

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

September 22, 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 – Councilmember present on roll call were: McDermott, Gaghen, Brown, Brewster, Iverson, Kennedy, Poppler, Ohnstad, Jones and Larson.

MINUTES – Sept 8, 2003. Approved as printed.

COURTESIES - NONE

PROCLAMATIONS – Mayor Tooley.

- September 26th – American Indian Heritage Day
- September 28th – Habitat for Humanity Rededication Day
- October 5-11 - Fire Prevention Week
- November 2003 - National American Indian Heritage Month

BOARD & COMMISSION REPORTS – Downtown Billings Partnership

- Greg Krueger, Billings Downtown Partnership Director, informed the Council that the Partnership now has a link on their website (www.downtownbillings.com) called "Board Topics" that will contain all supporting documents that are pending with the Board of Directors of the Partnership.
- Mr. Krueger also spoke about an RFP process underway to obtain grant research funding that will "tie in" with the Framework Plan. He noted that the Framework Plan states that the Partnership should not rely entirely on Tax Increment dollars for their projects.

ADMINISTRATOR REPORTS – Kristoff Bauer.

- Acting Assistant City Administrator Robert Keefe noted that Staff has recommended that Item #3 - consideration of the annexation of Golden West Estates, on the Regular Agenda be delayed to the October 14th Council meeting.
- Mr. Keefe introduced Public Works Director Dave Mumford who gave an update of the 5th Street West Sewer Rehab/Construction Project between Lewis and Grand Avenues. Mr. Mumford informed the Council that the contractor has run into a situation that needs immediate attention, where native soil (clay) was replaced during a 1991 utility construction project. He noted the clay is retaining water even after 5 years of drought conditions. He added that the Public Utilities Department, at the time, accepted the job with the native backfill into the road and it would be hard to prove negligence. This is causing the grade to slide and the road to sink approximately six inches and tearing the asphalt away from the gutter. He said the

contractor would like to complete paving by next week. He asked the Council to authorize a change order that would place the cost of the project above the \$100,000 mark on change orders, but would remain in the 7% change order cost of contract range. He noted the cost should not be more than \$35,000. Councilmember Larson moved to add approval of the change order for 5th Street West as Item L of the Consent Agenda, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved. Item was added as Item L.

- Councilmember Brown moved to add approval of the final plat of Croy Subdivision as Item 10 on the Regular Agenda, seconded by Councilmember Poppler. On a voice vote, the motion was unanimously approved. Item was added as Item 10.

CONSENT AGENDA:

1. A. Bid Awards:

(1) **Gasoline, Diesel Fuel and Lubrication Products.** (Opened 9/2/03). DELAYED FROM 9/8/03. Recommend GM Petroleum for the Gasoline and Diesel Fuel contract and A & I Distributors for the Lubrication Products contract.

(2) **HazMat Response Vehicle for Fire Dept.** (Opened 9/9/03). Recommend delaying to 10/14/03.

(3) **1-1/2 Ton – Cab & Chassis 4x4 for Fire Dept. (Brush Truck)** (Opened 9/9/03). Recommend delaying to 10/14/03.

(4) **One New Current Model Cab & Chassis – 52,000 GVW for Fire Dept. (Water Tender)** (Opened 9/9/03). Recommend delaying to 10/14/03.

(5) **HVAC System Replacement – Fire Station #1.** (Opened 9/16/03). Recommend delaying to 10/14/03.

B. Change Order #1, Security Lobby and Snack Bar Renovations at Airport, Hardy Construction, \$49,436.00.

C. Final Change Order #3: South Hills (Briarwood) Water Extension, COP Construction, \$7,302.21.

D. W.O. 03-17: Railroad Crossings Feasibility Study, Professional Services Contract with Short Elliott Hendrickson, Inc., \$115,000.00.

E. Lease Agreement with Budget Instant Print, Inc., for retail/office space in Park I garage, term: 1 year with two one-year options to renew.

F. Ground Lease with Federal Aviation Administration (FAA) for new Air Traffic Control Tower facility, \$0.00.

G. Approval of reverted funds grant agreement from Highway Traffic Safety for one (1) radar unit and one (1) in-car video system, \$4,500.

H. Second and final reading ordinance 03-5255 expanding the boundaries of Ward II to include recently annexed property described as a portion of Tract 3A, C/S 2317, Annex #03-05, George Rosenfeld and Eugene A. Brosovich, owners.

I. Second and final reading ordinance amending portions of BMCC Sections 4-301 thru 4-453, prohibiting wild animals within city limits and offensive animal waste; changing certain definitions; requiring permits for 4 or more dogs and/or cats; updating language on noisy animals, dangerous and potentially dangerous behavior and animal's justified use of force; allowing the City Administrator to set fees; prohibiting small animals from being in City parks; requiring dogs and cats to be vaccinated; requiring registration and vaccination tags to be on an animal when off owner's property; allowing impoundment of cats and dogs and collection of fees and increasing penalties.

J. Final Plat of Rebecca Subdivision.

K. Bills and Payroll.

LATE ADDITION:

L. Change Order for 5th Street West project between Lewis and Grand Avenues, approximately \$35,000. (NOTE: NO DOCUMENTATION PROVIDED PRIOR TO, DURING, OR IMMEDIATELY AFTER COUNCIL MEETING).

(Action: approval or disapproval of Consent Agenda.)

Councilmember Jones separated Item A1 from the Consent Agenda. Councilmember Gaghen separated Item I from the Consent Agenda. Councilmember Poppler separated Item E from the Consent Agenda. Councilmember Ohnstad moved for approval of the Consent Agenda with the exceptions of Items A1, E and I, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Ohnstad moved for approval of Item A1 of the Consent Agenda, seconded by Councilmember Larson. Councilmember Jones said Stockton Oil submitted a personal check and the accompanying bid was "thrown out". He expressed concern that bids are rejected on a technicality.

Councilmember Brown asked if the bid amount includes tax that the City is obligated to pay. Motor Vehicle Maintenance Manager Larry Deschene said the City does pay federal tax but does not pay the state tax on fuel. He noted that the \$1.555 price designation for Unleaded was noted for a comparative figure. The 32-cent state tax is not paid.

Councilmember McDermott asked who has access to the fuel pumps, specifically. She asked if the car allowance personnel are eligible to fill their tanks at this particular pump. Mr. Deschene said the fuel is available for City vehicles only. The pumps are activated by a magnetic card that is issued to authorized personnel. Councilmember McDermott asked if City personnel such as Mr. Keefe were included. Mr. Deschene replied "no". Councilmember Brown asked if there is direct supervision during the fueling

process. Mr. Deschene said there is no one physically present, but the system is computerized and the fuel consumption is monitored for discrepancies. Councilmember Brown asked what kind of reports could be generated. Mr. Deschene said the reports can be generated by vehicle, department, user and can be configured in many different ways.

Councilmember Poppler asked if the bid bond requirements are State law or City requirements. Mr. Keefe said he thought it was State law and would research this and report back to the Council. On a voice vote, the motion was unanimously approved.

Councilmember Ohnstad moved for approval Item E of the Consent Agenda, seconded by Councilmember Larson. Councilmember Poppler noted that the lease agreement amount for Budget Instant Print is \$5.75 per square foot. She said this is decidedly below the average rental rate for downtown properties. She asked if the Facilities Manager has made an analysis of comparable properties before the Council commits to this lease. Mr. Keefe said this property is located in Park I in a rather inaccessible area of the garage, making the property less valuable than the others in that particular garage. Because of this the lease rate has been adjusted to take this into consideration. He did say that there has been a proposal to raise the rental fee to the amount of other properties in the Park I (that are set at either \$7.00 or \$8.00 per square foot). He noted that the rates are tied to the consumer price index. Mr. Keefe said it was finally agreed that the City would incrementally move the rate up to the existing rate of the other lessees. The agreement states if Budget Instant Print stays for the next three years, they will be moved up to the rate paid by the other leaseholders. Mr. Keefe also noted that all leaseholders pay their own utilities. On a voice vote, the motion was approved with Councilmembers Brown, Poppler and Brewster voting "no".

Councilmember Ohnstad moved for approval of Item I of the Consent Agenda, seconded by Councilmember Larson. Councilmember Gaghen made a substitute motion to postpone this action to address concerns from numerous citizens, seconded by Councilmember Brown. Councilmember McDermott said this has generated a great deal of correspondence and contacts via e-mail and telephone. She said she hoped the various animal groups could meet with the City Staff to find an amicable resolution to the issues. She noted that many callers said they were unaware of the public hearing and did not have a chance to participate or fully study the ordinance. Councilmember Poppler said the main complaint she heard was that citizens were unaware of the public hearing and disappointed that they could not share their concerns with the Council.

Councilmember Brewster suggested that the item be brought back to the Council in three weeks with a public hearing. Councilmember Brewster amended the substitute motion to bring the Animal Control Ordinance revisions back on October 14, 2003 with another public hearing, seconded by Councilmember Larson. Councilmember Kennedy asked that there be sufficient time to respond to the concerns voiced at the public hearing. Councilmember McDermott noted this was an appropriate subject for public meetings with community input prior to Council action. Animal Control Supervisor Dave Klein said there were no public meetings but the animal groups were invited to speak about their concerns at the Animal Control Board meetings during the 2-1/2 years that these revisions have been in progress. On a voice vote, the first amendment was unanimously approved.

Councilmember Jones amended the substitute motion to schedule the 2nd reading and action on the ordinance for October 27, 2003, seconded by Councilmember Gaghen. On a voice vote, the second amendment was unanimously approved.

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

REGULAR AGENDA:

2. PUBLIC HEARING for the FY2002 Draft Comprehensive Annual performance Evaluation Report (CAPER) Community Development Block Grant (CDBG) and HOME Program. (Action: public hearing only.)

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed.

3. PUBLIC HEARING AND RESOLUTION annexing Blocks 2 & 3 and portion of Block 1 of Golden West Estates, Jerry Olson ETAL, owners. (Annex #03-06). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Planning Director Ramona Mattix asked the Council to delay this item to the next council meeting. The Planning Staff and the owners need additional time to come to a formal agreement on storm water fees and a correction of calculations must be completed.

The public hearing was opened. There were no speakers. The public hearing was continued. Councilmember Kennedy moved to continue the public hearing and postpone the action to October 14, 2003, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved. Item is continued to October 14, 2003.

4. PUBLIC HEARING AND SPECIAL REVIEW #744: A special review to allow an outdoor patio in a Highway Commercial zone on Lots 1-2, Block 2 of Arrowhead Subdivision. The subject property is located at 1432 Main Street. Westcott Holdings, LLC, owner. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Bruce McCandless said this is an application by the Play Inn Restaurant and Casino to allow an enclosed outdoor patio. The site is located at the intersection of Main Street and Sioux Lane in the Heights. He said the property to the west is zoned Residential Professional with a public park immediately west of that. There is a pawn shop with a daycare and pre-school facility located nearby to the south with Highway Commercial zoning. Property to the north is the old Heights bowling alley.

Mr. McCandless said the Zoning Commission conducted a public hearing September 2nd on this special review and recommend conditional approval with the following conditions:

1. The existing 6-foot cedar fence shall be maintained continuously and repaired or replaced as necessary.
2. There shall be no amplified or loud music performances on the proposed outdoor patio. Background music shall be allowed.

3. The gates provided on the east and west sides of the 6 foot cedar fence shall be "EXIT ONLY" gates and patrons shall not access the outdoor patio lounge directly from the parking area.

He said the Zoning Commission has recommended that the 600-foot separation be waived. He noted that the day care facility, Treasure State Day Care and Pre-School, is not a predominate use of the building and a 600-foot separation is not required to this facility. Arrowhead Park is within the 600-foot separation distance and a waiver of the separation is necessary. The Zoning Commission recommended the waiver because the park is completely obscured from sight and there is no direct access from the Play Inn.

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

5. GOODMAN SUBDIVISION:

(A) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #718: A zone change from Residential-9,600, Residential-6,000 and Residential Professional to Residential Multi-Family-Restricted, Residential-9,600, Residential-7,000 and Community Commercial on portions of Goodman Subdivision, 2nd Filing (a more complete description may be obtained from the Planning Department). The subject property is generally located north of Grand Avenue and west of Shiloh Road. Goodman, Inc., owner; Engineering, Inc., agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Bruce McCandless reminded the Council that a public hearing was held on July 28th and at that time there was a lot of public opposition to the zone change proposal. He noted that the Council instructed the applicant to meet with the surrounding property owners and develop a solution to their concerns. This was accomplished and the public hearing this evening is to consider the revised zone change request. He said the property is 27 acres in size and is located northwest of the intersection of Shiloh Road and Grand Avenue. The zoning has been designed in a rainbow effect with the Community Commercial zoning at the intersection of Grand Avenue and Shiloh Road changing to Multi-Family Residential and finally Single-Family Residential moving away from the intersection. The primary change from the previous proposal is that there is now a double row of single-family residential lots to the east and south that buffer the property and a large tract of Agricultural Suburban zoning that is actually located in the County to the east. The developer is proposing to build duplexes on the Residential Multi-Family Restricted zoning areas. There is one lot that is changing from Residential Professional to Community Commercial. Mr. McCandless said this is a smoother transition from Community Commercial to the single-family residential.

He said the Zoning Commission recommended denial on the first proposal and is now recommending approval of the revised zone change request. With the previous proposal there was a valid protest that included 25% of the surrounding property owners. He said, within the past ten days owners of 12 of the lots have withdrawn their

protest leaving only 3 lots that are remaining on the protest petition, thereby removing the valid protest to the zoning application.

The public hearing was opened. RICK LEUTHOLD, 1001 SOUTH 24TH STREET WEST, thanked the Council, the Planning Board and the Zoning Commission for allowing the process to work. He said the developers provided a compromise (through neighborhood meetings) with the neighbors and their concerns with single-family residential buffering. He noted there are still protests from the 10-acre County tracts to the west. He said the developers have substantially met the requirements of the neighbors to the north with two rows of single-family home buffering. There were also agreements on limitations of height of duplexes in the multi-family area and square footage minimums in the single-family and duplex units to assure certain design standards. The building designs were reviewed and arrived at with a general consensus as evidenced by the withdrawal of the protests and unanimous recommendations from the Zoning Commission and Planning Board. Mr. Leuthold said the development fits the West End Plan and asked the Council to support both the zone change and the preliminary plat.

MARY LINN, 43RD STREET WEST AND GRAND AVENUE, said her home is an investment that she has had for 15 years and will pass on to her children. She said she thinks 240 units will greatly devalue her property and have a big impact on the neighborhood. She said she is concerned about who will move into the multi-family units or what property management company would handle those rentals. This is her biggest concern. She asked the Council to deny the zoning request and keep the single-family residential zoning.

JERRY GOODMAN, NO ADDRESS GIVEN, said his family has owned the subject property since 1942. He said the taxes have become so high that they cannot afford to farm the land. He said his desire is to subdivide the property and put upscale (five-star) apartments on part of the property. The apartments would be managed by a professional management agency. He said, as a property owner, he also has rights and should be able to get what he can from the property while holding some of it within the family. He added that he has added two rows of single-family housing as a compromise with the neighbors. He said a small number of protestors live in the County and two are out of the legal protest area. He asked the Council to consider the revised proposal and approve the zone change and plat.

JOSEPH WHITE, 926 NORTH 30TH STREET, said he speaks for himself in that he wants to see no more agricultural land converted to residential or commercial use. He said he is also sympathetic to Mr. Goodman's tax position. He proposed that agricultural land receive a property tax reduction. He said the Council should consider the effects of urban expansion on the air supply. He said there is a severe air deficiency that is "crowding into the city". He proposed an airpark as a solution.

DOUG NEUHOFF, 1800 43RD STREET WEST, said he lives immediately adjacent to the subject property. He noted that developers own all of the 12 lots that withdrew their protests. He said the compromise took 4 acres for single-family housing that gives a 211-foot buffer to the west and a 219-foot buffer to the north. The remaining property would have 250 apartment units. He said the neighborhood is single-family residential and was built on the basis of the Residential 9,600 zoning. With the change in zoning the neighborhood will have to accept more noise and traffic

congestion and a reduction in property values. The existing homes in the area are not low-end homes and he said he is comfortable with the ability to know his neighbors that comes from living in a single-family neighborhood. He said he is concerned about the transient nature of an apartment population in this area. He said the revisions do not go far enough to protect the existing neighborhood, and with further compromise by the owner and developers, he could possibly support this proposal. He said he cannot however support the proposed changes and asked the Council to deny the zone change.

CARL ANDERSON, 1708 43RD STREET WEST, said he does not live in the legal protest area but said he does not want the zone change. He asked that the property be used as it is currently zoned, for single-family homes. He noted that the buffering of single-family homes has been included in the new proposal, but the number of multi-family units has not changed. He said he is worried about the quality of the houses that would be built on the single-family lots, adding he does not think they would be upper end homes if they were positioned so close to 250 apartment units. He said he feels the apartment units would decrease his property value and change the character of this single-family neighborhood, that is the single biggest investment of his life. He asked the Council to deny this zone change request.

DAN WELLS, 4241 CEDARWOOD LANE, said he has the support of local Shiloh/Grand Corridor area business members for the proposed zone change and development. He noted that the Zoning Commission and the Planning Department have unanimously approved the proposal. This would bring over \$15 Million in tax revenue from the residential units and \$5 Million in tax revenue from commercial properties. He said there were several meetings with the surrounding neighbors to reach a compromise on the configuration of the plat. He said most of the neighbors concerns were met. He noted that several lots that are adjacent to the proposed plat were recently sold to people who were made aware of the proposed design and had no concerns about the development. He added that there are still some County residents on large acre tracts that are unhappy with the proposed development. The developers have limited the height of the multi-family housing and added two rows of single-family buffering to lessen the impact to those 10-acre tracts. He said that the traffic pattern that concerns the multi-family housing has been designed to be directed out onto Avenues C and B and not onto 41st Street West which was one of the initial concerns. He asked the Council to support the plat.

HEATHER WYANT, 4134 WATERFORD DRIVE, said she is one of the protestors to the zone change. She said she has concerns about the design of the single-family homes in the buffer area - which is adjacent to her backyard. She said she is happy with what has been presented to her regarding the designs. She noted that her husband has concerns about the 8-plexes that would bring a lot of traffic and movement to the area around her home. She asked the Council to make the right decision for the surrounding property owners.

MIKE HEFFNER, 4209 GRAND AVENUE, said he is part of Goodman, Inc. and would be the architect designing the multi-family housing and the duplexes. He noted there is a document regarding the design of the structures that is a legal document and is part of what the Council would be approving. The number, height and size of the units are all contained in this legal document. He noted there are "no-access" zones on

43rd Street West to avoid vehicular access. This road would be used as an easement for the utilities. He asked that the Council approve the revised zone change and plat. Councilmember Jones asked when the property was annexed into the City. Mr. Heffner said it was annexed in 1994. Councilmember Gaghen asked what the range of value would be for the multi-family and duplex housing. Mr. Heffner said they would be similar to the units in Shiloh Point and could be in the range of \$200,000 to \$300,000.

TERESA GOODMAN, 7631 FRITZ ROAD, said she served on the Zoning Commission 18 years ago and on the City/County Planning Board for 2 years. She said the main thing she learned during her service was that "if you take prime agricultural land out of production it must be used to its highest and best use". This is the reason that their family has developed the proposed plan. She said this proposal fits in with the West End Plan and the Comprehensive Plan. She noted that the 10-acre tracts that still oppose the zone change will in the future probably be forced to do the same because of the taxes and pressures of the surrounding development. This proposal is the only way to keep part of the property for future family. She asked the Council to approve the zone change and plat.

SHARON ELLIS, 3214 NOLANA DRIVE, said she is on the staff of the Shiloh United Methodist Church. The church is to the east of the subject property. She said that Jerry and Teresa Goodman are members of this church and have been for the past 16 years being original founders of the congregation. She spoke on behalf of the character of the Goodmans and their integrity. She said their integrity has been in question during this development and she said she has never found a time that she could doubt their word, their ethics, their morals or where their heart is. She said the Goodmans always look for the better good in other members of the congregation. She said she believes they also look for the better good of their community and that they are doing a service to the West End in providing a good development. She asked the Council to support the Zoning Commission recommendation.

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

Mayor Tooley called for a recess at 7:55 P.M.

Mayor Tooley reconvened the meeting at 8:00 P.M.

Councilmember Larson moved for approval of the Zoning Commission recommendation of Zone Change #718, seconded by Councilmember Kennedy. Councilmember Brewster disclosed that he visited with Rod Wilson, but any information he disclosed has been covered in the previous testimony and staff presentation. He said the developer has gone a long way to accommodate the neighbors and it is in the developer's best interest to build a quality development in order to sell the single-family housing. He said he would support the zone change.

Councilmember Brown said he toured some areas that were converted from Residential 9,600 to Multi-Family Residential. Three of those areas show a definite deterioration of property values. He said he is concerned about the property values and would not support the zone change.

Councilmember Poppler said she has a personal conflict in that Mary Linn is her ex-daughter-in-law and her children are her grandchildren so she said she would abstain from voting.

Councilmember Kennedy noted the complete turn around from the Zoning Commission from denial to unanimous approval. He said the developer has done a tremendous amount of work and the Goodmans have done a great job on the development, noting he would support the zone change.

Councilmember McDermott said that she has experienced the additional traffic and parking problems that come with multi-family housing. She said she does not support the zone change.

Councilmember Jones said he has had personal experience with a house that was adjacent to vacant land that eventually was rezoned. He said there was adequate buffering and the rezoning did not affect his property values, in fact they went up. He said the key point in his experience is that this involved an arterial street much like the Goodman’s property. He noted that Shiloh Road is a great place for this development. He said that neighborhood will change in the next ten years with continued growth. He added that the developers owning the 10 lots that withdrew their protest also have an interest in retaining their property values.

Councilmember McDermott reminded the Council that this property could sell to a different individual after the zone change approval and those new owners could change the character of the development. The zone change should be judged as to its merits for that part of Billings. On a voice vote, the motion was approved with Councilmembers Brown and McDermott voting “no” and Councilmember Poppler abstaining.

(B) PRELIMINARY PLAT OF GOODMAN SUBDIVISION, 3RD FILING. Planning Board recommends conditional approval of the plat and Staff recommends approval of the Development Agreement. (Action: approval or disapproval of Planning Board and Staff recommendations.)

RECOMMENDED CONDITIONS:

1. All property that hasn’t previously applied for water service will pay the Transmission Water Main Construction Fee and property that hasn’t previously participated in the cost of water mains or sewer laterals will be assessed the appropriate construction fees that are in effect at the time of service application.
Requested by PW/PUD and required by City Resolution # 01-17658
2. Curbside sidewalks will have an unobstructed width of at least 5 feet and may not be obstructed by light poles, mailboxes, street signs, etc.
Requested by PW and required by the Americans with Disabilities Act
3. Julara Lane drainage shall be piped to the storm drain system or on-site retention construction and maintenance must be approved by City Engineering.
Requested by PW and required by BMCC Section 23-706
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.

Standard condition that permits minor changes to the final plat documents without requiring the subdivider to repeat the subdivision review and approval process.

5. Subdivider shall comply with all applicable federal, state and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations.

This condition informs the subdivider that all local and state laws and policies apply to the subdivision even if they are not specified in the documents.

VARIANCES

Staff recommends a variance from Section 23-302(a) that requires alleys in commercial and industrial subdivisions. Five of the new lots will be commercial/retail. All of them have public street frontage and are large enough to accommodate delivery and trash service without alleys.

Staff recommends a variance from Section 23-601 that requires 60' wide local street rights of way. Julara Lane is a short cul-de-sac that gives access to 8 single family residential lots. 50' right of way is sufficient in this instance and public health or safety won't not be compromised.

Staff recommends a variance from Section 23-601 that requires 37' wide residential streets. The subdivider requests a 32' wide street for Julara Lane for the same reasons as the reduced right of way. The narrower street should not compromise public health and safety.

Staff recommends a variance from Section 23-605(d) that discourages double frontage lots except on arterial streets or railroads. Four lots between Julara Lane and 43rd St. West will have frontage on both streets. A 1' no access strip will be platted on 43rd and the street might never be improved. The double frontage lots don't compromise public health or safety.

The Montana Subdivision and Platting Act requires that the local government assess the subdivision's effect on the primary review criteria specified in MCA 76-3-608. Likewise, subdivisions must meet the provisions of Billings Municipal Code (BMC) 23-304 (c).

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

1. Effect on agriculture

There will be a small effect on agriculture and agricultural water users. The property is 27 acres in size so a relatively small amount of land will be removed from agriculture. It is located in a rapidly developing part of Billings and is no longer suitable

for large-scale agriculture. There is an irrigation ditch along the north property line that serves this property, the Shiloh United Methodist Church and Sylvan Nursery. The ditch will be terminated and other arrangements will be made with the water users.

2. Effect on local services

- a. Utilities – Water and sanitary sewer facilities will be extended by the developer to serve this subdivision. Some of the property may not have participated in water transmission/main or sanitary sewer trunk/lateral construction and will be required to build the facilities or pay assessments for them as required by City resolution. All stormwater except on Julara Lane and a small amount along 43rd Street West will be discharged to storm drains in Shiloh Road. Stormwater in 43rd St. West will be retained on site. Stormwater from Julara Lane should be discharged to the storm drain system or if it's retained on site the disposal area construction and maintenance should be reviewed and approved by city engineering. Private utilities will be extended to this property under the companies' operating rules.
- b. Solid waste – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - The subdivider will construct the internal streets with the standard design of 37' or 49' back of curb to back of curb width and curbside sidewalk, except Julara Lane, which will be 32' wide if the variance is granted. Most traffic from this subdivision will use Avenue B, Avenue C or 41st Street West to enter/exit Shiloh Road or Grand Avenue. The sidewalk standard is designed to provide 5' of clear sidewalk area for pedestrians, so the subdivider should not obstruct it with mailboxes or other private improvements. Streets/driveways within the four large multi-family lots will be private but will meet Fire Department and Engineering Division requirements. A round-about will be built at the intersection of 41st Street West and Avenue C and will be the main entrance to the multi-family lots. Right of way on 43rd Street West is incomplete and the subdivider proposes to not build the street south of Avenue D but to pay cash-in-lieu of the improvements and let the City build the street in the future if/when the right of way issues are resolved. One lot has Shiloh Road frontage and it will participate in any improvement districts that are established for Shiloh Road improvements. A number of off-site street improvements will be made or cash contributions made for future improvements.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #4, located at Parkhill and 17th, which is approximately 4 miles from this property. Police response will depend upon officer availability and location when a call for service is placed. AMR provides medical care and transport and response would probably come from the west-end station that is located on Grand Avenue at about 25th Street West.

- e. Schools – The subdivision is in School District 2. Elementary students would normally be assigned to Central Heights Elementary, Will James Middle School and West High School. The School District did not reply to a request for comments so it is assumed that the district has sufficient facilities to accommodate students from this subdivision.
- f. Parks and Recreation – Because this is a major plat the subdivider must dedicate parkland or cash in lieu of parkland. The subdivider previously donated cash in lieu of parkland when the 2nd filing was created. The property will be included in a PMD, probably for the Rush/Shiloh Point park that will be built at Poly and Larchwood.
- g. MET Transit – The closest MET route serves the shopping center at Rehberg and Grand Avenue. The increasing housing density in Circle Fifty and development on this property may cause MET to eventually expand service to the area.

3. Effect on the natural environment

There should be a small effect on the natural environment. There may be minor increases in air pollution during construction and from additional vehicle traffic in the area. Erosion control during construction is required by state law. Stormwater runoff is regulated by City and state authorities. No streams, lakes or reservoirs will be altered by the subdivision.

4. Effect on wildlife and wildlife habitat

There will be a small effect on wildlife and its habitat. The land is irrigated farmland and indigenous species may periodically inhabit the site. Montana Fish Wildlife and Parks responded to the request for comments but had no specific comments on the subdivision. There are no known threatened or endangered species on the property.

5. Effect on the public health, safety and welfare

There are no known health or safety hazards on the property. There is an adjacent Northwest Energy substation but it is fenced and should not be a significant hazard to new residents or businesses. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties.

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

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

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

1. Comprehensive Plan:

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

- a. Encourage a variety of housing types and/or styles within proposed housing developments. C-2
- b. Safe, energy efficient and sanitary housing. C-6
- c. Capitalize on existing public water supply systems. H-2
- d. Capitalize on existing public sewage systems and improve sewage systems in areas not currently served by public systems. H-4
- e. Encourage and direct urban growth to urban areas and contiguous lands to maintain a strong economy and accomplish a sound transition of agricultural land. I-3
- f. Curb urban sprawl and discourage leapfrog development. K-7

The subdivision does not meet the following goals/policies of the comprehensive plan
None

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Shiloh Road and Grand Avenue are principal arterial streets. Shiloh Road will be improved in the future and at least one lot in the subdivision will contribute to improvement costs. The Goodman Subdivision 2nd filing and the 3rd filing will contribute to off-site roadway/signal improvements based upon the traffic impacts identified in the Traffic Accessibility Study.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. The Plan shows a mid-section on-street bikeway but doesn't specifically identify 43rd Street West as that corridor. 43rd will be used by bikes/pedestrians to access the trail along the Big Ditch and parks that will be built north of the ditch.

4. West Billing Plan

The West Billings Plan identifies the Grand/Shiloh intersection as a Commercial Center. The proposed subdivision supports that future land use designation by creating slightly more Community Commercial zoned lots and providing for higher density housing near the commercial area. It supports most of the Planned Growth and Land Utilization Goals and Policies. It also supports the Community Character Goals and Policies but may not support Goal 3 that calls for special standards along Shiloh Road (no standards have been adopted).

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

This proposed subdivision meets the requirements of the Montana Subdivision and Platting Act and the local subdivision regulations. The subdivider and the local

government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

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

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

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

The property is in the Residential Professional, R-6000 and R-9600 zoning districts. There is a concurrent zone change application that would change these zones to Community Commercial, Residential Multi-Family Restricted, Single family residential (R9600) and two family residential (R-7000). The subdivision does NOT depend on the rezoning because all of the residential lots will be larger than 9,600 sq. ft., thereby allowing the residential uses that are allowed under the existing R9600 and R6000 zones.. The commercial lots can be developed with either RP or CC zoning. One of the issues that has been raised about the rezoning application is that the proposed zoning would allow nearly 500 dwelling units on the RMF-R zoned lots. The developer proposes to limit the number of dwellings and other factors like building height. Zoning can't be conditioned, so the subdivider has proposed a Development Agreement to address those issues (attached).

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

The subdivision contains public street rights of way and dedicated utility easements that provide adequate space for proposed facilities.

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

All lots will have access to a public street. Approving the plat as shown would eliminate public street access for one of the tracts that is owned by the adjacent Shiloh United Methodist Church. The Church intends to adjust lot lines or aggregate lots to remedy this issue.

CONCLUSIONS OF FINDING OF FACT

- The overall conclusion of the Findings of Fact is that the proposed Goodman Subdivision 3rd filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision will impact local services and cause some increase in demand for those services. However, when the vacant parcel is developed the

homeowners will pay property taxes and fees that should help to support those services.

- The proposed subdivision conforms to several goals and policies of the 1990 Yellowstone County Comprehensive Plan and the West Billings Plan and doesn't conflict with the Transportation or BikeNet Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning as noted, sanitary requirements and provides legal and physical access to each parcel.

Councilmember Larson moved for approval of the Staff recommendation for the preliminary plat and development agreement, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC regarding skateboarding and play vehicles. Staff recommends approval. (Action: approval or disapproval of ordinance on first reading.)

Recreation Supervisor Joe Fedin said the effective date for the ordinance is 30 days after the second reading. The schedule for completion of the Skatepark is October 30th, however there are many things that could affect that schedule. He noted that the Council should consider this when approving the ordinance.

The public hearing was opened. MARY WESTWOOD, 2808 MONTANA AVENUE, said she is the chairman of the Skatepark Committee. She said she welcomes the Skatepark into the neighborhood and is excited for the skateboarders to have this facility. She said she is happy with the skateboard ordinance adding it will be in place for the protection of the downtown business owners. She supports the skateboard and play vehicle ordinance as written. She suggested that the effective date of the ordinance should coincide with the opening of the Skatepark. She said a very broad section of the community has supported this endeavor and she thanked them.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the ordinance on first reading with a change in the effective date to the opening day of the Skatepark, seconded by Councilmember Gaghen. Councilmember Kennedy noted that there was discussion at the work session about changing some of the wording in the ordinance. He referred to Section 24-613 and 24-615 Item B for removal of words or wording changes. He said skateboarding in residential areas is a common occurrence and the language in the ordinance is too restrictive. He said he would like to see wording changes to provide more leniency. Councilmember Kennedy amended the motion to remove Section 24-613 and asked staff to comment on the change prior to the second reading, seconded by Councilmember Jones. Councilmember Brewster said he supports striking that section, but if it must remain, he suggested language that includes "if sidewalk is obstructed, then the skateboard may be ridden on the street". Councilmember Jones suggested that wording could include "upon arterial or collector street" should also be included in this section. He noted that it probably should be struck because the street is where neighborhood kids ride their skateboards. Councilmember Poppler said the section should be struck to have a cleaner ordinance.

Councilmember Ohnstad noted that skateboard jumps make driving in neighborhoods hazardous. On a voice vote, the amendment was approved with Councilmember McDermott voting “no”. Section 24-613 will be removed.

Councilmember Kennedy amended Section 24-615 item B to strike the wording “street or sidewalk”, seconded by Councilmember Brewster. Councilmember McDermott asked if there is an ordinance that pertains to the protection of the City rights-of-way if this wording is deleted. She noted that neighborhood children erect large ramps that are very dangerous on the sidewalk and parking areas of the streets. Mayor Tooley asked if there was an ordinance against obstructing the sidewalks. City Attorney Brent Brooks said there is an ordinance that addresses rights-of-way with certain limitations. He said the City right-of-way may not be temporarily obstructed and there is a certain time frame that is allowed before removal of the obstruction. Councilmember Kennedy said he agrees with Councilmember McDermott and withdrew his amendment to strike language from Section 24-615 Item B, the second was withdrawn. Section 24-615 remained intact in the proposed ordinance.

Councilmember Jones said the wording of “streets or sidewalks” in Section 24-615 Item B is redundant because it is already addressed in other ordinances. Councilmember Jones amended the motion to remove “street or sidewalk” from Section 24-615 Item B, seconded by Councilmember Brewster. Councilmember Jones said he does not want to create “a law upon a law” when this issue is already addressed. Mayor Tooley asked Mr. Brooks to confirm that the present ordinance does cover the rights-of-way and can be used to enforce the section of the new skateboard ordinance that Councilmember Jones is referring to. Mr. Brooks said he would clarify this question for the second reading. On a voice vote, the amendment was approved with Councilmembers McDermott, Larson, Gaghen and Mayor Tooley voting “no”.

Councilmember Kennedy referred to Section 24-612 regarding the language that concerns the act of riding to a specific destination. He noted that this would be hard to detect the intention of the skateboarder and difficult to police. Mr. Keefe confirmed that it was decided at the work session to delete the final phrase from this section. Councilmember Brewster amended the motion to remove the last phrase of Section 24-612 starting with “except when riding to a specific destination...” and placing a period after Seventh Avenue North, seconded by Councilmember Larson. Councilmember McDermott asked if this would affect the skateboarders using BikeNet when it is completed through the downtown area. Public Works Director Dave Mumford noted that the Bike Trail system would not be considered a public right-of-way because it is a series of easements. Councilmember Larson said the message must be clearly sent that skateboarding will not be allowed on any sidewalks in the downtown area. He said the Council must leave the language as clear as possible. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved. Second/final reading is scheduled for 10/14/03.

7. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC by revising Section 27-1704: Schedule of Fees. Staff recommends approval. (Action: approval or disapproval of ordinance on first reading.)

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Gaghen moved for approval

of the ordinance on first reading, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved. Second/final reading is scheduled for 10/14/03.

8. 2004 UNIFIED PLANNING WORK PROGRAM (UPWP). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

9. W.O. 03-21: AWARD OF CONTRACT FOR PROFESSIONAL SERVICES to Communication Arts, Inc. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Downtown Billings Partnership Director Greg Krueger said the proposed 27th Street Corridor Downtown Billings Master Plan started shortly after the Framework Plan was brought into existence. The Master Plan is a plan that addresses vehicular and pedestrian circulation throughout downtown. It would be a plan that is referred to often, providing objective and rational guidelines for signage and way finding. It would include estimates for the cost for part two of the plan - the installation phase. The plan will guide both residents and visitors (both drivers and pedestrians) to downtown destinations and provide a "sense of place" for Billings. He noted that the Framework Plan states that transportation to and through the downtown area is crucial to the survival of the revitalization process. He said if it is too hard to get around the downtown area, or to find a place to park or how to park, people will pass on by.

Mr. Krueger said the Partnership Urban Design Committee identified the need to address 27th Street as the corridor into downtown because the Airport and Interstate border it on each end. Most of the visitors to Billings arrive from those two locations via 27th Street. Signage was an issue when this three-year plan was developed in 1999. This plan will provide identification, information, orientation and direction to drivers and pedestrians. He said the Council asked the Partnership at the beginning of the fiscal year to work with City Staff on projects that involve City properties.

Mr. Krueger noted that the Partnership has researched this type of issue with other cities and has learned several important points. He said advice from other cities was to make the RFP process clear, detailed and thorough in direction for each phase of the project. He noted that the plan was to involve all other studies that are on going, such as the railroad, and the traffic calming on Montana Avenue and to coordinate efforts. The scope of the work has been a cooperative effort between the City of Billings, the Partnership and the downtown leaders.

He said the goals of the 27th Street Master Plan were to: 1) research and analyze the legal and regulatory requirements, 2) analyze the physical environment, 3) involve the public in how to manage traffic, 4) develop detailed recommendations of financial analysis and design alternatives, and 5) direct the traffic flow to the desired destinations and back. Part Two would offer schematic plans that would determine the best place, based on traffic flow, for placement of signs. Prototypes of the required signs will be included.

Mr. Krueger said this Master Plan supports other community studies relating to the City, the County, Montana Rail Link, Burlington Northern and Montana Department of Transportation. He noted that he also serves on the Over, Under and Around Committee and the Montana Avenue Traffic Calming Study Committee. He said the Master Plan would be jointly developed with all of these groups.

He noted that Communication Arts is a nationally recognized and experienced team. They work for companies such as Disney and other major cities. He noted that one responder to the RFP stated that the price should be in the range of \$250,000. He said the Partnership and the local firm of Olsen Architecture feel that the bid from Communication Arts is a bargain. He said the Master Plan would be a good investment the Partnership will refer to often and not a waste of Tax Increment money. It will revitalize, create energy and growth. He noted that the Council originally approved a \$60,000 expenditure last year and \$85,000 for this year.

Councilmember McDermott asked if the Don Olsen of Olsen Architecture is the same Don Olsen that was on the committee that made the selection. Ms. Jennifer Henry from the Partnership said that Don Olsen was on the committee that developed some of the criteria for the RFP. Once the RFP was issued, Mr. Olsen "recused" himself from the committee and was not involved in any of the selection process. Councilmember McDermott noted that the \$144,000 is just "buying the plan" and not the signage, and asked about prices paid by other cities. Mr. Krueger said the \$144,000 would pay for a "doable" design phase of the plan, but did not include the cost of the entire project.

Councilmember Jones asked what the plans are to fund the signage and the implementation. Mr. Krueger said the signage costs could come from different neighborhood projects that the Partnership is proposing. There are also other Tax Increment funds that the Partnership is looking at that could be used for the major gateway sign. The Partnership is also looking for a grant researcher to develop grants for funding projects. A Business Improvement District is another option, he added.

Councilmember McDermott noted that community development citizens in the task forces have poured large amounts of money into improvement of South 27th Street. She noted that North 27th Street from 7th Avenue North to the Airport has been revitalized and the rest of 27th Street "looks pretty nice" and she fails to see why the City should spend \$145,000 for this study, especially as the City is considering the railroad problem. She said this study is premature. Mr. Krueger said the Partnership's plans are to continue the work that has begun on the 27th Street Corridor and establish a gateway. The second part of the project is to get people from their cars and onto their feet, around the downtown area and back to their cars. He said currently there is inadequate signage throughout the downtown area.

Councilmember Jones said he does not see the value of a \$145,000 study. He also expressed concerns "that someone was involved in the planning of the RFP and now gets the contract."

Councilmember Brewster moved for disapproval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Kennedy said his clients from out of town experience trouble negotiating the downtown area. He said he finds it is easier to tell them he will meet them outside of his office, rather than try to direct them to parking access. He said this is an important issue to consider. It may be an

expensive study, but it must be done properly and include signage that is easy to read and understandable. He said he would not support the motion.

Councilmember McDermott said one of the problems of the downtown area is the one-way streets and she doesn't feel that signage will solve that problem. Councilmember Poppler said she agrees with Councilmember McDermott's comments. On a roll call vote, the motion was approved 7-4 with Councilmembers McDermott, Gaghen, Brown, Brewster, Poppler, Ohnstad, and Jones voting "yes" and Councilmembers Iverson, Kennedy, Larson and Mayor Tooley voting "no". The contract was not approved.

LATE ADDITION:

10. FINAL PLAT OF CROY SUBDIVISION. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Councilmember Brown moved for approval of the final plat of Croy Subdivision, seconded by Councilmember Brewster. Councilmember Brown said this plat has "been in the mill for quite a while". The subdivision contains two lots on about 16,000 square feet that is located on Lake Elmo Road, south of Milton Lane. He said the owner has a buy/sell agreement that might fall through if the plat is not approved at this council meeting. Councilmember Jones asked for a staff report. Planning Director Ramona Mattix said the deadline for plats is the first of the month and this conflicted with the three-week requirement for submission for placement on the agenda. She noted that staff review and turn-around is usually a few days, especially with this type of plat. The biggest concern Ms. Mattix said she sees in the precedent this will set with other parties with plats asking for accelerated approval. She suggested a different agenda schedule for final plats.

Councilmember Brewster said this issue is creating a significant financial hardship for the property owner and he is willing to support this motion. Councilmember Jones noted that this month contains a fifth Monday that would delay consideration of this item for three weeks rather than the usual two weeks. For that reason, he said he would support the motion. Councilmember McDermott suggested this be classified as a special situation to avoid setting a precedent. Mayor Tooley noted that the Council would be "finding a lot of developers that are going to be losing the deal if the Council doesn't put them ahead in the line" and future councils would have to deal with that. Councilmember Poppler said it doesn't appear improper to add this item to the agenda.

Councilmember Brown said he is sure the professionals that work with plats for a living are well aware of the rules and that this instance involves a citizen that is not aware of the requirements. He said he would not like to have her lose this potential because of the precedent that it may set. On a voice vote, the motion was approved with Mayor Tooley voting "no".

11. PUBLIC COMMENT. (Non-Agenda Items; comments limited to 3 minutes per speaker.) NONE

Council Initiatives

COUNCILMEMBER MCDERMOTT: Councilmember McDermott moved to direct staff to proceed with developing an ordinance or resolution establishing a railroad quiet zone, seconded by Councilmember Gaghen. On a voice vote, the motion was approved with Councilmember Brown voting “no”.

COUNCILMEMBER JONES: Councilmember Jones moved to direct staff to investigate the issue of bid bonds and the legal requirements for bid bonds, seconded by Councilmember McDermott. Councilmember Jones asked the staff to research why the City requires a bid bond on certain procurements where the next lowest bidder could be chosen if the low bidder fails to satisfy the requirements of the City. City Attorney Brent Brooks noted that City ordinance states that personal checks are not acceptable because they are less secure than cashier’s checks or bid bonds in a bid situation and the City must adhere to the state bidding requirements. Councilmember Jones said he is interested in the requirements as they relate to bids other than construction, such as procurement bids. Mr. Brooks said the legal staff would provide a memo that clarifies the requirements. On a voice vote, the motion was unanimously approved.

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

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Susan Shuhler, Deputy City Clerk