council Initiative process and bring back alternatives for a timeline to list initiatives on the Council agenda for review and action by the City Council, seconded by Councilmember Kennedy. She said she would like at least a week to review the initiative and get constituent feedback before voting on it. Mr. Bauer explained that Councilmember Iverson's motion would direct the staff to develop a process to submit an initiative. Councilmember Gaghen expressed concern that time sensitive issues would not be dealt with according to the proposed limitations. Councilmember McDermott said she understood the initiative process was to speed up the process for placing issues on the agenda that could possibly be tied up for several weeks.

Mr. Bauer reminded the Council that the process that was supplanted by the present initiative process was a written initiative signed by a minimum of three Councilmembers. That written request was placed on the agenda and brought forward for Council consideration. He noted that initiatives have risen from constituent concerns and there may be a need to provide a different opportunity during the agenda to "share" these concerns or reports. Councilmember Brewster noted that prior notification could come through an e-mail to Mr. Bauer to include a possible initiative in the Friday packet. Mayor Tooley said this Council felt that they needed some method to bring current issues before the Council. Councilmember Ohnstad said he sees a problem with the concern of a vote being taken on an

initiative that could “throw out a document such as the Aquatics Study” simply because a few Councilmembers are absent.

Councilmember Gaghen said “there is value in measured thought and also a need for sharing a concern that could avert a crisis.” Mr. Bauer said it would be beneficial to revisit the policies that are now in place and provide options to clarify them. He said supporting Councilmember Iverson’s initiative could provide that direction. He also said it would be valuable to give prior notice of possible concerns whenever possible. On a roll call vote, the motion failed with Councilmembers Gaghen, Brewster, Iverson, Ohnstad and Mayor Tooley voted “yes” and Councilmembers McDermott, Brown, Kennedy, Poppler, and Jones voted “no”.

- COUNCILMEMBER MCDERMOTT: Councilmember McDermott requested information on the status of the Engineering Department list of permits and development information for setting up new businesses or businesses making major changes, as discussed in the last retreat. She said this should be a duty of the BSEDA. Mr. Bauer said members of the DPARB have been investigating the development review process. She also requested that a presentation to Council be scheduled on the sources of and dissemination of development information. This presentation will be scheduled for a future Work Session.
- COUNCILMEMBER MCDERMOTT: Councilmember McDermott moved to direct staff to investigate the feasibility and costs to establish an information center for all board/commission information (including which boards/commissions exist, their duties, their membership, the current members, meeting dates/times, the bylaws, the agendas, the minutes, budgets and staff liaisons), seconded by Councilmember Poppler. Councilmember McDermott said the boards and commissions are a great resource to the Council and feels it is important to have all the information pertinent to each one. Mr. Bauer said the problem is that all boards have differing support levels. At this point there is no mechanism to accumulate all those resources into one centralized resource. Councilmember Poppler suggested that at least two boards and commissions be scheduled each Council Meeting to give a brief report during the Boards and Commission Reports section of the agenda. On a voice vote, the motion was unanimously approved.
- COUNCILMEMBER GAGHEN: Councilmember Gaghen requested staff contact and assist a resident on Lordwith Lane near Pioneer Park who is experiencing problems with noise, abusive behavior and trespassing on private property from the Frisbee/golf (Folf) that is taking place in the park. She noted that this recreation takes up half of the park. She asked that something be done to mitigate these concerns as soon as possible. Deputy Chief Archer asked that Councilmember Gaghen give the name of the complainant to him and he will refer her request to Lt. Vern Petermann in the Police Department for enforcement action after park hours.
- COUNCILMEMBER JONES: Councilmember Jones moved to direct staff to investigate the use of Photo Radar as a potential deterrent for speeding in the Descro Task Force area, seconded by Councilmember Gaghen. Councilmember

Jones said the members of the Descro Task Force have discussed this issue and included it in their minutes. Councilmember McDermott said this same problem exists in the North Elevation Task Force area and would be another group that would interested in this suggestion. On a voice vote, the motion was approved with Councilmember Brown and Kennedy voting “no”.

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

THE CITY OF BILLINGS

By: _____
Charles F. Tooley MAYOR

ATTEST:

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