

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

October 15, 2002

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 Mark Kennedy.

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

MINUTES – September 23, 2002. Approved as printed.

COURTESIES – Fire Dept. On behalf of the Billings Area Relay Team (BART), Fire Chief Marv Jochems and Tom Osbourne, Executive Director of the National Congress of State Games presented the Mayor and Council with one of the Olympic Torches that was prepared for the Torch Run through Billings prior to the 2002 Winter Olympics in Salt Lake City. This was presented with gratitude for the substantial support the City of Billings gave to the torch run and will be a constant reminder of the “fire that burns” within each one of our citizens.

Mayor Tooley announced that the City of Billings would host the Mayoral Institute for Weapons of Mass Destruction and Terrorism Incident Preparedness Seminar on Friday, October 18, 2002. Mayors from North Dakota, South Dakota, Wyoming and Montana will be attending this seminar.

PROCLAMATIONS – Mayor Tooley.

- World Population Awareness Week: Oct 20-26, 2002
- Make A Difference Day: Oct. 26, 2002

BOARD & COMMISSION REPORTS. None

ADMINISTRATOR REPORTS – Dennis Taylor.

- City Administrator Dennis Taylor thanked everyone who attended the Montana League of Cities convention last week in Butte. Billings was well represented and resolutions were adopted that will serve the City well during the coming legislative session.
- Mr. Taylor announced that Billings was recognized at the conference with three (3) awards: the first for being the first Tree City USA in Montana. The next awards were for first place in the 1st and 2nd class cities category for the lowest modification factor for workers' compensation and also for first place in the 1st and 2nd class cities category for the lowest modification factor for general liability insurance. The last two awards were presented by the Montana Municipal Insurance Authority (MMIA).

- Mr. Taylor noted that Mayor Tooley was elected second Vice President of the Montana League of Cities and Towns and in two years will become President. Councilmember Mick Ohnstad is currently a board member. He also announced that next year Billings would be the host city for the Montana League of Cities and Towns convention.

CONSENT AGENDA:

A. Bid Awards:

(1) **SID 1349.** (Opened 9/17/02). Delayed from 9/23/02. Recommend Schedule I: Paradise Excavating, \$272,500.00; Schedule II: H. L. Ostermiller, \$269,805.20.

(2) **Two New Current Model Fire Apparatus.** (Opened 9/17/02). Delayed from 9/23/02. Recommend HME Fire Apparatus, \$615,348.00

(3) **One (1) New Dual Propulsion Floating Dredge with Floating Discharge Piping, Cable Positioning System and a Storage and Transport Trailer.** (Opened 9/24/02). Recommend SRS Crisafulli, \$209,620.16.

(4) **W.O. 02-20: Descro Park Multi-Use Trail.** (Opened 9/24/02). Recommend Schedule IA and Schedule IIA: Rock Pile, Inc., \$145,035.00. Council approved Schedules I and IA (concrete alternative + bridge), JTL Group, \$180,751.00 instead.

(5) **Surplus 1997 Modular Home with Two Wooden Decks.** (Opened 10/1/02). Recommend Harold and Lou Grosskop, \$28,150.00.

(6) **Cleaning Services for Four (4) Parking Garages.** (Opened 10/8/02). Recommend delaying award to 10/28/02.

B. C.O. #2, W.O. 02-02, #1: 2002 Developer-Related & Miscellaneous Sidewalk Improvements, JTL Group, Inc., \$19,000.00 and 5 calendar days.

C. C.O. #2, W.O. 96-08: 2000 School Route Improvements, Rock Pile, Inc., \$18,094.78 and 0 days.

D. Project Design Contract, W.O. 02-15: City Operations Center, A & E Architects; ~~amount to be announced at meeting.~~ \$744,000.00.

E. Project Design Contract, W.O. 02-19: City Animal Shelter, Olsen Architecture; ~~amount to be announced at meeting.~~ \$132,000.00.

F. Contract for Professional Services for review of construction and system development fees, Financial Consulting Solutions Group, \$61,930.00.

G. Contract for Professional Services for updating the Multi-Model Transportation Plan, n/k/a BikeNet, Engineering, Inc., \$54,545.00.

H. Purchase of two (2) replacement parking enforcement scooters, White Bear West, Inc., \$41,150.00.

- I. **Easement** to provide gas service to Amend Park, Montana-Dakota Utilities, \$0.00.
- J. **Resolution of Intention 02-17917** to create Park Improvement District #4014 in Rush Subdivision and setting a public hearing date for 11/11/02.
- K. **Acceptance of FAA Discretionary Grant, AIP 25**, \$500,000.00.
- L. **Final Plat** of Ironwood Estates Subdivision, 1st Filing.
- M. **Final Plat** of Sysco Subdivision, First Filing.
- N. **Bills and payroll.**

(Action: approval or disapproval of Consent Agenda.)

Councilmember Ohnstad separated Item A4 from the Consent Agenda. Councilmember Gaghen moved for approval of the Consent Agenda with the exception of Item A4, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item A4, seconded by Councilmember Larson. Councilmember Ohnstad gave a short history of the bike trail effort. He noted that the first bike trail was originally "painted" from North Park to Pioneer Park. He added that this trail was never used and when the signage came down, no one missed it. He said he has traveled on bike trails around the country with all kinds of different surfaces. He said the decision tonight is to approve a very short trail in a very dense area. He said he feels the Council should approve first class materials, such as concrete on the trail. Councilmember Ohnstad showed a number of pictures of a bike trail in the Heights that is used extensively by school children. Neighbors along the trail have planted enhancements to the trail. He noted the County has provided restrooms and a trailhead where trees from Billings Gazette employees have been planted. He said park benches have been provided through Eagle Scout projects, and a picnic shelter was donated by the Stillwater Mine Company.

Councilmember Ohnstad referred to a recent Gazette article about Denver and its bike trails. He noted that the article stated what was good and bad about our bike trail system. He said Denver has not built anything but concrete trails for the last 25 years. He noted there is a choice between asphalt and concrete on the Descro Bike Trail, and since this is one of the major segments of the bike trail, paralleling 24th Street it should be built with concrete. He also said he feels this will be a demonstration segment to the ditch companies to show that the City wants first class trails. This would require concrete materials and would not require a vote from the electors for a Park Maintenance District for maintenance of the trail because concrete requires little maintenance as opposed to asphalt that requires more maintenance, and concrete is cooler to walk on in hot weather.

Councilmember Ohnstad noted that concrete would cost approximately \$30,000 more to complete this segment of the trail. He said there is adequate money in the bond

fund to pay for the additional cost of concrete. Councilmember Ohnstad offered a substitute motion to build this portion of the Descro Multi-Use Trail and bridge in concrete, seconded by Councilmember Iverson. Councilmember Brewster asked for confirmation that the substitute motion simply changes the material to be used from asphalt to concrete. Councilmember Ohnstad replied "yes". Councilmember Gaghen noted that while the construction of a concrete path would cost \$35,000 more, the economy would be there in the long run because a Park Maintenance District would not be necessary because of low maintenance costs. Councilmember Brewster asked for clarification of the difference in costs of maintenance to asphalt as opposed to concrete. Public Works Director Dave Mumford said that weed control is the biggest maintenance cost for asphalt and agreed that concrete is an acceptable surface for the bike trail. He noted that the project is already \$30,000 over budget due to design and management and would require \$65,000 additional funds to complete the project if concrete were used. Councilmember Brewster asked if surface cracking is a problem, due to freezing conditions. Mr. Mumford said that asphalt would require crack sealing from time to time. He noted that concrete could also crack due to freezing and thawing conditions. He said both surfaces are acceptable for the project.

Mayor Tooley asked about the possibility of a shorter trail using the concrete as a surface. Mr. Mumford said a shorter trail is feasible however he noted that the bridge is an important connection in the trail system. Councilmember Ohnstad said the City does not yet have approval to build a bridge over the railroad tracks. Councilmember Iverson asked if Mr. Mumford agreed that the costs for asphalt and concrete balance out in the long run. Mr. Mumford said that asphalt requires small amounts of maintenance on a regular basis where as concrete would go a long time without the need for maintenance, however when maintenance is needed it is a costly expense.

Councilmember Brown asked if asphalt had limitations as far as use was concerned. Mr. Mumford said that asphalt and concrete could be used for the same uses, such as rollerblading and skateboarding. Councilmember Brown asked what the cost difference is between asphalt and concrete. Mr. Mumford said asphalt is one-third less than concrete. He said the \$35,000 additional costs are exclusively for the added cost of the concrete material.

City Administrator Dennis Taylor noted that the substitute motion must include Council approval of JTL Group as the contractor for concrete rather than Rock Pile who bid the contract for asphalt. He added that the motion will also need to include approval to authorize \$65,000 from the bond proceeds to cover the additional cost of concrete and design/management. Councilmember Larson asked for clarification of the \$65,000 amount. Mr. Mumford said the cost of the project with asphalt is \$150,000 and there is a \$30,000 deficit with regard to design and administration of the project. He said the added cost of concrete and the additional amount needed to fund the project (to cover the deficit) would be \$65,000.

Councilmember Jones said he received an e-mail stating that the grant for this project specified concrete. He asked if this was true and asked if that is an issue. Mr. Taylor said he did not know if that was the case. Planning Director Ramona Mattix said that Planning staff member Darlene Tussing checked with the people responsible for the grant and they did not feel the change in surfaces would be a problem.

Councilmember Larson asked if the major cost concern with concrete is in the construction phase, whether it is laid down properly. Mr. Mumford said that both surfaces must be installed properly and if they are, both will give a long life to the project. Councilmember Larson asked what kind of warranty would be involved. Mr. Mumford said the basic contract includes a one-year warranty. He said that most projects are still in good condition after a year unless it is poorly constructed.

Councilmember Gaghen asked if there is any other portion of the bike trail that is concrete. Mr. Mumford said a major part of the trail is concrete. Councilmember Gaghen added that this portion is between Broadwater and Central and probably will be a well-used portion of the bike trail.

Councilmember Larson asked if the Council approves the use of the bond funds for completion of this portion of the trail, would there be funds left to complete the connection to it. Councilmember Ohnstad said that the projects authorized for bond use include the West End, Descro Falls, Swords Park and the Downtown Connection. He said the \$150,000 is not budgeted and is discretionary in nature and the Council can spend what is needed to finish this portion of the trail and the connector for downtown. Councilmember Ohnstad added that a portion of the trail by Riverfront Park is concrete and is designed to withstand being underwater, whereas asphalt cannot be underwater.

Councilmember Brown noted that asphalt could be recycled when it needs repairing whereas concrete cannot. He asked how many users it is estimated will use this portion of the trail. Councilmember Ohnstad said he did not have an estimate as to the number of users. Mayor Tooley asked if there were any figures on the number of joggers versus bicyclists on this type of a trail. He noted that asphalt is inherently easier on joggers. Ms. Mattix said there is no data on these types of uses. Councilmember Brewster said in his experience watching the trail in the Heights, the bicyclists are in the minority.

On a roll call vote on the substitute motion, the motion passed 6-4 with Councilmembers Gaghen, Iverson, Kennedy, Ohnstad, Jones and Mayor Tooley voting "yes" and Councilmembers Brown, Brewster, Poppler and Larson voting "no".

REGULAR AGENDA:

2. PUBLIC HEARING FOR INPUT on the Fair Housing Work Plan. Final action on 10/28/02. (Action: public hearing only.)

Community Development Manager John Walsh said the City is a recipient of Federal Housing Funds and is required to conduct an Analysis of Impediments to Fair Housing Choice every four years and take action to address fair housing in the community. He said last fall the City contracted with BBC Research and Consulting from Denver to do a fair housing analysis. He said that this company does this in many other areas of the country and was impressed with how the City of Billings is approaching the undertaking of fair housing in the community. Mr. Walsh said the work plan that was completed as a result of the report was presented to the Community Housing Resource Board (CHRB). This board includes many organizations that come together to work on fair housing issues.

Mr. Walsh said BBC Research and Consulting identified potential impediments to fair housing in our community. He said they were mostly basic issues that need to be addressed. They are: 1) income levels of minority and female-headed households, 2)

concentration of minority households in certain neighborhoods, 3) lack of knowledge among residents regarding fair housing, 4) lack of knowledge among some large landlords/property managers regarding fair housing, 5) lack of knowledge among small landlords regarding fair housing, 6) lack of knowledge among some real estate professionals regarding fair housing, 7) lack of adequate zoning for manufactured housing and 8) lack of a local organization devoted to fair housing investigation/testing.

Mr. Walsh said the City has prepared a work plan with five strategies to address those impediments. He said they are: Strategy #1 – To promote the development of an integrated, comprehensive strategic plan for the community to guide fair housing education, outreach, and enforcement (the City is required to do a Fair Housing Plan and wants to make sure their goals are consistent with community goals on fair housing), Strategy #2 – To ensure that the community's fair housing efforts are documented through the institution of data tracking systems (he said there is a lack of good data on fair housing complaints and he wants to see a better tracking system for this data), Strategy #3 – To promote fair housing education and training activities citywide (this is primarily done through the CHRB that is included in the \$15,000 allocation to them for this effort), Strategy #4 – To promote fair housing outreach and public awareness activities citywide, (again accomplished through CHRB) and Strategy #5 – To promote affordable housing and economic opportunities for low/moderate income persons and protected classes such as minorities and the disabled.

He said these strategies are part of the FY 2003 Action Plan that outlines the activities to be undertaken in the first year of the plan and the new work plan that will be developed for subsequent years. He noted that the Council received a copy of this Action Plan as well as the Work Plan. Councilmember Kennedy noted that the CHRB is involved in four of the five strategies.

The public hearing was opened. PETE HANSEN, 1435 WICKS LANE, said he is the past president of the Montana Landlords' Association and fair housing is dear to his heart. He said not all landlords or realtors have access to the fair housing information that the Montana Landlords' Association has because they are not members. He noted that when the Montana Fair Housing Association holds its seminars they charge for admission and consequently the majority of the attendees are landlords and not tenants. He said he feels there is enough money in the program to allow residents to attend these seminars without charge, allowing greater exposure to the tenants and what their rights are. Mr. Hansen said one of the enforcement problems is that there are two agencies in charge of Montana's fair housing laws. He said one of the testing agencies was paid \$60,000 and did not do any testing. He said he thinks the CHRB should monitor the enforcement and make sure the money is not duplicated. He said he supports the plan proposed by the City and CHRB, adding that a landlord should also be a member of the CHRB.

CONNIE WARDELL, NO ADDRESS GIVEN, said she manages the Relocation Management Department for Coldwell Bankers. She said she commends the City and Mr. Walsh for presenting this plan. She said it is needed and is a statement of what the City of Billings stands for in terms of fair housing opportunities for everyone. She offered the following amendments: 1) Page one, add "and modular homes" to adequate zoning for manufactured housing (which is the best opportunity for affordable homes), 2) Page two, add "lack of knowledge among condominium owners and members of the Boards of Directors of condominium associations" (these associations have no unified body within

the City and therefore have no source of knowledge of their responsibilities), 3) re: Strategy #3, add tenant training and rights and responsibilities (smaller landlords often don't make the codes available to the tenant), 4) re: Strategy #4, emphasize in-house training for fair housing to all housing providers and include tenants, and 5) re: Strategy #5 again add modular homes wording. She added that incorporating training for tenants and condominium owners and associations in the action plan would complete the document. She supports the document and program and urged the Council's support.

PETE HANSEN RETURNED, and said that adding to the impediments re: housing discrimination would be the reluctance of landlords to rent to university students. He asked the City to consider setting up a 4-hour training session for student tenants to teach them their responsibilities and issue a certificate of completion of training. Landlords would be considerably more willing to rent to students that have completed the training, he said.

There were no other speakers. The public hearing was closed. Final action is scheduled for 10/28/02.

3. SECOND READING ORDINANCE 02-5224 FOR Zone Change #703: A zone change from Public to Controlled Industrial on a portion of Certificate of Survey No. 779 (a more complete description may be obtained from the Planning Department). The subject property is generally located on the northwest corner of Monad Road and Edward Street. City of Billings, owner; Sysco Food Services of Montana, agent. Zoning Commission recommends approval. Public hearing held 9/23/02. (Action: approval or disapproval of ordinance on second/final reading.)

Councilmember Brown moved for approval of the ordinance on second reading, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

4. SECOND READING ORDINANCE 02-5225 FOR Zone Change #704: A zone change from Community Commercial to Controlled Industrial on Lots 1-5, Block 144 of Billings Original Town, located at 2309 2nd Avenue South. Thelma Spiegelberg, owner; Ernie Dutton, agent. Zoning Commission recommends approval. Public hearing held 9/23/02. (Action: approval or disapproval of ordinance on second/final reading.)

Councilmember Brewster moved for approval of the ordinance on second reading, seconded by Councilmember Iverson. On a voice vote the motion was unanimously approved.

5. RESOLUTION 02-17918 ANNEXING Tract 1B, C/S 1446 Amended (LESS the Interstate 90 right-of-way) and Block 1, Lot 4, Cereus Subdivision, (Annex #02-16: City Operations Center) both located in the NE4 of Section 17, Township 1 South, Range 26 East. Staff recommends approval. (Action: approval or disapproval of staff recommendation.

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

6. PRELIMINARY PLAT of Cherry Creek Estates Subdivision, generally located southwest of the intersection of Bitterroot Drive and Wicks Lane. Planning Board recommends conditional approval of the preliminary plat including the requested variances and acceptance of the findings of fact. (Action: approval or disapproval of Planning Board recommendation.)

Planning staff member Gail Kenson said this is a 5 lot minor subdivision named Cherry Creek Subdivision that includes a manufactured home court for 363 units. The site zoning is a mixture of Residential 9,600, Residential 7,000 and Residential Manufactured Home and Public. The property is generally located at the southeast corner of Wicks Lane and Bitterroot Drive. She said Park Land dedication is not required however 12.17 acres has been provided. Ms. Kenson said the Planning Board has recommended conditional approval. The conditions are:

- 1. To minimize the effects on local services,** the subdivider shall:
 - a. Submit a Stormwater Management Report for City Engineer review and approval (Section 23-706, BMCC).
 - b. Provide utility easements along the rear lot lines as requested by MDU.
 - c. Provide a 40-foot right-of-way dedication from Lot 1 and a 60-foot right-of-way dedication from Lot 2 along Bitterroot Drive to maintain the required arterial road right-of-way width (Section 26-601, BMCC).
 - d. Controlled access shall be permitted from Bitterroot Drive to Lots 1 and 2 upon review and approval of the City Traffic Engineer.
 - e. A 10-foot road easement on the north side of Lot 1 along Wicks Lane shall be granted to the City and shown on plat. If the easement is not needed for the future construction of Wicks Lane, the easement will be vacated (Section 26-601, BMCC).
 - f. Restrict the conveyance and transfer Lots 1, 2, 4, and 5 until the required improvements have been installed or guaranteed (Section 28-802, BMCC).

- 2. To minimize the effects on the Natural Environment,** the subdivider shall:
 - a. Install a landscape buffer of coniferous trees, deciduous trees, or a mixture of both around the perimeter of Lots 3 and 4 to ensure adequate screening to a density of one tree per 40 linear feet (Section 23-605(e), BMCC). Existing vegetative material may be used and incorporated into the buffer area but not counted toward the requirement in areas without existing landscaping. The developer shall submit a landscape plan, including irrigation, to the City-County Plan Department to be approved prior to commencement of Phase I construction. The landscape material

may be installed in phases as approved by the City-County Planning Department.

- b. The SIA shall be modified to include the requirement for the landscaped buffer and the requirement for the financial guarantee of any landscaping material that will not be installed with Phase I improvements (Section 23-802, BMCC).
- c. Install one deciduous street tree per manufactured home site to reduce the amount of radiant heat from the streets, to preserve open space, and provide adequate on-site drainage through percolation on site.

3. To minimize the effects on Public health and safety, the subdivider shall:

- a. Enter into a Development Agreement, enforceable by the City-County Planning Department outlining the process for the review of the placement of manufactured homes on each site to ensure appropriate setbacks from the front, rear, and sides of each site; to ensure appropriate fire separation between each manufactured home and any accessory structures; to ensure that all accessory structures are permitted and approved by the City of Billings; and to ensure that the manufactured homes placed on the site on in compliance with the rules and regulations of the manufactured home park.
- b. Limit the manufactured home development to a total of 300 units.
- c. The developer shall place a fence along the eastern property line of Lot 5 and that portion of Lot 4 that is east of the emergency access to prevent vehicular traffic accessing River View Drive.

4. To bring the subdivision into compliance with state law and local subdivision regulations, the following is required:

- a. **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.
- b. **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 Board has prepared the Findings of Fact for Cherry Creek Estates Subdivision. These findings are based on information received from the

subdivider, their engineer, City departmental review, Planning staff evaluation, and input received at the Public Hearing before the Planning Board. 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 116.091-acre tract is a reclaimed gravel mine. The land is vacant and not being used for agricultural purposes.

2. Effect on agricultural water user facilities

There are several existing lateral ditches that run from west to east across the subdivision. The subdivider shall provide easements for these lateral ditches in order to maintain historic irrigation flows until no longer required.

3. Effect on Local Services

Water and Sewer Service. The subdivider will install, at their expense, water and sanitary sewer mains to all lots within the subdivision. Sanitary sewer services shall include collection mains, a lift station within the manufactured home park, and force main in Wicks Lane that extends west to an existing manhole located in Bitterroot Drive.

The property is subject to all applicable water and wastewater fees and charges. The subdivider acknowledges that the development is subject to the Trunk Sewer Fee, and will be responsible for the installation of sewer lateral lines or fees. The Trunk Sewer Construction fee shall be paid in phases at the time of permitting of plans and specifications for each construction phase. These fees shall be based on the net lot area contained within each construction phase.

Storm Water Drainage. Storm drainage and surface flow shall be provided by a combination of privately owned and maintained surface drainage and storm drain lines. On-site storage and temporary disposal shall be handled via two surface ponds and detention areas. These two storage ponds shall permit seasonal irrigation flows to pass freely, but shall detain stormwater runoff through control structures located at the outlets of the ponds. The sizing, number of laterals, and their location will be subject to review and approval by the City Engineering Department and in conformance with the *Stormwater Management Manual*. The subdivider shall be responsible for any discharge permits that may be required.

The subdivider acknowledges that there exists a Heights Storm Drain Study. The subdivider shall abide by drainage planning as identified in that study, that incorporation the western portion of Lot 1.

Public Streets and Roads. The interior streets of the manufactured home park shall be private. The subdividers have requested a variance from the standard of requiring 90-degree intersection angles to allow a more curvilinear design for the private roads. Staff recommends approval of this variance because the radius of the curves will not interfere with the safe movement of traffic within the manufactured home park. All of the private streets within the manufactured home park will be constructed to a width of 26 feet. Cherry Creek Loop and Erin Street shall have an asphalt width of 32 feet. The north/south internal streets shall have a 3-foot wide sidewalk constructed on both sides of the street. Erin Street shall have a 3-foot wide sidewalk on the uphill side internal to the subdivision. A 5-foot thickened edge walk shall be constructed on the uphill side from the western border of Lot 3 to the Bitterroot Drive intersection. A 5-foot wide thickened edge sidewalk shall be constructed from the western border of Lot 4 to the intersection of Bitterroot Drive and Cherry Creek Loop. This work shall be done by the developer at no additional expense to the City and shall be completed at the time of initial subdivision development. At the time of Phase I construction the subdividers will construct a permanent gravel emergency access to River View Drive.

The Bitterroot Drive/Cherry Creek Loop intersection shall be redesigned for traffic safety per the TAS with a "tee" intersection. The design of the intersection shall be submitted to and reviewed by both the City Engineer and the Yellowstone County Public Works Department.

The TAS also states that the full build out of this subdivision may justify the installation of a traffic signal at the intersections of Hilltop Road and Bench Boulevard. The subdivider shall contribute his share of the signal.

The subdivider will furnish the necessary traffic control devices within or adjacent to the subdivision. Streetlights shall be installed at the time of development under a Northwest Energy lighting district. A Special Improvement Lighting and Maintenance District shall be created for the operation and maintenance of the lighting improvements on-site for Lots 3 and 4. No intersection lighting will be provided at the Erin Street/Bitterroot Drive or Bitterroot Drive/Yellowstone River Road intersections.

Fire and Police Protection. The Fire Department reviewed the preliminary plat application and required the subdivider to construct an emergency gravel access to River View Drive at the time Phase I is constructed. This access will provide necessary through access to emergency vehicles in the subdivision when adequate turn-arounds are not available. The subdivider has required a minimum spacing of twenty feet between structures. This separation along with the multiple accesses to the site, the subdivider has added extra fire safety measures.

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 Skyview High School on Wicks Lane, Castle Rock Middle School located on the east side of Governors Boulevard, and Bitterroot Elementary on Bench Boulevard. The District did not respond to the Planning Department's request for comments.

Parks. Parkland dedication is not required for a minor subdivision plat however, Section 76-3-621 MCA does provide for the provision of parkland in manufactured home parks. The subdivider has provided 9.87 acres of parkland and open space for the continuation of the riverfront trail system and 2.3 acres for the community center.

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 a reclaimed gravel mine. 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 disturb 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. However there are concerns with the proposed density of the manufactured home park in terms of fire protection. A reduction in density could allow for increased separation thereby reducing the possibility of fire spreading from one dwelling to another.

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

1990 Yellowstone Comprehensive Plan

- a. **Encourage a variety of housing types and/or styles within proposed housing developments. (C-2)**
This development will create a new location for the placement of manufactured homes as well as the placement of conventionally built homes on Lots 1, 2, and 5.
- b. **Alternative housing types should be available within the city and county. (C-2)**
This development will create additional inventory for the placement of manufactured homes. The City of Billings currently does not have an adequate supply of lots zoned appropriately for manufactured housing.
- c. **Protect against the encroachment of incompatible or related uses. (K-5)**
Development of this project, 363 units is at the same density as R-6,, 000 based on net acreage and R-9,600 based on gross acreage. Reduction of the units to 300 units provides the a density of 1 unit/12,000 square feet based on gross acreage and 1 unit/7,260 square feet based on net acreage. Additionally, the use of buffering would protect the existing development from any negative impacts that the manufactured housing development might have on the surrounding area. The landscaped buffer will be required around the perimeter of Lots 3 and 4. One tree per forty linear feet will be required. Existing site vegetation may be used to meet this requirement but not to substitute for areas without vegetation. The buffer area along with the elevation change and separation provided by Lots 1 and 2 will provide a visual barrier between the existing development and the manufactured home development. However, the Planning Board believes that RMH zoning is not appropriate for Lots 1, 2, and 5.
- d. **Curb urban sprawl and discourage leapfrog development. (K-7)**
This project is an infill project. There is existing development to the north and west, a new subdivision developing to the east, and the Yellowstone River to the south.
- e. **Promote orderly and rational land use during the various stages of economic residential growth cycles. (K-12)**
The extension of water and sewer service along the south side of Wicks Lane promotes orderly residential growth in this area. The availability of services makes urban density development possible and provides a more affordable alternative to more expensive, large lot development.
- f. **Capitalize on the use of existing public sewage systems and improve sewage systems in areas not currently served by public systems. (H-4)**
The development will be extending city sewer to an area that is not currently served by sewer. The availability of services makes urban density development possible in an area currently adjacent to urban densities.

- g. 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 known geologic hazards present.***
- h. Eliminate development in designated floodways and limit development in the flood fringe area (J-4).
*There is no designated floodway in this area.***
- i. Preserve areas of open space within areas of urban development and promote access by non-motorized traffic (K-11).
*This subdivision is located in an area that is identified for bike trails or greenway corridors. The developer has provided an easement for the continuation of the corridor.***

West Billings Master Plan (For informational purposes only)

This development is not in the *West Billings Master Plan* area. However, it does comply with the goals and policies of the *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 public utilities 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 located in an area that is identified for bike trails or greenway corridors. The developer has provided an easement for the continuation of the corridor.***
- 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 and is considered an infill project.***

- e. **Development of non-irrigated farmland within the appropriate zoning designation is considered a priority.**

The subdivision is proposed in an area is a reclaimed gravel mine. It has not been used for agricultural purposes.

- f. **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. (Chapter 23, BMCC)

Cherry Creek Estates 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 23-1002(h), BMCC, requiring private streets to have a 90-degree intersection angle. 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, R-9,600, RMH, and Public zoning districts.

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. MDU has requested that back lot line easements be added for all utilities.

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

Legal and physical access is available to the subdivision from Wicks Lane, Bitterroot Drive, Erin Street, Blarney Street, and Yellowstone River Road. Internal streets for the manufactured home development will be private as required by Section 23-1002(a), BMCC.

CONCLUSIONS OF THE FINDINGS OF FACT

The Planning Department staff has determined that the Cherry Creek Estates 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.

Councilmember Brewster asked why the fence was not placed on the boundary of the Residential Manufactured Home complex instead of around Lots 3 and 4. Ms. Kenson said the recommendation was for it to be placed on the property line. She added that as the lots are developed as Residential 9,600 the fence would be removed because traffic would not be able to cut through the property. She added that there would also be landscaping barriers.

Councilmember Brewster asked, if there will be a 20-foot separation between all outbuildings and porches and decks or just between the actual housing units. Ms. Kenson said the regulations imply between housing units and would be measured from the boundaries of each site. She said there are specific setbacks and separations for manufactured home structures and zoning setbacks will also be enforced maintaining an 8-foot minimum setback from the property line. Councilmember Brewster asked if this would mean there would be 16 feet, minimum, between structures. Ms. Kenson said "yes". Councilmember Brewster asked if the builders could petition to have the right-of-way on Wicks Lane removed. Ms. Kenson said that would be considered by the Public Works Department. Mr. Mumford said there is no need for that for road construction, however it may be needed for a future trail because of how the road dead-ends. He said the decision was to reserve that easement for future use.

Councilmember Brewster asked Ms. Kenson to review the density calculations. Ms. Kenson said the recommendation from the Planning Board was to limit the density to the lots involved with the Residential Manufactured Home zoning. She said the units are calculated based on gross density. She said under the zoning regulations, the developer is allowed 584 units on these lots. However, in calculating the density, they took out the streets arriving at the 363 unit net density, allowing 6,000 square feet per unit. She said the developer has chosen to place fewer units than he is entitled to according to zoning regulations.

Councilmember Larson asked why the Planning Board was uncomfortable with allowing the Council to potentially restrict the units to allow for 300 after Phase I (189 units) are completed. Ms. Mattix said the Planning Board was comfortable with the reduction already established. Ms. Kenson noted the Development Agreement could contain a review at Phase II regarding impacts on fire protection, municipal services and traffic and the Council would have criteria to make a determination at that time to limit the development. Councilmember Larson clarified that this provision is not in the Development Agreement and would need to be added as an amendment by the Council prior to approval. Ms. Kenson replied "yes" and said the conditions would have to be altered. Mr. Kenson noted that the Planning Board allowed the developer to determine the number of units with each phase with a total number of units limited to 300.

Councilmember Brewster asked about the potential traffic problem of one of the main streets coming into Bitterroot Drive at an angle. Ms. Kenson said the street Councilmember Brewster noted is pre-existing and was addressed in the transportation and traffic accessibility study. She said there were no impact discussions in terms of the alignment of this street in the study and the traffic engineer did not have any issues with this. Mr. Mumford said the street in question will have to stop and the view is not significantly affected. He said it is not an ideal situation but there are no real sight

restrictions to visibility. He noted that the study did not require a left turn lane at this intersection.

Councilmember Gaghen asked how many entrances and exits there are to the subdivision. Mr. Mumford said "two". Ms. Kenson said, in answer to Councilmember Brewster's question about billboards or signage, that billboards are not allowed on residential property and a sign, of a certain size, denoting the subdivision and a map may be placed inside the property line.

Councilmember Brown asked if there was a study on the time it would take to evacuate the subdivision. Ms. Kenson said she would refer that question to Mike Sanderson of Engineering, Inc who prepared the traffic accessibility study. Mr. Mumford said he was not aware of any evacuation studies being done on the area. He reiterated that there are actually three access points including the emergency access.

Councilmember Gaghen asked for square footage figures on Lots 3 and 4. Ms. Kenson said Lot 3 is 44.653 acres and Lot 4 is 35.921 acres. Councilmember Gaghen confirmed that Lot 3 would accommodate 189 units in Phase I. Ms. Kenson said the developer has proposed 189 units in Phase I, but based on zoning regulations there could be more than 190 units placed on the parcel. Ms. Kenson added that it would be up to the developer as to the number of units placed in each phase if the total was restricted to 300 units, he would not be locked into the 189 units in Phase I.

Councilmember Brown moved for approval of the Planning Board recommendation, seconded by Councilmember Kennedy.

Councilmember Brewster amended the motion to remove the fence from the outside perimeter of owner's property to the perimeter of Lots 3 and 4 to create a barrier between Residential Manufactured Home and Residential 9,600 zoning, seconded by Councilmember Larson. Councilmember Brewster noted that other mobile home parks typically place their fencing in this manner and have a barrier between adjacent zonings and he said he feels this is appropriate. Councilmember Larson asked why require the developer to place a fence that will eventually be taken down when the Residential 9,600 portion is developed and when there is already a landscaping barrier in place. Councilmember Poppler asked if the fence change would create a problem for the emergency access. Councilmember Larson said he did not think the fence would change the nature of the emergency access and it would be fairly easy to provide for the emergency gate. On a voice vote, the motion was approved with Councilmember Poppler voting "no".

Councilmember Brewster amended the motion to require a third permanent full time access to the property, seconded by Councilmember Gaghen. Councilmember Brewster said he would allow the Planning Department to choose the location of this access. Councilmember Brewster said this would provide better emergency access and better traffic management. Councilmember Larson said this would make a significant impact on the Residential 9,600 development. On a voice vote, the motion failed.

Councilmember Brewster amended the motion to require all the water retention ponds be fenced and require mosquito abatement in perpetuity, seconded by Councilmember Brown. Councilmember Gaghen noted that standing water is a concern in view of the recent West Nile virus and agreed there should be an abatement effort. Councilmember Jones asked what plan could be recommended to pay for on-going mosquito abatement. Councilmember Brewster said it should be part of the developers'

operating expense. Mr. Mumford said the City could require there not be standing water in the storm drain requirements. Councilmember Brewster said as long as there would not be standing water and that the water would continually flow, he would withdraw his motion. Councilmember Gaghen withdrew her second.

Councilmember Larson amended the motion to reinsert the language proposed by staff to the Planning Board to limit the Phase I density to 189 units and call for Council review prior to Phase II and retain the possibility at that point of restricting the number of units to 300 and retain the language of that review proposed this evening, seconded Kennedy. Councilmember Larson said the real issue is trust, "will the developer perform as he as promised?". He said this means that if he completes Phase I with 189 units in the appropriate manner, the Council will give approval to the 184 units of Phase II. If the developer fails to complete Phase I according to plan, Phase II will be limited to 111 units. He said he feels this is fair to everyone involved. Councilmember Brewster said his concern is that it does not provide for any reduction in density.

Councilmember Poppler asked if there was a time limit on the Development Agreement. City Administrator Dennis Taylor said there was a time limit but the developer agreed to waive the time limit to allow this plat to go back through the process and back to the Planning Board for a recommendation.

Councilmember Larson said the potential is there to cut the density in half after the proposed Council review. He reminded the Council that the zoning allows for 594 units. Councilmember Kennedy said this amendment allows the Council to maintain vigilance throughout the development. Councilmember Brewster said he would like to see a traffic study done after Phase I is completed and before Phase II is considered. On a voice vote on the amendment, the motion was approved with Councilmember Poppler voting "no".

Councilmember Brewster asked what a letter of commitment was in regard to the landscaping condition. Ms. Kenson said the Planning Board placed that condition in the agreement and she is not aware of what a letter of commitment was. She said the City is requiring a financial guarantee and she said the condition is a bond or letter of credit. Councilmember Brewster amended the motion to require a language change that the developer provides a "financial guarantee" to do the landscaping instead of a letter of credit or letter of commitment, seconded by Councilmember Gaghen. On a voice vote, the amendment was unanimously approved.

Mayor Tooley stated the motion on the floor has three approved amendments. They are: 1) move fence to separate Residential Manufactured Home and Residential 9,600 zoning, 2) reinstate the language that staff proposed referring to Phase I density and reviewing the development of Phase II prior to construction and allowing the Council to restrict the units to 300, and 3) change language in the Development Agreement on page 3-19 and all other places to require the developer to provide a financial guarantee instead of a letter of credit or letter of commitment. Mayor Tooley said all of the amendments are tied to the review criteria.

Councilmember Kennedy commented that the developer has had to go through a lot to show trust and to provide affordable housing for Billings.

Councilmember Brewster said it is important to have trust with a developer in a community. He noted that there are manufactured home developments in the city that are very nice and some that are not. He said the difficulty comes from the disparity in

the different developments and if restrictions are not imposed then there is "broad latitude to do anything". He also noted that the developer has a long history of not working with neighbors and not being trustworthy and that requires a certain level of scrutiny.

Councilmember Larson said there are two major manufactured home developments in his Ward and they are very well done. He noted that the issues that Councilmember Brewster has raised are the same issues that arise in these types of developments. Councilmember Gaghen noted that the developments Councilmember Larson referred to in Ward V are different from the proposed one in that they were not placed in the midst of a residential area.

On a voice vote for the motion as amended, the motion was approved with Councilmember Poppler voting "no".

Council Initiatives

- **COUNCILMEMBER BREWSTER:** reported that his previous initiative re: the Right-of-Way dispute behind Bench School is well on its way to being resolved. He thanked Public Works Director Dave Mumford for his assistance.
- **COUNCILMEMBER JONES:** requested that staff be directed, with consensus of the Council, to follow up with the stormwater drainage issue to get all the water out of the project proposed for Cherry Creek Estates Subdivision (Item #6 above).
- **COUNCILMEMBER POPPLER:** reported on a complaint she received from a grandparent about standing water in a Lake Hills Subdivision Area posing a hazard for small children. Public Works Director Dave Mumford said he is following up with the engineer to get fencing and an aerator in place. The cost will be borne by the City, as it is a scheduled part of the project in process.
- **COUNCILMEMBER BROWN:** reported that he received a request from a Mr. Ness regarding a duplex he built. In order to get a building permit he signed an agreement to do the street improvements and wants to change the agreement to allow for him to sign a waiver of protest for improvements in the future, at which time he will pay his fair share. Staff was directed to come back to the Council with a proposal.
- **COUNCILMEMBER BROWN:** reported he received a complaint from a woman whose deceased husband was transported by the ambulance company. The bill required Medicare and Medicaid processing. It was turned over for collection and she is being harassed by the collection agency. Staff was directed to investigate this incident and report back to Council.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 9:40 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

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