

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

## **October 28, 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 Larry Brewster.

**ROLL CALL** – Councilmembers present on roll call were: McDermott, Gaghen, Brown, Brewster, Iverson, Kennedy, Ohnstad, Jones and Larson. Councilmember Poppler arrived late at 6:45 PM.

**MINUTES – October 15, 2002.** Approved as printed.

### **COURTESIES – Transit Division**

Airport Director Bruce Putnam recognized Steve Leichner for his 1<sup>st</sup> place finish in the Montana State Bus Roadeo and for his significant finish in the top 10 in the American Public Transit Association's National Bus Driving Competition. This is the third international competition that he has participated in, representing the City in New York City in 1998 and Philadelphia in 2001. Transit Manager Ron Wenger displayed the traveling state trophy that is kept by the winner until the next competition. He noted that in 11 years there have been six drivers from Billings that have won the trophy.

Mayor Tooley recognized former Councilmember Dick Clark in the audience.

### **PROCLAMATIONS – Mayor Tooley.**

- Community and Regional Planning Day – November 8<sup>th</sup>

### **BOARD & COMMISSION REPORTS.**

- Mayor Tooley noted that evaluation forms for the City Administrator were handed out to the Councilmembers and should be completed and returned at the November 4<sup>th</sup> Work Session.
- Mayor Tooley also handed out information regarding CTEP Program funds and asked for feedback in the form of comments or concerns prior to his participation as the Council representative on the Transportation Policy Coordinating Committee. Councilmember Iverson moved to accept the County Commissioner's recommendation for the CTEP funding, seconded by Councilmember Kennedy. Mayor Tooley noted that the County Commissioners wanted to include funding in 2003 for the Pompey's Pillar project. On a voice vote, the motion was unanimously approved.

### **ADMINISTRATOR REPORTS – Kristoff Bauer**

- Assistant City Administrator Kristoff Bauer said the City lost a valued employee with the recent death of 911 Communications Center employee Gail Allen. She was a dedicated employee of seven years, excelling in handling calls from victims of domestic violence. She leaves behind three children and six grandchildren. On

behalf of the City, Mr. Bauer extended condolences to the family.

- Mr. Bauer called attention to a packet of information placed on the Councilmember's desks. He reminded the Council that the Work Session on November 4<sup>th</sup> will be held at the Downtown Billings Partnership office at 2906 3<sup>rd</sup> Avenue North at 5:30 PM.

## **CONSENT AGENDA:**

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

- (1) **2900 Block of Monad Road Sanitary Sewer Project.** (Opened 10/15/02). Recommend Gray Construction, Inc., \$62,139.00.
- (2) **Janitorial bid for Parking Division.** (Opened 10/8/02). No bids received. Recommend reevaluate janitorial situation and make a future recommendation.

**B. Lease agreement** with Merton and Susan Musser, for ground lease at Airport, term: 20 years, \$910 for first year of lease.

**C. Approval to execute a Purchase Agreement** for property (Block 41, O.T.) for New Downtown Library, ~~\$954,000~~, \$900,000 plus fees, closing costs and monthly lease payment of up to \$120,000 for an estimated total cost of \$1,174,000.

**D. Approval of Reimbursement Agreement** with AVIARA, Inc. to recover a portion of costs to construct water and sanitary sewer facilities for lots in Augusta Ranch Estates and Yellowstone Club Estates, 5<sup>th</sup> filing.

**E. Approval and acceptance of High Intensity Drug Trafficking Area Grant**, total grant funds \$22,000 (no City match required).

**F. Approval and acceptance of Universal Hiring Program Grant** for three Police Officers, total grant funds \$225,000 over three year period (City will be responsible for non-allowable expenses such as longevity, overtime, court time, and short changeover in the public safety fund.)

**G. Approval of Fair Housing Five-Year Work Plan** with funding allocated to the Community Housing Resource Board (CHRB), \$15,000.

**H. Approval of Funding Feasibility Study** for Southwest Corridor Neighborhood Community Center, \$10,000.

**I. Approval of a budget amendment to the FY 2002-2003 CDBG Program** authorizing transfer of funds from Neighborhood Police Contract Officers Program to Graffiti Removal Program, \$2,020.

**J. Approval of Terrorist Emergency Response Plan and Resolution 02-17924** for Yellowstone County, (City as signatory).

**K. Resolution 02-17919** relating to \$784,000 Special Sidewalk, Curb, Gutter, and Alley Approach Bonds – Series 2002B, authorizing the issuance and calling for the public sale thereof.

**L. Resolution 02-17920** correcting the annexation legal description on Res. #01-17774 for property annexed on 10/22/01 located on Gabel Road, Annex #01-16.

**M. Bills and payroll.**

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

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

Councilmember Iverson moved for approval of Item C, seconded by Councilmember Kennedy. Councilmember Jones said on June 24, 2002 the Council voted to put a \$12 Million Bond Issue on the November 5<sup>th</sup> ballot. He said the Council is now being asked to approve the purchase of the property to house the new Library, one day and one week before the outcome of the election that may or may not approve the bonds. He said he feels this is presumptuous of the Council to move forward on this proposal prior to knowing the voter's decision. Councilmember Jones noted that the Council is being asked to spend up to \$1.2 Million of the \$3.2 Million the Library has accrued in reserves. He said if the Bond issue does not pass that will be \$1.2 Million that will not be available to upgrade the existing building. He said the rationale for approving the agreement for a new Library site is that it will hurt the chances of the Library bond issue passing if the property is not purchased. He encouraged voters to support the bond issue whether the property is purchased or not.

Councilmember Jones said the agreement calls for the City to pay, at the owner's discretion, \$4,000 per month until August 1, 2005 which is a total of \$120,000. There is no incentive for the seller to complete the transaction. He noted that if the Council does approve the agreement, language should be added stating that the City will not pay over the appraised value. He said he is also concerned about the City paying the full brokerage fee of 6%. He repeated this is not the appropriate time to consider this agreement.

NOTE: Councilmember Poppler joined the meeting at 6:45 P.M.

Councilmember Jones made a substitute motion to postpone purchase of the property for a new Library, seconded by Councilmember Brown. Councilmember Larson concurred that this agreement is premature. He noted that the subject property has been for sale for a decade and said he feels the Council can wait two more weeks for the results of the election to complete this purchase.

Councilmember Kennedy asked why this item is before the Council at this time. Assistant City Administrator Kristoff Bauer said this date was negotiated in the buy/sell agreement as the time to be brought to the Council. The seller asked the City to act on this agreement before the November 5<sup>th</sup> vote. If the Council does delay it, the agreement

will become void, he added. He noted that if the Council does approve the agreement, they will still have an opportunity to change their minds such as after the appraisal, the bond issue vote and any other issues of this transaction. He said the City would have an opportunity to review the purchase agreement after the appraisal is completed and at that time "walk away". Councilmember Kennedy noted that there appears to be contingencies in place to allow the City to "kill the deal" and that it would be fruitless to postpone this issue. He said he is opposed to the substitute motion.

Councilmember Brewster asked if the City would be bound by the buy/sell agreement if the appraisal comes close to the purchase price. Mr. Bauer said the agreement allows both parties to review the purchase and determine if they wish to move forward. He said this agenda item allows the City to start the appraisal process, which is a very lengthy process and could begin as late as February of next year.

Councilmember Brewster asked why the agreement has the City paying all of the fees and the rental portion. He said it seems unusual to have a five-year rental agreement and the fees are normally negotiated differently. Mr. Bauer said the City worked on the agreement for several months and feels they reached the best options and one worth bringing to the Council. Councilmember Brewster said the offer seems to support the seller and he said he is inclined to support the delay.

Mayor Tooley noted that some sellers intentionally do not take the rental money for a certain time until another property is available to invest in to avoid tax liabilities. He said he thinks this is the intention of the seller. Mr. Bauer agreed with this assumption.

Councilmember McDermott said she is concerned that the City is obligating itself to a \$1.2 Million purchase price when the last assessed market value of this block was \$293,500. She said this "is a very broad difference between the two". She asked if the appraisal came in at \$600,000 would it trigger the rental to start or can portions of the agreement be "pulled off the table". Mr. Bauer said the appraisal is the piece of information that both the buyer and seller are waiting for to understand whether it makes sense to go forward with the transaction in its current state, another state or if it dies altogether. He noted that the City, under the current Council direction, can only pay "fair market value" established by two appraisals. Councilmember McDermott said she does not think postponing this purchase agreement will damage the bond issue vote. She said the Council does not have enough information and the absence of an appraisal creates concerns for proceeding with the agreement. Mr. Bauer noted that the limit the Council has currently placed on staff in going forward with negotiations of this agreement is 5% or \$10,000 of fair market value, whatever is less. He said the appraisal would ascertain whether the negotiated agreement would fit within those guidelines. He noted the rental fees will allow the City to have possession of the land and allows the seller to find replacement property.

Councilmember Brown asked if the City would have to pay the 6% commission, or an adjusted commission if they back out of the deal. Mr. Bauer replied "no". He said he thinks the appraisal will come in close to the offered amount simply because the City has made the offer.

Councilmember Gaghen said she investigated as to whether there was some kind of formula that is used to assess raw land and was told by the County that it depends on like properties that are available. She said she thinks the Council could better decide this issue if an appraisal was available.

Councilmember Larson said the agreement contains the “right to terminate the agreement” if either party disagrees with the appraised value. He asked the City Attorney if the City would be vulnerable if they decided to terminate the agreement even if the appraisal came in at a desirable figure. City Attorney Brent Brooks advised the Council to take the wording “does not agree with the appraised value at face value”. This would give the City flexibility if the appraisal price is not acceptable. Councilmember Larson expressed his concern that if the Library bond issue should fail and the appraisal comes in at a reasonable amount, the City would be “stuck” with a property that is not needed. Mr. Brooks said the agreement allows the Council to disagree with the appraisal and the decision to terminate the agreement would be based on that reason.

Councilmember Larson offered a substitute motion to direct staff to proceed with the appraisal process and postpone the Council decision on the buy/sell until after the appraisal has been completed and move forward with the negotiation, seconded by Councilmember Kennedy. Councilmember Larson restated his concern about moving the City toward a buy/sell agreement when there is not a clearly established need for the property. If the Library bond issue fails, he said the City would need every dollar that is committed to this buy/sell agreement to make the current Library site acceptable. He said he does not think it is unreasonable to ask the seller to give the City two more weeks to “get their affairs in order”.

Councilmember Kennedy asked if the Council approves the buy/sell agreement and uses the monies to fund the agreement requirements would the Library ultimately lose that part of the reserve money for funding the current site, if the bond issue fails. Administration Services Director Robert Keefe said the initial purchase would be paid through the Library funds and if the bond issue fails the City would be in the position of needing to reimburse the Library as their money is restricted to Library use only. He added there is a possibility of grant money to fund a location for the Library at the Transit Center if the bond issue does not pass.

Mr. Bauer noted that the City looked at a number of sites and said that the offer that was made is the least expensive of all the sites considered for this purpose. He noted that this property is currently under one ownership and there is no need to have the added expense of demolishing existing buildings to prepare the site. This makes it more of a value. He also said that a good appraisal needs the cooperation of the seller. Mr. Bauer said the appraiser has stated that his appraisal would not be driven by the buy/sell agreement.

Councilmember Jones said the buy/sell agreement indicates that the City believes the property is worth \$900,000 and he asked, should the appraisal come in under that price, would the City still be able to back out of the agreement. Mr. Brooks said the City still needs two appraisals to complete the buy/sell agreement and this would give the City flexibility to not enter into the final purchase agreement. He said there are several contingencies that allow this agreement to be terminated.

Councilmember McDermott said she feels this is a premature agenda item and it needs to be delayed. After Councilmember Larson’s substitute motion was restated, Councilmember McDermott says she agrees with this motion and would support it. Mr. Bauer restated that in order to receive a good appraisal it is necessary to have the cooperation of the seller for information concerning the history of the property. Councilmember Larson said this is a bare piece of land and he disagrees with Mr. Bauer’s

statement. He said the process is simple and can be accomplished without the seller's cooperation. Councilmember Iverson asked if the City can refuse to complete the buy/sell transaction if the appraisal comes in low, such as \$500,000. Mr. Brooks said that was correct. Mayor Tooley summarized the motions made for Councilmember Poppler who arrived late and noted that if the second substitute motion passed all further discussion is terminated and the final decision will have been made. On a voice for the second substitute motion, the motion was approved 7-4 with Councilmembers McDermott, Brown, Brewster, Kennedy, Poppler, Jones and Larson voting "yes" and Councilmembers Gaghen, Iverson, Ohnstad and Mayor Tooley voting "no".

## **REGULAR AGENDA:**

### **2. AGREEMENT WITH AIR HOST, INC. to provide restaurant concession, term: 5 years; approximately \$80,000 per year revenue. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Councilmember Kennedy moved for approval of the agreement and staff recommendation, seconded by Councilmember Brown.

Airport Director Bruce Putnam said this is an important issue for the Airport, the City and the staff. Airport staff assembled a detailed Request For Proposal for concessionaires to take over the operation of the bar and restaurant. He said the contract with Marriott Food Service expired in July and they chose not to renew due to significant operating costs. Two national corporations responded to the Request For Proposal. He noted that not getting any local response was not unexpected due to the aftermath of 9/11 and that passenger restraints are significantly different than before. He said this severely impacts travelers in that they must spend more time in the terminal. Mr. Putnam said their hope was that a prospective concessionaire would bring additional funds that could cover badly needed facility renovations. He said the Restaurant RFP Committee included Councilmember Kennedy, who has been in the restaurant business and Airport Commission member Owen Neiter. With the impacts on travelers, the selection of a company that can contribute to expanding the food service is an important benefit. Mr. Putnam said that Air Host, Inc. was selected unanimously by the committee. He noted that Air Host specializes in operating in airports of the size of Billings. He said that they are presently in 15 other airports in the Midwest and Western United States and when Airport staff called several of those airports, Air Host received extremely good reviews and was recognized as having a good reputation for customer service. They have a track record that spans thirty years.

Mr. Putnam said Air Host will be investing \$250,000 into the operation to update equipment and furnishings and to provide the new concourse space that the City will be building. Part of the renovations will include a modern hot food deli with access to the secure side of the concourse. The result will be a more efficient operation and attractive and modern facility and the single most significant operational enhancement of the terminal in a decade. He said the first year of operation of Air Host should generate approximately \$80,000 in revenue for the City.

Mr. Putnam noted that the Food and Beverage Union representative has been monitoring the rehiring of the current employees. He said Air Host understands the value of retaining the experience embodied in those employees and has made offers to 7 of

those people as of this evening. He noted the hiring process will go on through Thursday and others may chose to interview during this hiring process. He said the Airport staff has spoken with Air Host to insure that present employees have an opportunity to interview with them and is convinced that Air Host has made a good effort to do this. He said making mandatory employment for existing employees a part of the contract is not an accepted practice and in his experience there has never been language to that effect in any other contract between a landlord and a tenant/concessionaire.

Mr. Putnam addressed the concern that there should be a delay in formalizing this agreement. He said the contract expires November 1, 2002 and it is clear that Marriott is leaving. The delay would put at risk the ability to have any food and beverage service there. He asked the Council to approve what the Airport staff feels is a great proposal.

Councilmember McDermott asked how many employees are presently employed in the food and beverage service at the Airport. Mr. Putnam said there are between 15 to 20 employees. She asked if Mr. Putnam knew how many of those employees applied for new positions. Mr. Putnam said he did not know but noted that the process has just begun.

Mr. Putnam introduced David Shelton, CEO of Air Host, Inc. and John Stimac from Operations and Management.

Councilmember McDermott said the Council should recognize the dependable service that the present food and beverage employees have given. She noted that some have over thirty years of service. Councilmember Gaghen agreed with this assessment and has concerns for how the present employees will come out of this transition. She said she hopes these folks are handled with great sensitivity. Councilmember Brewster noted that when the School District privatized their food service program all of the employees were retained by the contractor and included in their retirement system with years of service retained. This was an instance where the employees were all accommodated through the RFP process. He noted that the food and beverage workers at the Airport felt that they did not have a forum to express their concerns to the Council. He said thirty years of employment should rate some time to express their concerns and asked if the Council would be inclined to let any employees present speak, or to schedule a public hearing rather than delay approval of the agreement. Councilmember Ohnstad said it is unfortunate that a change in management can create jeopardy for these employees but many people have faced this same situation.

Councilmember Brewster offered a substitute motion to open a public hearing to any employees present that would like to include input, seconded by Councilmember McDermott. City Attorney Brent Brooks cautioned the Council that a public hearing requires advertisement and this agenda item was not scheduled as a public hearing therefore the appropriate notification was not done. Councilmember Gaghen offered a substitute motion to receive input from the employees and union representative. Councilmember Poppler said any discussion from the employees will not have any bearing on approval of the agreement as the City is a landlord not an employer. Councilmember Larson concurred with this. Councilmember McDermott said the Council cannot delay the approval of this agreement but said she feels the City owes the courtesy to hear from the employees and union representative. Mr. Brooks again strongly urged the Council to not enter into a public hearing format that has not been advertised. Councilmember Poppler agreed with Mr. Brooks. Councilmember Kennedy called for the question. On a voice

vote to stop debate, the motion passed with Councilmember Brewster voting “no”. On a voice vote, the substitute motion failed 4-7 with Councilmembers McDermott, Gaghen, Brewster and Mayor Tooley voting “yes” and Councilmembers Brown, Iverson, Kennedy, Poppler, Ohnstad, Jones and Larson voting “no”.

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

**3. AGREEMENT FOR ACCEPTANCE OF CHARITABLE GIFT of approximately 40 acres of donated land to be used as a community park and elementary school site, \$5,000 for title report, appraisal and miscellaneous documents. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Parks and Recreation Director Don Kearney said there were many people that worked to make this charitable gift a reality. He thanked Westward Ho, Inc. and their attorney Bill Cole, School District #2 Board and staff, Yellowstone County Commissioners and staff, Fischer & Associates, especially Sandy Fischer, and the City of Billings City Council, Recreation and Cemetery Board and staff. He noted that 10 of the proposed 40 acres can be used as an elementary school site. He said the County will deed approximately 3 acres currently surrounded by the property to the City as part of the agreement. Mr. Kearney said the proposed park is located in the general vicinity of 54<sup>th</sup> Street West and Colton Boulevard.

He said the potential uses for the area are a swimming pool, branch Library and a sports field. He noted there are several restrictions as to what may be placed on the property. There may be no sports complexes, skateparks, cell towers and any other City uses such as water treatment plants and fire stations. He said the development requirements include several resources including funding through the Capital Improvement Plan, forming a Special Improvement and Park Maintenance Districts within the 1-1/2 mile benefited area and grants, donations and other sources of revenue. Councilmember McDermott asked how much of the \$2.4 Million development costs would come from capital improvement dollars. Mr. Kearney said there would be a Special Improvement District formed to fund this and no General Fund dollars would be used. Councilmember McDermott asked if the property is located in the County. Mr. Kearney replied “yes”. She voiced concern as to why the County did not want the donated property. Mr. Kearney asked that the Council authorize the Mayor to execute the Cottonwood Park Charitable Gift and Park Development Agreement.

Councilmember Poppler moved for approval of the staff recommendation, seconded by Councilmember Kennedy. Councilmember Kennedy said, in response to Councilmember McDermott’s question, that the County realized that eventual development would surround that area and concluded it would best be part of the City for that eventuality. On a voice vote, the motion was unanimously approved.

NOTE: Mayor Tooley called for a 5-minute recess at 8:10 P.M. The Council Meeting was reconvened at 8:17 P.M.

**4. PUBLIC HEARING AND RESOLUTIONS 02-17921 and 02-17922 ANNEXING Yellowstone Club Estates, 1<sup>st</sup> and ~~4<sup>th</sup>~~ through 7<sup>th</sup> filing and eleven adjacent properties (Annex #02-14 and #02-15). Staff recommends approval. (Action:**



**approval or disapproval of staff recommendation.)**

Planning Director Ramona Mattix said the recommendation for approval is conditioned upon: 1) the sewer connection fees shall be reduced by \$350,000 and by any RSID fees given to the City, and 2) the City shall work with affected homeowners to determine the future of Byron Nelson Park. She said the subject area for both annexations contains 393 lots with the Yellowstone Club Estates and 11 lots outside Yellowstone Club Estates along Rimrock Road. She stated all the parcels are currently zoned Residential 9,600 and would remain so after annexation. Most of the developed parcels currently have City water service and a public sanitary sewer service funded by County RSID. Many of the properties have "Consent to Annexation" waivers, approximately 296 out of 404 or 73%. She noted this annexation complies with the requirements of the City's annexation policy, as it is in the Sphere of Influence, most parcels currently use City water and a community sewer system; it is continuous to the City limits on three sides and is greater than 10 acres in size. She noted that the City of Billings' Fire Department serves the area through the BUFSA. She briefly outlined the process that involved the annexation starting with a meeting between the Yellowstone Club Estates homeowners and the City to discuss annexation, the Resolution of Intent to Annex passed by the Council on September 23<sup>rd</sup>, a 20-day public comment period, and a public hearing that is being held tonight. She noted that if the annexations are approved the next Council action would be to act on the Ward Boundary extension on November 12<sup>th</sup>. Ms. Mattix said of nearly 800 letters sent out for public comment, 347 comments were received. She said 297 are from registered voters with 229 opposed, 68 approved, and 35 were not registered voters, 15 were repeat comments and 1 said "don't know". She said the total estimated annual revenue would be \$258,778.02.

Planning Staff Member Juliet Spalding said the annexation complies with the 1990 Comprehensive Plan and the West Billings Master Plan. She said it provides adequate housing for all income levels, retains and improves existing residential neighborhoods and develops new residential areas in an orderly and financially sound manner protecting against the encroachment of incompatible uses. She said it will curb urban sprawl and discourage leapfrog development. Ms. Spalding said it capitalizes on the use of existing public sewage systems and improves sewage systems in the areas not currently served by public systems. She said it reduces sprawl and development pressure on agricultural lands. She covered some of the frequently asked questions such as the costs for the wastewater construction. She said if connected to the current system it would be \$1,000 after credit from the City for purchase on the existing lines and transfer of RSID funds. She said the sewer line would be completed within a year of annexation with repairs to sewer lines, water lines and streets at no cost to landowners. Police service may decrease response time with City patrol cars frequenting the area more than County cars. She noted the Police Department will be adding 3 new officers to its force. She said the area is currently served by the City Fire Department and response time will likely not be affected. She noted that homeowners would no longer pay the BUFSA fees, thus decreasing their taxes by \$300 to \$500.

The public hearing was opened. ED RILEY, ACTING PRESIDENT OF YELLOWSTONE CLUB ESTATES, said that 73% of the voters do not favor the annexation at this time. He said the annexation is based on contiguity and this is minimal. He stated that the City split the annexations to avoid the "300-property law" and the waiver

of protest use is questionable. He noted that the sewer connection cost is prohibitive as are the higher taxes and fees that will be required. He said that City services such as Fire and Police have been unavailable for years. Mr. Riley noted that the present subdivision has good services, newly resurfaced streets and water and fire protection purchased from the City. Councilmember Brown asked if the waivers of protest are incorporated on the property titles. Mr. Riley said it is not on his deed and the waiver itself is illegible.

STERLING STARR, 3713 TOMMY ARMOUR CIRCLE, said the City has split the annexation into 2 parcels to avoid the Part 43 law requiring vote and waivers to be used. He strongly recommended that the City follow Part 43 of the annexation laws. He noted that the subdivision is only contiguous to the City because of a strip of land recently annexed. He asked the Council to delay the annexation.

SCOTT WILSON, 3816 BEN HOGAN LANE, said there was no evidence of a waiver on his title search. He said there are at best only 190 waivers and there are serious procedural problems with them. Some are illegible and not notarized. He said he is opposed to the annexation.

CHERI REYNOLDS, 3704 TOMMY ARMOUR CIRCLE, said the Yellowstone Club Estates invested \$4 Million in their infrastructure. She said they paid \$435,000 for the water trunk line from the City and are charged the same amount as City residents for their water. She said Yellowstone Club Estate owners pay twice what City residents pay for fire service through the BUFSA. She noted they pay the same school taxes as City residents. She said City funding has never supported the Yellowstone Club Estates. Ms. Reynolds said that Yellowstone Club Estates residents strongly support Billings through their time, talent and money contributions to many groups and organizations. She said the annexation is premature.

MARY LEVY, SAM SNEAD TRAIL, asked the Council to delay the annexation until City services are available to the area.

JOSEPH WHITE, NO ADDRESS GIVEN, said he is against all annexations. He said the City is in "bad shape" and doesn't know where most of its boundaries are and should stop all annexation until they do.

EARLENE DAVIS, 3329 JACK BURKE LANE, said that she disagrees with the City's presentation on several points. She said the YCE subdivision could not be characterized as available to low income residents. She said it is not consistent with the 1990 Yellowstone County Comprehensive Plan. She recommended that the Council delay the annexation.

There were no other speakers. The public hearing was closed. Councilmember Gaghen asked for clarification on what waivers are intended for. City Attorney Brent Brooks said it waives the right of the owner to protest the creation of Special Improvement Districts for the purposes of improvements. He noted that the waivers are not required to be signed or approved by the current owners nor do they need to be legible or notarized. He said the burden of proof would be on the challenger. He also said the waiver does not have to be listed on the deed as an easement would. Councilmember Gaghen asked if water service was the first step to an inevitable annexation. Ms. Mattix said that waivers were required at that point. Public Utilities Director Carl Christensen confirmed the condition for water service was that waivers be signed.

Councilmember Ohnstad moved for approval of Annexation #02-14, seconded by Councilmember McDermott. Councilmember Kennedy asked what ward that would be

placed in. Mr. Bauer replied "Ward IV". Councilmember Poppler said she is concerned about the reason for splitting the annexations. She asked if that was usual. Ms. Mattix said that annexations have been done in sections before. She said it was the quickest and easiest way to proceed with these particular annexations. She also noted that there were 290 waivers. Mr. Bauer added that timeliness was an issue. Councilmember Poppler referred to the discussions and agreements that were proposed with the Yellowstone Club Estates and asked how many people attended those sessions. Mr. Bauer said that more than 90 people attended the sessions and the consensus from them was that if the City was going to annex them that they would prefer the City do it when there would be a savings in costs for them. Councilmember Larson said he would vote against the annexation as he considers it a "forced annexation" and he had heard no positive comments tonight. On a voice vote, the motion passed 8-3 with Councilmembers McDermott, Gaghen, Brown, Brewster, Iverson, Ohnstad, Jones and Mayor Tooley voting "yes" and Councilmembers Kennedy, Poppler and Larson voting "no".

Councilmember Ohnstad moved for approval of Annexation #02-15, seconded by Councilmember McDermott. On a voice vote, the motion was passed 8-3 with Councilmembers McDermott, Gaghen, Brown, Brewster, Iverson, Ohnstad, Jones and Mayor Tooley voting "yes" and Councilmembers Kennedy, Poppler and Larson voting "no".

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #669: a zone change from Residential 9,600 to Residential 7,000 on Tracts 1 & 2, Rush Acreage Tracts Subdivision and Lots 1-3, Block 6, Rush Subdivision, 2<sup>nd</sup> filing and from Residential 9,600 to Residential Multi-Family-Restricted on Lots 5 and 6, Block 6, 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 the Council delayed this zone change on the September 9<sup>th</sup> meeting to October 28<sup>th</sup>, sending it back to the Zoning Commission for review and a recommendation with the new proposed zoning districts. The original application changed all of the parcels to Residential Multi-Family Restricted however owners of five lots agreed to a zone change of their lots to Residential 7,000 which created a buffer and satisfied the concerns of the neighbors. The Zoning Commission held a public hearing on October 1<sup>st</sup> on the revised application and recommended unanimous approval. He noted that the zone change meets the 12 criteria set out in Montana Code Annotated. He said the Zoning Commission recommends approval to the Council for this zone change located on the northwest and southwest corners of Shiloh Road and Parkhill Drive.

The public hearing was opened. RICK LEUTHOLD, ENGINEERING, INC., 1001 SOUTH 24<sup>TH</sup> STREET WEST, requested the Council's support for approval of the zone change.

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

**6. PUBLIC HEARING AND RESOLUTION 02-17923 ordering the improvements identified in W. O. #02-14: 2002 School Route Improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Public Works Director Dave Mumford said the City and the North Park Task Force along with the majority of the property owners have requested the improvements consisting of sidewalks and ADA ramps along both sides of North 22<sup>nd</sup> Street between 9<sup>th</sup> Avenue North and 11<sup>th</sup> Avenue North and along the north side of the 1000 block of St. Johns Avenue. The proposed project would utilize federal CTEP funds that reduces the amount of construction costs an individual property owner must pay. He noted that 50% of the construction cost will be assessed to the property owners. Councilmember McDermott asked if Community Development Block Grant Funds would be available to help certain low-income persons with these assessments. Mr. Mumford replied "yes". He said the project is scheduled to start in the Spring of 2003. Councilmember Kennedy noted that the School Board was involved in this process.

The public hearing was opened. DONNA BENNETT, 1015 N. 22<sup>ND</sup> STREET, said she is not for or against the plan but asked if it was possible that the sidewalks could be placed on only one side of the street. She is concerned about trees that will be removed for some sidewalks to be constructed. She noted that there are a lot of elderly people in the affected area and that not all of the property owners were notified. She asked if a private contractor can do the work rather than the City. She asked how many children that use the bus service must there be to require the sidewalk project. She said there are less than a dozen children using the bus. She asked if the project will extend east on 11<sup>th</sup> Street.

BEVERLY HARDT, 1022 N. 22<sup>ND</sup> STREET, asked how many children are involved in using the potential sidewalks. She agreed with Ms. Bennett that the loss of the trees on several of the streets would be unfortunate and replacement trees would be small. She said there are many low-income people in this area and she is concerned with how they will be able to pay for the improvements. She said the North Park Task Force did not speak to her about this proposed project. She said the tax dollars could be put to better use with lights in the streets and alleys.

There were no other speakers. The public hearing was closed. Councilmember Larson moved for approval of the staff recommendation, seconded by Councilmember Kennedy. Mayor Tooley asked that some of the concerns of the speakers be addressed. Mr. Mumford said the sidewalk project can be reviewed regarding the tree issue and sidewalks only on one side. Councilmember McDermott noted that North 22<sup>nd</sup> Street is a collector street and the option of sidewalk on one side may not be appropriate. Mr. Mumford said there is no bus service and that is why the sidewalk project was proposed. It is a walking route for children walking to school. Councilmember McDermott noted that there is a bus that comes through the neighborhood, but it is picking up children whose parents pay for this bus service. Mr. Mumford said that the property owners were notified of the project through mailings from addresses obtained from the County property tax lists. Mr. Mumford said it would be done again once the design portion starts. He noted there are several trees that need to be removed because they won't survive much longer. Mr. Mumford said that private contractors are used on all City construction. Councilmember Iverson asked if the property owners could contract the sidewalk individually. Mr. Mumford

said yes, but the cost would be more than the assessment which will be spread out over 12 years. He noted that the action this evening is requesting permission to start the project. Councilmember McDermott noted there have been instances where the City has cooperated with the neighbors in saving certain trees slated to be cut down for a sidewalk project. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND SPECIAL REVIEW #728: A special review to allow the operation of a powder coating business in an existing building in a Controlled Industrial zone on Lot 9A, Block 1, Gabel Subdivision, 1<sup>st</sup> filing. The subject property is located at 3205 Hesper Road. Beverly & Russell Clark, owners. Pierre Lave, Bosco Motorsports, agent. Planning Department and the Zoning Commission recommend conditional approval. (Action: approval or disapproval of Planning Department and Zoning Commission recommendation.)**

Planning Staff Member Gail Kenson said the special review is for the operation of a powder coating business to operate in a Controlled Industrial zone. The location of the proposed business is on South 32<sup>nd</sup> Street West. She said the Zoning Commission recommends conditional approval to mitigate any impacts that this business may have on the nearby properties. The conditions are: 1) all steps of the powder coating operation including any material preparation such as sandblasting be conducted either inside the building or in an enclosed temporary shelter outside, and 2) any area used for staging or storing materials outside the building shall be kept in a neat and orderly fashion. She noted that an alternate to this condition would be a sight obscuring fence around any outdoor storage or staging area.

The public hearing was opened. RUSSELL CLARK, 3134 BEN HOGAN LANE, said he is the owner of the property and is in favor of the change. He said he sees no problems to the location of this type of business because of the surrounding businesses, such as a warehouse and manufacturing. He said the tenants have agreed to keep the area clean. He asked the Council for their approval.

Councilmember Brown asked how many employees the business would have. Mr. Clark said he thought there were four and added that this business is environmentally friendly. It is an electrostatic process and an innovative way to apply coatings to many different surfaces.

PIERRE LAVE, AVENUE B, said he is the owner of the proposed business. He said there are two employees at present and two more waiting for the approval of the special review to start work. He asked for the Council's approval.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the Planning Department and Zoning Commission recommendation of conditional approval, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND SPECIAL REVIEW #729: A special review to allow a child day care center in a residential zone on Lot 2, Block 28, Harvest Subdivision, 3rd filing. The subject property is located at 3225 Rosebud Drive. Billings Family Worship Center-Church of God, owner. Donald Hanser and Engineering, Inc., agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Bruce McCandless said the Zoning Commission has recommended conditional approval to operate a day care in a residential zone. Day cares require special review approval before operation in residential areas. He said the property is located at 3225 Rosebud Drive in the Church of God building. He noted the existing zoning is Planned Development and the Development Agreement specified that this property may be used for church purposes. The surrounding land uses are single-family residential, multi-family residential and commercial. He said the Zoning Commission recommends conditional approval to mitigate impacts such as noise and dust to the surrounding area. The conditions are:

1. The final site plan, including circulation and parking, must be reviewed and approved by the City Planning Department and Engineering Division.
2. Meet all City requirements for parking, including installing asphaltic concrete on all proposed drive, parking and turnaround areas.
3. Create a minimum 5' bufferyard along the S. 32<sup>nd</sup> Street West frontage that abuts the newly paved parking area, including planting and maintaining at least four (4) deciduous trees. The hedge along the west border of the property must be maintained the entire time that the property is used for a child day care center.
4. Fence any outdoor play areas at least four (4) feet in height, using traditional fence materials such as cedar, chain link or vinyl.

The public hearing was opened. RICK LEUTHOLD, ENGINEERING, INC., said he is representing the owner Don Hanser. Because this is a Planned Development area the notification process was substantially larger than is typically required. He said there was no public comment at the Zoning Commission public hearing. He asked for the Council's approval of the special review.

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

**9. PRELIMINARY PLAT of Appleby Subdivision, located at 428 Milton Road. Planning Board recommends conditional approval of preliminary plat and acceptance of findings of fact. (Action: approval or disapproval of Planning Board recommendation.)**

Planning Staff Member Bruce McCandless said this is a preliminary plat application for a minor subdivision located at 428 Milton Road. The area of the lots is approximately 40,000 square feet and would be split into two lots. The property is partially developed with multi-family residences including the Rambler Apartments on one lot and a vacant lot on the other. He said the Planning Board recommends conditional approval. The recommended conditions are:

1. A five foot (5') easement along the north property line, adjacent to Milton Lane, will be created to accommodate utilities and fire hydrant(s).
2. Subdivider will add a statement to the SIA that when Milton Road is

improved/reconstructed, the existing improvements in the right of way will be removed at no cost to the City.

3. Minor wording changes may be made in the final documents upon request of the Planning or Public Works Departments to clarify the documents and bring them into standard, acceptable format. The changes are not intended to alter the intent or extent of the documents.
4. Subdivider shall comply with all applicable federal, state and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations.

The Yellowstone County Board of Planning recommends the proposed Findings of Fact for the Appleby Subdivision. The Montana Subdivision and Platting Act requires that the local government assess the subdivision's effect on the primary review criteria specified in MCA 76-3-608. Likewise the City of Billings Subdivision Regulations require that subdivisions be reviewed under the provisions of BMCC 23-304 (c).

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

1. Effect on agriculture

There will be no effect on agriculture. The property is within the urbanized area of the City of Billings and is partially developed. The vacant property is not used for agricultural purposes.

2. Effect on local services

- a. Utilities – The Heights Water District provides water to the property and it will be extended to the vacant lot according to the District's rules. Sanitary sewer is available and the property has participated in trunk and lateral SIDs. New connections will be established at the time of lot development. Stormwater will be detained on-site and may eventually discharge to stormwater sewers that may be built in the future. The property will participate in any SIDs that are created to pay for stormwater management systems.
- b. Solid waste – The City of Billings will collect and dispose of solid waste that is generated in the subdivision. The City's landfill has adequate capacity for this waste.
- c. Streets - Milton Road provides immediate access to the property. The street may be improved in the future by using CDBG funds and an SID. The owners of the existing apartments have placed some improvements in the right of way that will have to be removed when the street is reconstructed. The right of way is 60' wide and the planned street would be 49' with 5' sidewalks on each side. Since the right of way will be occupied entirely by street improvements, these owners should reserve an easement behind the right of way so that utilities, fire hydrants,

signs, mailboxes, etc. can be installed without encroaching on the sidewalk or street. Lake Elmo Road at its intersection with Milton Road will be improved in the future as part of a three phase project. No immediate street improvements are required and the subdivider will waive his right to protest street SIDs.

- d. Emergency services – Billings Police and Fire Departments will respond to emergency situations in this subdivision. The nearest fire station is Station #6 located at St. Andrews and Wicks Lane and is approximately 1 mile from this property. Police response will depend upon officer availability and location when a call for service is placed. AMR provides medical care and transport and is located approximately 3 miles away.
- e. Schools – The subdivision is in School District 2. Bench Elementary School is located across Milton Road from this property. While the school is at capacity, the District has no concerns about the property split or development.
- f. Parks and recreation – This subdivision should have little impact on parks or recreation services. The lot size will limit development to no more than four (4) dwelling units.
- g. MET Transit – This subdivision is served by MET buses that use Main Street and Lake Elmo Road for at least two routes. Both streets are located approximately one block from this subdivision.

### 3. Effect on the natural environment

There should be little impact on the natural environment because only four additional housing units can be developed and the property is already within the urbanized area.

### 4. Effect on wildlife and wildlife habitat

There will be little or no impact on wildlife or wildlife habitat because this and surrounding property contain many housing units and do not provide high quality wildlife habitat. There are no known endangered or threatened species on the property.

### 5. Effect on the public health, safety and welfare

There are no known health or safety hazards on the property. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties.

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

An Environmental Assessment was not required for this subdivision because it is a minor subdivision and has not been previously subdivided.



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

1. Comprehensive Plan:

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

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

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

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Main Street is an arterial street and Lake Elmo Road is a collector. Improving Lake Elmo Road is a Transportation Plan project.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. Lake Elmo Road is a primary district connector but this subdivision won't require any improvements to that street or to Milton.

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

This proposed subdivision meets the requirements of the Montana Subdivision and Platting Act and the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

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

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

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

The property is in the Multi-family Residential zoning district. The present development appears to conform to the zoning and future development will conform.

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

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

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

All lots will have access to Milton Road which is a public street.

**CONCLUSIONS OF FINDING OF FACT**

- The overall conclusion of the Findings of Fact is that the proposed Appleby Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision will impact local services and cause some increase in demand for those services. However, when the vacant parcel is developed its taxable value will increase and the owner(s) will pay property taxes and fees that should help to support those services.
- The proposed subdivision conforms to several goals and policies of the 1990 Yellowstone County Comprehensive Plan and doesn't conflict with the Transportation or BikeNet Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, sanitary requirements and provides legal and physical access to each parcel.

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

**Council Initiatives**

**COUNCILMEMBER BROWN:** Asked staff to look into a situation at the end of Moore Lane where it meets Amend Park. He said there is an access that has been opened and is causing dirt to be tracked onto the City streets in the area.

MINUTES: 10/28/02

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 9:45 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Susan Shuhler, Deputy City Clerk