

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **August 26, 2002**

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

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

**MINUTES – August 12, 2002.** Approved as printed.

**COURTESIES** – None

### **PROCLAMATIONS – Mayor Tooley.**

- National Alcohol and Drug Addiction Recovery Month – September 2002
- Kampgrounds of America Day – August 23, 2002
- Health Center Week – August 18 – 24, 2002
- Kids Day American International – September 21, 2002

**BOARD & COMMISSION REPORTS.** None

### **ADMINISTRATOR REPORTS – Dennis Taylor.**

- Mr. Taylor noted that everything is “lined up” for closing on the South Billings Boulevard property this Friday afternoon. This is the property the City is purchasing for the future relocation of the Edwards Complex, a portion of which is being sold to Sysco for its expansion plans.
- On Friday, August 30<sup>th</sup> at 11:30 a.m. at the Yellowstone Art Museum, the Downtown Billings Partnership will be hosting a meeting where the New Century Development Team will outline the financial “roadmap” for proposed developments in the downtown area. An important part of this meeting will be discussions on the Cineplex proposal in the downtown area. Officials will be meeting again this week to review additional information on the proposal.
- The FY 2003 annual budget and updated 5-year Capital Improvement Program have now been published and are available from the Finance and Administrative Services Dept and on file with the City Clerk's Office and the Library. He noted that this would be on the website soon.

### **LATE ADDITION:**

Mayor Tooley noted that City officials met with members of the Yellowstone Country Club Homeowners Association last Thursday about the prospect of annexing that area. City Administrator Dennis Taylor said the purpose of the addition of this item is to present to the Council the results of the discussion and the options that are being

considered and a decision from the Council regarding further action by City staff. Mayor Tooley asked that Council discussion of this item be added to tonight's agenda as Item #11, so that Council could discuss the outcome of that meeting and give further direction to staff on the annexation issue.

Councilmember Iverson moved to add this discussion to the agenda as Item #11, seconded by Councilmember Brewster. On a voice vote, motion was unanimously approved.

## **CONSENT AGENDA:**

### **A. Bid Awards:**

(1) **Truck Chassis, Tilt Cabs for Solid Waste Division.** (Opened 8/13/02). Recommend Tri-State Truck & Equipment, Schedule I: \$190,852.00; Schedule II: \$183,062.00.

(2) **Refuse Compactor Bodies for Solid Waste Division.** (Opened 8/13/02). Recommend Kois Brothers Equipment, Schedule I: \$133,392.00; Solid Waste Systems, Schedule II: \$69,718.00.

(3) **Gasoline and Diesel Fuel.** (Opened 8/20/02). Recommend delay to 9/9/02.

**B. Change Order #2, SID 1359, Schedule I: Skokie Drive Utilities, COP Construction, \$456.00 and 0 days.**

**C. Change Order #6, STPE 1099(31), SID 1346: Broadway Streetscape, JTL Group, \$104,325.00 and 10 calendar days.**

**D. Contract Amendment** to the Professional Services Contract with Interstate Engineering, Inc., on SID 1351 – Vaughn Avenue, \$1,941.00.

**E. Employment Contract** with Jani McCall for political consulting services (lobbyist) for 9/1/02 to 6/30/03, \$22,050.00.

**F. Approval of HOME funds** to the Rimrock Foundation for the rehabilitation of Michel's House, \$20,000.

**G. Approval of Guidelines** for the Housing Rehabilitation Equity Loan Program.

**H. Approval of Changes** to the Housing Rehabilitation Deferred Loan Payback Requirements.

**I. Right-of-Way Acquisition** for Parcel #5, W.O. 99-07: Lake Elmo Drive Improvements, Phase II

(1) Approval of Right-of-Way Agreement from Michael S. Eastwood

(2) Acceptance of Warranty Deed from Michael S. Eastwood

**J. Approval of land purchase** adjacent to the landfill (144.26 acres located in T1S-R26E-S29: S2SE4,S2SW4 LESS C/S 1130, 1443) for long-term development of the landfill, \$230,816.00.

**K. Resolution 02-17870** relating to financing of certain proposed projects; establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

**L. Resolution 02-17871** providing for the receiving of bids and the letting of a contract for the construction of improvements in SID 1349 and setting a bid opening date for 9/17/02.

**M. First Reading Ordinance amending BMCC** by adding Section 23-1501, providing a procedure for review of applications for exemptions of certain divisions of land from local review under the provisions of the *Montana Subdivision and Platting Act*, Section 76-3-101, et seq., MCA, defining exemptions, providing a statement of intent for each exemption, establishing required documentation to be submitted with each application for exemption, and setting forth standards that will be applied to each application for exemption, and setting a public hearing date for 9/09/02.

**N. Approval of downtown route** for the *Ales for Trails* fundraiser for trail development, 9/7/02

**O. Bills and payroll.**

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

Councilmember McDermott separated Item C. Councilmember Larson moved for approval of the Consent Agenda with the exception of Item C, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Larson moved for approval of Item C, seconded by Councilmember Iverson. Councilmember McDermott noted that this project is now over \$300,000 in costs and with the approval of this change order it would be well over \$400,000. She said she would vote "no" on this item. On a voice vote, the motion was approved with Councilmembers McDermott, Brown, Brewster, Poppler and Jones voting "no".

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION 02-17872 amending the City of Billings annual budget for FY 2003 to include construction and operation of wading pools or spray parks. Staff recommends approval of the resolution. (Action: approval or disapproval of staff recommendation.)**

Administrative Services Director Robert Keefe said this item is the budget

amendment that the Council asked City staff to prepare several meetings ago. The total budget amendment would be \$834,000 of which \$375,000 would be interfund transfers. The actual increase in expenditures is \$459,000, \$450,000 paying for the pools and \$9,000 paying for the operation of the pools. Mr. Keefe noted there were several alternatives offered that Parks and Recreation Director Don Kearney would present. Councilmember McDermott asked if the \$50,000 CDBG money for Highland Park pool is factored into the \$459,000. Mr. Keefe said it was. Mr. Kearney said part of the alternatives included the costs to create Park Improvement and Park Maintenance Districts to fund the construction and maintenance of the proposed facilities. He said the districts that were considered are for 1) Veteran's Park that would encompass 1,100 lots. The proposed Special Improvement District cost would be \$12.00 annually for a ten-year period on a 10,000 square foot lot. The maintenance on that same lot size would be \$7.00 annually, 2) Castlerock Park that would encompass 1,400 lots. The proposed Special Improvement District cost would be \$12.00 annually for a ten-year period on a 10,000 square foot lot. The maintenance on that same lot size would be \$7.00 annually, and 3) Highland Park that would encompass 600 lots. The proposed Special Improvement District cost would be \$42.00 annually for a ten-year period on a 10,000 square foot lot. The maintenance on that same lot size would be \$24.00 annually.

Councilmember Brown asked what park services the public receives from the General Fund dollars that go to the Park Fund. Mr. Kearney said the scope of that question would be better answered via e-mail. Councilmember Brown said that would be acceptable.

Councilmember Jones asked what the \$150,000 cost for wading pools represents. Mr. Kearney said a consultant estimated that it would cost \$150,000 to replace the existing facilities with new wading pool facilities. This includes filtration and disinfection that is required by law. He noted that the consultant advised that retrofitting the existing pools would cost as much as replacement. Councilmember McDermott said it seems wrong to burden a low-income neighborhood like Highland Park with an SID that they can't afford. She said this neighborhood was given the block grant because it cannot afford SIDs. She said she is not in favor of using the SID process for any of the proposed park wading pools.

Councilmember Poppler said she thinks her previous motion to ask staff to develop a proposal including the cost to retrofit three wading pools - Highland, Veteran's and Castlerock has been ignored. She said the staff has put forth the Aquatics Study proposal as the answer. She also said that the staff has deliberately released the inflated proposal that includes costly SIDs, in an attempt to sway public opinion and intimidate the Councilmembers who supported the original idea.

Councilmember Jones asked what the annual cost of the wading pools would be. Mr. Kearney said the operating cost is approximately \$9,000 for all three pools to be operated through June 30, 2003. He said that for ten weeks of operation the cost for all pools would be 4 or 5 times that amount per pool. He noted the installation cost of spray parks such as the one at Terry Park is approximately \$100,000. The primary maintenance costs for spray parks are for water, he added.

The public hearing was opened. WELDON BIRDWELL, 44 YELLOWSTONE AVENUE, said he was speaking in support of the reopening of Highland Park wading pool. He said there has been misinformation presented by the opposition. He noted that the

newspaper stated the pools are obsolete. He said this is a foolish argument. He noted that at the public meeting held in January strong support was stated for Highland Park wading pool. Mr. Birdwell restated the history behind the wading pool closures. He said three wading pools were retrofitted with the required filtration system, however three wading pools, including Highland Park pool, have remained closed. He said the City has budgeted \$375,000 for reopening those pools. He said the Parks Department spent part of those funds for the "out of state" Aquatics Study, noting the recommended closures in the study are a waste of "hundreds of thousands" of dollars and angered hundreds of Billings' families. He asked for the Council's support of Councilmember Poppler's request.

MARGARET WISER, NO ADDRESS GIVEN, A SOUTHSIDE RESIDENT, said she has been a resident of Billings for the last thirteen years. She said the Southside has always been a low-income area. She noted there are 8 small children under 10 years of age in her neighborhood. She said these children couldn't go to the South Park pool because it is too far. She said she wants the wading pool reopened. She noted she is not in favor of the spray parks.

AUDREY WAGNER, 310 SOUTH 35<sup>TH</sup> STREET, said she is an active member of Southside and has consistently attended meetings on this issue. She said the Council should listen to what the neighborhood wants and not to the experts. She said the neighborhood wants a wading pool that serves children under 8 years of age.

JOAN HURDLE, NO ADDRESS GIVEN, A SOUTHSIDE RESIDENT, said it is an absurd notion that every neighborhood should be treated the same because the demographics, the people and the neighborhoods are not the same. She noted that every neighborhood was not treated the same when a bond issue for parks and trails passed and the Park Department did not spend any of that money on the Southside because they had CDBG money. She said the sample SIDs are not fair and are a way to get out of re-opening Highland Park wading pool. Ms. Hurdle said treating every neighborhood is not fair either, because every neighborhood is not the same.

MARION DOZIER, 3923 3<sup>RD</sup> AVENUE SOUTH, said the Southside residents have jumped through every hoop and attended all meetings and hearings that had input into this issue. She said the neighborhood has waited two years for the wading pool and they still want it for the children. She noted that the Southside neighborhood has the women's prison, the jail, the youth treatment center and probation and parole that make the Southside neighborhood "different" than others. She said every neighborhood is not the same. She noted the Southside has the lowest income. She supports Councilmember Poppler's request and not SIDs to finance wading pools.

OCTAVA TATE, 124 SOUTH 38<sup>TH</sup> STREET, said she lives across from Highland Park. She said it was a great place to take her children and visit with other parents who took their children to play in the pool when it was open. She said she supports Councilmember Poppler's request and asked the Council to consider it. She said the Parks Department did have the money for re-opening the pool, but spent it on another project. She said it seems like the Parks Department decides every 10 years that something is obsolete and needs to be changed. She said she thinks the Parks Department will find that spray parks are not appropriate for Montana's climate, due to the need to flush the systems to prevent clogging. This will cost more money, she added.

CRAIG CANFIELD, 407 CONSTITUTION, objected to changing the budget as proposed. He said Billings needs both wading pools and spray parks. He said the City

should concentrate their efforts on implementing the recommendations of the Aquatics Study, as he said he feels it is well thought out. He said it provides a good framework and direction for the City that can be changed as needed. He said the pools are being closed because of safety issues. If the safety issues can be addressed, and meet to the wants of the neighborhoods, then that should happen. If the safety issues cannot be addressed, or conflict with the Aquatics Study, the course to follow is the Aquatics Study, he said. Mr. Canfield also noted that action on Castlerock wading pool should be postponed until a decision on when and where a swimming pool and wading pool in the Heights would be located. He said there is "no sense in spending \$100,000 on a wading pool in the Heights" when a different location would be considered in the next few years.

KIM GILLAN, 750 JUDICIAL AVENUE, said she has been a member of the Parks Board for the past 8 years. She said she recognizes that the decision before the Council is an extremely difficult one because of the limited resources. She said she is concerned about the serious safety and public health issues of re-opening the wading pools. She also noted that all age groups that desire access to aquatic facilities need to be considered and are considered in the Aquatics Study. She said she does not want one part of town "pitted against" another. She echoed Mr. Canfield's suggestion that the Castlerock wading pool should be "put on hold" until it is determined how it will fit in with the other aquatic needs of the Heights. She noted that the City couldn't please every neighborhood.

There were no other speakers. The public hearing was closed. Councilmember Poppler moved to re-open the three wading pools - Veteran's, Highland and the Heights, by next season, and that the pools be staffed by lifeguards if legally required and the City pay for repairs from City resources, seconded by Councilmember McDermott. Councilmember Larson said he would abstain from this discussion and vote, not because of a conflict of interest with wading pools but a conflict (based on the City Charter) with many elements of the Aquatics Study due to his position as Executive Director of the YMCA. He noted that the Aquatics Study always comes up in the wading pool discussions.

Councilmember Brewster offered a substitute motion to allow facilities to be built by SIDs and maintained by Park Maintenance Districts with the exception of Highland Park that can use the \$50,000 CDBG money, seconded by Councilmember Iverson. Councilmember Brewster said that with the recent sale of park land, the residents of those parks that were not sold were informed that they must establish Park Maintenance Districts to assume the cost of maintenance of those retained parks. He said he feels it is only right that parks wanting water facilities should finance these amenities with Park Maintenance Districts also. He noted that there is a way for Highland Park to be subsidized due to their low-income status. Councilmember Kennedy said he has no problem with building the Highland Park pool, it is the maintenance of it that concerns him. He asked if it was Councilmember Brewster's intention that CDBG funds also maintain Highland Park pool. Councilmember Brewster said they would have to form a Park Maintenance District to maintain the pool; the CDBG funds are there to offset the SID for construction of a pool in that park. Councilmember Gaghen asked if an SID would still be required for residents around Highland Park. Councilmember Brewster said those residents have opportunities to find revenues to pay for the pools, as can other areas. Councilmember McDermott said the bond issue paid for a small park in Ward I making the residents pay more than their share of the bond issue for parks in other areas in the City.

She said CDBG funds are not being used to enhance the quality of life in Ward I, but used to substitute for General Funds dollars and she said she objects to that. Councilmember Brewster said most of the aquatic facilities lie in Ward I, and Ward II received about the same as Ward I did in regard to the parks bond issue. He said the residents in Ward I have a place to go, but the people in the Heights have nothing in the way of aquatic facilities. To say that Parks resources are not spent in Ward I is not true, he added.

Councilmember Iverson restated her concern about taking \$400,000 out of a skeleton budget to fund these facilities. She said she thinks it is bad to even be having this discussion because the City cannot afford it. Councilmember Brown said he has gotten a lot of positive comments about raising private money for a swimming pool in the Heights. He said he thinks that we can do that in other areas as well. He is concerned that eventually the Lake Elmo swimming area will be closed and there will be nothing in the Heights. He said the Heights could build a pool if some of the bureaucracy "gets out of the way." City Administrator Dennis Taylor noted that the motion and substitute motion before the Council does not contain the budget amendment for the FY 2003 budget that would anticipate whatever method of raising revenue and will authorize expenditure for the facilities that are under consideration. He said it was important to have Administrative Services Director Robert Keefe explain the language that needs to be in the final motion that considers the expenditure and anticipated revenues. Mr. Keefe said the increase of expenditures by \$459,000 and an increase of revenues by \$409,000 from special assessments, due to the \$50,000 CDBG funds, needs to be contained in the motion. Mayor Tooley noted that this additional language and the motions are subject to the approval of the residents in each neighborhood. Councilmember Brewster's motion was amended to include the expenditure and the raising of the revenue amounts noted in Mr. Keefe's explanation, with Councilmember Iverson agreeing to second the amendment. Mr. Taylor asked that the City Attorney and Mr. Keefe be allowed to review the language of the resolution to determine if wording appropriately gives the authority to comply with budgetary concerns.

Councilmember Poppler asked if Councilmember Brewster's motion required the three neighborhoods to actively form an SID. Councilmember Brewster said that would be true unless they can identify other revenues that the Council can expend. The Park Maintenance District would still have to be formed to maintain the pool, he added.

Councilmember Jones said he has major issues with the report that states that wading pools are obsolete and calling for a lifeguard. He is also concerned about the ongoing funding required for the pools, about the operation and maintenance of the pools.

Councilmember McDermott asked if CDBG funds could be used for maintenance of the Highland Park pool. City Administrator Dennis Taylor said while it is not currently allocated for that purpose in the CDBG process, it would be permissible.

On a roll call vote on the substitute motion, the motion was approved by a 6 to 4 vote, with Councilmembers Brewster, Iverson, Mayor Tooley, Kennedy, Ohnstad and Jones voting "yes" and Councilmembers McDermott, Gaghen, Brown and Poppler voting "no". Councilmember Larson abstained.

Mayor Tooley called for a five-minute recess at 8:35 P.M. Councilmember Brewster was called to respond to an urgent business call and was excused for the remainder of the meeting. The meeting was called back to order at 8:40 P.M.

**3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR Zone Change #669: A zone change from Residential-9,600 to Residential Multi-Family-Restricted on Tracts 1 and 2 of Rush Acreage Tracts Subdivision and Lots 1-3, 5 and 6 of Rush Subdivision, 2<sup>nd</sup> Filing. The subject property is generally located on the northwest and southwest corners of Shiloh Road and Parkhill Drive. Kincaid Land, LLC, Randall Swenson, Bobbie Nitzel, Brian Bessey and Billings Urban Fire Service Area, owners; Engineering, Inc., agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said this zone change includes multiple parcels with multiple owners. It is located on the northwest and southwest corners of Shiloh Road and Parkhill Drive. He said the existing zoning to the north, west and south is Residential 9,600 with the existing land uses as single-family and vacant lots and to the east Residential Multi-Family Restricted. He noted there is an assisted living facility being developed to the southeast and a multi-family condominium being developed to the northeast. There was a special review previously granted to allow an assisted living facility on property in the northwest corner of this zone change. He said this zone change would not affect that use. Councilmember Kennedy asked Mr. Bollman to explain the difference between Residential Multi-Family and Residential Multi-Family – Restricted. Mr. Bollman said there are a couple of differences. When there is an apartment complex type of development where there are over 8 units in a building, the Residential Multi-Family – Restricted requires more lot area per unit than the standard Multi-Family. Another difference is in the height limit. There is a maximum height limit of 45 feet in the Multi-Family – Restricted whereas there is no height limit in the standard Multi-Family zoning. Mr. Bollman noted that this zone change, if approved, would create a node of Residential Multi-Family – Restricted at the intersection of Shiloh Road and Parkhill Drive and there are a few areas where this zone change complies with the goals of the West Billings Master Plan. He said the Zoning Commission recommends approval of the zone change.

The public hearing was opened. RICK LEUTHOLD, PRESIDENT OF ENGINEERING, INC., said he is representing the landowners in this zone change. He said he originally only represented Gene Culver (Kincaid Land, LLC), but after speaking with the other landowners, he said all but the Church property recognized the value of participating in the zone change to have uniformity with the zoning. The intentions of the new owners of the Culver property are to build a duplex type of development. They have made a substantial monetary investment in the property, bringing water and sewer to it and building a road. He said the owners do not want to jeopardize their investment by building a sub-standard development. Mayor Tooley asked what prevents a large multi-family complex taking the place of the assisted living facility, if that facility does not work out. Mr. Leuthold said there is no way to achieve the parking ratio needed for 48 units because the parking requirements were barely met with the assisted living facility. He asked that the Council follow the recommendation of staff and the Zoning Commission and approve the zone change.

CHARLIE GAMBLE, 1819 CRYSTAL DRIVE, said he has been a real estate broker and developer in Billings for thirty years. He said this is the first time he has ever voiced concerns to a City Council regarding zoning. He noted that he does believe in development. He said there have been no discussions with the surrounding neighbors of



this proposed zone change. He also said his office is in danger of being “gored”. He noted that the Methodist Church was not interested in joining the zone change. Mr. Gamble said the Residential Multi-Family – Restricted allows buildings to be three stories high. He also said that Mr. Leuthold told the Zoning Commission that “he didn’t know who the owners were but to just give us the zoning and trust us.” He said this is not a sound basis for granting a zone change. He noted that the construction in process could change to a high-rise if the Residential Multi-Family – Restricted zoning is approved. Councilmember Jones asked about the high-rise possibility and if parking could be accommodated. Mr. Gamble said there is the possibility of higher density in that scenario. He said that may not happen, but he noted that plans can change. He said the zoning should benefit all the concerned people. Councilmember Brown asked what the affect of the zone change would have on the value of the property. Mr. Gamble said he did not know. He said the present zoning does not alter any proposed buildings by any of the owners.

RICK DORN, NO ADDRESS GIVEN, said one of the reason he and Mr. Dan Lowe purchased the property next door to Shiloh Point is to maintain the integrity of the neighborhood. He said the property does not fit well with single-family homes. He said he intends to handle the property in the proper manner. He said he will be sensitive to the neighbors and yet must take the position that would be best to defend themselves. He asked for the Council’s support for the zone change.

RANDY SWENSON, 120 WEST 12<sup>TH</sup> STREET, said he is the owner of the Tender Nest Assisted Living Facility in the area. He said he has no plans to build anything different than what he is building now. He said he felt it was more consistent to keep the zoning the same on both sides of the street. He said he is in favor of the zone change.

WAYNE STALEY, CRYSTAL DRIVE, said he and his wife are quite concerned about the money that they have invested in their property. He noted it is \$50,000 for the lot and a minimum of \$250,000 for a home on the lot. He said Mr. Dorn’s partner said there would be no high-rises built in the proposed zone change area. He is concerned that there could be as many as 170 units built with the proposed zoning. He said he thinks that the value of his property has a chance of diminishing and he would not like to see 170 units going in south of Parkhill Drive.

SHERRY REYNOLDS, CHAIR OF BILLING URBAN FIRE SERVICE AREA BOARD, said she is speaking on behalf of the board. She said the BUFSA owns a portion of the proposed zone change area. She said BUFSA joined in the petition because they thought it would allow greater flexibility in the final disposition of the property. Ms. Reynolds said the prime use of the property is for a future Fire Station. She noted that the Fire Station could be built in either the current or the proposed zoning.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember Iverson. Councilmember Larson asked what the waiting period is for another zone change if this zone change fails this evening. Mr. Bollman said there is a one-year wait. Councilmember Larson asked what the implications would be if the Council postponed this zone change. Mr. Bollman said it would delay development on the site. Councilmember Larson asked if any of the applicants choose to withdraw during the postponement could one of them reapply for an alternate zone change during that time. Mr. Bollman said typically with a zone change like this, all of it is approved or all of it is

denied. City Attorney Brent Brooks said he would have to research this to see if one property could be segregated out from the others. He said it would be a departure from past practices. Councilmember Larson said there were two applicants that have a major portion of the land involved in the proposed zone change that said they could proceed with their projects under the current zoning. He said he questions their motivation and why they are involved and why the Council should change the zone when the previously approved project can move forward without any change. He said he understands that Mr. Dorn and Mr. Lowe wish to protect their property investment, but he said he thinks this particular zone change is not necessary for that. He said he is concerned about the two parcels that the Council has not heard from and how are they affected. He noted that in his experience, from his neighborhood where a three-story building was built, the surrounding properties had a hard time selling. He is considering asking for a postponement until the Council can hear from the other owners.

Councilmember McDermott said she is also in favor of a postponement. She said she is cautious when someone requests Residential Multi-Family zoning and only wants to build duplexes when Residential 7,000 would be appropriate for that. She said once the Multi-Family zoning is approved there is not a lot that can be done to stop those type of projects. Councilmember McDermott offered a substitute motion to postpone action on this proposed zone change to the next meeting, seconded by Councilmember Brown. Councilmember Larson would like to see something in writing or hear more about this zone change before making a decision. Councilmember Gaghen encouraged the Council to consider discussing this matter at the next work session. Mayor Tooley asked the staff to prepare two points of view that are thoroughly researched and presented at the next work session.

Councilmember Jones said he is concerned that the request is for Residential Multi-Family – Restricted zoning when other zoning “would handle the situation.” He said it would give developers other than Mr. Dorn and Mr. Lowe too much flexibility. He suggested that the two parties discuss this prior to Council action. On a voice vote, the substitute motion was unanimously approved.

**4. PUBLIC HEARING AND SPECIAL REVIEW #723: A special review to allow a change from one nonconforming use (financial service office) to another nonconforming use (general business office) in a Residential-6,000 zone on the west 50' of Lot 3, Block 4 of Billings Heights Subdivision. The subject property is located at 1707 – 8<sup>th</sup> Street West. Morty and Phyllis Forney, owners. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said this property is located on the northeast corner of 8<sup>th</sup> Street West and Avenue D. The area is entirely zoned residential, with mainly single-family uses. He noted there are some apartment complexes to the north and west. The special review request is to change from one non-conforming use to another non-conforming use. He said that in 1996 the Council approved Special Review #591, approving a change from the previous non-conforming use of a dry cleaners to the current non-conforming use of a financial service office. Mr. Bollman said this request is to change from the current non-conforming use of a financial service office to another non-conforming use of a general business office. He said the Zoning Commission

recommends denial of the special review. Their concerns were 1) the requested use is too broad, and 2) the potential amount of traffic that would be generated by the new office uses that could be located in the general business office building. He said the property does not have any off-street parking and all parking is on 8<sup>th</sup> Street West, which was a significant concern for the Zoning Commission.

The public hearing was opened. MORT FORNEY, NO ADDRESS GIVEN, said he is the owner of the office building and has owned it for 5 or 6 years. He said when he took over the property was in a great disrepair. He said he has made many improvements and has converted into an appropriate building for the community. He said he has used it as a financial service office, however he is no longer in that business due to the economic conditions. In answer to the traffic problem, he noted there were a total of 156 cars that parked at the office location in the month of July of 2001. Mayor Tooley asked Mr. Forney to respond to the allegation that he now employs as many as 7 people in his new office. Mr. Forney said there are now two businesses located in the office. In his business, there are three employees. He said he is a traveling salesman and he and some of his staff work primarily out of town. He said there is another business operated by Clint Peck, called Beef Magazine, and he is the sole employee. Mr. Forney noted that Mr. Bollman must approve of any other businesses that go into this building, due to the conditional approval of the previous special review. He noted that if the special review is not approved, he will suffer a financial hardship and will be out of business.

CLINT PECK, 2222 SPRUCE, said he is the senior field editor for Primedia Business Magazine, publishing Beef Magazine. He said he has had a suite in the office building owned by Mr. Forney for three years. He said his business does not create a lot of traffic, with one office visitor a month. He said the office is close to his residence and very affordable for him.

PHYLLIS FORNEY, 921 AVENUE F, showed several pictures of properties in the neighborhood that generate more traffic than is generated at her husband, Mort Forney's office. She said they are just asking to have a general business office at their present location. She said some of the neighbors in the area are glad they have cleaned the building up. She noted that one particular neighbor sends letters every week and she said she thinks this is harassment.

MARGY BONNER, ATTORNEY WITH CROWLEY LAW FIRM, said she is representing Otis and Jackie Packwood who live at 734 Avenue D and are opposing the special review. She said the latest use for the building in question is North West Home Improvement that has greatly increased the traffic on that property from the 4-5 cars that was approved in the previous special review. Another problem that exists with the property is that cars are parking illegally in the alley because there is no off street parking. She said the type of traffic includes trucks and trailers with scaffolding. She stated this is not the type of traffic that is compatible with a residential use. She noted that, as Mr. Bollman said, in order to change the non-conforming use to the new non-conforming use the Council must make a finding that the proposed new use is equally or more compatible with the neighborhood than the current use. She said it is clearly not and she requests that the recommendation of the Zoning Commission be followed and the special review be denied. Councilmember Jones asked if Ms. Bonner could verify that the truck and trailer that she indicated was connected with the business in question. She stated she could not verify that, only that it was parked in front of the business.

OTIS PACKWOOD, 743 AVENUE D, said he is the owner of the property immediately adjacent to this property in question. He said he bought this property 40 years ago. He said the previous owners lived in the duplex and ran a small neighborhood cleaners in the subject building for 35 years. They subsequently went out of business and the neighborhood wanted to help them sell the property and therefore agreed to support the zoning change from the cleaners to a financial office. At the time of the change, the financial office was represented as a one person, one secretary financial services office. Mr. Packwood said he appeared before the Zoning Commission and supported that change. He said since that time the building has been used for progressively busier offices. He noted that the pictures presented of the large amounts of traffic, that include trucks, trailers and equipment, is an everyday occurrence. He noted this traffic parks in the street, in the alley and on the sidewalk. He said there are many businesses on 8<sup>th</sup> Street West, but every business has off street parking.

There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of the Zoning Commission recommendation for denial, seconded by Councilmember McDermott. Councilmember Larson asked Mr. Bollman what the conditional approval for the former Zoning Commission recommendation was. Mr. Bollman said there were two conditions: 1) approval for the special review is only for the building at 1707 8<sup>th</sup> Street West and not intended to allow any commercial use in the duplex on the same lot, and 2) the types of offices approved in the special review are limited to office uses permitted in the Residential Professional zoning district and must receive written approval by the Zoning Coordinator prior to their location in the office building. Councilmember Larson asked if Mr. Bollman is aware of the current uses that are in this building. Mr. Bollman said his understanding is that the business is North West Home Improvement and that Mr. Peck is also in the building. He said a number of different offices have rotated through that building in the last few years. Councilmember Larson asked what the status of those businesses is. Mr. Bollman said they are illegal and that is why this application is before the Council. Councilmember Larson said in order for these businesses to remain in the building they would have to have permission from the Zoning Commission. Mr. Bollman clarified that they would have to get permission from the Zoning Coordinator. Councilmember Larson concluded that the uses that are in the building are present are not legal and would have to be approved to be there. Mr. Bollman said that what he thinks Mr. Forney wants to do with the building is have a broader range of office uses than what is currently approved. Councilmember McDermott asked if Northwest Home Improvement would be allowed under the requested non-conforming use of general business office. Mr. Bollman said that would still have to be approved, however it would be allowed in the Residential Professional zoning district. Councilmember McDermott asked if this area was in a Task Force area. Mr. Bollman said this area is outside the North Park Task Force jurisdiction. Councilmember Kennedy asked how the Zoning Coordinator keeps track of changing businesses in this type of situation. Mr. Bollman said his department is driven on a complaint basis. Councilmember McDermott asked if Mr. Bollman knew if the trucks being brought onto the property were owned by North West Home Improvement. Mr. Bollman said a picture presented at the Zoning Commission meeting showed a truck with the license plate "Morty" and it was assumed that it belonged to that particular business. Councilmember Ohnstad said that when a non-conforming use is approved, the property owners need to be aware that this is a pretty

restricted designation and it would not be fair to make many changes. On a roll call vote, the motion was approved to deny the special review 7-3 with Councilmembers McDermott, Gaghen, Brown, Kennedy, Poppler, Ohnstad and Larson voting "yes" and Councilmembers Iverson, Jones and Mayor Tooley voting "no".

**5. PUBLIC HEARING AND SPECIAL REVIEW #724: A special review to allow the expansion of a building with an all beverage liquor license in a Community Commercial zone on Lots 1-4 and 6 of Certificate of Survey No. 36 Amended, less highway right-of-way. The subject property is located at 150 Calhoun Lane. J.R. Blair, owner. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said this special review is located on the southwest corner of Calhoun Lane and Underpass Avenue. The property is the existing Reno Club. He said the owners are proposing an expansion onto the existing building. The property currently has an all beverage license located within but has not gone through the special review process. He said the addition is triggering the special review. He noted there are no uses within 600 feet that require the waiver of the 600 foot separation, however he did point out there is a baseball diamond that is located to the east of the property across Calhoun. He said the Zoning Commission is recommending conditional approval, with the condition of a 6 foot sight obscuring fence be located on the south property line of Lot 1.

The public hearing was opened. JOHN BLAIR, 3051 PARKHILL DRIVE, said this business has been in his family for 61 years. He said he has been with the business for 27 of those years. He said the intent of the project is not to change any past business practices since buying the property, but to add 20 feet to one end of the building which is the packaged liquor store and remodel the bathrooms for handicapped stalls.

There were no other speakers. The public hearing was closed. Councilmember Iverson moved for approval of the Zoning Commission recommendation for approval of the special review, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND SPECIAL REVIEW #725: A special review to allow the location of a beer and wine license with gaming in a Controlled Industrial zone on Tract 1A-1 of Certificate of Survey No. 1372, 2<sup>nd</sup> Amendment. The subject property is generally located immediately east of 1832 King Avenue West. Ernie and Leanne Dutton, et al, owners. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said he would give one staff report for this and the next item, as they are both on the same property. He said this property is located on the south end of King Avenue West between King Avenue West and the access road leading to the King Avenue interchange. This property currently housed Incredible Auto Kia dealership and is zoned Controlled Industrial with the uses in the area mostly commercial with some light industrial. He noted there are no uses within 600 feet that require the waiver of the 600-foot separation. The first special review would allow the location of a beer and wine license with gaming in the Controlled Industrial zone and the

second special review would allow the location of an all beverage liquor license in a Controlled Industrial zone. He said the Zoning Commission recommends approval of both of the special reviews. Councilmember Poppler asked about the access onto the property. Mr. Bollman said it would be from King Avenue West with a reciprocal access agreement that would allow access. He said both properties physically have frontage on King Avenue West.

The public hearing was opened. ERNIE DUTTON, 2046 MARIPOSA LANE, said he and his wife are part owners of the property. He said they are in the process of subdividing. There will be a Mongo's Grill franchise located on one property and a Texaco RoadHouse Restaurant will occupy the other lot. He said the flow of traffic flow would resemble that at the Wal-Mart. Councilmember Poppler asked about the ability to obtain two liquor licenses. Mr. Dutton said arrangements have been made to comply with State law and the business owners were able to obtain them.

There were no other speakers. The public hearing was closed. Councilmember Kennedy moved for approval of the Zoning Commission recommendation to approve the special review, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND SPECIAL REVIEW #726: A special review to allow the location of an all beverage liquor license in a Controlled Industrial zone on Tract 1A-1 of Certificate of Survey No. 1372, 2<sup>nd</sup> Amendment. The subject property is generally located immediately east of 1832 King Avenue West. Ernie and Leanne Dutton, et al, owners. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

NOTE: See Item 6 for staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Poppler moved for approval of the Zoning Commission recommendation to approve the special review, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND SPECIAL REVIEW #727: A special review to allow the location of an all beverage liquor license and an outdoor patio in a Community Commercial zone on Certificate of Survey No. 662. The subject property is located at 2851 King Avenue West. William Ryan, owner; Don Charleson, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said this is a special review request that is located on the northeast corner of King Avenue West and South 29<sup>th</sup> Street West. The property is zoned Community Commercial to the west, Controlled Industrial to the south and east, Residential Manufactured Home to the northeast and Residential 9,000 to the northwest and north. He said to the north and west are mostly single-family uses and a skatepark. The proposal is to allow the location of an all beverage liquor license and an outdoor patio in a restaurant. There are no uses in the 600-foot radius that requires a waiver of that separation. He said the Zoning Commission is recommending conditional approval with four conditions that are to mitigate any impacts this use might have on the residentially zoned properties north and west of the subject property. The conditions

are: 1) the site shall be landscaped in accordance with Section 27-1105(B) of the BMCC, unless otherwise requested by the City in the areas over the Bannister Drain, 2) the outdoor patio shall be located on the east side of the proposed building, 3) a 4' high minimum wall or fence shall be placed around the entire outdoor patio. Any gates required by building or fire codes shall be used for exit only from the patio, and 4) there shall be no amplified or live music on the proposed outdoor patio. Only background music shall be allowed.

The public hearing was opened. DON CHARLESON, 111 CLARK, said he is a commercial realtor in Billings. He noted an error in the number of employees that are employed by Mr. Ryan. He said it was 1,250 rather than 250. He said there are twenty-four of these restaurants in seven cities and he feels this would be a compliment to this part of town.

HAROLD TOWER, 2951 HENESTA DRIVE, said he has no problem with the restaurant going into that location. He is concerned that King Avenue, that now has an island, will force traffic that wish to go to this restaurant will use Henesta Drive, which is residential and where several children live. He suggested that King Avenue have an access for the restaurant.

There were no other speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the Zoning Commission recommendation with a minor amendment to condition #3 that includes "a wall or fence" around the patio, seconded by Councilmember Kennedy. Councilmember Gaghen said she favors the motion but shares the concerns about the traffic accessibility and wonders if the City can work with the developers to preclude the problems on Henesta Drive. Public Works Director Dave Mumford said that precluding the traffic from using Henesta Drive would virtually preclude the residents from getting out on 29<sup>th</sup>. He said there is access and the possibility of U turns on King Avenue that will allow access into the facility. He said the Public Works Department would monitor the situation. Mr. Mumford said medians are used to channel traffic and reduce potential accidents. It does reduce convenience but in favor of safety. On a voice vote, the motion was unanimously approved.

**9. PRELIMINARY PLAT of Legends West Subdivision, generally located 800 ft. west of the intersection of Shiloh Road and Central Avenue. Planning Board recommends conditional approval of preliminary plat including the requested variances and acceptance of the findings of fact. (Action: approval or disapproval of Planning Board recommendation.)**

Planning Staff Member Candi Beaudry said that Legends West Subdivision is a 56-lot major subdivision for residential uses. This was annexed into the City in June of 2002 and was rezoned from Agricultural Open Space to Residential 7,000. She said the subdivision would be developed in three phases with each phase having specified requirements. She noted that the subdivider has requested two variances: 1) from the required street rights-of-ways to allow for a 50-foot wide right-of-way on all interior streets (City standards require 60 foot right of ways) and 2) from the restriction of double frontage lots on Banbury Place. The conditions of preliminary plat approval and findings of fact are:

1. **To minimize the effects on agricultural water user facilities**, the subdivider shall provide a letter from the downstream landowner agreeing to the location of the lateral irrigation ditch that traverses the subdivision or the elimination of said ditch. In the event the landowner prefers the ditch to be relocated, the subdivider shall show the ditch easement on the face of the final plat and file a separate easement document with the County Clerk and Recorder providing for the physical placement and unobstructed maintenance of the ditch (76-3-504 (9), MCA).
2. **To minimize the effects on local services**, the subdivider shall;
  - a. submit a vacant land appraisal, prepared by a licensed land appraiser, establishing the fair market value of unsubdivided land at the location of the subdivision. The subdivider shall submit a cash payment of the per acre cost of land multiplied by 1.61 acres as their cash in lieu parkland contribution (Article 23-900, BMCC).
  - b. submit a Stormwater Management Report for City Engineer review and approval (Section 23-706, BMCC).
3. **To bring the subdivision into compliance with state law and local subdivision regulations**, the following is required;
  1. **Minor wording.** Minor wording changes hereafter shall be made in the SIA and documents, as requested by the City Engineering Division and Planning Department, to clarify the documents and bring them into the standard, acceptable format.
  2. **Compliance.** If approved, 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 for review and approval by the City-County Planning Board has prepared the Findings of Fact for Legends West Subdivision. These findings are based on information received from the subdivider, their engineer, City departmental review, and Planning staff evaluation. The findings address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Section 23-304(c)), BMCC)

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

1. **Effect on Agriculture**

The 14-acre tract is currently used for agricultural purposes, as are the parcels east and west of the proposed subdivision. The subdivision will remove the acreage from agricultural production and will create some land use conflicts for the adjoining operations.



**2. Effect on agricultural water user facilities**

A lateral irrigation ditch traverses the property providing irrigation water to the hay field east of the property. The irrigation ditch will not become an issue until Phase II is constructed. Prior to filing the final plat, the subdividers must have an agreement in place with the downstream user to reroute or eliminate the ditch. If the ditch is rerouted, a ditch easement must be shown on the face of the plat and a separate document filed with the County Clerk and Recorder. The new ditch alignment will be located to facilitate continued operation and maintenance.

One drain ditch is located in the right-of-way of Central Avenue and one along the north side of Bell Avenue. Future construction of Central Avenue and Bell Avenue improvements, including curbs, gutter and sidewalks will need to address the location and continued functioning of the drain ditches. In the event these drain ditches are no longer in use, mitigation measures are not required.

**3. Effect on Local Services**

**Water and Sewer Service** A sanitary sewer main and a water main are located within the Central Avenue right-of-way fronting the subdivision. The subdivider will install, at their expense, water and sanitary sewer mains to all lots within the subdivision.

The subdivider will also be responsible for extending sanitary sewer and water main in Bell Avenue across the subdivision frontage as part of Phase III construction. The City will pay for 50 percent of the cost of the water main and sanitary sewer construction in Bell Avenue.

The property is subject to all applicable water and wastewater fees and charges. The Water Main Construction Fee, Water Transmission Construction Fee, Wastewater Water Construction Fee and the Wastewater Trunk Construction Fee for the frontage along Central Avenue shall be paid at the time of Phase I construction. The Water Main and Lateral Sanitary Sewer Construction Fees will not be assessed for the Bell Avenue frontage unless those lines are constructed prior to Phase III and the subdividers do not participate in the construction. These fees would be assessed at the time of Phase III construction. The Water Transmission Construction Fee and the Wastewater Trunk Construction Fee will be paid as each phase is constructed and will be based on the net area of the phase being constructed.

**Storm Water Drainage** The subdividers propose to drain stormwater to a detention pond located at the southeast corner of the subdivision. To accommodate the existing grade, the subdividers propose to pipe the stormwater in a 20' storm drain easement along the rear lot lines of lots on the east edge of the subdivision. Stormwater from the south portion of the subdivision will be drained in pipes located within Legends Way right-of-way

to the detention area. The City will be responsible for maintenance of the detention area until a stormwater outfall is established.

The location of the storm drain easement may create difficulties for future maintenance. Because of this, the subdividers are responsible for submitting a Storm Drain Management Plan that considers alternatives to this location in addition to specifying the type and location of facilities to be used.

**Public Streets and Roads** Interior streets shall be dedicated to the City. The subdividers have requested a variance from the right-of-way standard of 60' for local roads to 50'. Staff recommends approval of this variance because the roadway width will be the standard 37' from back of curb to back of curb. The subdividers will also grant a 5' easement on both sides of all interior streets to accommodate streetlights and fire hydrants. Before building permits are issued for each phase, the subdivider will install a complete sidewalk on at least one side of each interior street. The subdivider will also install curb and gutter, sub-base, base course, asphalt section, handicap ramps and dead end barricades as each phase is developed. At the time of Phase II construction the subdividers will construct a temporary gravel emergency access to Bell Avenue.

The subdividers will be responsible for contributing to the cost of improvements along Central Avenue including curb and gutter, handicap ramps, and widening of the asphalt and gravel section. Funds will be held in escrow until the City is prepared to upgrade Central Avenue. The City will pay the difference between the cost of the estimated residential street and that of constructing an arterial street. At the time of Phase I construction, a boulevard sidewalk will be constructed along Central Avenue frontage.

Bell Avenue is a county road that is covered by a County Rural Special Improvements District. Staff recommends that the City annex that portion of Bell Avenue that fronts the subdivision, to ensure that future street improvements are not assessed against County property owners. That portion of Bell Ave. would be eliminated from the RSID.

The subdividers submitted a Traffic Accessibility Study that assessed the impacts the proposed development would have on the surrounding transportation system. The study concluded that a traffic signal at Central Avenue – Shiloh Road intersection is needed to improve the level of service at that intersection. Legends West traffic contribution to the intersection would be 50 vehicles in the PM peak hour, which is approximately 3.3% of the total projected traffic stream entering the intersection for that period. The total cash contribution towards the new traffic signal is approximately \$5,500.

### **Fire and Police Protection**

The Fire Department reviewed the preliminary plat application and required the subdivider to construct an emergency gravel access to Bell Avenue at the time Phase II is constructed. This access will provide necessary through access to emergency vehicles in the subdivision when adequate turn-arounds are not available.

The City Police Department will serve this subdivision. As with most residential subdivisions, the additional households will strain the Department. To minimize the effects on the Department, the subdividers will phase the development over a period of time. Phasing will allow revenues to keep closer pace to the cost of providing public safety services.

### **Emergency Medical Service**

Ambulance service and emergency medical response is currently and will continue to be served by American Medical Response. The company has no concerns about continuing this service.

### **Solid Waste Disposal**

The Billings Solid Waste Department will provide solid waste hauling; the Billings Landfill has adequate capacity to provide landfill disposal service.

### **Schools**

School District 2 has been notified of the proposed annexation. The facilities operated by the District that serve this area are West High on St. Johns Street, Riverside Middle School located on the southside on Madison Street, and Big Sky Elementary at 3231 Granger. The District has anticipated additional west end growth and it has secured land for a middle school and a high school.

### **Parks**

The City Parks, Recreation and Public Lands Department will accept cash-in-lieu of parkland. The cash amount per acre will be established by a vacant land appraisal obtained by the subdividers. The required parkland acreage for the subdivision is 1.16 acres. The cash donation will be equal to the fair market value on a per acre basis of the unsubdivided, unimproved land multiplied by 1.16 acres.

The subdivider will also sign a Waiver of Right to Protest the Creation of an SID that will include the formation of a park maintenance district.

## **4. Effects on the Natural Environment**

The proposed subdivision is located on irrigated hay land. There are no special natural features that will be affected by the subdivision.

**5. Effects on Wildlife and Wildlife Habitat**

The area is frequented by deer and provides habitat to pheasants and small mammals. The subdivision will eliminate this habitat. The Montana Fish, Wildlife and Parks had no specific concerns about impacts to wildlife.

**6. Effects on Public Health and Safety**

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

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

**Yellowstone County Comprehensive Plan**

- a. Require that geologic hazards such as expansive/contractive soils, rockfall, steep slopes and landslide areas be addressed in the development review process (J-1).** *There are no geologic hazards present.*
- b. Protect against the encroachment of incompatible or related uses (K-5).** *The subdivision is located in an area that is actively farmed. Commercial and residential development has encroached into this area north and south of the subdivision but properties to the east and west remain in agricultural use. As the city continues to expand, the agricultural land will become enveloped or disappear entirely. This subdivision is one of the first residential developments of urban densities proposed for this area. Currently the proposal is not compatible with some of the existing uses, but the proposed use and density is consistent with the Comprehensive Plan.*
- c. Eliminate development in designated floodways and limit development in the flood fringe area (J-4).** *There is no designated floodway in this area.*
- d. Promote the necessary measures to reduce the risks associated with development in wildfire hazard areas.** *This area is not considered a high fire risk.*
- e. Preserve areas of open space within areas of urban development and promote access by non-motorized traffic (K-11).** *The subdivision is not located within or near areas identified for open-space corridors or bike trails. The subdivider has agreed to provide cash-in-lieu of parkland that will be applied to the acquisition and enhancement of existing or future parks in the vicinity.*
- f. Promote orderly and rational land use during the various stages of economic and residential growth cycles (K-12).** *The extension of water and sewer service along Central Avenue promotes orderly residential growth in this area. The availability of services makes urban density development possible and provides an affordable alternative to more expensive, large lot development.*

**West Billings Master Plan**

- a. **Establish development patterns that use land more efficiently.** *The increased density of the proposed development and the availability of sewer and water service ensure a more efficient use of both land and resources than large lot development. Additionally, the reduction of road widths also increases the efficiency of land use.*
- b. **Obtain linear parks and rights-of-way, easements ...and other continuous linear features lending themselves naturally to the creation of a non-vehicular transportation network.** *This subdivision is not located in an area that was identified for bike trails or greenway corridors.*
- c. **Increase residential densities within the West Billings planning area by approving requests for residential zoning that are consistent with this plan.** *The proposed subdivision is consistent with the goal of increased residential development in the urban expansion area.*
- d. **Reduce sprawl and development pressure on agricultural lands, conserve irrigated farmland, and increase the density of new residential development by requiring new subdivision in the West Billings Plan are to be served with municipal or approved community water and sewer systems.** *This subdivision will be served by municipal water and sewer systems.*
- e. **Development in the West Billings planning area shall provide for a variety of residential types and densities.** *The proposed subdivision is zoned R-7,000 which allows single family homes on a minimum of 7,000 square feet or duplexes on a minimum lot size of 9,600 square feet. The developer considers the subdivision primarily for single-family homes but some lots are large enough to accommodate duplexes.*
- f. **Development of non-irrigated farmland within the appropriate zoning designation is considered a priority.** *The subdivision is proposed in an area that was previously irrigated farmland.*
- g. **Identify and protect open spaces, flood channels, waterways, and scenic resources in West Billings.** *The agricultural-open space resources in this area will be diminished as the site develops and the city continues to expand westward.*

**Billings Urban Area 2000 Transportation Plan and BikeNet**

The proposed subdivision is consistent with the Transportation Plan and BikeNet.

**Compliance with the Montana Subdivision and Platting Act and local subdivision regulations [Section 23-201, BMCC, Section 23-304(c)(4), BMCC].**

Legends West Subdivision meets the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations with the exception of two development standards. The subdivider has requested a variance from Section 23-601(k), the 60' street right-of-way width and Section 23-605(d), the restriction on double frontage lots. The reduction of right-of-way width will not affect the required 37' pavement width. Also, the subdivider will grant a 5' easement along the right-of-way to accommodate streetlights and fire hydrants. The double fronted lots will be addressed to interior streets only. Staff is recommending approval of these variances in that they do not affect the public health and safety and they provide for a more efficient use of land. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

**Sanitary requirements [Section 23-201, BMCC, Section 23-304(c)(5), BMCC].**

Because the subdivision is within an a master planning area and municipal facilities for water supply, sewage disposal and solid waste collection, it is exempt from Department of Environmental Quality approval.

**Zoning requirements [Section 23-201, BMCC, Section 23-304(c)(6), BMCC].**

The subdivider has complied with the lot size requirements for the R-7,000 zoning district and has shown the required clear vision zones on the preliminary plat.

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

Both Montana Dakota Utilities and Northwestern Energy have reviewed the preliminary plat and made recommended changes to the utility easement layouts. These changes were incorporated into the resubmitted preliminary plat and conform to the recommendations.

**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 Central and Bell Avenues. Internal streets, dedicated to the City, will provide access to each lot.

**CONCLUSIONS OF THE FINDINGS OF FACT**

The Planning Department staff has determined that the Legends West Subdivision will not significantly affect agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat or public safety. The few negative impacts can be minimized through reasonable measures as conditions to final plat approval.

Ms. Beaudry said the City/County Planning Board is recommending that the City Council conditionally approve the preliminary plat application for Legends West Subdivision including the requested variances. Councilmember Jones moved for

approval of the Planning Board recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

**10. AUTHORIZATION FOR MAYOR TO EXECUTE Warranty and Quit Claim Deeds for the sale of City property (4 city parks and 5 lots in High Sierra Subdivision) at the August 19<sup>th</sup> land auction. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Larson moved that the Council give authorization to the Mayor to execute warranty and quit claim deeds for sale of City property, seconded by Councilmember Poppler. Parks and Recreation Director Don Kearney noted that not all of the five lots offered in High Sierra Subdivision were sold. He said Lot 1, Block 1 and Lot 1, Block 5 did not sell. He noted that this money must be used to repay the SID for High Sierra Subdivision. On a voice vote, the motion was unanimously approved.

**11. LATE ADDITION: DISCUSSION of the Yellowstone Country Club area annexation.**

City Administrator Dennis Taylor said this presentation comes from discussions with the Yellowstone Country Club Estates Homeowners Association and the individual residents that sought to find a way for annexation to occur that would be beneficial to both the subdivision and the City of Billings. Public Utilities Director Carl Christensen said the City has been working with the Yellowstone Country Club Estates homeowners for about a year to cover the mechanics of annexation. He said one of the concerns of the property owners is what the cost of the annexation will be for them. He said the City put together a comparison chart that would compare living inside the City as opposed to outside of the City. The property tax comparison is:

<b>City residents</b>	<b>County residents</b>
School District #2 Mill Levy – 198.91Mills	School District #2 Mill Levy – 198.91 Mills
School Retirement & Trans. – 38.28	School Retirement & Trans. – 38.28
State (Education) – 102.50 Mills	State (Education) – 102.50 Mills
City Levy – 105.34 Mills	City Levy – 0
County Levy – 69.09 Mills	County Levy – 97.13
Big Sky Economic Dev. – 2.41 Mills	Big Sky Economic Dev. – 2.41 Mills
Soil Conservation - .43 Mills	Soil Conservation - .43 Mills
Billings Fire Hydrant – 9.11 Mills	Billings Fire Hydrant – 0
<b>Total City – 526.07 Mills</b>	<b>Total County – 439.66</b>

Mr. Christensen noted that the increase in Mills inside the City would be 86.41 Mills that translates into an additional cost of \$470.00 on a house valued at \$150,000.00. The following is a property tax comparison chart with different home values:

### Property Tax Comparison - Yellowstone Country Club Area

Market Value	\$ 100,000	\$ 150,000	\$ 200,000	\$ 250,000	\$ 300,000
Additional Mills for Inside City 86.41	\$ 313.47	\$ 470.20	\$ 626.93	\$ 783.66	\$ 940.40
Market Value x 0.0362765 = Taxable Value					
Billings Storm Sewer 15,000 sq ft x 0.00312	\$ 46.80	\$ 46.80	\$ 46.80	\$ 46.80	\$ 46.80
Billings Street Maint #2 15,000sq ft x 0.005457	\$ 81.86	\$ 81.86	\$ 81.86	\$ 81.86	\$ 81.86
Billings Urban Fire Service Area	\$ (304.00)	\$ (444.00)	\$ (489.00)	\$ (489.00)	\$ (489.00)
County Refuse District	\$ (30.00)	\$ (30.00)	\$ (30.00)	\$ (30.00)	\$ (30.00)
Inside City Tax Increase	\$ 108.13	\$ 124.86	\$ 236.59	\$ 393.32	\$ 550.06
Other Factors:					
Solid Waste Pickup - Annual Fee					
BFI	\$ 156.00	\$ 156.00	\$ 156.00	\$ 156.00	\$ 156.00
Billings - 5 Year Waiting Period	\$ 79.00	\$ 79.00	\$ 79.00	\$ 79.00	\$ 79.00
Savings on Solid Waste Pickup	\$ 77.00	\$ 77.00	\$ 77.00	\$ 77.00	\$ 77.00
No RSID Assessment for Water Line Maintenance					
No RSID Assessment for Street Maintenance					
No RSID Assessment for Activated Fire Hydrants					
Date Prepared July 2002					

He said this chart defines several additional charges that would add to the tax increase in the form of charges for storm sewer and street maintenance. He noted that there is a reduction because the Yellowstone Country Club Estates is in the Billings Urban Fire Service Area and those homes contribute to that fire protection. When they come into the City of Billings they would receive a reduction for that charge. He also noted that County residents contribute a \$30.00 annual charge to use of the landfill that would be a reduction for them if they come into the City. Mr. Christensen said the net increase in their taxes, for the \$150,000 home, would be \$124.86. He said another area they would see a reduction in would be the Solid Waste service, however there would be a five-year waiting period for this reduction. He noted the Solid Waste savings would be \$77.00 per year. He said Yellowstone Country Club Estates residents would also see savings because there would be no RSID assessments for water line maintenance, street maintenance and activated fire hydrants.

Mr. Christensen said the Yellowstone Country Club Estates residents appeared to be pleasantly surprised at the outcome of the preceding analysis. They noted that the cost to come into the city limits was not that great. He said the increase in revenue for the average home of \$150,000 at the 105.34 Mill rate would be \$573.21 per home. He noted there are approximately 350 homes for a total property tax revenue that would



be \$200,623. He said the City is in the process of extending wastewater service back to Ironwood Subdivision that is in the northern part of the subdivision. Presently the City is bringing the wastewater line up 58<sup>th</sup> Street to Rimrock Road and the plan is to extend this down Rimrock Road to 62<sup>nd</sup> Street and pick up the Augusta Ranch Subdivision and continue down 62<sup>nd</sup> Street and pick up the Ironwood Subdivision. Another option would be to purchase the line going through the Golf Course and consider that a trunk sewer line and reimburse them for the cost of that line. He said the value of that would be \$350,000. He noted that the City would have to acquire two small easement areas in order to construct facilities through that area. Mr. Christensen said that additional construction to accommodate either option would cost about the same, but the second option would be a more acceptable solution. He also noted that 70% of the properties have signed waivers for water service. Councilmember Larson asked what the people are doing that are not connected to the sewer. Mr. Christensen said they are on septic tanks.

Mr. Christensen said the City calculated the amount of sewer trunk fees and system development fees for the entire area and that amounted to \$772,000. If the City were to pay them \$350,000 for their trunk line in Yellowstone Country Club and applied the \$88,000 cash in their RSID fund that maintains their sewer system that would leave a balance of \$334,000 that would be owed. This would calculate out to \$1,021.40 per homeowner and Yellowstone Country Club. Councilmember Jones asked about the ponds in the area. Mr. Christensen said that the golf course wants to retain those ponds to use in watering the golf course.

City Administrator Kristoff Bauer said the residents indicated that they wanted the City to "make it free" for them to annex into the City. He said the Public Utilities Department tried hard to reduce some of the entry costs, but wasn't able to achieve the "no cost" proposal. The proposal to purchase the trunk line in the golf course area has not been met with favorable results. He said at this point Mr. Christensen proposed the option that requires entry via the Ironwood Subdivision and there is a bid to consider this option that will come to the Council in September. He noted that Mr. Christensen gave this presentation at the meeting held at the Yellowstone Country Club last Thursday. After the presentation, the residents agreed that the tax repercussions for annexation were about "a push". He said there was additional discussion about alternatives. He noted there were approximately 90 people present at the meeting and 60 of those persons voted on whether the residents would fight the annexation in court or allow the City to move forward and exercise the waivers and take advantage of the opportunity presented. Their response was for 48 lots to vote that the City exercise the waivers, 12 lots voted to sue. He said that an exit poll asked a different question. The questions were "Do you want the City to exercise the waivers, do you want to exercise by petition or do you not want to annex?" The results of that poll were about 34 to 22. Mr. Bauer said the general comment was that if the City was going to annex, do it on a time line that would take advantage of the opportunity to reduce their costs by half.

City Administrator Dennis Taylor said the issue before the Council tonight is to authorize the City to proceed along the lines that have been outlined tonight and negotiate the agreement with the homeowners' association. It would still appear on an agenda and be subject to all the required hearings. He said administration feels it is appropriate to move forward and is requesting the Council's feedback as to what

method to use. Councilmember Gaghen asked for clarification of the waiver process. City Attorney Brent Brooks said 200 out of the 350 lots have "Waivers to Protest Annexation" that is similar to deed restrictions that run with the land, meaning that if the property changes hands the waiver stays with the property. He explained that the waiver means that the current owner will not have the right to protest the annexation; they can voice their opinion, but will not be counted in terms of the statutory protest process. The reason that Waivers of Protest exist is to allow infrastructure to be installed at a later date. Mr. Brooks said in this case it means that 200 of the 350 potential lots have waivers of that right to be counted officially against the amount that would actually stop the City from annexing. Mr. Taylor said because they have more than the 50% majority of waivers and because of the opportunity with the infrastructure and the development all around the area, it is a good time to pursue the annexation through the waiver process.

Councilmember Brown asked if the City is giving up anything by utilizing the line that goes through the golf course. Public Works Director Carl Christensen said it is a good offer. He noted that the City is committed to providing water service to the Ironwood Subdivision and this line is adequate to do that. He noted there are a lot of new construction technologies that would be appropriate and convenient for this project. Mr. Taylor asked Mr. Christensen to explain to the Council what would occur regarding any current bids that involve any anticipated projects. Mr. Christensen said if the Council is interested in pursuing the annexation of the Yellowstone Country Club Estates his recommendation would be to withdraw the bid in process, set up a temporary holding facility and combine the two projects for a completion date next spring. Councilmember Larson clarified that there are no tax dollars involved in the projects and that all costs are covered by fees.

Councilmember Larson said he thinks this is a great deal for the property owners, but he cautioned that there would still be controversy with this action. Councilmember Gaghen agreed that this is a good deal and that this area has had the benefit of City services for many years and it is time for them to contribute their fair portion. Councilmember Larson moved to direct staff to proceed in the manner described and to 1) call in the waivers, 2) direct Public Utilities Department to proceed in the best interest of the City, and 3) move forward with annexation before the end of this year, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

## **Council Initiatives**

**1. Councilmember McDermott: Consideration of the purchase of the Arcade Building at the owner's request.** City Administrator Dennis Taylor said the only caution he would raise would be that the City is very near to reaching a deal for acquiring the Library site that the Council recommended, as well as very strategic property to enhance the Park Two facility. It would be a mistake at this time to pay more than market value for another piece of land (which is what is involved in the Arcade Building purchase). Councilmember McDermott noted that only Community Development money is involved in the Arcade purchase. Councilmember Ohnstad said the Council should take a look at the site before considering this initiative. He said in his opinion there is no asset there, the building would have to be torn down and the cost

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would be unbelievable. Councilmember Larson said this building is an eyesore and has been that way for some time now. He said the City may have no intention of occupying the building, but the City should recognize that the block has more value with the building gone. Councilmember McDermott said there is value in owning the block and the City would own it with the purchase of this building. Mr. Taylor suggested that the Council allow the appraisals to come in before considering the outright purchase of the building in order to not set a bad precedent of buying without the benefit of two appraisals. Staff recommended waiting until two appraisals could be obtained on the property to establish fair market value. The Council did not support the initiative request at this time.

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 11:05 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AE, City Clerk