

CITY OF BILLINGS

**CITY OF BILLINGS MISSION STATEMENT:
TO DELIVER COST EFFECTIVE PUBLIC SERVICES
THAT ENHANCE OUR COMMUNITY'S QUALITY OF LIFE**

AGENDA

COUNCIL CHAMBERS

February 28, 2005

6:30 P.M.

CALL TO ORDER – Mayor Tooley

PLEDGE OF ALLEGIANCE-- Mayor Tooley

INVOCATION – Councilmember Ed Ulledalen

ROLL CALL

MINUTES – February 14, 2005

COURTESIES –

PROCLAMATIONS – Mayor Tooley.

BOARD & COMMISSION REPORTS – Aviation & Transit Board

ADMINISTRATOR REPORTS – Kristoff Bauer

LEGISLATIVE REPORT – Kristoff Bauer

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1, #8, #12 and #13 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

CONSENT AGENDA:

1. A. Mayor's Appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Lynn Davis	EMS Commission	01/01/05	12/31/08
2.	Charles Hamway	EMS Commission	01/01/05	12/31/08

[\(Corresponding Staff Memo A\)](#)

B. Bid Awards:

(1) Detroit Diesel Engine Overhauls for 6V92, Series 40 and Series 50 Diesel Engines. (Opened 2/8/05; Delayed from 2/14/05). Recommend Interstate Detroit Diesel, Schedules 1-3, \$64,231.50.

[\(Corresponding Staff Memo B1\)](#)

(2) Three (3) Year Mowing Contract for Billings Logan International Airport. (Opened 2/8/05; Delayed from 2/14/05). Recommend Kofflers Lawn and Landscape, \$71,398.32.

[\(Corresponding Staff Memo B2\)](#)

(3) One New Current Model 2005 800 KW Skid-Mounted Diesel Generator Set and a 2,000 Gallon Above-Ground Storage Tank with 250-Gallon Base-Mounted Diesel Day Tank. (Opened 2/22/05). Recommend delaying award to 3/14/05.

[\(Corresponding Staff Memo B3\)](#)

(4) Rose Park Recreation Building. (Opened 2/15/05). Recommend Rocky Mountain Builders, \$89,300.00.

[\(Corresponding Staff Memo B4\)](#)

C. W.O. 04-36: Briarwood Sanitary Sewer Main Extension, Professional Services Contract for Engineering and Right-of-Way Services, Morrison-Maierle, Inc., \$496,860.00.

[\(Corresponding Staff Memo C\)](#)

D. Additional Software License Agreement with New World Systems to provide in-car Vehicle Accident Report Writing., \$81,456.00.

[\(Corresponding Staff Memo D\)](#)

E. HOME Affordable Housing Fund allocation to Rimrock Foundation to rehabilitate the second half of the sober living house at 1721 8th Avenue North, \$20,902.00, 0% interest, deferred loan.

[\(Corresponding Staff Memo E\)](#)

F. HOME/CHDO Fund allocation for *IRMA House II* project at 502 South 33rd St., \$98,966.00.

[\(Corresponding Staff Memo F\)](#)

G. Approval of Grant Application submission/receipt to U.S. Department of Justice for a Technology Grant for an indoor firing range, \$197,328.00.

[\(Corresponding Staff Memo G\)](#)

H. Second/Final Reading Ordinance for Zone Change #750: a zone change from Residential-7000 to Residential Multi-Family Restricted and Neighborhood Commercial on Tract B2-A of C/S 1056 Amended, generally located at the southeast corner of the intersection of Wicks Lane and Bench Boulevard in the proposed King Place Subdivision. King Place LLC, Richard Dorn, owner, Engineering, Inc., agent.

Zoning Commission recommends approval and adoption of the determinations of the 12 criteria.

[\(Corresponding Staff Memo H\)](#)

I. Preliminary Plat of Rimrock Auto Subdivision, generally located on the southwest corner of Holiday Avenue and S. 12th Street West. Approval of the requested variance, conditional approval of the preliminary plat and adoption of the findings of fact.
[\(Corresponding Staff Memo I\)](#)

J. Final Plat of Cottonwood Grove Subdivision, 1st Filing.
[\(Corresponding Staff Memo J\)](#)

K. Final Plat of Interstate Subdivision.
[\(Corresponding Staff Memo K\)](#)

L. Final Plat of The Village Subdivision.
[\(Corresponding Staff Memo L\)](#)

M. Final Plat of Village West Subdivision, 2nd Filing.
[\(Corresponding Staff Memo M\)](#)

N. Bills and Payroll.
(1) January 28, 2005
[\(Corresponding Staff Memo N1\)](#)

(2) February 4, 2005
[\(Corresponding Staff Memo N2\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION disposing of City owned property described as Lots 44-46, Block 7, Amended Westside Addition and located at the southwest corner of 6th Avenue North and Division Street. Staff recommends approval of the resolution, rejecting all bids received on 2/15/05 and re-advertising the call for sealed bids for the sale of the property. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 2\)](#)

3. PUBLIC HEARING REGARDING MET TRANSIT OPERATORS CARRYING CASH/CHANGE BAGS. Staff recommends that MET Operators no longer carry cash/change bags to make change for its passengers and that cash fares and pass sales will be for exact change only, payable by check or cash. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 3\)](#)

4. **PUBLIC HEARING AND RESOLUTION** vacating the alley between Lots 1 and 28, Block 1, Country Club Heights Subdivision. Staff recommends approval of the resolution and acceptance of the dedication of new right-of-way as shown on the amended subdivision plat. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 4\)](#)

5. **PUBLIC HEARING AND RESOLUTION** de-annexing a recently annexed parcel described as T1N-R26E-S27: S2N2SW4NE4NE4 located at 637 Lincoln Lane, Bill Dunlap, petitioner. (Annex #04-14). Staff recommends denial of the de-annexation request. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 5\)](#)

6. **PUBLIC HEARING AND RESOLUTION** annexing five (5) wholly surrounded properties along South Billings Boulevard described as:

- Tract 1, Popelka Industrial Tracts Subdivision, First Filing
- Tract A, C/S 289 in Sugar Subdivision, Lot 20
- Tract A, C/S 289 in Sugar Subdivision, Lot 19
- Tract 19B-1, C/S 289 in Sugar Subdivision, Lot 19
- Tract 19B-2, C/S 289 in Sugar Subdivision, Lot 19.

Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 6\)](#)

7. **RESOLUTION OF INTENT TO CREATE SID 1373:** a special improvement district for public improvements along South Billings Boulevard between King Avenue and Underpass Avenue and consisting of curb, gutter, sidewalk and street improvements. Staff recommends approval of the resolution and setting a public hearing date for 3/28/05. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 7\)](#)

8. **PUBLIC HEARING AND SPECIAL REVIEW #775:** a special review to permit a 6-plex apartment building in a Residential 6000 zone described as Lots 25-28, Block 3, Billings Heights Subdivision and located at 740 Avenue D. Gordon Bernhart, owner and agent. Zoning Commission is recommending conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 8\)](#)

9. **PUBLIC HEARING AND SPECIAL REVIEW #776:** a special review to permit the sale of alcohol (full beverage license) without gaming in a Highway Commercial zone described as Lot 10A1A1, Hogan Homestead Subdivision and located at 2010 Overland Avenue for the existing Denny's Restaurant. William O Ryan, owner; Tim Ballou, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 9\)](#)

10. **PUBLIC HEARING AND SPECIAL REVIEW #777:** a special review to permit the sale of alcohol (full beverage license) with gaming in a Community Commercial zone

described as Lots 8-12, Block 2, Arnold Subdivision, 1st Amended and located at 2248 Grand Avenue for an existing structure behind the Rainbow Fly Shop. Nash Brothers, owners; Roger Tuhy, agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 10\)](#)

11. **RESOLUTION ADOPTING THE CAPITAL IMPROVEMENTS PLAN (CIP).** Public hearing held 2/14/04. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 11\)](#)

12. **APPROVAL OF THE 2005 COUNCIL GOALS.** Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 12\)](#)

13. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

COUNCIL INITIATIVES

ADJOURN

A



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, FEBRUARY 28, 2005

SUBJECT: Boards & Commissions –Appointments
DEPARTMENT: City Administrator's Office
PRESENTED BY: wynnette Maddox, Administration

PROBLEM/ISSUE STATEMENT: Confirmation of appointments for Boards and Commission positions that are either vacant or up for re-appointment. Term expiration dates on these vacancies are December 31, 2004 and the positions must be filled.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tooley recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Lynn Davis	EMS Commission	01/01/05	12/31/08
2.	Charles Hamway	EMS Commission	01/01/05	12/31/08

Approved By: City Administrator ____ City Attorney ____

Attachments

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, February 28, 2005

TITLE: Award of MET Transit Engine Overhauls Bid

DEPARTMENT: Aviation/Transit Department

PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation/Transit

PROBLEM/ISSUE STATEMENT: To accomplish these overhauls in a timely manner, MET Transit annually solicits bids from engine repair vendors to perform mechanical and electronic engine overhauls on the three different types of Transit bus engines. Bids are solicited to do overhauls on a 6V-92 DDEC II Detroit Diesel Engine (Schedule 1), a Series 50 Detroit Diesel Engine (Schedule 2), and a Series 40 Detroit Diesel Engine (Schedule 3). An agreement is awarded on an annual basis, due to the vendor's inability to forecast parts and labor cost increases for a period exceeding one year. The annual agreement also enables the MET to update any agreement specifications for changes in emission standards.

Staff advertised for sealed bids on January 27 and February 3, 2005. Bid specifications were delivered to five vendors: Interstate Detroit Diesel, Billings Truck Center, Rocky Mountain Cummins, Northwest Peterbilt Ford, and TriState Equipment. Bids were opened on February 8, 2005 and Interstate Detroit Diesel was the only vendor to respond. Interstate Detroit Diesel is the only vendor in Billings that is factory trained by Detroit Diesel, and has the diagnostic equipment available to overhaul the Detroit engines found on the Transit buses. Staff has reviewed the bid and finds it to be acceptable.

<u>Vendor</u>	<u>Schedule 1</u>	<u>Schedule 2</u>	<u>Schedule 3</u>
Interstate Detroit Diesel	\$29,043.00	\$22,110.00	\$13,078.50
ESTIMATE	\$26,650.00	\$23,000.00	\$12,100.00

FINANCIAL IMPACT: The engine overhauls have been included and approved in the FY 04/05 operating budget, and will also be included in the FY 05/06 proposed budget as well. At this time staff is not aware of any bus engines in need of an overhaul; however, this bid award will allow MET the ability to immediately treat with any overhauls as the need arises.

RECOMMENDATION

Staff recommends that Council approve the bid submitted from Interstate Detroit Diesel, and authorize the Mayor to execute the Agreement.

Approved By: **City Administrator** ____ **City Attorney** ____

ATTACHMENT

A – Agreement for Detroit Diesel Engine Overhauls

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, February 28, 2005

TITLE: Approval of Award of the Three Year Mowing Service Agreement
DEPARTMENT: Aviation and Transit Department
PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: Since 1993, the Airport has employed a contractor to provide the lawn mowing and trimming of the Airport grounds due to the expansion of the landscaped areas, and unavailable staff and equipment to undertake the ongoing maintenance of these areas. We now have approximately 15 acres of lawn areas located on Airport property including the Operations Building, Airport Business Park, and Terminal Building area. These areas will be mowed once a week, along with the trimming of all lawn edges, sidewalks, and landscaped areas. The Agreement also requires the clippings to be swept up and disposed of. The term of this Agreement will be from April 2005 until October 2007. This project was advertised in the *Billings Times* and vendors were contacted. We received the following bids for this work:

<u>CONTRACTOR</u>	<u>BID AMOUNT</u>
Kofflers Lawn and Landscape	\$ 71,398.32
4 Seasons Lot Service	\$ 79,888.00
Hodgson/Wirth Maintenance Inc.	\$ 80,160.00
The Lawn Ranger	\$121,000.43
ESTIMATE	\$ 70,000.00

FINANCIAL IMPACT: The total cost of this Three Year Mowing Service Agreement is \$71,398.32. Sufficient funds have been budgeted to cover the cost of this work for the balance of 2005. Additional budget authority will be placed in the subsequent fiscal year budgets.

RECOMMENDATION

Staff recommends that Council award the Three Year Mowing Service Agreement to the low bidder Kofflers Lawn and Landscape, in the amount of \$71,398.32.

Approved By: City Administrator City Attorney

B3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 28, 2005

TITLE: Award for Backup Diesel Generator at Wastewater Treatment Plant
DEPARTMENT: Public Works
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT:

In order to provide a more reliable source of backup power to the wastewater treatment plant a backup diesel powered generator will be permanently installed at the plant. Bids will be opened on February 22, 2005.

RECOMMENDATION

Staff recommends that Council delay the bid award until March 14, 2005.

Approved By: **City Administrator** **City Attorney**

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 28, 2005

TITLE: Rose Park Building Replacement, Award of Bids

DEPARTMENT: Parks, Recreation, and Public Lands Department

PRESENTED BY: Don Kearney, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: This project is designed to construct a building to provide public restrooms replacing the restrooms and multi-use building at Rose Park that was destroyed by fire in September of 2003. The original design included a 3 season large group shelter along with the public restrooms. Bids for the project were opened on November 23, 2004, and were substantially higher than the funds available. At the January 10, 2005 City Council meeting all bids received were rejected. The project was restructured to eliminate the 3 season large group shelter and to just include the public restrooms. The design still incorporates a modified grain bin painted with bright colors. The toilets will have stainless steel low maintenance fixtures and will be larger in size than the previous restrooms to better provide for the levels of use at Rose Park. Bids were received for the restructured project at the regular bid opening, at 2:00 p.m., on February 15th, 2005, at City Hall.

FINANCIAL IMPACT: Funding for the project is available from the Property Reserve Fund, insurance reimbursements and CIP funds identified for this building and approved in the budget.

Location of Work: Rose Park at 21st Street West and Avenue D.

Funding Sources: Insurance Reimbursement (\$60,865), Approved CIP (\$45,317.20), Property Reserve Fund (\$25,000).

Approved Dollar Amount for Project	\$131,182.20
Spent to date	\$ 9,612.66
Architecture and Engineering	\$ 12,000.00
Funding available for Construction	\$109,569.54

The base bid is \$88,000 and the bid for Additive Alternate 3 – a heavy duty drinking fountain at the entrance – is \$1,300. The total bid of \$89,300 received from **Rocky Mountain Builders**, of Billings, Montana, is recommended as the best and lowest bid received. The amount bid is within the funds available for the project.

RECOMMENDATION

Staff recommends that Council accept the low bid received from Rocky Mountain Builders, Billings, Montana, for the amount of \$89,300 and approve the contract for the building construction project.

Approved By: City Administrator _____ **City Attorney** _____

ATTACHMENTS:

A. Bid Tabulation, and B. Building Site Layout and Site Plan

[\(Back to Consent Agenda\)](#)

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, February 28, 2005

TITLE: W.O. 04-36 – Briarwood Sanitary Sewer Main Extension, Contract for Professional Engineering and Right-of-Way Services

DEPARTMENT: Public Works Department – Engineering Division

PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The Briarwood Wastewater Treatment Facility experiences many operational problems handling waste, and a sanitary sewer main will be extended to Briarwood to replace the existing plant. Staff requested the services of an engineering firm to provide design and right-of-way acquisition services for the project, and Morrison-Maierle, Inc. was selected through the RFP process.

ALTERNATIVES ANALYZED:

- Award the Contract for Professional Services to Morrison-Maierle, Inc. (Estimated design and right-of-way acquisition completion date of March 2006)
- Perform the design and right-of-way acquisition in-house. (Unknown completion date)

FINANCIAL IMPACT: The cost of design and right-of-way acquisition services is \$496,860. The project funding (for design, right-of-way, and construction) is as follows:

<u>CIP Project PWB1</u>	
FY 2005	\$ 600,000
<u>FY 2006</u>	<u>\$3,654,000</u>
Total	\$4,254,000

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute a Contract for Professional Services with Morrison-Maierle, Inc. for \$496,860.

Approved By: **City Administrator** **City Attorney**

ATTACHMENT

- A. Draft Contract for Professional Engineering and Right-of-Way Services

INTRODUCTION

At the time Briarwood was annexed, it was known that the on-site wastewater treatment facility (WWTF) had operational problems. Staff analyzed alternatives to handle waste flows and determined that merely replacing the existing facility solved the immediate problem, but left several important issues unanswered. First, plant replacement provided no opportunity to serve the Cedar Park Subdivision and did not allow for future growth along State Route 476 (Blue Creek Road). Second, the Briarwood Wastewater Plant requires an operator to travel to and from the main plant to Briarwood on a regular basis. Third, replacing the existing plant would not provide any redundancy of this critical facility such that any failure would be a critical one. Therefore, the decision was made to extend a sanitary sewer main from the South Billings Boulevard area to Briarwood to replace the plant.

PROCEDURAL HISTORY

Completed Items

- November 11, November 18, and November 26, 2004 – RFP advertisement dates
- December 10, 2004 – Proposals received by Engineering Division
- January 10, 2005 – Selection committee meeting
- January 26, 2005 – Interviews with short listed firms
- February 28, 2005 – Award of Contract for Professional Services

Future Items

- April 2005 – Design Study completion (with route and construction method chosen)
- April 2005 – Right-of-way acquisition tasks begin
- September 2005 – Preliminary Design completed
- March 2006 – Final Design completed
- May 2006 – Construction contract award and construction begins
- November 2006 – Construction complete

BACKGROUND

The purpose of this project is to connect a sanitary sewer main to existing facilities in the area of Riverfront Park and South Billings Boulevard and extend the new sewer main to the Briarwood waste treatment plant. A soft surface trail, both for maintenance access and for recreation, will be designed to run along the sewer main route, to the extent feasible.

The consultant will evaluate several alternative means for crossing the Yellowstone River (siphon, gravity, lift station, or bridge appurtenance), several methods for constructing the river crossing (open cut, bore and jack or directional drilling), and several ways to connect to the existing sewer infrastructure (force main or gravity). The consultant will also investigate including a dry water main in the new sewer crossing of the Yellowstone, and, if feasible, include it in the design. The salvage or demolition of the existing Briarwood waste treatment plant will be included in the design scope.

The project is to be financed using wastewater capital funding from the sale of revenue bonds. The budgeted amount for this project, including engineering, right-of-way acquisition, and construction

is \$600,000 in FY 2005 and \$3,654,000 in FY 2006. It is expected that the consultant will begin work on preliminary tasks immediately upon contract signing and have right-of-way and design tasks completed in order to receive construction bids by May 1, 2006.

ALTERNATIVES ANALYSIS

The consultant selection committee comprised of Vern Heisler of Public Works, Susan Stanley of Public Works-Wastewater Treatment, Scott Emerick of Public Works-Utilities, Nicholas Bailey of the Engineering Division, Travis Harris of the Engineering Division, and Janice Munsell of the Blue Creek Community Council reviewed the proposals submitted.

Proposals to provide the requested services were received from Engineering, Inc., HKM Engineering, Inc.; Interstate Engineering, Inc.; Kadrmas, Lee & Jackson, Inc.; Montana Engineering & Administration, LLC; and Morrison-Maierle, Inc. Each of the proposals were reviewed by the selection committee members (seven members total) and scored in the following categories: qualifications and prior experience (25 points available), key personnel (20 points available), project management and past performance (20 points available), consultant location and business organization (10 points available), and project schedule (20 points available).

Each proposal's scores were summed to determine an overall score for each firm. Based on each firm's score, the committee members ranked the proposing firms from first to sixth place. Following the reviews, the committee selected the top three firms (Engineering, Inc., HKM Engineering, Inc. and Morrison-Maierle, Inc.) for interviews. Morrison-Maierle, Inc. was chosen in a close vote (over second-place Engineering, Inc.) after the interviews were completed. Engineering staff then initiated negotiations with Morrison-Maierle, Inc. for a Contract for Professional Services for design study, preliminary design, final design, and right-of-way acquisition services for this project.

Costs of the right-of-way parcels, construction and construction administration are not included in this contract. Estimated cost for the right-of-way parcels is \$10,000 per acre, and approximately 15 acres are anticipated to be acquired. The construction cost is estimated to be approximately \$3.2 Million. Historically, construction administration fees are 10-15% of construction costs. Construction administration fees are outside the scope of this contract.

Staff is recommending that Council approve the contract that has been prepared. If approved, it is anticipated that construction of the project would be completed by November 2006.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute a Contract for Professional Services with Morrison-Maierle, Inc. for \$496,860.

ATTACHMENT

A. Contract for Professional Engineering Services

DRAFT

~~Contract for Professional Engineering and Right of Way Acquisition Services~~

W.O. 04-36, Briarwood Sanitary Sewer Main Extension

In consideration of the mutual promises herein, City of Billings and Morrison-Maierle, Inc. agree as follows. This Contract consists of:

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 11 Sections of General Provisions;

Appendix A consisting of 5 pages (Basic Services of Contractor);

Appendix B consisting of 1 page (Methods and Times of Payment);

Appendix C consisting of 1 page (Additional Services of Contractor);

Appendix D consisting of ____ pages (Schedule of Professional Fees);

Appendix E consisting of 1 page (Project Schedule);

Appendix F consisting of (Certificate(s) of Insurance); and

PART I
SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means Morrison-Maierle, Inc. (MMI).

Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Contractor in accordance with Appendix B and incorporated herein by reference for services actually performed under this Contract.
- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.

- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31, 2006.

Section 4. Compensation; Method of Payment.

- A. Subject to the Contractor's satisfactory performance, Billings shall pay the Contractor no more than Four hundred ninety-six thousand, eight hundred and sixty and 00/100 dollars (\$496,860) in accordance with this Section.
- B. Billings shall pay the Contractor in accordance with the progress payment schedule attached hereto as Appendix B and incorporated herein by reference.
- C. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.
- D. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- E. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

The Contractor's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

Section 6. Duties Upon Termination

- A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.
- B. If the Contractor's services are terminated for cause, Billings shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed ninety percent (90%) of the total compensation allowable under Section 4 of this Part. Any

finished or unfinished documents or materials prepared by the Contractor under this Contract shall become the property of Billings at its option.

- C. If the Contractor receives payments exceeding the amount to which it is entitled under Subsections A or B of this Section, he shall remit the excess to the Administrator within 30 days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this Section until the Contractor has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Contractor's services are terminated for whatever reason the Contractor shall not claim any compensation under this Contract, other than that allowed under this Section.
- F. If a final audit has not been performed before the Contractor's services are terminated, Billings may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Contractor's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:
 - 1. Workers' compensation and employer's liability coverage as required by Montana law.
 - 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
 - 3. Commercial automobile liability -- \$500,000 per accident.
 - 4. Professional liability in the amount of \$1,000,000.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

Unless otherwise allowed by this Contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this Contract shall give Billings the right immediately to terminate this Contract without any liability for Work performed.

Section 9. Ownership; Publication, Reproduction and Use of Material.

- A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this Contract shall be the property of Billings, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. Exclusive rights shall not be

attributed to portions of such materials presently in the public domain or which are not subject to copyright.

- B. Equipment purchased by the Contractor with Contract funds shall be the sole property of Billings, marked and inventoried as such with a copy of the inventory forwarded to Billings.
- C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will not hold Contractor liable for any damages resulting from Billings's reuse of work products for an unintended purpose. Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Contractor's or subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

Section 10. Notices.

Any notice required pertaining to the subject matter of this Contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Billings: City Engineer (Vern Heisler, P.E.)
City of Billings
Department Public Works
510 North Broadway – 4th Floor
Billings, Montana 59101 FAX: (406) 657-8252

Contractor: Carl Anderson, P.E., Office Manager
Morrison-Maierle, Inc.
2020 Grand Ave.
Billings, MT 59102 FAX: (406) 656-3432

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or 5 days after proof of proper posting.

Section 11. Contract Budget.

In connection with its performance under this Contract, the Contractor shall not make expenditures other than as provided in line items in the Contract budget.

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
 - 1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
 - 2. Strikes or Work stoppages.

3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

The Contractor shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

In the event that any funding source for this Contract should impose additional requirements upon Billings for the use of those funds, the Contractor agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings.

Section 15. Subcontracts.

The Contractor may enter into subcontracts for the purchase of goods and services necessary for the performance of this Contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

PART II

GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

The Contractor shall perform its obligations hereunder as an independent Contractor of Billings. Billings may administer the Contract and monitor the Contractor's compliance with its obligations hereunder. Billings shall not supervise or direct the Contractor other than as provided in this Section.

Section 2. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Contractor shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Contractor shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this Contract.
- E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

Section 3. Permits, Laws, and Taxes.

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Contract. All actions taken by the Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

The failure of either party at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 5. Amendment.

- A. This Contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, with the same formality as this Contract was executed.
- B. For the purposes of any amendment modification or change to the terms and conditions of this Contract, the only authorized representatives of the parties are:

Contractor: Billings Office Manager (Carl Anderson, P.E.)
(title of position)

Billings: City Council or Authorized Designee

- C. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this Contract shall be brought in the Superior Court for the Thirteenth Judicial District of the State of Montana, Billings. The law of the State of Montana shall govern the rights and obligations of the parties under this Contract.

Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

The Contractor shall indemnify, defend, save, and hold Billings harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

- A. The Contractor shall not indemnify, defend, save and hold Billings harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Contractor, the Contractor shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result from the Contractor's performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

The Contractor shall, at any time during normal business hours and as often as Billings may deem necessary, make available to Billings, for examination, all of its records with respect to all matters covered by this Contract for a period ending three years after the date the Contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this Contract, to Billings, in such form and at such times as Billings may reasonably require. The Contractor shall permit Billings to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Contract. Billings may, at its option, permit the Contractor to submit its records to Billings in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to Billings; and Billings shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.

IN WITNESS WHEREOF, the parties have executed this Contract on the date and at the place shown below.

City of Billings

Contractor

Mayor

Date: _____

Print Name: _____

Title: _____

Date: _____

ATTEST:

Marita Herold, CMC/AAE
City Clerk

Date: _____

STATE OF MONTANA)

)

County of Yellowstone)

On this _____ day of _____, 2005, before
me, the undersigned, A Notary Public for the
State of Montana, personally appeared
, known to me to be the person whose name is
subscribed to the within instrument, and
acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my Notary Seal the day and
year first above written.

APPROVED AS TO FORM:

City Attorney

Printed Name: _____
Notary Public in and for the State of Montana
Residing at _____
My Commission Expires: _____

Note: Final contract documents will require the Contractor's signature to be notarized.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, February 28, 2005

TITLE: Additional Software License Agreement with New World Systems
DEPARTMENT: Police Department
PRESENTED BY: Ron Tussing, Chief of Police

PROBLEM/ISSUE STATEMENT: The US Department of Justice awarded the City of Billings the 2004 Technology Grant in the amount of \$173,159. The award was approved by Council on June 28, 2004. The grant will be used to purchase the additional software license agreement with NEW WORLD Systems to add in-car Vehicle Accident Report writing to our existing mobile technology project for patrol vehicles. The amount of this Agreement is \$81,456 including project management, installation, training support, and one year of software maintenance. The rest of the grant monies in the grant will have to be spent by January 22, 2006. At this time we are requesting Council approval of the Additional Software License Agreement, attached.

FINANCIAL IMPACT: There will be no financial impact since the amount of the Agreement will be paid for totally by the Technology Grant. Annual software maintenance fees will have to be budgeted for in the out years.

RECOMMENDATION

Staff recommends that Council approve the Additional Software License Agreement with NEW WORLD Systems to provide in-car Vehicle Accident Report writing.

Approved By: City Administrator City Attorney

ATTACHMENT

A – Additional Software License Agreement with New World Systems (7 pages)

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AGENDA ITEM:



City Council AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 28, 2005

TITLE: Affordable Housing Support Fund Project

DEPARTMENT: Planning & Community Development Division

PRESENTED BY: Vicki Lapp, Community Development Program Coordinator

PROBLEM/ISSUE STATEMENT: The Community Development Division received a proposal from the Rimrock Foundation in response a Request for Proposals issued by the Department. Their proposal was to assist them with the rehabilitation of the second half of their sober living house located at 1721 8th Avenue North, Apt. B. The project would double the capacity of the existing facility to eight bedrooms. This facility is dedicated to providing a structured safe and sober living environment for male adults in early recovery. Rimrock Foundation is proposing the complete facility be targeted to that Special Needs population at or below 80% of Area Median Income.

ALTERNATIVES ANALYZED: Alternatives would be: (1) To approve the project for funding, and; (2) to not approve the project for funding and have the Rimrock Foundation continue to seek funds elsewhere to rehabilitate the facility and expand their services.

FINANCIAL IMPACT: CDBG and HOME funds are provided by HUD to the City for affordable housing projects. The Rimrock Foundation is requesting \$20,902 from HOME funds and has indicated they would be able to provide match in the form of volunteer work, staff labor or donations.

The current balance of HOME & CDBG funds	\$ 391,373
This request	\$ 20,902
Ending Balance	\$ 370,471

RECOMMENDATION:

CD Board and Staff recommend City Council approve the allocation of \$20,902 from the HOME Affordable Housing Fund to the Rimrock Foundation as a 0% interest, deferred loan, to rehabilitate the second half of the sober living house located at 1721 8th Avenue North to expand their sober living environment. The loan will be deferred for 20 years, as long as Rimrock Foundation complies with rent and income restrictions. After that, it will be forgiven.

Approved By: **City Administrator** ____ **City Attorney** ____

INTRODUCTION

Special Needs populations were identified in the City's 1999 Housing Needs Analysis as a priority group having needs not currently being met. The writers of this report estimate 1,000 persons with substance abuse/addiction problems in Billings who are having a difficult time finding affordable housing.

District VII HRDC conducted a more recent study of the homeless in Billings. 517 individuals completed the survey, which reported the following results:

- 50% of the respondents were living in a shelter
- 96% reported they had no permanent and safe place to live
- 29% had received drug & alcohol treatment sometime in the past
- 30% indicated drugs & alcohol had contributed to their homelessness;
- with an additional 10% indicating both drugs & alcohol **and** mental health had contributed to their homelessness.

Rimrock Foundation, providing services since 1966, is Montana's oldest and largest private, non-profit in-patient treatment center for addictions. In 1979, the Executive Director was mandated to complete the Foundation's continuum of care with a quality Inpatient treatment program. The initial commitment to a continuum of care has been a strength of the Foundation, assuring program diversity and a range of services to meet the needs of the community.

With a mind toward continuing to provide a continuum of care treatment for its clients, Rimrock Foundation opened the first Sober Living House in September of 2003. The demand for this type of facility will be further increased with the addition of the City's new Misdemeanor Drug Court. Rimrock's experience with the Yellowstone County Family Drug Court indicates there are many individuals who are homeless and/or without the means to secure safe & sober housing while undergoing the intensive outpatient treatment this facility would provide.

Billings has no other program like this one for the target population of male substance abusers undergoing extensive outpatient treatment. Left untreated, these residents will continue to recidivate within our court systems and cost tax payers. Rimrock Foundation is requesting financial assistance to rehabilitate the second half of the existing duplex into 4 bedrooms, two full baths, a common living room, kitchen and laundry room. This facility will help low income male victims of substance abuse make the transition from homelessness to permanent housing. Irma House, although similar, targets male substance abusers that have undergone treatment and are being released.

Staff review of the organizational and financial capacity of Rimrock Foundation indicates they have staff with the ability, both to complete the rehabilitation of the duplex and continue with successful program management.

PROCEDURAL HISTORY

Winter 2003	Rimrock Foundation purchases 1.6 acre property with existing duplex.
September 2004	Renovations to $\frac{1}{2}$ of the duplex are complete and units are rented out.
November 2004	Community Development receives application from Rimrock Foundation to renovate second half of duplex.
December 2004	CD presents application to CD Board with Executive Director of Rimrock Foundation present to answer questions.

January 6, 2005	Rimrock Foundation Executive Director presented project North Park Task Force.
February 8, 2005	Staff presents funding recommendation to CD Board who approved the recommendation.

BACKGROUND

The City of Billings, as the recipient of the federal Home Partnership Program (HOME) funding from the Department of Housing and Urban Development (HUD), set aside a portion of this funding to assist non-profit and for-profit organizations in helping to create more affordable housing opportunities deemed necessary according to the City's Housing Needs Analysis. This set-aside is known as the HOME Demonstration Affordable Housing Program. Funds are allocated using an open Request for Proposal process. Applications are accepted and action is taken until funds are depleted for the year. The Community Development Division received a request for funding from the Rimrock Foundation to assist them in rehabilitating the second half of a duplex owned by them. Special Needs Housing, such as this, was listed as a segment of the housing market in Billings that is currently not being adequately met. This project's goal is to provide men completing treatment for substance abuse with a safe structured environment to ease their mainstreaming back into society and their continued success in maintaining sobriety.

The Rimrock Foundation saw a need to expand its services and during the winter of 2003 purchased the 1.6 acre property located at 1721 8th Avenue North which included a duplex. Based upon the need for transitional housing for patients in early recovery the Foundation has experienced over numerous years, they determined they would renovate one side of the duplex and launch the Sober Housing program. They rehabilitated one half of the duplex using staff time, donations and garage sale items. Rehab was completed in September 2004.

Because of the increased demand for this type of facility and to further the organization's capacity to provide these services, Rimrock Foundation decided to rehabilitate the other half of the duplex. Because they did not have the necessary funds to complete the project, a request was submitted to Community Development in response to the RFP issued by the Department.

Total project costs are projected to be \$36,355. Project costs were derived by using the budget figures from rehabilitating the first half of the duplex. HOME funds have been requested in the amount of \$20,902. Per unit cost of HOME funds is \$5,226, which is well below the maximum per unit subsidy allowed by Federal Regulations. HOME program regulations require a match of 25% of HOME funds requested or for this project, \$5,226. Rimrock Foundation has indicated they will meet and exceed the match requirement with donations of time and materials in an amount equal to \$15,453, in order to complete the funding needed for the project.

This request is consistent with other, like, requests that have recently been approved;

- Mental Health Center was approved for \$78,400 for renovation of 3 group homes (\$26,133/house)
- Michel's House (also owned by Rimrock Foundation) was approved for \$20,000 for exterior renovations---siding and egress windows

ALTERNATIVES ANALYSIS or DISCUSSION

Alternatives would be: to not approve the project and have the Rimrock Foundation continue to seek funds elsewhere to rehabilitate the facility and expand their services. This would result in

the loss of 4 affordable units targeted to a Special Needs population, as well as the loss of services to the community.

STAKEHOLDERS

Stakeholders for this project include:

- Rimrock Foundation will be impacted as they are trying to double the space they have to provide a sober living facility.
- Homeless or about to be homeless recovering male substance abusers are stakeholders, as there are no other facilities that provide the same service in Billings, and;
- The residents of the City of Billings. Left untreated, the potential residents of this facility will continue to recidivate within our court systems and cost tax payers.
- North Park Task Force. At their January 2005 meeting, they unanimously approved a motion to support this project.

CONSISTENCY WITH ADOPTED POLICIES OR PLAN

This project is consistent with the following Strategies identified in the City of Billings 5-Year Consolidated Plan adopted in 2000:

- Improve the economic conditions of lower income households in the community.
- Promote Affordable Housing and Fair Housing Citywide. This project will provide affordable housing for the special needs population it serves.
- Preserve the existing supply of affordable housing. The long-term plan for the property permits continued use of these buildings for low income housing.
- Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located. The program supports the preservation and revitalization of one of Billings' oldest neighborhoods. Rimrock Foundation currently owns two other off-site residences. In each instance they have improved the neighborhoods with extensive renovations to the buildings and collaborated with the neighbors to improve relations.
- Zoning is appropriate for this facility.

SUMMARY

Special Needs populations were identified in the City's 1999 Housing Needs Analysis as a priority group having needs not currently being met. This project is targeted to the Special Needs population of low-income male substance abusers. Billings has no other program like this one for the target population. The amount of funds requested is consistent with other requests for rehabilitation activities that have recently been approved. Rimrock Foundation is contributing toward the project and exceeding the HOME match requirement three times over. The project is consistent with 4 of the 5 Strategies included in the City's Consolidated Plan. Additionally, the project was presented to the North Park Task Force January 6, 2005 and a motion was approved by a unanimous vote to support it.

RECOMMENDATION

CD Board and Staff recommend City Council approve the allocation of \$20,902 from the HOME Affordable Housing Fund to the Rimrock Foundation as a 0% interest, deferred loan, to rehabilitate the second half of the sober living house located at 1721 8th Avenue North to expand their sober living environment. The loan will be deferred for 20 years, as long as Rimrock Foundation complies with rent and income restrictions. After that, it will be forgiven.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, February 28, 2005

TITLE: Staff Recommendation for Irma House II application

DEPARTMENT: Planning & Community Services Department

PRESENTED BY: Vicki Lapp, Community Development Program Coordinator

PROBLEM/ISSUE STATEMENT: The Community Development Division received a proposal from Irma House in response a Request for Proposals issued by the Department. Their proposal was to assist them with a new construction project of a second, 6 bedroom, half-way house at 502 South 33rd Street. The CD Board and City Council conditionally approved funds to authorize the allocation of additional staff time and funding to address deficiencies in the application through development of a management plan. Once deficiencies were addressed a formal Development Agreement would be brought back for approval by the Board and City Council. In December a final Management Plan was presented to Community Development.

ALTERNATIVES ANALYZED: Alternatives would be: (1) Approve the Management Plan and Construction Development Agreement; (2) Not recommend the project for consideration and have Irma House continue to seek funds to expand their services; or (3) Return the Management Plan to Irma House, asking for additional information.

FINANCIAL IMPACT: CDBG and HOME funds are provided by HUD to the City for affordable housing projects. The City is required through HUD HOME regulations to set aside 15% of their HOME allocation for Community Housing Development Organizations(CHDO). CD Board and City Council approved providing up to \$5,000 in HOME funding as a deferred loan to Irma House, Inc. to develop a management plan and for HOME allowed pre-development costs associated with the construction of Irma House II at 502 South 33rd Street. Additionally, an additional \$93,966 in HOME CHDO grant funding was reserved for construction costs.

Current CHDO funds:	\$244,538
This request:	<u>\$ 98,966</u>
Balance left:	\$145,572

RECOMMENDATION

CD Board and Staff recommend City Council approve allocating, as a deferred loan, the balance of the \$93,966 already committed to Irma House to construct a second facility located at 502 South 33rd Street. Staff will ensure the Development Agreement addresses regulatory and organizational capacity concerns.

Approved By: **City Administrator** **City Attorney**

INTRODUCTION

Special Needs Housing was identified in the City's 1999 Housing Needs Analysis as a priority group having needs not currently being met. The report estimated 1,000 persons with substance abuse/addiction problems in Billings who are having a difficult time finding affordable housing.

Irma House has been treating victims of alcohol abuse for 24 years. They provide a safe, sober environment for men completing treatment programs for alcohol addiction. In addition to that, they report that they provide the following services:

- a. Primary and follow-up treatment for those persons and families suffering from the effects of alcoholism
- b. Research the causes and effects of alcoholism on individuals and on the community
- c. Develop educational programs about alcoholism within the community

These services have been provided to a wide range of people. The need for the services offered by Irma House has increased over the past 10 years and the current facility cannot meet this increased need. The new facility will help those victims of drug & alcohol abuse make the transition from homelessness to permanent housing.

PROCEDURAL HISTORY

- September 28, 2001- South Side Task Force issues request for projects to build housing on land located at 3016 9th Avenue South formerly known as Al's Tavern. Request received from Habitat for Humanity and Irma House. Land given to Habitat but Irma House was encouraged to seek other opportunities.
- October 1, 2002- Jake Romero of Irma House gives informational presentation to CD Board.
- October 7, 2002- City receives a completed application requesting funding to purchase and demolish empty structure located at 502 South 33rd Street.
- October 29, 2002- Staff presented recommendation to the Community Development Board. Community Development Board approved the staff recommendation unanimously after review and recommended that project be forwarded to City Council for review and action.
- April, 2004-Irma House becomes certified as Community Housing Development Organization, CHDO.
- May 5, 2004- Irma House submits application to Community Development Division for 2nd building.
- July 6, 2004- CD Board site tour.
- September 7, 2004 - Staff reviews Irma House project with the Community Development Board.
- October 5, 2004 – Review and Recommendation by the Community Development Board.
- October 25, 2004 – City Council approves CD Board recommendation.
- December 2004- Community Development Division receives final Management Plan.
- February 8, 2005 – Staff presents final Management Plan and recommendation to Community Development Board.
- February 28, 2005 – CD Board and staff recommendation to City Council.

BACKGROUND

The City of Billings, as the recipient of the federal HOME Investment Partnership Program funding, is required to set aside 15% of this funding to assist special non-profit housing development organizations, known as Community Housing Development Organizations (CHDO) to create more affordable housing opportunities. These funds are allocated on an open Request for Proposal process throughout the year until funds are depleted.

The Community Development Division received a request for funding from the CHDO Irma House to assist them in building an additional facility on a site owned by them. This project's goal was to provide men completing treatment for alcohol or drugs with a safe structured environment to ease their mainstreaming back into society and their continued success in maintaining sobriety.

In November of 2002, Irma House was awarded \$30,000 in FY02 HOME funds from the City, to purchase the property located at 502 South 33rd Street and demolish the two existing, empty structures there. These funds were granted with the idea Irma House would build a new structure on that property.

In May of 2004, Irma House submitted an application for funds to assist them in constructing a second facility on the property located at 502 South 33rd Street.

After review, in October 2004, the CD Board and City Council approved the City provide up to \$5,000 in HOME funding as a deferred loan to Irma House, Inc. to develop a management plan and for HOME allowed pre-development costs associated with the construction of IRMA House II at 502 South 33rd Street. They also approved reserving an additional \$93,966 in HOME CHDO grant funding for the construction costs associated with Irma House II, subject to the future review and approval by the CD Board and City Council of a formal Development Agreement between the City and Irma House incorporating the management plan and HOME program requirements.

The concept of requiring Irma House to complete a Management Plan was to try to provide resources and assistance in planning for the future of Irma House; both financially and organizationally. The initial funding was also to be used for predevelopment costs, particularly, obtaining the zoning variance, plan review and developing an acceptable Management Plan. In December of 2004, the Developer provided the Community Development Division with a completed Management Plan.

Elements of the Management Plan include Board Development, Organizational Structure of the Grant Management Team, Financial Management of the Corporation, Financial Management of the Property, Property Maintenance & Repair Program, Project Specific Management and On-going Project Management & Compliance Plan.

The Management Plan addresses these topics. Staff review noted some deficiencies in the Plan particularly relating to Board Development and Organizational Structure. The balance of the Management Plan is consistent with what other applicants have done.

Conducting board training and development was recommended. Irma House has been in existence for 24 years and most of the board members have been board members since that time. Irma House Board will not pursue changing their structure.

Regarding the organizational structure of the grant management team, it appears the Executive Director will be doing everything on this project, from securing approval from the Planning and Building Departments to overseeing the construction of the facility. Because the Management Plan indicates most of the grant management activities will be the Executive Director's responsibility, the project becomes very dependant on the time and skills of the Executive Director. Staff believes that with assistance from the volunteer architect, capable board members and a detailed development agreement that will assure HOME program requirements are met.

ALTERNATIVES ANALYSIS

Alternatives would be: (1) Approve the Management Plan and Construction Development Agreement; (2)Not recommend the project for consideration and have Irma House continue to seek funds to expand their services; or (3) Return the Management Plan to Irma House, asking for additional time & information and to re-submit for final approval.

STAKEHOLDERS

The stakeholders identified in this project are:

#1. Special needs population, specifically substance abusers. This group was identified in the City of Billings Consolidated Plan as needing more quality housing and a group to target for our assistance.

#2. Irma House, Inc., is another stakeholder in this project. By providing funds to Irma House, Inc to increase it's capacity and develop a reasonable and sound management plan for the facility we will ensure the long term viability of the facility and the services offered there.

#3. Surrounding property owners. The proposed project is situated on a corner lot where currently there is a dilapidated, run down, uninhabited house. By funding this project, this structure will be removed and in it's place a new, high-quality transitional housing facility will be constructed. This will have a positive impact on the surrounding property owners through increasing the value of their homes and the neighborhood as a whole. This property is located across the street from the original Irma House facility. Neighbors will have an opportunity to comment specifically about the proposed project during the zoning variance process.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The final detailed Development Agreement will ensure this facility will comply with zoning and building codes.

The City of Billings current Consolidated Plan adopted in 2000, lists goals and strategies to meet needs identified though a comprehensive needs assessment process. This project is consistent with the following goals identified in the Consolidated Plan

Goal #1. Improve the economic conditions of lower income households in the community. This is met through providing transitional housing for male recovering substance abusers at 50% or less of Area Median Income.

Goal #2. Promote affordable housing and fair housing City-wide. This project meets this goal through providing a safe sanitary living environment for \$300 per month. This amount includes rent, utilities and food. The current Fair Market Rent amount for a zero bedroom unit (which is what these units qualify as) is \$365. Fair Market Rent (FMR) is the maximum amount set by

HUD, by bedroom size, that can be assessed for rent and utilities and qualify as affordable. This amount is set by using the dollar amount below which 40 percent of standard quality rental housing units rent.

Goal #4. Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located. This will be accomplished through upgrading the corner lot where the facility will be located.

SUMMARY

In November of 2002, Irma House was awarded \$30,000 in FY02 HOME funds from the City, to purchase the property located at 502 South 33rd Street and demolish the two existing, empty structures there. These funds were granted with the idea Irma House would build a new structure on that property. In May of 2004, Irma House submitted an application for funds to assist in constructing a second facility on the property previously cleared through HOME funded demolition activities.

In October 2004, the CD Board and City Council approved providing up to \$5,000 in HOME funding as a deferred loan to Irma House, Inc. to develop a management plan and for HOME allowed pre-development costs associated with the construction of Irma House II. They also approved reserving an additional \$93,966 in HOME CHDO grant funding for the construction costs associated with Irma House II. These funds were approved subject to the future review and approval by the CD Board and City Council of a formal Development Agreement between the City and Irma House incorporating the management plan and HOME program requirements. In December, the Community Development Division received the final Management Plan from Irma House, Inc. It addresses the components of the Management Plan template included as an exhibit with the initial Development Agreement. Concern remains regarding the organizational capacity to complete the project with so much dependence on the Executive Director. Staff feels this can be overcome through a detailed Development Agreement and assistance from the Irma House board and the volunteer architect. Staff will ensure the facility complies with zoning and building department requirements through the detailed Development Agreement.

This project meets three Consolidated Plan goals and the HUD HOME goal of providing safe, decent, sanitary and affordable housing.

RECOMMENDATION

CD Board and Staff recommend City Council approve allocating, as a deferred loan, the balance of the \$93,966 already committed to Irma House to construct a second facility located at 502 South 33rd Street. Staff will ensure the Development Agreement addresses regulatory and organizational capacity concerns.

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G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, February 28, 2005

TITLE: Approval to submit application and acceptance of 2005 Technology Grant Award in the amount of \$197,328 for Indoor Firing Range

DEPARTMENT: Police Department

PRESENTED BY: Darrell Bell, Deputy Chief of Police

PROBLEM/ISSUE STATEMENT: The US Department of Justice has notified the City that they have been awarded the 2005 Technology Grant for an indoor firing range. This will be the fourth year the City has received Federal direct appropriations. The previous Grants were used for mobile technology. The indoor firing range was requested 2 years ago from direct appropriations. The indoor range will be placed beside the PD2 building (Evidence Building) located at the Billings Operations Center. We are requesting from City Council the approval to submit the application and accept the award.

FINANCIAL IMPACT: There will be no City match required.

RECOMMENDATION

Staff recommends that Council approve submittal of the application and acceptance of the 2005 Technology Grant award in the amount of \$197,328 for an indoor firing range.

Approved By: **City Administrator** **City Attorney**

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, February 28, 2005**

TITLE: Zone Change #750, Second Reading of Ordinance

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: This is a second reading for zone change application to modify the zoning of a property described as Tract B2-A of Certificate of Survey 1056 Amended (preliminary plat approved on December 13, 2004, for Lots 1-4 of King Place Subdivision) from Residential-7000 (R-7000) to Residential Multi-Family Restricted (RMF-R) and Neighborhood Commercial (NC). The City Zoning Commission conducted a public hearing on January 4, 2005, and is forwarding a recommendation of approval to the City Council. The City Council opened the public hearing on January 24, 2005, and voted to defer action until the February 14, 2005, meeting in order for a Neighborhood Meeting to be conducted between the developer and the surrounding property owners. On February 14, 2005, the City Council voted to approve the proposed zone change and first reading of the Ordinance.

A Protest Petition was submitted to the Planning Department on January 3, 2005. Pursuant to Section 76-2-305(2) of the Montana Code Annotated (MCA), a protest petition against a zone change shall be signed by 25% or more of the surrounding property owners within 150 feet of the subject property for the proposed zone change. The submitted Protest has been determined valid, as 47% of the owner's signatures within 150 feet of the subject property (15 surrounding properties identified within 150 feet) have been included. As such, the MCA specifies that such petitioned zone changes shall only be approved if two-thirds (2/3) of the present and voting members of the Council vote favorably for the application.

ALTERNATIVES ANALYZED: State law requires that all zone changes be reviewed in accordance with 12 criteria (MCA 76-2-304). Utilizing the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: The proposed zone change would permit commercial and multiple family residential units on the subject property, which would increase the taxable value of the property.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #750 and adopt the determinations within the 12 criteria. The City Council opened the public hearing on January 24, 2005, and voted to defer action until the February 14, 2005, meeting in order for a Neighborhood Meeting to be conducted between the developer and the surrounding property owners. On February 14, 2005, the City Council voted to approve the proposed zone change and first reading of the Ordinance.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

- A. 12 Review Criteria for Zone Changes
- B. Ordinance

ATTACHMENT A

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes shall be evaluated using the 12 criteria within Section 76-2-304 of the Montana Code Annotated (MCA), as follows:

Prior to forwarding a recommendation to the City Council, the City Zoning Commission shall consider the following 12 criteria for zone changes:

1. *Is the new zoning designed in accordance with the Growth Policy?*

Chapter 3: Community Goals/Objectives of the Growth Policy Plan specifies that there is a desire for more housing and business choices within neighborhoods. Staff finds that the proposed zoning will further provide the surrounding residential and commercial neighborhoods with commercial amenities within a close walking distance. The proposed zoning will allow for a mix of residential and commercial uses.

Additionally, the proposal is an infill development that helps to control urban sprawl. The primary utility services and street system are in place, therefore the property will utilize existing infrastructure which reduces the public cost of new developments.

2. *Is the new zoning designed to lessen congestion in the streets?*

Wicks Lane is located along the northern portion of the subject property and Bench Boulevard abuts the western boundary of the property. Staff finds that these streets are sufficient to accommodate the proposed commercial and multi-family uses, as the applicant is proposing limited street improvements with the proposed subdivision application. Furthermore, a Traffic Accessibility Study identifying specific traffic generation for the site will potentially be required upon further development of this property.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

At this time, no structures are proposed for the site, however upon submittal of a subdivision application and/or building plans, the Fire, Police, and Building Departments will review the proposed development for compliance with applicable codes.

4. *Will the new zoning promote health and general welfare?*

The proposed Neighborhood Commercial zoning permits more limited uses than those permitted on the adjacent Community Commercial zoning. The proposed multiple family uses to be located on the southern portion of the site will create a buffer zone between the neighboring single-family residential uses.

5. *Will the new zoning provide adequate light and air?*

Sufficient setbacks are required within the proposed zoning that will allow for adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, provide restrictions on the maximum percentage of lot area that can be covered with structures. Furthermore, retail structures greater than 3,000 square feet within the Neighborhood Commercial zoning district require a Special Review in order to determine compatibility with surrounding land uses. The above restrictions will help to prevent crowding within the proposed zoning.

7. *Will the new zoning avoid undue concentration of population?*

The proposed commercial and residential uses should not create an undue concentration of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation: In regard to traffic generation, staff finds that the proposed zoning is no more intense than the commercial uses (Wal-Mart) and the medical office structures to the west of the subject property. A Traffic Accessibility Study identifying specific traffic generation for the site will potentially be required upon further development of this property.

Water and Sewerage: Municipal water and sewer services are available at the site and have the capacity to serve the subject property.

Schools and Parks: The proposed subdivision is located within School District #2. Staff finds that the student population impact of any proposed residential development will be minimal. With the uses proposed for the commercial zoning there will be no impacts to schools. No comments were received by the school district regarding this application.

There is no parkland dedication requirement for Lots 1 and 2, as they are proposed for commercial development. However, Lots 3 and 4 will be developed as multi-family residential units and are subject to the parkland requirement. The applicant has indicated that they will pay a cash-in-lieu for the proposed parkland requirement as necessary for the final plat.

Fire and Police: The Police and Fire Departments review subdivision applications and will determine potential impacts upon submittal of a Preliminary Plat application.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning will give reasonable consideration to the character of the district by providing a transition zone between the multi-family residential uses proposed for the southern portion of the property and the proposed commercially zoned northern portion of the property, as well as the existing commercial properties to the west.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district. The uses permitted within the Neighborhood Commercial and the Residential Multi-Family Restricted zoning districts are compatible with the surrounding residential and commercial uses.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

The proposed zoning will not alter the value of existing structures within the immediate vicinity of the subject property, as the property is bordered on the west by commercial development and on the north and east by churches that tend to generate commercial traffic volumes on a limited basis.

Due to an increase in traffic volume on Wicks Lane by over 60% within the last 10 years, there has been some depreciation in value of the existing single-family residences along this section of Wicks Lane. However, as a principle arterial, the land use along Wicks Lane is anticipated to be a mix of commercial and residential uses. The proposed zone change is intended to provide neighborhood services for the existing and developing subdivisions within this area. Such services may include, but not be limited to office uses, a convenience store, or a restaurant that does not provide alcohol or gaming.

The proposed zone change should not further depreciate the value of the existing single-family uses within the area.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The proposed zoning for the northern portion of the subject property, which will permit limited commercial development, will promote the most appropriate use for the subject property. Furthermore, the proposed multi-family zoning for the southern portion of the property will create a buffer zone between the surrounding residential uses to the north and south of the subject property.

ATTACHMENT B

ORDINANCE NO. 04-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Tract B2-A of Certificate of Survey 1056 Amended located within Section 23, Township 1N, Range 26E, P.M.M, Yellowstone County, Montana.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. **RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC,* provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the twelve (12) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the twelve (12) criteria required by state law.

2. **DESCRIPTION.** Tract B2-A of Certificate of Survey 1056 Amended is presently zoned **Residential 7000** and is shown on the official zoning map within these zones.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 7000 to Neighborhood Commercial and Residential Multi-Family Restricted** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Neighborhood Commercial and Residential Multi-Family Restricted** as set forth in the Billings, Montana City Code.

4. **REPEALER.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. **EFFECTIVE DATE.** This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading February 14, 2005.

PASSED, ADOPTED AND APPROVED on second reading February 28, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY:
Marita Herold, CMC/AAE, City Clerk

ZC#750

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 28, 2005

TITLE: Rimrock Auto Subdivision Preliminary Plat
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: On January 18, 2005 the owner of this property applied for preliminary plat approval for the Rimrock Auto Subdivision. This is a proposed 2-lot commercial subdivision located on the southwest corner of Holiday Avenue and S. 12th St. West. The City Council must act on the preliminary minor plat within 35 working days of its submittal.

ALTERNATIVES ANALYZED: State and City subdivision regulations require that preliminary plats be reviewed using criteria that are set out in those laws. Those review criteria are found in Attachment C of this report. The City may not unreasonably restrict an owner's ability to develop his land if the subdivider provides evidence that any identified adverse effects can be mitigated. The City Council is required to approve, conditionally approve or deny the preliminary plat.

FINANCIAL IMPACT: If the City approves the preliminary plat, an additional lot may develop and result in additional tax revenues for the City.

RECOMMENDATION

Planning staff recommends that the Billings City Council approve the requested variance from BMCC Section 23-602 and conditionally approve the preliminary plat of Rimrock Auto Subdivision, and adopt the findings of fact as stated in the staff report.

Approved by: **City Administrator** _____ **City Attorney** _____

ATTACHMENTS

- A: Plat
- B: Mayor's approval letter
- C: Findings of Fact
- D: Site photos

INTRODUCTION

Rimrock Auto Subdivision is a preliminary minor plat that would create two lots for commercial use. Lot 1 is approximately 3.28 acres in size and has the existing Rimrock Auto Group detail shop located on it. Lot 2 would be 4.7 acres in size and is currently paved parking area for the shop. The subject property is zoned Highway Commercial, is located on the southwest corner of Holiday Ave. and South 12th St. West. The subdivider is requesting one variance from the Section 23-602 of the City Subdivision Regulations, which requires the platting of alleys in commercial subdivisions. Discussion on this variance and staff's recommendation is found below.

PROCEDURAL HISTORY

- The preliminary plat application was submitted to the Planning Department on January 18, 2005.
- The City Council will consider the application at its meeting on February 28, 2005

BACKGROUND

General location:	on the southwest corner of Holiday Ave. and S. 12 th St. West
Legal Description:	Tract 1, Certificate of Survey 2834
Subdivider/Owner	Rimrock Auto Group
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	Highway Commercial
Surrounding zoning:	Highway Commercial & Agricultural Open Space
Existing land use:	Auto detail shop
Proposed land use:	same plus one addition commercial development
Gross area:	7.997 acres
Lots:	2
Max.	3.28 acres
Min.	4.72 acres
Dedications:	None – previously met

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potentially negative effects from a subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments, utilities and other agencies have reviewed this application and provided input on effects and mitigation. The Findings of

Fact, which are presented as Attachment C, discuss the potential impacts that were identified by reviewers and the following conditions are recommended as measures that will mitigate them. Staff also recommends that the requested variance from the subdivision design and improvement standard be granted.

RECOMMENDED CONDITIONS

1. Utility easements shall be shown on the final plat as requested by Montana Dakota Utilities Co. and Northwestern Energy. (*Recommended by Planning & Community Services; BMCC Section 23-603*)
2. The following changes shall be made to the final SIA:
 - a. The SIA shall be reformatted to follow the standard format, including a section called “Conditions that Run with the Land” and a Table of Contents. (*Recommended by City –County Planning*)
 - b. Section 2.A.(1)(a) shall be amended to state: South 12th Street will be extended from Holiday Avenue to the southern extent of Lot 2. It shall be constructed with standard curb and gutter along the west side, and asphalt pavement to a half-width of 32 feet. Holiday Avenue will be extended from the existing pavement at Weil Street to South 12th Street. It shall be constructed with standard curb and gutter on the south side and asphalt pavement to a half-width of 32 feet. Full-width development of the Holiday Avenue or the South 12th Street extensions will be dependent upon participation of adjacent property owners in a private contract or creation of a Special Improvement District. (*Recommended by City-County Planning, PW Engineering*)
 - c. Section 2.A.(4) shall be amended to require the construction of 5-foot curb walks along the south side of Holiday Avenue and the west side of South 12th St. West. (*Recommended by City-County Planning, PW Engineering*)
 - d. References to “in the future” shall be removed from Sections 2.A.(1)(a), 2.A.(2), 2.A.(4). Noted improvements in these sections shall be completed prior to final plat approval or otherwise guaranteed. (*Recommended by City-County Planning, PW Engineering*)
 - e. Section 2.B.(4) shall be amended to state: The Subdivision Improvements Agreement does not constitute an approval of extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water and sanitary sewer to Public Works - Belknap. The extension/connection to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications will need to be submitted for processing prior to the start of any construction. The appropriate water and wastewater local and interior mains construction fees and franchise fee in effect shall be submitted with the application. The property is subject to the conditions of a wastewater facilities Reimbursement Agreement. (*Recommended by PW Distribution & Collection; BMCC Section 23-706*)
3. Minor changes may be made in the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

4. The final plat shall comply with all requirements of the City Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCE REQUESTED

1. A variance from BMCC 23-602 requiring alleys in commercial and industrial districts.
The properties are large enough to accommodate deliveries without alleys and the existing development and lot layout is not conducive to alley development. Public health and safety will not be compromised by granting this variance. Staff is recommending approval of the variance request.

STAKEHOLDERS

A public hearing is not scheduled for the City Council meeting but nearby property/business owners may attend the Council meeting. The Department received no public comments or questions about the subdivision.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The subdivision is consistent with the 2003 Yellowstone County/City of Billings Growth Policy, the 2000 Transportation Plan and the Heritage Trail Plan. Specific conformance is discussed in the Findings of Fact.

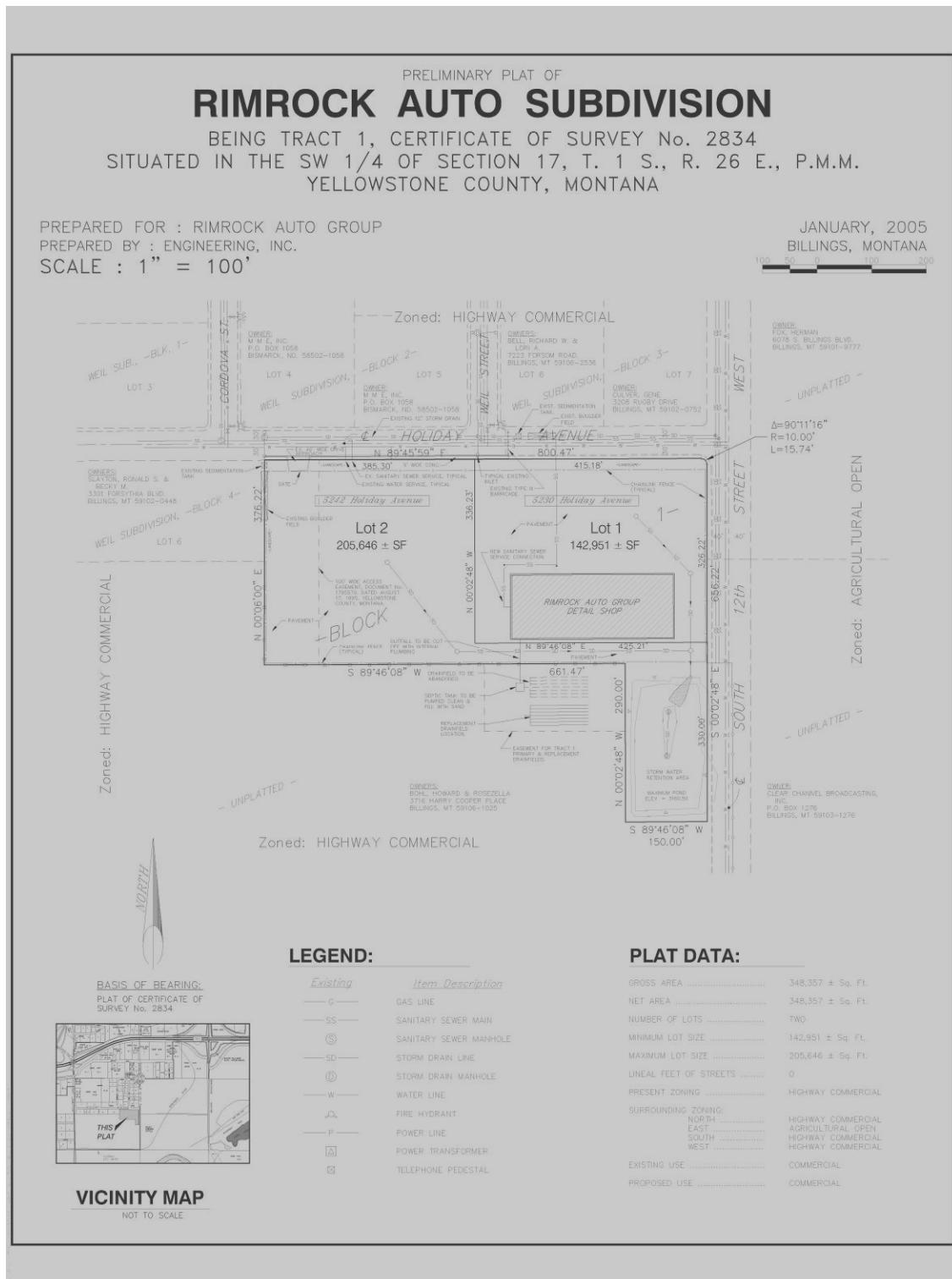
RECOMMENDATION

Planning staff recommends that the Billings City Council approve the requested variance from BMCC Section 23-602 and conditionally approve the preliminary plat of Rimrock Auto Subdivision, and adopt the findings of fact as stated in the staff report.

ATTACHMENTS

- A: Preliminary Plat
- B: Mayor's approval letter
- C: Findings of Fact
- D: Site photos

ATTACHMENT A
Preliminary plat of Rimrock Auto Subdivision



ATTACHMENT B
Mayor's approval letter

March 1, 2005

Rimrock Auto Group
324 South 24th St. W.
Billings, MT 59102

Dear Sir:

On February 28, 2005 the Billings City Council conditionally approved the preliminary plat of the Rimrock Auto Subdivision. The conditions of approval are as follows:

1. Utility easements shall be shown on the final plat as requested by Montana Dakota Utilities Co. and Northwestern Energy.
2. The following changes shall be made to the final SIA:
 - a. The SIA shall be reformatted to follow the standard format, including a section called "Conditions that Run with the Land" and a Table of Contents.
 - b. Section 2.A.(1)(a) shall be amended to state: South 12th Street will be extended from Holiday Avenue to the southern extent of Lot 2. It shall be constructed with standard curb and gutter along the west side, and asphalt pavement to a half-width of 32 feet. Holiday Avenue will be extended from the existing pavement at Weil Street to South 12th Street. It shall be constructed with standard curb and gutter on the south side and asphalt pavement to a half-width of 32 feet. Full-width development of the Holiday Avenue or the South 12th Street extensions will be dependent upon participation of adjacent property owners in a private contract or creation of a Special Improvement District.
 - c. Section 2.A.(4) shall be amended to require the construction of 5-foot curb walks along the south side of Holiday Avenue and the west side of South 12th St. West.
 - d. References to "in the future" shall be removed from Sections 2.A.(1)(a), 2.A.(2), 2.A.(4). Noted improvements in these sections shall be completed prior to final plat approval or otherwise guaranteed.
 - e. Section 2.B.(4) shall be amended to state: The Subdivision Improvements Agreement does not constitute an approval of extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water and sanitary sewer to Public Works - Belknap. The extension/connection to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications will need to be submitted for processing prior to the start of any construction. The appropriate water and wastewater local and interior mains construction fees and franchise fee in effect shall be submitted with the application. The property is subject to the conditions of a wastewater facilities Reimbursement Agreement.

3. Minor changes may be made in the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
4. The final plat shall comply with all requirements of the City Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

If you have questions about the conditions of approval, please contact Juliet Spalding in Planning and Community Services at 247-8684 or by email at spaldingj@ci.billings.mt.us.

The Governing Body's decision may be appealed within 30 days to the Montana District Court for Yellowstone County.

Sincerely,

Charles F. Tooley, Mayor

C: Peter Knapp; Engineering, Inc.

ATTACHMENT C
Findings of Fact
Rimrock Auto Subdivision
February 28, 2005

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

1. Effect on agriculture and agricultural water users' facilities

This subdivision should have no effect on agriculture or agricultural water users' facilities. The property is not currently used for agriculture and is surrounded on two sides by commercial development. No irrigation facilities are apparent on the property.

2. Effect on local services

- a. Utilities – Water and sewer lines are in place in both Holiday Avenue and South 12th Street West. The building on Lot 1 is already currently served by water and sanitary sewer, and any new development on Lot 2 will be hooked up to the water and sewer lines found in Holiday Avenue. Public Works-Collection & Distribution has recommended some of the language within the SIA be changed in order to clarify the most current requirements. This request has been added as a recommended condition of approval. Private utilities will provide service to the new lots under their operating procedures. Both MDU and NWE have identified additional easements required for utilities. Showing the necessary easements on the final plat has been added as a recommended condition of approval.
- b. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - Holiday Avenue fronts the north boundary of the subdivision, and South 12th Street West fronts its east side. Currently Holiday Avenue is constructed to City standards to the west, and turns to gravel where it intersects Weil Street. Holiday Ave. will be extended to South 12th St. West with this subdivision. South 12th St. exists as a substandard gravel road along the subject property and will be improved from Holiday Avenue to the southern boundary of the subdivision. Both street extensions will be constructed to City standards with curb, gutter and sidewalks adjacent to the property, and a half-width of asphalt pavement, to a width of 32 feet. The remaining width and the curb, gutter and sidewalk on the sides opposite the subject property will be completed when the adjacent properties develop in the future. Public Works-Engineering has requested that the street improvement requirements be clarified in the SIA, so this is a recommended condition of approval.

Access to the subject property is currently off of Holiday Avenue. There is an existing 40-foot wide approach near the northwest corner of Lot 2 that serves the existing business. New approaches off of either Holiday Avenue or South 12th Street West will be reviewed at the time of lot development review for Lot 2.

A variance from BMCC 23-602, which requires the platting of alleys for commercial subdivisions, has been requested. Staff is recommending approval of this variance request.

- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #5 on South 24th Street West. The Fire Department commented and found no concerns with the proposal. Police response will depend upon officer availability and location when a call for service is placed. AMR provides medical care and transport and response would come from the west station on Grand Avenue.
- e. Schools – The subdivision is in the School District #2. Since this is commercial property, there should be no direct impact on the schools.
- f. Parks and Recreation – There is no parkland dedication requirement because this is a minor plat and commercial property. There should be little impact on parks and recreation because there will not be any residents in this subdivision.
- g. MET Transit – The nearest MET route passes the intersection of Mullowney Lane and Midland Road, to the north of the subdivision. This subdivision should not significantly impact MET service.

3. Effect on the natural environment

This subdivision should have only minor effects on the natural environment. There will be some short term air and noise pollution during construction activities. However, the property is within an urbanized part of the city and these effects should be small.

4. Effect on wildlife and wildlife habitat

This subdivision should not adversely affect wildlife or habitat. The property is within the urbanized area of the city, is primarily dirt-surfaced and has no unusual or attractive habitat. There are no known endangered or threatened species on the property.

5. Effect on the public health, safety and welfare

The subdivision should not negatively affect public health or safety. This property is not within a mapped floodway or flood zone. Potential traffic circulation impacts will be reviewed at the time of site development. There are no other obvious threats to public health, safety or welfare.

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

An Environmental Assessment is not required because this is a minor plat.

C. Does the subdivision conform to the 2003 Growth Policy and the Urban Area 2000 Transportation Plan? [BMCC 23-304(c)(3)]

1. Growth Policy

The proposed subdivision conforms to the following land use goals of the *Yellowstone County – City of Billings 2003 Growth Policy*.

- a. Predictable land use decisions that are consistent with neighborhood character and land use patterns.

The proposed subdivision is consistent with the neighborhood character and is zoned Highway Commercial.

- b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.

The proposed development is in an area developed with commercial uses.

- c. Contiguous development focused in and around existing population centers separated by open space.

The proposed subdivision is infill development, utilizes existing infrastructure and does not contribute to urban sprawl.

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Both streets fronting the subdivision are considered local streets and are being constructed to the appropriate City standards.

3. Heritage Trail Plan

The subdivision is also within the jurisdictional area of the Heritage Trail Plan however it is not within an area identified for future trails. No improvements are required for this subdivision.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608(3)(b) and BMCC 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? [BMCC 23-304 (c) (5)]

The property is served by municipal water, sewer, storm drain and solid waste services and these services will be extended to the new lot. All services are approved and regulated by state and federal authorities.

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

The property is in the Highway Commercial zoning district and the subdivision conforms to the zoning.

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

The preliminary subdivision plat did not identify any utility easements. MDU and NWE have requested easements along the perimeter of the lots. These requested easements are recommended as a condition of approval to be shown on the face of the final plat. If this condition is met, the needs of the affected utility providers should be met.

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 BMCC 23-304(c)(8)]

Legal and physical access is provided to both lots by Holiday Avenue and South 12th Street West.

CONCLUSIONS OF FINDING OF FACT

- The proposed preliminary plat of Rimrock Auto Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- There should be little effect on local services because this is an infill proposal and services are already provided to the property and surrounding properties.
- The proposed subdivision conforms to several goals and policies of the 2003 Yellowstone County – City of Billings Growth Policy and does not conflict with the Transportation or BikeNet Plans.
- The proposed subdivision complies with State and local subdivision regulations, sanitary requirements, zoning and provides legal and physical access to each parcel.

Approved by the Billings City Council on February 28, 2005.

Charles F. Tooley, Mayor

ATTACHMENT D
Site Photos—Rimrock Auto Subdivision



Figure 1: From intersection of Holiday Ave. and S. 12th St. W. looking west.
Subject property is on the left.

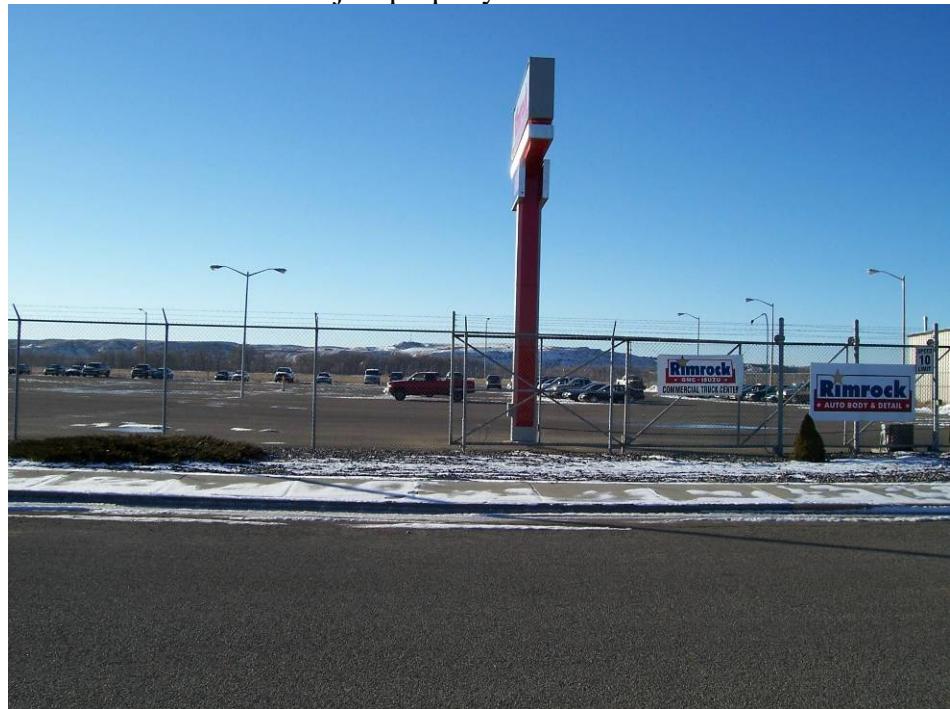


Figure 2: View looking south across Holiday Ave. at Lot 2.



Figure 3: From corner of Holiday Ave. and S. 12th St. W. looking north up 12th St. right-of-way.

[\(Back to Consent Agenda\)](#)

J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, February 28, 2004

TITLE: Cottonwood Grove Subdivision, 1st Filing--Final Plat
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: This final plat is being presented to the City Council for approval. The preliminary plat was approved by the Council on December 13, 2004. The subject property is zoned R-7000 and is located on the southwest corner of 54th St. West and Colton Boulevard. The subdivision will create 52 lots for residential use. All of the conditions for final plat approval have been met by the subdivider.

The City Attorney reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing.

FINANCIAL IMPACT: The creation of 52 residential lots will increase the City's tax revenue on this parcel.

RECOMMENDATION

Staff recommends that the City Council the final plat of Cottonwood Grove, 1st Filing.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

A: Final Plat

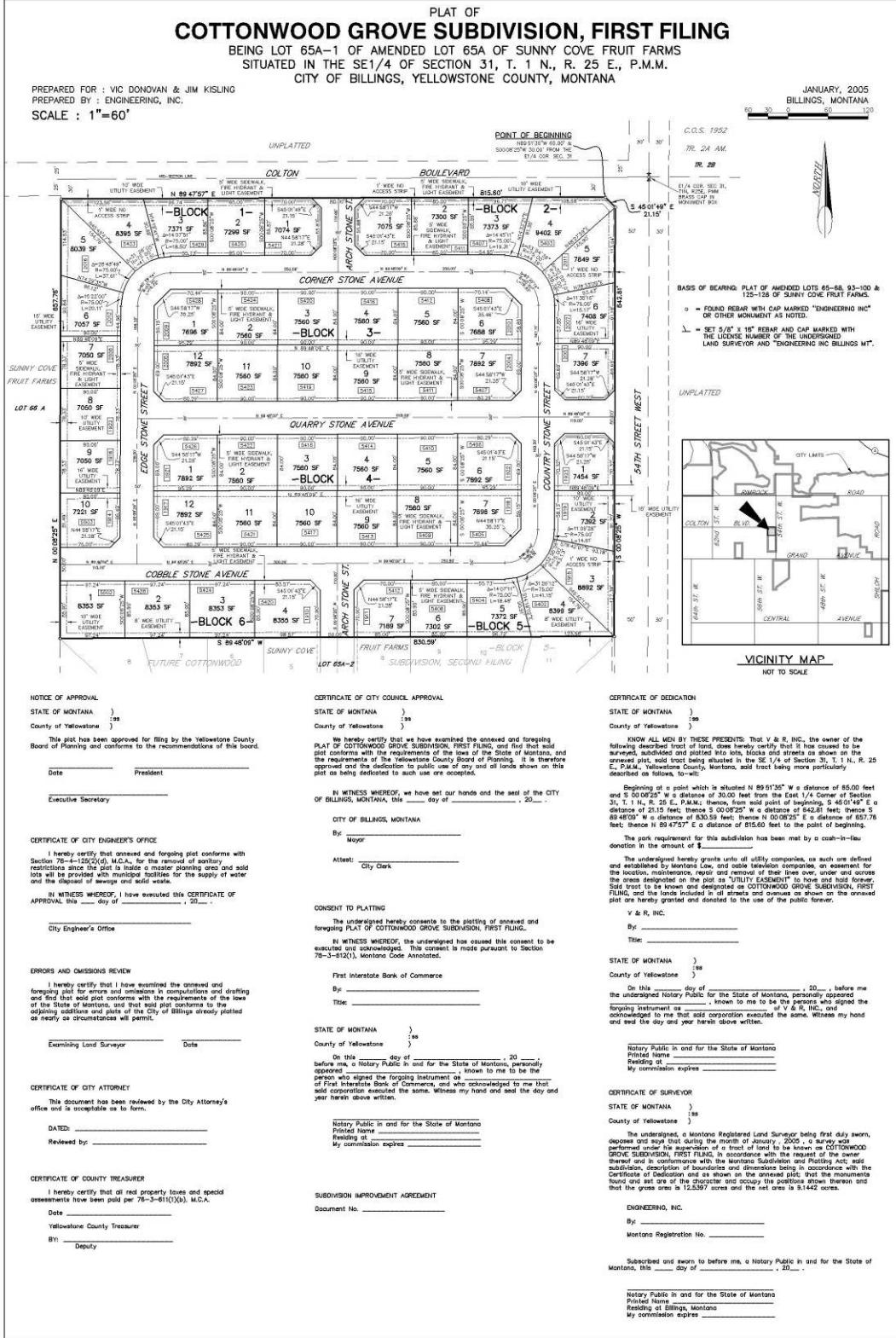
**PLAT OF
COTTONWOOD GROVE SUBDIVISION, FIRST FILING**

BEING LOT 65A-1 OF AMENDED LOT 65A OF SUNNY COVE FRUIT FARMS
SITUATED IN THE SE1/4 OF SECTION 31, T. 1 N., R. 25 E., P.M.M.
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : VIC DONOVAN & JIM KISLING
PREPARED BY : ENGINEERING, INC.

SCALE : 1"=60'

SCALE : 1"=60'



a AAA

[\(Back to Consent Agenda\)](#)

K

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 28, 2005

TITLE: Interstate Subdivision Final Plat

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: This final plat is being presented to the City Council for approval. The preliminary plat was conditionally approved by the Council on December 13, 2004. The subject property is zoned Entryway General Commercial and is located on the southwest corner of South Billings Boulevard and South Frontage Road. The subdivision will create 1 commercial lot. The subdivider has met the conditions for final plat approval. The City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

FINANCIAL IMPACT: The creation of 1 commercial lot will increase the City's tax revenue on this parcel.

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Interstate Subdivision.

Approved By: **City Administrator** _____ **City Attorney** _____

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, February 28, 2005

TITLE: The Village Subdivision Final Plat

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: This final plat is being presented to the City Council for approval. The preliminary plat was conditionally approved by the Council on May 10, 2004. The subject property is zoned Planned Unit Development and is located on the northwest corner of Shiloh Road and King Avenue. The subdivision will create 35 lots for commercial, residential and recreational purposes. The subdivider has met the conditions for final plat approval. The City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

FINANCIAL IMPACT: The creation of 35 commercial, residential and recreational lots will increase the City's tax revenue on this parcel.

RECOMMENDATION

Staff recommends that the City Council approve the final plat of The Village Subdivision.

Approved By: **City Administrator** **City Attorney**

[\(Back to Consent Agenda\)](#)

M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA February 28, 2005

TITLE: Village West 2nd Filing Subdivision Final Plat

DEPARTMENT: Planning and Community Services

PRESENTED BY: Nicole M. Cromwell, AICP, Planner II, Zoning Coordinator

PROBLEM/ISSUE STATEMENT: This final plat is being presented to the City Council for approval. The preliminary plat was approved on October 12, 2004. The subdivision is located north of Grand Avenue and east of 38th Street West and was formerly described as Lot 4A of Hancock Grand Subdivision. It contains 49 residential lots. The final documents meet all of the preliminary plat approval conditions. The City Attorney reviewed and approved the subdivision plat and the associated documents.

FINANCIAL IMPACT: There should be no direct financial impact to the City for approving this final plat. Most fiscal impact analyses show that residential development rarely pays the full cost of providing services to the occupants.

RECOMMENDATION

Staff recommends that the City Council approve the final plat of the Village West 2nd Filing Subdivision. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

A: Plat

[\(Back to Consent Agenda\)](#)

N1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 28th, 2005

TITLE: Payment of Claims

DEPARTMENT: City Administrator's Office

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$595,940.99 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 28th, 2005 is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

ATTACHMENT:

A -- List of claims greater than \$2500

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N2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 28th, 2005

TITLE: Payment of Claims

DEPARTMENT: City Administrator's Office

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,212,405.21 have been audited and are presented for your approval for payment. A complete listing of the claims dated February 4th, 2005 is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

ATTACHMENT:

A -- List of claims greater than \$2500

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, February 28, 2005**

TITLE: Public Hearing and Resolution to Dispose of City-Owned Property – Lots 44-46, Block 7, Amended Westside Addition and Rejection of Bids for the purchase of the land.

DEPARTMENT: Administrative Services – Parking Division

PRESENTED BY: Liz Kampa-Weatherwax, Parking Supervisor

PROBLEM/ISSUE STATEMENT: The City of Billings recently requested bids for the purchase of city-owned property on the southwest corner of 6th Avenue North and Division Street. The request for bids was in response to a number of entities expressing interest in purchasing the property. The City advertised for bids on February 3 and 10, and bids were opened on February 15, 2005. The following bids for purchase of said property were received:

- Big Sky Properties and Holding – Did not comply with bid requirements
- Roger Webb - \$20,502
- James W. Coons - \$30,000

A market appraisal was completed on September 7, 2004. The bids that were submitted and complied with the bid requirements were substantially below the market estimated value for the property. On January 24, 2005, the City Council approved a Resolution stating the City's intent to dispose of the property and scheduled a public hearing for February 28, 2005. The public hearing for the disposal of this property was advertised on February 10 and 17, 2005. Staff has mailed a copy of the advertisement for the public hearing to all property owners in a 300' radius of the city-owned property for sale. An affidavit of mailing was completed and notarized.

ALTERNATIVES ANALYZED: City staff has considered the following alternatives for the above-referenced property: (1) Accept the bid by James W. Coons for \$30,000, although substantially below market appraisal; or (2) Reject all bids and re-advertise the sale of the property.

FINANCIAL IMPACT: The land was acquired for dedication of required street right-of-way by the City Engineering staff, which has been completed. This sale would add funds to the Parking Division's revenue for possible use toward approved projects currently underway.

RECOMMENDATION

Staff recommends that the Council approve the attached resolution authorizing the sale of the property, but reject all bids for the sale of the property and allow staff to re-advertise the call for sealed bids for the sale of the property. After re-advertising, staff will bring a new recommendation to Council for the sale of this property.

Approved By: City Administrator City Attorney

ATTACHMENT

A. Resolution (1)

RESOLUTION 05 - _____

A RESOLUTION PURSUANT TO BILLINGS, MONTANA CITY CODE, ARTICLE 22-900: SALE, DISPOSAL OR LEASE OF CITY PROPERTY, DESCRIBING THE PROPERTY TO BE DISPOSED OF, DECLARING THE INTENT OF THE CITY TO DISPOSE OF THE PROPERTY AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings owns and desires to dispose of the public property located at the southwest corner of 6th Avenue North and Division Street, Lots 44-46, Block 7, Amended Westside Addition; and

WHEREAS, the location of the public property to be disposed of is more particularly described as follows:

Public Property Lots 44-46, Block 7, Amended Westside Addition, in Yellowstone County, Montana, according to the official plat now on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana; and

WHEREAS, the notice required by Section 22-902 of the Billings Montana City Code has been duly published and mailed; and

WHEREAS, the public hearing required by Section 22-902 of the Billings Montana City Code was duly held on the 28th day of February, 2005;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA AS FOLLOWS:

That the City staff is authorized to proceed with the sale of Lots 44-46, Block 7, Amended Westside Addition, under the requirements of Section 22-902 of the Billings, Montana City Code.

APPROVED AND PASSED by the City Council of the City of Billings, Montana this _____ day of _____, 2005.

THE CITY OF BILLINGS:

BY: _____
CHARLES F. TOOLEY, MAYOR

ATTEST:

MARITA HEROLD, CMC/AAE , CITY CLERK

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA**
Monday, February 28, 2005

TITLE: Public Hearing on Recommendation for MET Operators Carrying Cash/Change Bags

DEPARTMENT: Aviation/Transit Department

PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation/Transit

PROBLEM/ISSUE STATEMENT: To address a possible Operator safety issue and comply with the new Teamster Contract language, a Joint Labor Management Committee (JLMC) was formulated to discuss MET Operators carrying cash/change bags on MET buses. Three members from the Teamster's Union and three members from management were selected to make up the Committee. The Committee met six times and forwarded a recommendation to the City Administrator, which the Committee believed best addressed the situation. It was the Committee's recommendation that MET Operators no longer carry cash/change bags to sell bus passes and make change for passengers, and that cash fares and bus pass sales will be for the exact amount only, payable by check or cash.

For accountability, a "bus pass sales farebox" will be installed on all the buses for the Operators to deposit checks and cash received from selling the bus passes. Newly designed bus passes will be printed, which include a matching pre-numbered envelope for the Operator to deposit the checks and/or cash received from the sales. The pre-numbered envelope concept will provide a means to track all bus pass sales.

This recommendation was presented at the Council Work Session on January 18, 2005. To allow for public input prior to Council action, a public hearing was advertised in the January 27 and February 17, 2005 *Billings Gazette*, as well as the February 17 and 24, 2005 *Billings Times*.

ALTERNATIVES ANALYZED: A number of alternatives were identified and analyzed throughout the process. These included going to a different bus pass system, using open fareboxes, Smartcard technology, and the utilization of private vendors to sell and distribute bus passes. In the final analysis, the use of the additional bus pass sale farebox, with a new type of bus pass sequenced with matching pre-numbered cash envelopes, was considered the most cost effective and manageable way to address the issue.

FINANCIAL IMPACT: The implementation cost to implement this new process is approximately \$6,000. These costs include the fabrication and placement of special fareboxes on all buses for approximately \$5,400, and an additional cost of approximately \$600 for the printing

of the newly designed bus passes. Funding for the project is available in the MET's current operational budget.

RECOMMENDATION

Staff recommends that the City Council approve the recommendation that MET Operators no longer carry cash/cash bags to make change for its passengers, and that cash fares and pass sales will be for exact change only, payable by check or cash.

Approved By: **City Administrator** **City Attorney**

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA**
Monday, February 28, 2005

TITLE: Public Hearing and Resolution on Right-of-Way Vacation and Dedication for Country Club Heights Subdivision

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Mona Clark and Bruce Anderson submitted a petition to vacate a portion of a 25-foot wide alley between their lots located on Lots 1 and 28, Block 1, Country Club Heights Subdivision. The petitioners propose to shift the original alley 15 feet west. The purpose of relocating the alley is to increase the side yard area for Lot 28. The existing structure on Lot 28 encroaches into the required side yard setback. The vacation and relocation of the walkway will bring the structure into conformance with the zoning requirements. An amended subdivision plat, dedicating the new right-of-way, is being presented in conjunction with the vacation petition for Council's action.

ALTERNATIVES ANALYZED:

- Vacate alley right-of-way and accept dedication of new alley right-of-way
- Do not vacate alley right-of-way

FINANCIAL IMPACT: There will be no financial impact to the City as a result of this right-of-way vacation. No appraisal was conducted for this action because the City is receiving identical amount of property adjacent to the original alley. The value of the vacated property is the same as the dedicated property.

RECOMMENDATION

Staff recommends that Council approve the vacation of the alley between Lots 1 and 28, Block 1, Country Club Heights Subdivision and accept the dedication of new right of way as shown on the amended Subdivision Plat.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

- A. Request to Vacate Public Right-of-Way
- B. Resolution

INTRODUCTION

Mrs. Mona Clark and Dr. Bruce Anderson own neighboring lots that share a dedicated right-of-way between them. The right-of-way was originally established to provide access to a City park located behind their properties. Mrs. Clark's residence is located within five feet of the east right-of-way boundary. Dr. Anderson's lot is vacant. Dr. Anderson has agreed to reduce the size of his lot to allow the walkway alley to be shifted, approximately 15 feet to the west.

PROCEDURAL HISTORY

The Council acknowledged the petition to vacate right-of-way and set a public hearing on February 14, 2005. The petitioners have also submitted an amended plat showing the relocation of the right-of-way and lot line and dedicating new right-of-way to the City to reestablish the 25-foot right-of-way.

BACKGROUND

Mrs. Clark's residence encroaches into the required 5-foot side yard setback. The vacation of right-of-way and the relocation of her property boundary and the right-of-way boundary will add 15 feet to her lot. This action will bring her lot and structure into conformance with the zoning regulations. Dr. Anderson's lot will be reduced by 15 feet, but the resulting lot size still complies with the minimum lot size for the zoning district.

ALTERNATIVES ANALYSIS

Vacate Alley Right-of-Way and Accept New Dedication. Vacation of the right-of-way transfers ownership of the land to the adjacent property owner and allows the owner to develop and use the property as part of the lot. To replace the loss of right-of-way, the owners are dedicating an equivalent amount of property for the same purpose.

Do not vacate alley Right-of-Way. Under this option the City would retain ownership of the right-of-way.

RECOMMENDATION

Staff recommends that Council approve the vacation of the alley between Lots 1 and 28, Block 1, Country Club Heights Subdivision and accept the dedication of new right of way as shown on the amended Subdivision Plat.

ATTACHMENTS

- A. Request to Vacate Public Right-of-Way
- B. Resolution

RESOLUTION NO. 05-_____

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, DISCONTINUING AND VACATING a portion of an alley located between Lots 1 and 28, Block 1, Country Club Heights Subdivision.

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting vacation of a portion of an alley located between Lots 1 and 28, Block 1, Country Club Heights Subdivision as described hereinafter; and

WHEREAS, a public hearing was properly noticed and held as required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AS FOLLOWS:

1. VACATION. Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., a portion of an alley located between Lots 1 and 28, Block 1, Country Club Heights Subdivision as further described below is/are hereby vacated.

A tract of land situated in the SW1/4 of Section 25, T.1N., R.25E., P.M.M.,

Yellowstone County, Montana, more particularly described as:

Country Club Heights Subdivision, Recorded February 15, 1957, Under Document No. 578034, Records of Yellowstone County, Montana; Beginning at the most NW corner of Lot 28, Block 1; Thence S 16° 47' 58" E for a distance of 120.00 feet, to a point on the north Right-of-Way line of Country Club Circle; Thence on a curve to the left with a radius of 230.00 feet, an arc distance of 15.00 feet, (chord bearing S 71° 19' 54" W with a chord distance of 15.00 feet); Thence

N 15° 36' 57" W for a distance of 120.52 feet; Thence N 73° 12' 02" E for a distance of 12.50 feet to the point of beginning.

Containing 0.038 gross and net acres, more or less

See Exhibit "A" Attached

2. **PUBLIC INTEREST.** The vacation of the above described **a portion of an alley located between Lots 1 and 28, Block 1; Country Club Heights Subdivision** is in the best interest of the public and can be done without any public detriment.

PASSED by the City Council and APPROVED this 24th day of January, 2005.

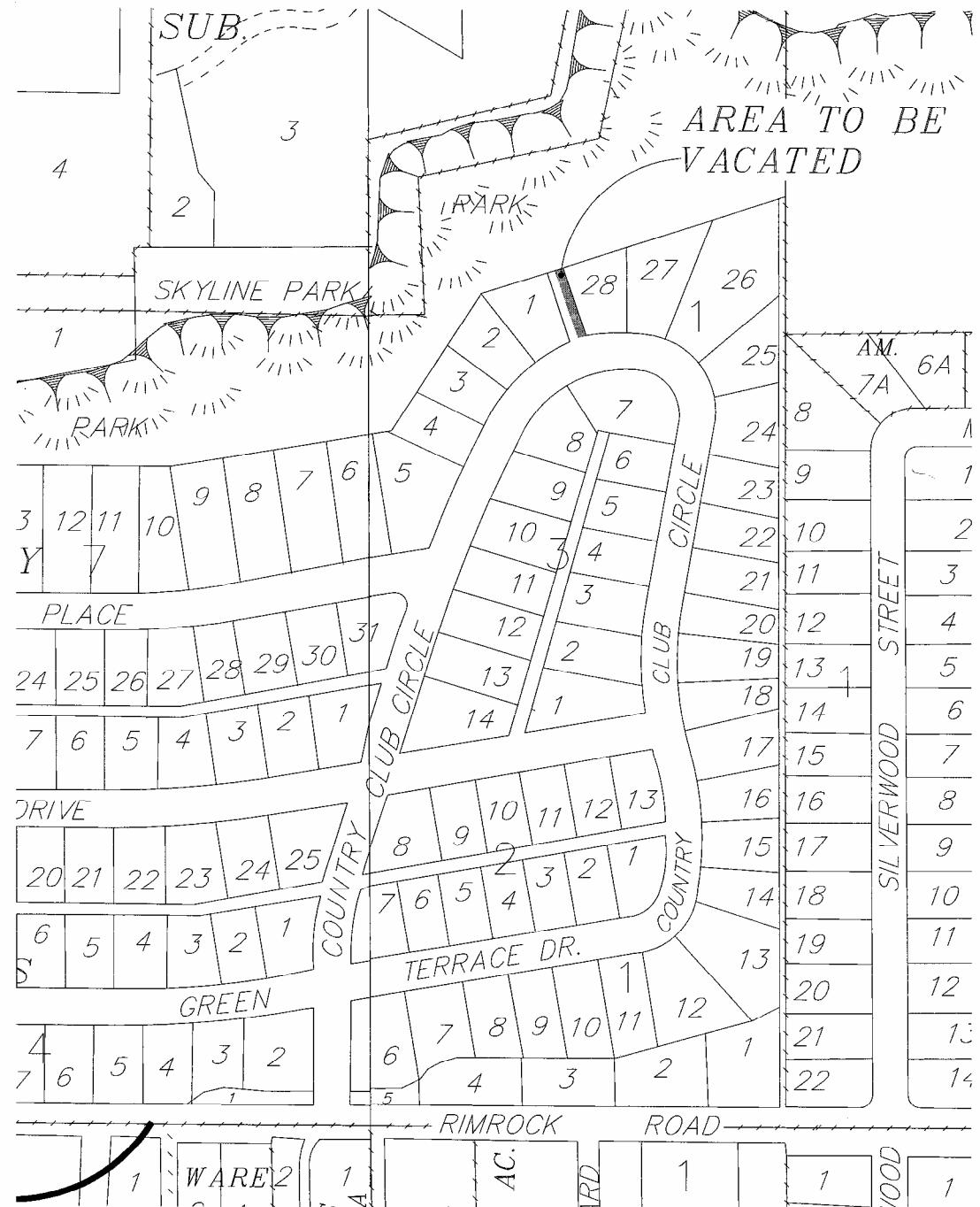
THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

EXHIBIT "A"



[\(Back to Regular Agenda\)](#)

Agenda item:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
MONDAY, FEBRUARY 28, 2005

TITLE: Public Hearing and Resolution of De-Annexation – AN#04-14

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II through Ramona Mattix, AICP, Planning Director

PROBLEM/ISSUE STATEMENT: Owner and petitioner Bill Dunlap is requesting that the City Council exclude an approximate 2-acre parcel legally described as the S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, T1N, R26E from the City of Billings in accordance with Section 7-2-4803 of the Montana Code Annotated (MCA). The subject property is zoned Neighborhood Commercial, per a zone change (ZC #306) from R-7200 to NC, which was approved by the Board of County Commissioners on March 17, 1981 (the petitioner initiated the zone change request). The petitioner is requesting de-annexation, as the property taxes have greatly increased since the annexation of the property in 2001. The subject property was annexed into the City on August 13, 2001, (Resolution 01-17732) per the petitioner's request in order to obtain City utility services for proposed redevelopment of the property.

A Resolution of Intent to conduct a public hearing on the de-annexation request was approved by the City Council on January 24, 2005. A 20-day public comment period commenced on January 25, 2005, and the proposed de-annexation has been publicly advertised.

ALTERNATIVES ANALYZED: The request for de-annexation was initiated by the property owner pursuant to Title 76, Chapter 2, Part 48 of the Montana Code Annotated. According to this statute, the City Council may decide to approve or deny the request for de-annexation. Since, there is not an adopted de-annexation policy to guide the Council in this action; staff has reviewed this request with the criteria set forth in the recently adopted City Annexation Policy to determine the suitability of the submitted petition.

The petitioner's main concern is the recently administered arterial construction fee that is charged based upon the square footage and zoning of a particular lot, as well as other fees his property is assessed by the City. Staff requested that the petitioner pursue appealing the fees to the City as a possible intermediate step to applying for de-annexation. The petitioner applied for an appeal with the Public Works Department on December 2, 2004, and was denied the request on December 7, 2004. The Public Works Department found that the fees being assessed for the

property are not unfair or inequitable, as there is potential for development of the commercially zoned property (please see Attachment D for the protest form and response).

FINANCIAL IMPACT: According to information received by the City of Billings Finance Division, the property to be de-annexed would remove an annual tax revenue of \$885.24 to the City of Billings in property taxes. An additional \$1994.09 is allocated to the City for sources consisting of garbage (\$79.00), fire hydrant (\$13.70), street maintenance (\$520.54), storm sewer (\$662.98), and arterial fees (\$717.87). The subject property is currently assessed for taxes at a higher rate due to the Neighborhood Commercial (NC) zoning district in which it is located.

RECOMMENDATION

Staff recommends that the City Council **deny** this de-annexation request.

Approved by: **City Administrator** _____ **City Attorney** _____

ATTACHMENTS

- A: Site Location Map
- B: Petition for De-Annexation (Exclusion)
- C: Petitioner's Letter
- D: Tax Assessment Protest Form/Response from Public Works
- E: Site Photographs
- F: Resolution

INTRODUCTION

Owner and petitioner Bill Dunlap is requesting that the City Council exclude an approximate 2-acre parcel legally described as the S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, T1N, R26E from the City of Billings in accordance with Section 7-2-4803 of the Montana Code Annotated (MCA). The subject property is zoned Neighborhood Commercial, per a zone change (ZC #306) from R-7200 to NC, which was approved by the Board of County Commissioners on March 17, 1981 (the petitioner initiated the zone change request). The petitioner is requesting de-annexation, as the property taxes have greatly increased since the annexation of the property in 2001. The subject property was annexed into the City on August 13, 2001, (Resolution 01-17732) per the petitioner's request in order to obtain City utility services for proposed redevelopment of the property. The proposed redevelopment, which included the construction of seven (7) duplex structures for low income housing, was unable to be completed due to financing and the high cost of developing the land.

The subject property is bordered on the north by Lincoln Lane Assisted Living, zoned Residential Professional and R-6000 (located within the County) and Intrepid Health Services, zoned Community Commercial (located within the City); on the south by single-family residences within the Neighborhood Commercial zoning district (located within the City and County); on the east by single-family residences in the Residential 7000 zoning district (located within the County); and on the west by a restaurant (Taco Bell), zoned Highway Commercial (located within the City).

Staff has determined that the proposed de-annexation is contrary to the goals set forth by the City's newly adopted Annexation Policy. The policy provides criteria to review the suitability of this property to remain within the City limits.

PROCEDURAL HISTORY

- The subject property was rezoned from Residential-7200 to Neighborhood Commercial on March 17, 1981.
- The subject property was annexed into the City on August 13, 2001.
- The petitioner, Bill Dunlap, submitted an Assessment Protest form to the Public Works Department on December 2, 2005.
- The Public Works Department issued a response to the protest on December 7, 2005 (please see Attachment D).
- The petitioner submitted a petition for de-annexation on December 21, 2004.
- The City Council received the petition and passed a Resolution of Intent to exclude this property at the January 24, 2005, City Council meeting. This action initiated a public comment period of 20 days that commenced on January 25, 2005, and set a date of February 28, 2005, for a public hearing.
- The City Council will conduct a public hearing on the de-annexation petition on February 28, 2005.
- Should the Council approve the de-annexation; an ordinance excluding the land from Ward II will be presented for first reading on March 14, 2005.

BACKGROUND

The petitioner is requesting de-annexation, as the recently administered arterial construction fees have greatly increased the amount of taxes assessed for the subject property, which is higher due

to the commercial zoning. The subject property contains a single-family residence and one (1) small accessory structure, which the petitioner states should not be assessed at a higher tax rate. The property is served by the Billings Heights Water District and contains a septic system for sanitary sewage disposal; therefore, the petitioner asserts that he has not been provided with the City services in which he is being assessed.

ANALYSIS

The adopted Annexation Policy establishes criteria for annexing land into the City, which will be used to determine whether this property is more suitable to remain within the City limits or whether it should be excluded. Pursuant to the Policy Statement, the City Council may approve, deny, or conditionally approve petitions or initiatives for annexation based on the criteria outlined below, which can also be used to determine whether a property should be excluded from the City limits.

- *The area must be located within the Limits of Annexation as defined herein and within the Urban Planning Area.*

As depicted on the Limits of Annexation Map adopted on November 22, 2004, the subject property is located within the City's projected 5-year annexation boundary. In addition, the property is located within the Urban Planning Area, which specifies properties that can be "safely and effectively served by City services".

- *The City must be able provide adequate city services within a time period mutually agreed to by the property owners requesting annexation and the City.*

There are adequate city services (sewage disposal) located within Lincoln Lane to service this property.

- *Existing or proposed public improvements within the area to be annexed must meet City standards.*

The existing street provides for adequate access to the site and there is a 10-inch sewer line located within Lincoln Lane that could adequately serve the property.

- *All property owners within the area to be annexed must sign a Waiver of Right to Protest the creation of Special Improvement Districts.*

The subject property was annexed on August 13, 2001. There was no waiver submitted as part of the application.

- *All residential property owners within the area to be annexed must create or join an existing park maintenance district.*

The subject property is currently within the City limits.

- *Residential densities within the area to be annexed must equal or exceed four dwelling units per acre.*

As calculated, the property has a potential residential density of 55 units. This calculation is an estimate based on the size of the property and does not take into account maximum lot coverage, landscaping, or proposed roads/driveways. Furthermore, due to the Neighborhood Commercial zoning, there is a potential for commercial development on the site, which may include offices, commercial retail, or a restaurant.

- *The proposed land use within the area to be annexed must conform to the goals of the City of Billings and Yellowstone County Growth Policy.*

Chapter 5 of the Growth Policy specifies that the properties located within the Urban Planning Area can be easily serviced by the City. The subject property is located within an area that is easily accessible for City utilities and services, such as police and fire protection. Furthermore, the subject property complies with the Annexation Policy, which is utilized to “help plan for the expansion and provision of municipal services.” The subject property is bordered on the west by properties located within the City limits and is located within the 5 year annexation boundary on the Annexation Limits Map. De-annexing the subject property would be contrary to both the Growth Policy and the Annexation Policy.

City Departments:

City departments were given the opportunity to comment on this de-annexation, as follows:

Public Works: No issues with the proposed de-annexation.

Planning: Concerns. With the exception of the size, this parcel satisfies the criteria outlined in the Annexation Policy and should not be excluded.

Police: No issues with the proposed de-annexation.

Fire: No issues with the proposed de-annexation.

City Attorney: Comments. There are no concerns regarding the proposed de-annexation, however specific de-annexation practices and criteria should be established for future requests.

Public Utilities: No issues with the proposed de-annexation.

Finance: Concerns. The City should be pursuing additional annexations within this area, not excluding property from the city.

Parks: No issues with the proposed de-annexation.

MET Transit: No issues with the proposed de-annexation.

County Public Works: No comment.

City Facilities:

Primary access is via a driveway off of Lincoln Lane, a narrow paved street, without curbs, gutters or sidewalks, which serves properties within both the city and county. No immediate improvements are planned for the street, however additional development in the area may create the need for improvements in the future.

Sewer services are currently available to this parcel from the city system via a 10-inch sanitary sewer line within Lincoln Lane. Water to the property is provided via a line within Lincoln Lane serviced by the Billings Heights Water District.

General City Services:

These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, garbage collection and disposal, parks, etc, as specified below. The service providers that responded did not oppose the de-annexation of the subject property.

- The property is served by the Billings Fire Department, Station #6, located at 1601 St. Andrews Drive.
- Two Moon park is within one (1) mile of this property. There is no anticipated negative impact on the city parks.
- There are no storm water lines in the area of this property at this time.

City Financing:

Any future storm water facilities may be assessed to the owner, or future owners through SID's. The property owner pays city taxes and city fees for fire hydrant maintenance, street maintenance (including the new arterial construction fee) and storm sewer maintenance that helps to offset infrastructure costs to the City.

STAKEHOLDERS

De-annexations do not require notification of surrounding property owners. However, it is the City's policy to post a notice of public hearing on the subject property; this property was posted on February 8, 2005. Pursuant to the regulations for a de-annexation petition, a 20-day public comment period was provided and advertised. At the time this report was written, there was no public comment received on the proposal.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

De-annexation of this property would be in opposition to the following goals, objectives and policies of the *Yellowstone County and City of Billings 2003 Growth Policy Plan and the Annexation Policy*:

- Annexation Policy goals to help plan for expansion and provision of municipal services (Chapter 5, page 147)
- The Urban Planning Area is used to define the geographic extent that can be safely and effectively served by City services (Chapter 5, page 147)

- The Policy Statement (Criterion 2) of the Annexation Policy, which is outlined within this report.

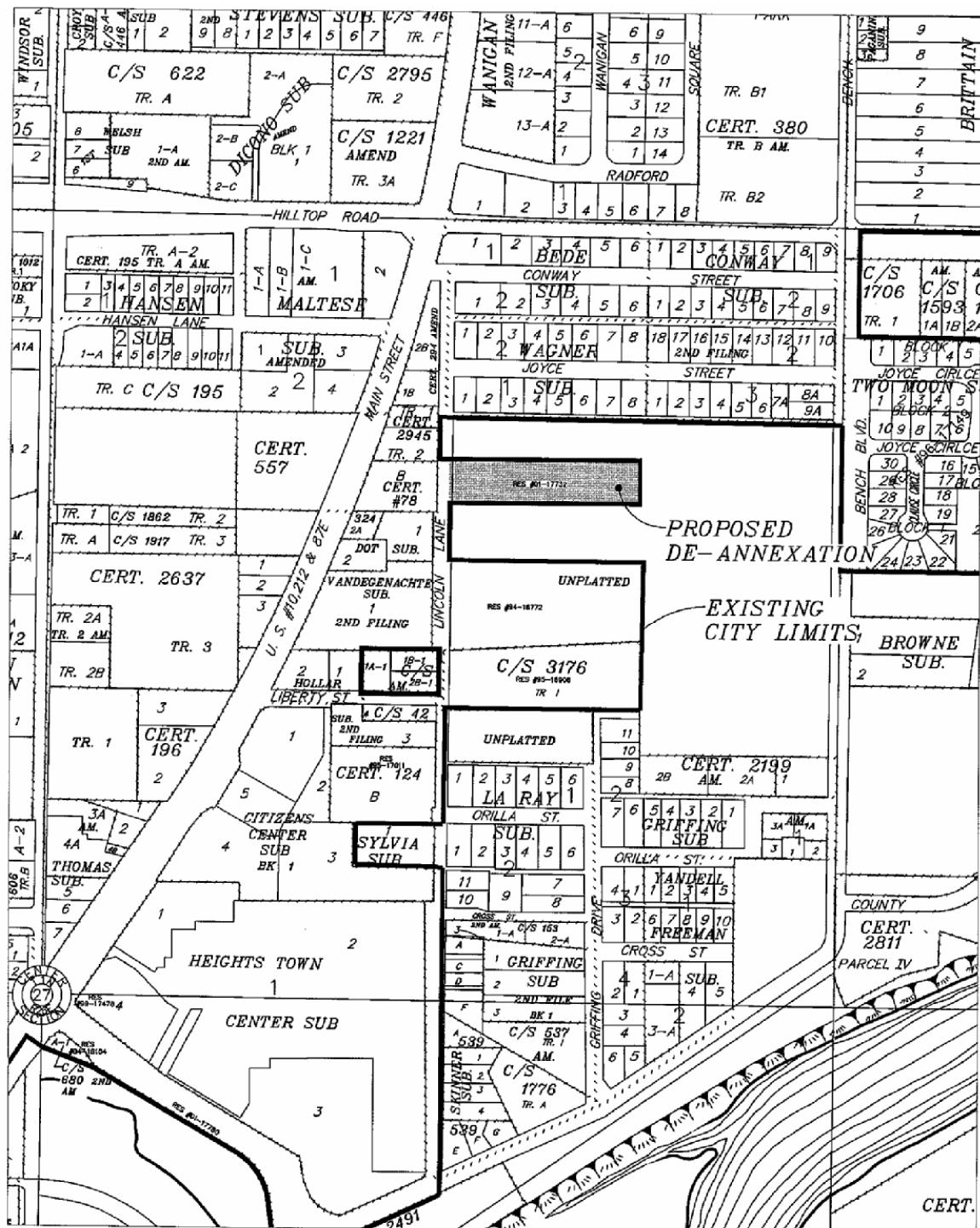
RECOMMENDATION

Staff recommends that the City Council **deny** this de-annexation request.

ATTACHMENTS

- A: Site Location Map
- B: Petition for De-Annexation (Exclusion)
- C: Petitioner's Letter
- D: Tax Assessment Protest Form/Response from Public Works
- E: Site Photographs
- F: Resolution

ATTACHMENT A
Location Map



ATTACHMENT B
Petition for De-Annexation (Exclusion)



**PETITION
FOR DE-ANNEXATION
FROM THE CITY OF BILLINGS**

NOTICE TO PETITIONER

This is a Petition to the City of Billings requesting the DE-annexation of property from the City, pursuant to MCA Title 7, Chapter 2, Part 48. Procedures for de-annexation are governed by the Statutes of the State of Montana. This Petition requires the signatures of not less than 75% of the Resident Freeholder Electors to be considered for de-annexation.

INSTRUCTIONS

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting de-annexation and all other property within one-quarter (1/4) mile.
The map must show:
 - a. The boundaries of the municipality;
 - b. The present streets, major trunk water mains and sewer mains;
 - c. The zoning of the property requesting de-annexation and the property immediately adjacent to it.
3. The Petition should be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Pamly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, Parks and Recreation Department, and the Finance Department. If the departments find no problems with the Petition, the City Clerk will schedule the Petition for City Council action.
4. If the Council finds that the petition is signed by the required number of owners of the territory to be excluded, and that the granting of said petition will be to the best interest of the city and the inhabitants thereof and will not materially mar the symmetry of the city, they shall pass a resolution of intent to De-Annex the territory. Then the City Clerk shall publish in the newspaper for two successive notice of the Council's Resolution of Intent to De-annex, of a 20-day comment period, and of an upcoming public hearing on the question of de-annexation.
5. A description of the territory to be de-annexed from the City is legally described on a document attached hereto.

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
12-21-04	Bill Dunlap	Bill Dunlap	P.O. Box 23104 Billings, Mt 59104

(continued on separate page)

(Should be completed prior to obtaining signatures of resident freeholder electors)

DESCRIPTION OF THE TERRITORY TO BE DE-ANNEXED FROM THE CITY OF BILLINGS

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: 12/21/04

Received By: _____

Petition Number: BA0413711

Fee Paid: \$600.00

ATTACHMENT C
Petitioner's Letter

December 21, 2004

City-County Planning Department

Property Description: S1/2, N1/2, SW1/4, NE1/4, NE1/4 S. 27, T1N, R26E
Known as: 637 Lincoln Lane, Billings, MT

Owner: Bill Dunlap

Gentlemen:

In 2000, I was working with Joe Burst, the Home Program Coordinator of the Community Development Division of the City of Billings, and the Stockman Bank to develop low income housing on my property, which consists of two acres and an old farm house. To get funding, it was required that I have the property annexed into the City.

After spending my savings on the project, I hit many obstacles as the costs of developing the land was too great to support the amount I could get for the sale of the lots. The Stockman Bank refused to fund it and the project fell apart. The development of this area was obviously premature.

What I have is an old farm house and two acres of undeveloped land with no city services. I have Heights Water. I tried to obtain a loan on it and all it appraised for was \$34,000. The taxes have tripled to \$2,880.08. My only income is my social security of \$872/month and a small amount from my share of a ranch, which was minimal because of the drought.

I have tried to sell the property for over a year with no success. Businesses want to be located on Main Street, not Lincoln Lane. The taxes are so high, no one will buy it for a residence..

I respectfully request that this property be de-annexed.

Sincerely,



Bill Dunlap – Ph: 259-8990
P.O. Box 23104
Billings, MT 59104

ATTACHMENT D
Assessment Protest Form and Response
City of Billings Public Works Department

City of Billings

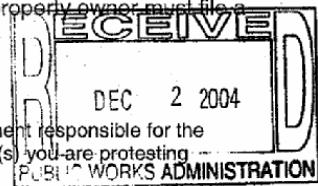
Assessment Protest Form

The protest and appeal process is the responsibility of the property owner. To obtain an assessment adjustment or refund, if the City determines it is due, the property owner must file a written appeal with the City of Billings.

Complete and submit this form to either the:

Finance & Administrative Services Division
City of Billings
210 North 27th Street
Billings, MT 59101

or
City department responsible for the
assessment(s) you are protesting
PUB WORKS ADMINISTRATION



Date 11-23-04 Tax Code # D05S2S-3 Taxable Year 10-31-04

OLD # (D-1427)

Legal description S 2 N 2 SW 4 NE 4 NE 4 NW 26

2.00 AC (2002)

Annexation Resolution 04-17738

Have you filed a formal protest with the Yellowstone County Treasurer's Office? 520.54

I am protesting payment of \$ 662.98 (total) I am being assessed for:
717.88

Arterial Construction Fee Light District # _____

Storm Sewer SID # _____

Other Street Maintenance

I am protesting for the following reason(s) William Dunlap
— 637 Lincoln Lane —

Although this property is zoned neighborhood-

commercial, it is just a residence with no

city services. Residential arterial const. fee

is capped at 9600 ft. Most are paying \$35 per

resident. You are charging me \$12.88, we do not have storm sewer or

street maintenance.

Property Owner Signature Bill Dunlap Date 11-23-04

Property Owner Name (printed legibly) Bill Dunlap

Mailing address P O Box 23104

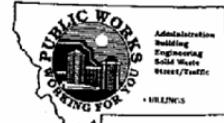
City Billings State MT ZIP 59104

Phone Number (optional) 259-8990



CITY OF BILLINGS

PUBLIC WORKS DEPARTMENT
Administration Division



510 North Broadway - 4th Floor

Billings, Montana 59101

Office (406) 657-8230

Fax (406) 657-8252

December 7, 2004

Bill Dunlap
637 Lincoln Lane
PO Box 23104
Billings, MT 59104

SUBJECT: RESPONSE TO YOUR REQUEST FOR A REVIEW OF PUBLIC WORK ASSESSMENTS ON TAX CODE #D05525

Dear Mr. Dunlap:

Thank you for your patience while we reviewed your request for a review of the street maintenance, arterial construction, and storm sewer assessments on your property. Our research highlighted the following information specific to your situation.

A review of Billings Municipal City Code, Article 22-500, Street Maintenance District, and Montana State Code, Part 44, Special Provision for Street Maintenance Districts, do not provide a process for adjusting Street Maintenance District assessments. Montana State Code establishes five (5) methods of assessing property. The Billings City Council, using methods established in the Montana State Code, developed the current City assessment process that calculates assessments on the lot size basis. There is currently no provision for exempting all or a portion of street maintenance assessments within Billings Municipal City Code or the Montana State Code.

The City Council passed Ordinance 04-5300 adopting arterial construction fees earlier this year. Arterial construction fees are assessed citywide regardless of the parcel's proximity to designated arterial roadways. The arterial construction fee is a community cost, borne by the entire community. While the method of calculating assessments may not be perfect, it is equitable in that fees are based on square footage and zoning to categorize properties with respect to their current or potential ability to contribute traffic to the system (e.g., commercial and multi-family properties paying more because they generate more traffic). While I understand your parcel is currently a single family residence, the Neighborhood Commercial zoning allows it to be developed for those uses, and it would then generate more traffic on the arterial street system.

All property within the Billings city limits is assessed in accordance with Section 22-800 of the Billings Municipal City Code. This section of the code requires that assessments be based on developed/undeveloped, zoning, and square footage. The Billings City Council adopted Article 22-800, Storm Sewer Maintenance Code, in 1986. The City Council included a provision within Section 22-804 (e) that provides the Council the ability to adjust a property owner's assessment **IF** the City Engineer and the City Council determined the rate charged not to be equitable to the rate charged others. The City of Billings established the Storm Sewer Assessment through

Billings Pride
City-wide



Dunlap – Public Works Assessments
December 7, 2004
Page 2 of 2

Ordinance 4125 in September 1977. The method of assessment has since been challenged and upheld by the Montana Supreme Court

We consider a property developed if the property contains a residential and/or business structure. If the property is limited to such structures like an irrigation pump house, tool shed, etc., we consider the property undeveloped.

My staff and I completed our review of the arterial construction and storm drain assessments on your specific property and we have determined the following.

Square Footage	Zoning	Storm Rate- NC Zoning	Annual Storm Assessment	Arterial Rate NC Zoning	Annual Arterial Assessment
87,120	Neighborhood Commercial (NC)	.00761	\$662.99	.00824	\$717.87

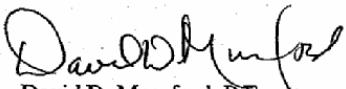
This review does not indicate that the arterial construction and storm sewer assessments levied on your parcel are unfair, inequitable, or unreasonable in comparison to what is charged others. Therefore, I do not support your request for an adjustment to the assessments. However, I will submit your request, and our findings, to the City Administrator for possible forwarding to the City Council for their consideration.

While I have not visited your property, it appears the parcel may be large enough to provide some relief to your arterial construction and storm sewer assessments if you choose to split the developed and undeveloped portions through the re-platting process. The vacant portion of your property would then be subject to the vacant rates for arterial construction (.00125) and storm drain (.00116). If you wish to pursue this option, please contact the City-County Planning Department at 657-8246.

If you have concerns about our decision regarding your property, you may choose to make an appointment with Kristoff Bauer, City Administrator, by calling his office at (406) 657-8433.

Please feel free to contact me at 657-8230 if you have any questions.

Sincerely,



David D. Mumford, P.E.
Public Works Director

DDM:TLR

CC: Kristoff Bauer, City Administrator
Brent Brooks, City Attorney
Vern Heisler, P.E., Deputy Public Works Director / City Engineer
Ramona Mattix, City-County Planning Director

ATTACHMENT E
Site Photographs



Figure 1: View looking east onto the subject property from Lincoln Lane at the existing farmhouse.



Figure 2: View to the north of the subject property along Lincoln Lane at the adjacent commercial uses (Intrepid Health Services is pictured).



Figure 3: View to the west of the subject property at the existing commercial uses along Main Street (Taco Bell is pictured).



Figure 4: View to the property directly adjacent to the north of the subject property, Lincoln Lane Assisted Living, located in the County.

ATTACHMENT F
Resolution

RESOLUTION NO. 05 - _____

**A RESOLUTION TO EXCLUDE TERRITORY UNDER THE
PROVISIONS OF TITLE 7, CHAPTER 2, PART 48 OF THE
MONTANA CODE ANNOTATED.**

WHEREAS, the City Council of the City of Billings has determined that a petition to exclude the territory now within the City of Billings was signed by the requisite number of qualified electors of the City, and that granting of the petition is in the best interest of the City of Billings and will not materially mar the symmetry of the City; and

WHEREAS, the Billings City Council desires to exclude said territory from the City of Billings pursuant to Title 7, Chapter 2, Part 48 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the Billings City Council desires to exclude is particularly described as follows:

S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 27, T1N, R26E, Yellowstone
County, Montana.

(#04-14)

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
BILLINGS, MONTANA:

1. The Billings City Council desires to exclude the above described contiguous territory.
2. All registered voters in the territory to be embraced were immediately notified, in writing.
3. Notice of the City Council's intent to exclude said territory was published as provided in Section 7-1-4127, MCA, with notice that for a period of twenty (20) days after first

publication of the notice, the Billings City Clerk accepted written comments approving or disapproving the proposed exclusion of the above described territory from the City of Billings from registered voters residing in the area proposed to be excluded.

4 The City Clerk forwarded all written communication received by the Clerk to the City Council for consideration.

5. A public hearing on the question of exclusion of said territory was held on February 28, 2005.

APPROVED AND PASSED by the City Council of the City of Billings this 28th day of February, 2005.

THE CITY OF BILLINGS

BY:_____

Charles F. Tooley, MAYOR

ATTEST:

BY:_____

Marita Herold, CMC

CITY CLERK

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA**
Monday, February 28, 2005

TITLE: Public Hearing and Resolution of Annexation – Annexation #05-01

DEPARTMENT: Planning and Community Services Department/Public Works Department

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The City of Billings is proposing to reconstruct South Billings Boulevard from King Avenue East to Overpass Avenue. The cost of the project will be funded through a variety of mechanisms including a General Obligation Bond approved by the City voters, Special Improvement District assessments, City Storm Drain funds and Water Main Construction fees. Those properties fronting South Billings Boulevard will be directly affected by the Special Improvement District (SID) assessments. There are five County properties that are wholly surrounded by the City located near the south end of the project. Four of these properties would be part of the SID if they were in the City. Without the inclusion of these four properties in the SID, the City would not be able to complete the project as planned. All five wholly surrounded properties receive City water but are on individual septic systems. It would be in the best interest of the City to annex these five properties in order to complete a functional reconstruction of South Billings Boulevard.

The City Council approved a Resolution of Intent on January 24, 2005. Following that action, notice of a 20-day comment period was advertised in the Billings Times and the registered voters of the area to be annexed were notified of the comment period and a public hearing to be held on February 28, 2005.

ALTERNATIVES ANALYZED: The City has the authority to annex property that is wholly surrounded by City limits without the owners' permission. This authority is granted by state law, 7-2-4501 et. seq., Montana Code Annotated. There are other methods of annexation that would allow the property owners to protest. In these cases, if a majority of property owners protesting the annexation could effectively block the annexation. The "Wholly Surrounded Land" method is recommended for guaranteeing the success of the annexation.

FINANCIAL IMPACT: Without these four properties contributing their proportionate SID assessment to the project, the City would not be able to complete the South Billings Boulevard reconstruction with the planned bicycle lane improvements and the transition from the old section to the new section. Three of the properties within the SID currently have curb, gutter and sidewalk. These improvements will be replaced by the City at no cost. A fourth property has no

curb, gutter or sidewalk and the assessment on this property totals \$7,609.44 over fifteen years. The fifth property would not be subject to SID assessments.

RECOMMENDATION

Staff recommends that City Council approve a Resolution of Annexation to annex the wholly surrounded County properties located on South Billings Boulevard.

Approved By: City Administrator City Attorney

ATTACHMENTS

- A. Tax Comparisons of Affected Properties
- B. Plan for Extension of Services
- C. Resolution of Annexation

INTRODUCTION

Five properties located along South Billings Boulevard lie outside of the City limits and are entirely surrounded by City properties. Four of these properties also lie within the boundaries of a proposed Special Improvement District that will help fund the reconstruction of South Billings Boulevard. Excluding these properties from the SID will preclude the City from reconstructing South Billings Boulevard as planned. The properties are currently receiving City water.

BACKGROUND

The Transportation Bond approved on November 4, 2003, was created to fund several major transportation projects in the City of Billings. One of these projects is the reconstruction of South Billings Boulevard. The project entails reconstructing the roadway to three lanes, constructing curb, gutter, and sidewalks, installing streetlights and constructing an off-street bicycle path. The project will also include construction of a new storm drain system, replacement of the existing water main and minor sanitary sewer improvements. The total cost of the project is \$392,855.00. Other sources of funding for the project will come from the Arterial Fees, Storm Drain Funds and Water Main Construction Funds.

The Special Improvement District for this project would include properties along South Billings Boulevard, north of King Avenue to Underpass Avenue. Most of the properties along South Billings Boulevard are located within the City limits, with the exception of five. Four of these properties would be subject to the SID if they were annexed. Of these, three are residential and located on the east side of South Billings Boulevard. The only commercial property within the "County Island" is located on the west side of the street. The remaining property outside the SID is a residential property and is owner-occupied.

If these five properties were annexed to the City, besides receiving general City services, they would have access to the sanitary sewer. Currently, they are receiving City water provided by a County water line. The City would replace the sewer lines within S. Billings Boulevard and stub the utility connections to each property in the SID. A plan for the extension of services is attached. This plan conforms to the requirements of 7-2-4732, MCA that requires municipalities to provide a long-range plan for extension of services to the area to be annexed.

Three of the properties located in the SID will not be assessed any improvement costs. It is the City's policy to not assess properties where improvements are being replaced rather than newly constructed. The three properties located on the east side of South Billings Boulevard already have curb, gutter and sidewalk which are the only improvements to be paid through the SID. A fourth property, located on the west side of South Billings Boulevard will be assessed the cost of curb, gutter and sidewalk. The SID assessment for this property will be \$7,609.44 spread over fifteen years.

Property tax for all five wholly surrounded properties would increase after annexation. Tax comparisons prepared for these properties indicate that their taxes would increase from a low of \$220 to \$771 annually. Tax comparisons for these properties are also attached.

ALTERNATIVES ANALYSIS

In accordance with 7-2-4501 et. seq., MCA, the City may annex any land that is wholly surrounded by the City upon passing a resolution of intent, giving notice, and passing a resolution of annexation. The City may do so whether or not a majority of the real property

owners of the area to be annexed object. The question of annexing the wholly surrounded land is not subject to being voted on by the registered voters of the area to be annexed. Using this method, the City may not annex land used for agriculture, mining, smelting, refining, transportation, or any industrial or manufacturing purposes. Property that is used for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment cannot be annexed by this method either.

The other annexation methods available to the City in this situation include “Annexation of Contiguous Land” (Part 43) or “Annexation with the Provision of Services” (Part 47). Both of these methods allow a majority of real property owners to protest. In the event of a majority protest, the Council cannot approve the annexation.

STAKEHOLDERS

The five properties and their owners are as follows:

OWNER	TAX CODE	ADDRESS	LEGAL DESCRIPTION
Duwanne E. & Susan Carner (under contract for deed)*	A20254	706 S. Billings Blvd.	Tract 1, Popelka Industrial Tracts Subdivision, First Filing
Dale & Lillian Steinbrink	D01586	726 S. Billings Blvd	Tract A, C/S 289 in Sugar Subdivision, Lot 20
Westley Wayne & Elvira Wilcox*	D01583	4017 S. Billings Blvd	Tract A, C/S 289 in Sugar Subdivision, Lot 19
Patrick & Michael Kenney*	D01584	709 S. Billings Blvd	Tract 19B-1, C/S 289 in Sugar Subdivision, Lot 19
Patrick & Michael Kenney*	D01585	713 S. Billings Blvd	Tract 19B-2, C/S 289 in Sugar Subdivision, Lot 19

* Subject to the Special Improvement District if annexed.

The owners have been notified of the proposed annexation and are aware of the conditions imposed by the “wholly surrounded land” method of annexation. None of the landowners entirely support the prospect of annexation. Mr. Steinbrink, Mr. Wilcox and Mr. Kenney have voiced clear opposition, while Mr. Carner has yet to object to annexation specifically, but is concerned with the added financial burden.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The annexation would comply with the recently adopted Annexation Policy in most respects including:

- The area must be located within the Limits of Annexation as defined herein and within the Urban Planning Area;
- The City must be able provide adequate city services within a time period mutually agreed to by the property owners requesting annexation and the City;
- The proposed land use within the area to be annexed must conform to the goals of the City of Billings and Yellowstone County Growth Policy.

After the reconstruction of S. Billings Boulevard the annexed property would meet additional criteria for annexation listed in the Annexation Policy, including:

- Existing or proposed public improvements within the area to be annexed must meet City standards;

Because the property to be annexed is already developed, the annexation would not meet the following criteria of the Annexation Policy:

- All property owners within the area to be annexed must sign a Waiver of Right to Protest the creation of Special Improvement Districts;
- All residential property owners within the area to be annexed must create or join an existing park maintenance district;
- Residential densities within the area to be annexed must equal or exceed four dwelling units per acre; and

RECOMMENDATION

Staff recommends that City Council approve a Resolution of Annexation to annex the wholly surrounded County properties located on South Billings Boulevard.

ATTACHMENTS

- A. Tax Comparisons of Affected Properties
- B. Plan for Extension of Services
- C. Resolution of Annexation

State law requires that a plan for the extension of services be prepared for the area to be annexed. The plan must cover a minimum of five years. Because this area is completely surrounded by City property, it is indirectly affected by the City's 5-year Capital Improvement Plan (CIP). The following plan for services supplements the CIP for the area to be annexed.

City Facilities: The following improvements and facilities are necessary to provide adequate services to the subject property.

Water: City water service is currently provided to these properties.

Sewer: The reconstruction of South Billings Boulevard will include the extension of a sewer line adjacent to the annexed properties. The City will provide service stubs to these properties. The property owners are not required to connect to sewer at this time. When the property owners desire to connect to sewer, they will be responsible for reimbursing the City for the cost of the service stub, and paying the local construction and system development fees in effect at that time. A four percent franchise fee will also be assessed for the local construction and system development fee. The property owner must also bear the cost of extending the service line and connecting to the structures' plumbing. If the owner chooses, the cost of the local construction and the service stub construction can be included in the Special Improvement District assessment and spread over 15 years.

Stormwater: The SID includes the construction of a new storm drain system that will serve these properties.

Transportation: The reconstruction of South Billings Boulevard will widen South Billings Boulevard, construct curb, gutter, and sidewalk, and add a 10-foot wide bike path. These improvements will facilitate the flow of traffic and reduce the potential for traffic and pedestrian accidents.

Fire Stations: The County properties are currently served by the City Fire Department because they are located in the Billings Urban Fire Service Area (BUFSA). Primary fire protection will continue to be provided by Fire Station #4 located at 5th Street and Miles Avenue.

Parks: The area to be annexed is located directly across South Billings Boulevard from Amend Park, a City facility. The proposed annexation is not expected to negatively impact this park.

Bicycle and pedestrian facilities: South Billings Boulevard is identified as a primary bicycle route. The reconstruction project will provide for a 10-foot wide bicycle path along the east side of South Billings Boulevard.

General City Services: These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded did not object to the annexation of this property, however, some considered that the provisions of adequate City services to this property given its

Transit: MET provide direct service along South Billings Boulevard and King Avenue East.

Fire: The property is currently within the Billings Urban Fire Service Area (BUFSA) and is served by the Billings Fire Department. After annexation, the Billings Fire Department will continue to serve this area.

Police: The proximity of the proposed annexation to the Police Operations Facility will minimize the response time of police responders. The Police Operations Facility is located across South Billings Boulevard, within one half mile.

Ambulance Service: The City does not provide ambulance service but dictates the level of service provided by American Medical Response (AMR). By City ordinance, 90% of ambulance calls must be answered within 8 minutes. This annexation is within the area of acceptable response time.

Garbage: State law prohibits the City from providing garbage collection and disposal service for five years after the annexation. The City will provide these services at this time.

Legal and Finance: General Fund services such as Legal and Finance have indicated that they will not be negatively impacted.

Other Departments: City/County services such as Library, Planning, and Environmental Health are only slightly affected by the annexation since they will serve new development if it is in the City or if it remains in the County.

RESOLUTION NO. 05 - _____

RESOLUTION OF INTENT TO ANNEX WHOLLY SURROUNDED
LAND TO THE CITY OF BILLINGS.

WHEREAS, MCA 7-2-4501 authorizes annexation of wholly surrounded land, and

WHEREAS, a Resolution of Intent was duly passed, notice was given, and a hearing held, and

WHEREAS, there were no protests, and

WHEREAS, said annexation would be in the best interest of the City,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. ANNEXATION: Pursuant to MCA 7-2-4501 the following described land is hereby annexed to the City of Billings:

Tracts of land situated in the SE1/4 SE1/4 of Section 8, and the SW1/4 SW1/4 of Section 9 of T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Popelka Industrial Tracts Subdivision, 1st Filing, Tract 1, Recorded February 14, 1968, Under Document No. 814837; Certificate of Survey No. 289, Tract A, situated in Lot 19 of Sugar Subdivision and Tract A, situated in Lot 20 of Sugar Subdivision, Recorded March 7, 1950, Under Document No. 460572; Amended Certificate of Survey No. 289, Tracts B1 and B2, of land situated in Lot 19 of Sugar Subdivision Recorded August 15, 1952, Under Document No. 494960.

Containing 3.631 gross acres and 3.108 net acres, more or less.

(# 05-01) See Exhibit "A" Attached

2. EFFECTIVE DATE: Said annexation is immediately effective.

PASSED by the City Council and APPROVED this 14th day of February, 2005.

THE CITY OF BILLINGS:

BY: _____

Charles F. Tooley, MAYOR

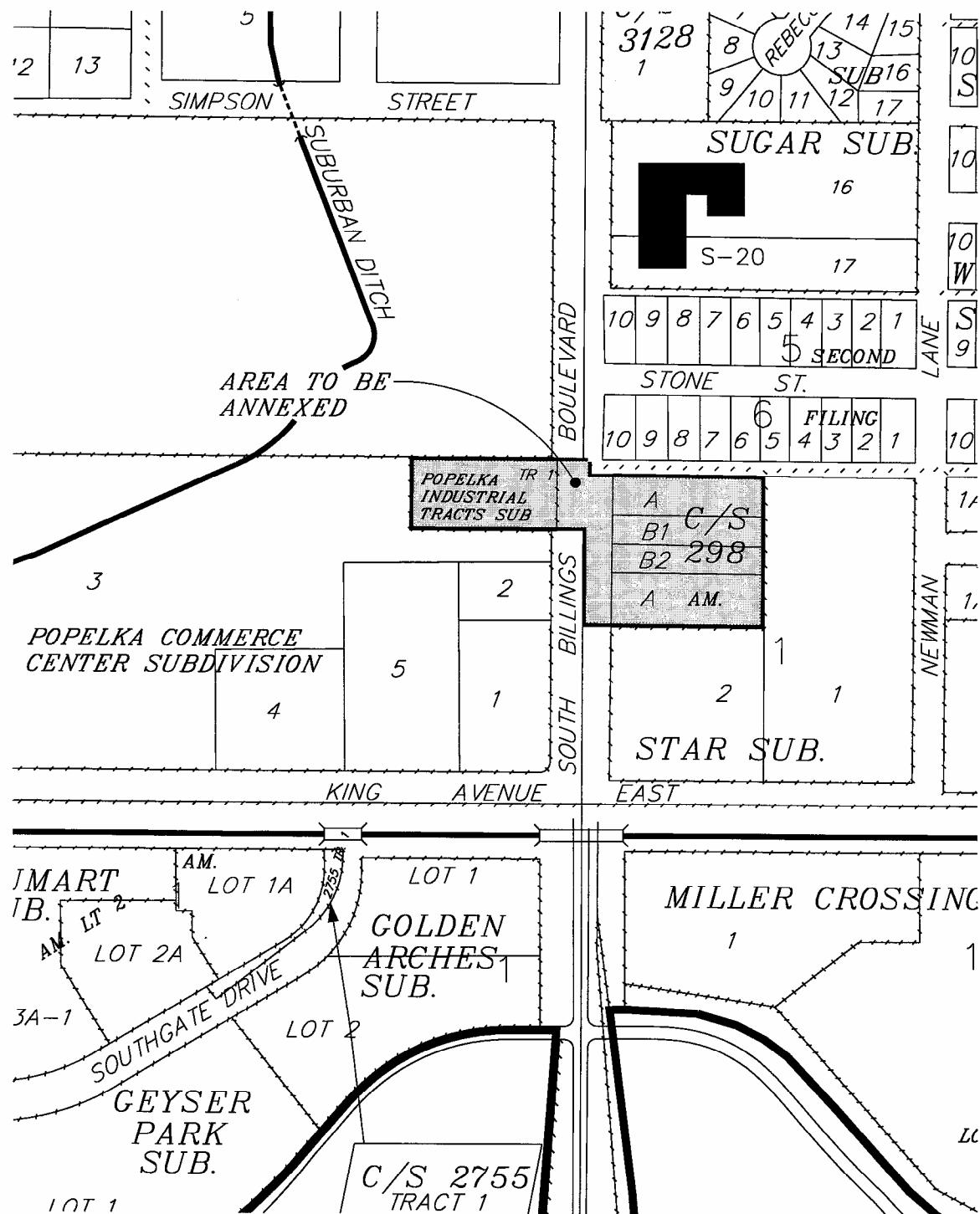
ATTEST:

BY: _____

Marita Herold, CMC/AAE CITY CLERK

(AN 05-01)

EXHIBIT "A"



[\(Back to Regular Agenda\)](#)



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 28, 2005

TITLE: SID 1373 South Billings Boulevard Resolution of Intent to Create District
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: The City of Billings, in conjunction with the GO Bond Project, wishes to construct public improvements along South Billings Boulevard between King Avenue and Underpass Avenue consisting of curb, gutter, sidewalk and street improvements. Council must consider two options prior to approving a Resolution of Intent to Create SID 1373. **Option A** involves assessing 26 parcels currently located within the city limits fronting South Billings Boulevard, as shown on Exhibit A-Alternative, and **Option B** requires the annexation of four additional properties fronting South Billings Boulevard currently located outside the city limits, as shown on attached Exhibit A, increasing the number of assessed parcels to 30.

ALTERNATIVES ANALYZED:

1. Approve the Resolution of Intent to Create SID 1373 for the 26 parcels stated as Option A;
2. Approve the Resolution of Intent to Create SID 1373 to annex the additional four parcels for a total of 30 parcels stated as Option B;
3. Do not approve the Resolution of Intent to Create SID 1373 for either Option A or Option B.

FINANCIAL IMPACT: The total cost of the project is \$2,431,000. Funding for the project is provided from the FY05 CIP and through direct assessments to the property owners.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1373 for either Option A or Option B and set a Public Hearing date of March 28, 2005.

Approved By: City Administrator City Attorney

ATTACHMENT

A. Exhibits 'A' & 'A-Alternative'

INTRODUCTION

The City of Billings, in conjunction with the GO Bond Project, has the desire to construct public improvements along South Billings Boulevard between King Avenue and Underpass Avenue. These improvements will consist of curb and gutter, sidewalk and street improvements to South Billings Boulevard frontage. To complete the project, it is necessary to create a Special Improvement District. Council must consider two options prior to approving a Resolution of Intent to Create SID 1373.

Option A involves assessing 26 parcels currently located within the city limits fronting South Billings Boulevard, as shown on Exhibit A-Alternative.

Option B requires the annexation of four additional properties fronting South Billings Boulevard, as shown on attached Exhibit A, increasing the number of assessed parcels to 30.

PROCEDURAL HISTORY

- December 18, 2003 and January 8, 15 and 22, 2004 – Request for Proposals advertisement
- February 16, 2004 – Proposals for professional services received by Engineering Division
- February 18, 2004 – Selection committee meeting
- April 12, 2004 – Contract for Professional Services Award
- February 28, 2005 - Resolution of Intent to create SID 1373
- March 28, 2005 – Resolution to Create SID 1373 – Public Hearing

BACKGROUND

The boundary of the two proposed special improvement district options are indicated on the attached Exhibits. The public improvements contemplated under the terms of this project include curb and gutter, sidewalk and street improvements to South Billings Boulevard frontage.

The protest period will end on March 18, 2005. The total number of protests will be presented at the council meeting of March 28, 2005. If approved, it is anticipated that construction of SID 1373 will begin in the summer of 2005 and be completed by the Fall of 2005.

STAKEHOLDERS

Two public meetings have been held at Newman Elementary School. The first meeting took place on July 15, 2004 and provided an opportunity for the property owners to comment on the preliminary plans and learn more about the nature of the project. The second meeting was held on January 20, 2005 to provide the property owners with a project status update. There were no specific comments made on the project design at either meeting. The majority of the discussions focused on the annexation of the adjoining parcels.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1373 for either Option A or Option B and set a Public Hearing date of March 28, 2005.

ATTACHMENT

A. Exhibits 'A' & 'A-Alternative'

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the City), hereby certify that the attached resolution is a true copy of Resolution No. _____, entitled: **RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1373; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND** (the Resolution" was duly adopted by the City Council of the City at a meeting on February 28, 2005 that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.)

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: _____;
_____;
voted against the same: _____;
_____;
or were absent: _____.

WITNESS my hand officially this _____ day of _____, 200____.

Marita Herold, CMC City Clerk

RESOLUTION NO. 05-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1373; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

BE IT RESOLVED by the City Council of the City of Billings (the City), Montana, as follows:

Section 1. Proposed Improvements; Intention To Create District. The City proposes to undertake certain local Improvements (the "Improvements") to benefit certain property located in the City. The Improvements consist of the construction of sewer main, storm drainage facilities, street lighting and street improvements, as more particularly described in Section 5. The total estimated costs of the Improvements are \$2,431,000.00. The costs of the Improvements are to be paid from the following sources: (1) \$2,132,000.00 funded from the City of Billings; and (2) Special Improvement District bonds hereinafter described. It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a Special Improvement District (the "District") for the purpose of financing costs of the Improvements and paying costs incidental thereto, including costs associated with the sale and the security of Special Improvement District bonds drawn on the District (the "Bonds"), the creation and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Bonds are \$300,000.00. The Bonds are to be payable primarily from special assessments to be levied against property in the District, which property will be specially benefited by the Improvements.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1373 of the City of Billings, Montana.

Section 3. Boundaries of District. The limits and boundaries of the District are depicted on a map attached as Exhibit A-Alternative hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on Exhibit B hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on Exhibit E hereto (which are hereby incorporated herein and made a part hereof).

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits A-Alternative, B, and E are hereby

declared to be the Special Improvement District and the territory which will benefit and be benefited by the Improvements and will be assessed for the costs of the Improvements as described in Section 7.

Section 5. General Character of the Improvements. The general character of the Improvements, as shown in Exhibit D, is the construction of curb & gutter, sidewalk, drive approaches, accessibility ramps and street improvements to South Billings Boulevard.

Section 6. Engineer and Estimated Cost. The Office of the City Engineer, 510 N. Broadway, 4th Floor, Billings, MT 59101, shall be the Engineer for the District. The Engineer has estimated that the costs of the Improvements, including all incidental costs, are \$2,431,000.00, of which \$2,132,000.00 is funded by the City of Billings.

Section 7. Assessment Methods.

7.1. Property to be Assessed. All properties within the district are to be assessed for the costs of the Improvements, as specified herein. The costs of the Improvements shall be assessed against the property in the District benefiting from the Improvements based on the linear footage and square foot methods described in Section 7-12-4162, and 7-12-4163 M.C.A., as particularly applied and set forth in this Section 7.

7.1.2 Assessment # 1 - Linear Foot Method.

The assessment # 1 will include Improvements to curb, gutter, sidewalks, and necessary street improvements along South Billings Boulevard between King Avenue and Underpass Avenue. The properties to be assessed for these improvements shown on Exhibit "A" and listed as follows: OLD #(D347) AMND C/S 1456 TR 1A W2NW4 9-1S-26E 1.407ACRES ANNEX9'87); PP29-24@4848 UNDERPASS AVE N TRIANGLE OF LOT 6 SUGAR SUB 8-1S-26E 1.070 ACRES ANNEX(90); OLD #(D347-1) AMND C/S1456 TR 2A 9-1S-26E 5.196 ACRES; OLD #(D348) N70' OF S150.34' OF W160.0' OF LOT 13 SUGAR SUB 9-1S-26 0.26 ACRES; OLD #(D163) E200' OF S246.75' OF LOT 6 SUGARSUB 8-1S-26E 1.16 ACRES ANNEX(90); E473.6' OF S10' OF LOT 13, LOT 14 (INCLUDING C/S 349), N91' OF LOT15 SUGAR SUB & C/S 471 TR 1B 9-1S-26E 4.938 ACRES ANNEX(93); OLD #(D 165) LOT 7 SUGAR SUB (LESS ST-WONDERPARK DR) 8-1S-26E 3.37 ACRES ANNEX(90); AMND C/S 471 TR A & 2B IN LOT 15 SUGAR SUB 9-1S-26E 1.93 ACRES ANNEX(93); OLD #(D 166) N 85.2' OF E 274.9' OF LOT 8 SUGAR SUB 8-1S-26E 0.54 ACRES; OLD #(D 361) N2 OF LOT 4 SUB OF SECTION 9 IN SW4 9-1S-26E 4.75 ACRES ANNEX(90); PP # 9-244 & PP#9-243 LSD EQ S326' (LESS S15' & W 100') OF LOT8 SUGAR SUB 8-1S-26E 1.93 ACRES; (OLD CODE# D-362) C/S 473 IN LOT 4 OF SUB OF SECTION 9 IN SW4 9-1S-26E 2.87 ACRES ANNEX(90); AMND LOT 9 SUGAR SUB LOT 9C 8-1S-26E 0.865 ACRES ANNEX(91); OLD #(D 363)S 132' OF LOT 4 OF SUB OF SECTION 9 IN SW4 9-1S-26E 2.0 ACRES ANNEX (90); AMND LOT 9 SUGAR SUB LOT 9B 8-1S-26E 1.727 AC ANNEX(91); OLD #(D 364) N 2 ACRES OF LOT 5, SUB OF SECTION 9 IN SW4 9-1S-26E 2.0 ACRES ANNEX (90); OLD #(D 365) S2 ACRES OF N4 ACRES OF LOT 5, (LESS ST) SUB OF

SECTION 9 IN SW4 9-1S-26E 1.91 ACRES ANNEX (90); OLD #(D 161-1) SUGAR SUB LOT 10 8-1S-26E 2.77 ACRES ANNEX(90); PP# 8-28 C/S 666 TR 1, IN SW4 9-1S-26E 0.52 ACRES ANNEX (90); (OLD CODE# D-367) C/S 666 TR 2, IN SW4 9-1S-26E 0.39 ACRES ANNEX (90); C/S 2783 TR IN SW4 & SE4 8-1S-26E 57.17 ACRES ANNEX(94); OLD #(D370) COS 3128 TR 1 IN SW4 9-1S-26E 1.286 ACRES(03) ANNEX (90); POPELKA INDUSTRIAL TRACTS 1ST TRACT 1 8-1S-26E 0.897 ACRES; OLD #(D 375) SUGAR SUB LOT 16 & N2 OF LOT 17 9 1S 26E (NEWMAN SCHOOL) 5.01 ACRES; (OLD CODE D01395) POPELKA COMMERCE CENTER SUB, BLK 1, LOT 3 8-1S-26E 11.51 ACRES (04); WEBER SUB 2ND, BLK 5, LOT 10 9-1S-26E 0.189 ACRES; (OLD CODE D01395) POPELKA COMMERCE CENTER SUB BLK 1, LOT 2, 8-1S-26E 0.442 ACRES (04); WEBER SUB 2ND, BLK 6, LOT 10 9-1S-26E 0.189 ACRES; (OLD CODE D0139) POPELKA COMMERCE CENTER SUB BLK 1, LOT 1, 8-1S-26E 1.172 ACRES (04); (OLD CODE# D-376) AMND C/S 289 TR 19A IN LOT 19 SUGAR SUB 8-1S-26E 0.74 ACRES; (OLD CODE# D-377) AMND C/S 289 TR 19B-1 IN LOT 19 SUGAR SUB 8-1S-26E 0.37 ACRES; (OLD CODE# D-378) AMND C/S 289 TR 19B-2 IN LOT 19 SUGAR SUB 8-1S-26E 0.37 ACRES; (OLD CODE# D-380) AMND C/S 289 TR 20A IN LOT 20 SUGAR SUB 8-1S-26E 0.74 ACRES; STAR SUB, BLK 1, LOTS 1 & 2 9-1S-26E 2.070 ACRES. The costs of the Improvements plus the proportionate share of the incidental costs of issuing the Bonds attributable to the parcels in the District is \$150,000.00. The total of \$150,000.00 shall be assessed against each lot, tract, or parcel of land in the District, as above-mentioned, for that part of the costs of the Improvements that the linear frontage of such lot, tract or parcel bears to the total linear frontage of all lots, tracts, or parcels of land in the District, as above-mentioned. The total linear frontage of parcels attributable to this assessment is 4,130.15 linear feet. The costs of the Improvements and the properties share of the incidental costs to be financed by the Bonds assessable to the above-mentioned parcels per linear frontage of each parcel are estimated to be \$36.3182932.

7.1.3 Assessment # 2 – Square Foot Method.

The assessment # 2 will include Improvements to curb, gutter, sidewalks, and necessary street improvements along South Billings Boulevard between King Avenue and Underpass Avenue. The properties to be assessed for these improvements shown on Exhibit “A” and listed as follows: OLD #(D347) AMND C/S 1456 TR 1A W2NW4 9-1S-26E 1.407ACRES ANNEX9'87); PP29-24@4848 UNDERPASS AVE N TRIANGLE OF LOT 6 SUGAR SUB 8-1S-26E 1.070 ACRES ANNEX(90); OLD #(D347-1) AMND C/S1456 TR 2A 9-1S-26E 5.196 ACRES; OLD #(D348) N70' OF S150.34' OF W160.0' OF LOT 13 SUGAR SUB 9-1S-26 0.26 ACRES; OLD #(D163) E200' OF S246.75' OF LOT 6 SUGARSUB 8-1S-26E 1.16 ACRES ANNEX(90); E473.6' OF S10' OF LOT 13, LOT 14 (INCLUDING C/S 349), N91' OF LOT15 SUGAR SUB & C/S 471 TR 1B 9-1S-26E 4.938 ACRES ANNEX(93); OLD #(D 165) LOT 7 SUGAR SUB (LESS ST-WONDERPARK DR) 8-1S-26E 3.37 ACRES ANNEX(90); AMND C/S 471 TR A & 2B IN LOT 15 SUGAR SUB 9-1S-26E 1.93 ACRES ANNEX(93); OLD #(D 166) N 85.2' OF E 274.9' OF LOT 8 SUGAR SUB 8-1S-26E 0.54 ACRES; OLD #(D 361) N2 OF LOT 4 SUB OF SECTION 9 IN SW4 9-1S-26E 4.75 ACRES ANNEX(90); PP # 9-244 & PP#9-243 LSD EQ S326' (LESS S15' & W 100') OF LOT8 SUGAR SUB 8-1S-26E 1.93 ACRES; (OLD CODE# D-362) C/S 473 IN LOT 4 OF SUB OF SECTION 9 IN SW4 9-1S-26E

2.87 ACRES ANNEX(90); AMND LOT 9 SUGAR SUB LOT 9C 8-1S-26E 0.865 ACRES ANNEX(91); OLD #(D 363)S 132' OF LOT 4 OF SUB OF SECTION 9 IN SW4 9-1S-26E 2.0 ACRES ANNEX (90); AMND LOT 9 SUGAR SUB LOT 9B 8-1S-26E 1.727 AC ANNEX(91); OLD #(D 364) N 2 ACRES OF LOT 5, SUB OF SECTION 9 IN SW4 9-1S-26E 2.0 ACRES ANNEX (90); OLD #(D 365) S2 ACRES OF N4 ACRES OF LOT 5, (LESS ST) SUB OF SECTION 9 IN SW4 9-1S-26E 1.91 ACRES ANNEX (90); OLD #(D 161-1) SUGAR SUB LOT 10 8-1S-26E 2.77 ACRES ANNEX(90); PP# 8-28 C/S 666 TR 1, IN SW4 9-1S-26E 0.52 ACRES ANNEX (90); (OLD CODE# D-367) C/S 666 TR 2, IN SW4 9-1S-26E 0.39 ACRES ANNEX (90); C/S 2783 TR IN SW4 & SE4 8-1S-26E 57.17 ACRES ANNEX(94); OLD #(D370) COS 3128 TR 1 IN SW4 9-1S-26E 1.286 ACRES(03) ANNEX (90); POPELKA INDUSTRIAL TRACTS 1ST TRACT 1 8-1S-26E 0.897 ACRES; OLD #(D 375) SUGAR SUB LOT 16 & N2 OF LOT 17 9 1S 26E (NEWMAN SCHOOL) 5.01 ACRES; (OLD CODE D01395) POPELKA COMMERCE CENTER SUB, BLK 1, LOT 3 8-1S-26E 11.51 ACRES (04); WEBER SUB 2ND, BLK 5, LOT 10 9-1S-26E 0.189 ACRES; (OLD CODE D01395) POPELKA COMMERCE CENTER SUB BLK 1, LOT 2, 8-1S-26E 0.442 ACRES (04); WEBER SUB 2ND, BLK 6, LOT 10 9-1S-26E 0.189 ACRES; (OLD CODE D0139) POPELKA COMMERCE CENTER SUB BLK 1, LOT 1, 8-1S-26E 1.172 ACRES (04); (OLD CODE# D-376) AMND C/S 289 TR 19A IN LOT 19 SUGAR SUB 8-1S-26E 0.74 ACRES; (OLD CODE# D-377) AMND C/S 289 TR 19B-1 IN LOT 19 SUGAR SUB 8-1S-26E 0.37 ACRES; (OLD CODE# D-378) AMND C/S 289 TR 19B-2 IN LOT 19 SUGAR SUB 8-1S-26E 0.37 ACRES; (OLD CODE# D-380) AMND C/S 289 TR 20A IN LOT 20 SUGAR SUB 8-1S-26E 0.74 ACRES; STAR SUB, BLK 1, LOTS 1 & 2 9-1S-26E 2.070 ACRES. For the purposes of equitably apportioning special benefit to each lot, tract or parcel of land in the District, as above-mentioned, the Engineer has determined that each lot, tract, or parcel of land, receiving curb, gutter, sidewalks, and necessary street improvements , shall equally bear the costs of the improvements as set forth hereto to arrive at an equal cost for the improvements. The total estimated cost of the Assessment is \$150,000.00 and shall be assessed against each lot, tract, or parcel of land within the District, as above-mentioned, receiving curb, gutter, sidewalks, and necessary street improvements, on an square foot amount based on the bid price to be received. The square foot amount assessment is estimated to be \$0.157704744 per half of the recorded square footage of each lot (1,902,288.98 sf), tract or parcel of land.

7.2. Assessment Methodologies Equitable and Consistent With Benefit. This Council hereby determines that the methods of assessment and the assessment of costs of the specific improvements against the properties benefited thereby as prescribed in this Section 7 are equitable in proportion to and not exceeding the special benefits derived from the respective improvements by the lots, tracts, and parcels to be assessed therefore within the District.

Section 8. Payment of Assessments. The special assessments for the costs of the Improvements shall be payable over a term not exceeding 15 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds. Property Owners have the right to prepay assessments as provided by law. Further, all owners shall have the opportunity to prepay their assessments prior to sale of the SID bonds.

Section 9. Method of Financing; Pledge of Revolving Fund; Findings and Determinations. The City will issue the Bonds in an aggregate principal amount not to exceed \$300,000.00 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the properties in the District. This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the city to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

(a) **Estimated Market Value of Parcels.** The estimated market value of the lots, parcels, or tracts in the District as of the date of adoption of this resolution, as estimated, by the County Assessor for property tax purposes ranges from \$20,010.00 to \$1,336,194.00 and is set forth in Exhibit E. The average market value is \$224,769.50 with the median being \$93,061.40. The special assessments to be levied under Section 7 against each lot, parcel, or tract in the District is less than the increase in estimated value of the lot, parcel, or tract as a result of the construction of the Improvements.

(b) **Diversity of Property Ownership.** There are a total of 26 parcels within the district boundaries. No improvements, public or private, are located on any of the parcels within the District. There are 22 different owners of the 26 parcels in the district boundaries.

(c) **Comparison of Special Assessments and Property Taxes and Market Value.** Based on an analysis of the aggregate amount of the proposed, any outstanding special assessments (whether or not delinquent), and any delinquent property taxes (as well as any known industrial development bonds theretofore issued and secured by a mortgage against a parcel in the District) against each lot, parcel, or tract in the District in comparison to the estimated market value of such lot, parcel, or tract after the Improvements, the City concludes that, overall, the estimated market value of the lots, tracts, or parcels of land in the District exceeds the sum of special assessments, delinquent property taxes, and current assessments and is set forth in Exhibit E.

(d) **Delinquencies.** An analysis of the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against the properties in the District shows that of 26 properties, one (1) property was delinquent which represents 3.8% of the total number of properties in the District, and is set forth in Exhibit E.

(e) **The Public Benefit of the Improvements.** The total estimated cost of installing these public improvements is \$2,431,000.00, of which \$300,000.00 would be recovered through direct assessments to property owners within the District. There are a

total of 26 parcels within the District. Of the 26 parcels within the District, 23 parcels are developed. This condition is necessary to satisfy the City's Special Improvement District Policy regarding raw land subdivision. The public improvements contemplated under the terms of this proposed District are required by the City Subdivision, Site Development and Zoning Ordinances. Properties are zoned "Controlled Industrial", "Residential 7000 / 6000 / 9600", "Entryway General Commercial", "Residential Manufactured Home", "Public", "Community Industrial", "Highway Commercial", and "Residential Multi Family".

Section 10. Reimbursement Expenditures.

10.01. Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

10.02. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

10.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$300,000.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

10.04. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to

be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

10.05. Reimbursement Allocations. The City's financial officer shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidence by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

Section 11. Public Hearing Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the City Clerk until 5:00 p.m., M.T., on the expiration date of said 15-day period (March 18, 2005), written protest against the proposed Improvements, or against the extension or creation of the District or both, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said, regular meeting will be held on Monday the 28th day of March 2005, at 6:30 p.m., in the Council Chambers, at 220 North 27th Street, in Billings, Montana.

Section 12. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the Billings Times, a newspaper of general circulation in the county on March 3rd and March 10, 2005, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 28th day of February 2005.

Mayor

Attest:

City Clerk

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the City), hereby certify that the attached resolution is a true copy of Resolution No. _____, entitled: **RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1373; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND** (the Resolution" was duly adopted by the City Council of the City at a meeting on February 28, 2005 that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.)

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: _____;
_____;
voted against the same: _____;
_____;
or were absent: _____.

WITNESS my hand officially this _____ day of _____, 200____.

Marita Herold, CMC City Clerk

RESOLUTION NO. 05-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1373; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

BE IT RESOLVED by the City Council of the City of Billings (the City), Montana, as follows:

Section 1. Proposed Improvements; Intention To Create District. The City proposes to undertake certain local Improvements (the "Improvements") to benefit certain property located in the City. The Improvements consist of the construction of sewer main, storm drainage facilities, street lighting and street improvements, as more particularly described in Section 5. The total estimated costs of the Improvements are \$2,431,000.00. The costs of the Improvements are to be paid from the following sources: (1) \$2,132,000.00 funded from the City of Billings, and (2) Special Improvement District Bonds hereinafter described. It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a Special Improvement District (the "District") for the purpose of financing costs of the Improvements and paying costs incidental thereto, including costs associated with the sale and the security of Special Improvement District bonds drawn on the District (the "Bonds"), the creation and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Bonds are \$291,000.00. The Bonds are to be payable primarily from special assessments to be levied against property in the District, which property will be specially benefited by the Improvements.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1373 of the City of Billings, Montana.

Section 3. Boundaries of District. The limits and boundaries of the District are depicted on a map attached as Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on Exhibit B hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on Exhibit E hereto (which are hereby incorporated herein and made a part hereof).

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits A, B, and E are hereby declared to

be the Special Improvement District and the territory which will benefit and be benefited by the Improvements and will be assessed for the costs of the Improvements as described in Section 7.

Section 5. General Character of the Improvements. The general character of the Improvements, as shown in Exhibit D, is the construction of curb & gutter, sidewalk, drive approaches, accessibility ramps and street improvements to South Billings Boulevard.

Section 6. Engineer and Estimated Cost. The Office of the City Engineer, 510 N. Broadway, 4th Floor, Billings, MT 59101, shall be the Engineer for the District. The Engineer has estimated that the costs of the Improvements, including all incidental costs, to be \$2,431,000.00, of which \$2,132,000.00 is funded by the City of Billings.

Section 7. Assessment Methods.

7.1. Property to be Assessed. All properties within the district are to be assessed for the costs of the Improvements, as specified herein. The costs of the Improvements shall be assessed against the property in the District benefiting from the Improvements based on the linear footage and square foot methods described in Section 7-12-4162, and 7-12-4163 M.C.A., as particularly applied and set forth in this Section 7.

7.1.3 Assessment # 1 - Linear Foot Method.

The assessment # 1 will include Improvements to curb, gutter, sidewalks, and necessary street improvements along South Billings Boulevard between King Avenue and Underpass Avenue. The properties to be assessed for these improvements shown on Exhibit "A" and listed as follows: OLD #(D347) AMND C/S 1456 TR 1A W2NW4 9-1S-26E 1.407ACRES ANNEX9'87); PP29-24@4848 UNDERPASS AVE N TRIANGLE OF LOT 6 SUGAR SUB 8-1S-26E 1.070 ACRES ANNEX(90); OLD #(D347-1) AMND C/S1456 TR 2A 9-1S-26E 5.196 ACRES; OLD #(D348) N70' OF S150.34' OF W160.0' OF LOT 13 SUGAR SUB 9-1S-26 0.26 ACRES; OLD #(D163) E200' OF S246.75' OF LOT 6 SUGARSUB 8-1S-26E 1.16 ACRES ANNEX(90); E473.6' OF S10' OF LOT 13, LOT 14 (INCLUDING C/S 349), N91' OF LOT15 SUGAR SUB & C/S 471 TR 1B 9-1S-26E 4.938 ACRES ANNEX(93); OLD #(D 165) LOT 7 SUGAR SUB (LESS ST-WONDERPARK DR) 8-1S-26E 3.37 ACRES ANNEX(90); AMND C/S 471 TR A & 2B IN LOT 15 SUGAR SUB 9-1S-26E 1.93 ACRES ANNEX(93); OLD #(D 166) N 85.2' OF E 274.9' OF LOT 8 SUGAR SUB 8-1S-26E 0.54 ACRES; OLD #(D 361) N2 OF LOT 4 SUB OF SECTION 9 IN SW4 9-1S-26E 4.75 ACRES ANNEX(90); PP # 9-244 & PP#9-243 LSD EQ S326' (LESS S15' & W 100') OF LOT8 SUGAR SUB 8-1S-26E 1.93 ACRES; (OLD CODE# D-362) C/S 473 IN LOT 4 OF SUB OF SECTION 9 IN SW4 9-1S-26E 2.87 ACRES ANNEX(90); AMND LOT 9 SUGAR SUB LOT 9C 8-1S-26E 0.865 ACRES ANNEX(91); OLD #(D 363) S 132' OF LOT 4 OF SUB OF SECTION 9 IN SW4 9-1S-26E 2.0 ACRES ANNEX (90); AMND LOT 9 SUGAR SUB LOT 9B 8-1S-26E 1.727 AC ANNEX(91); OLD #(D 364) N 2 ACRES OF LOT 5, SUB OF SECTION 9 IN SW4 9-1S-26E 2.0 ACRES ANNEX (90); OLD #(D 365) S2 ACRES OF N4 ACRES OF LOT 5, (LESS ST) SUB OF SECTION 9 IN SW4 9-1S-26E 1.91 ACRES ANNEX (90); OLD #(D 161-1) SUGAR SUB LOT 10 8-1S-26E 2.77 ACRES ANNEX(90); PP# 8-28 C/S 666 TR 1, IN SW4 9-1S-26E 0.52

ACRES ANNEX (90); (OLD CODE# D-367) C/S 666 TR 2, IN SW4 9-1S-26E 0.39 ACRES ANNEX (90); C/S 2783 TR IN SW4 & SE4 8-1S-26E 57.17 ACRES ANNEX(94); OLD #(D370) COS 3128 TR 1 IN SW4 9-1S-26E 1.286 ACRES(03) ANNEX (90); POPELKA INDUSTRIAL TRACTS 1ST TRACT 1 8-1S-26E 0.897 ACRES; OLD #(D 375) SUGAR SUB LOT 16 & N2 OF LOT 17 9 1S 26E (NEWMAN SCHOOL) 5.01 ACRES; (OLD CODE D01395) POPELKA COMMERCE CENTER SUB, BLK 1, LOT 3 8-1S-26E 11.51 ACRES (04); WEBER SUB 2ND, BLK 5, LOT 10 9-1S-26E 0.189 ACRES; (OLD CODE D01395) POPELKA COMMERCE CENTER SUB BLK 1, LOT 2, 8-1S-26E 0.442 ACRES (04); WEBER SUB 2ND, BLK 6, LOT 10 9-1S-26E 0.189 ACRES; (OLD CODE D0139) POPELKA COMMERCE CENTER SUB BLK 1, LOT 1, 8-1S-26E 1.172 ACRES (04); (OLD CODE# D-376) AMND C/S 289 TR 19A IN LOT 19 SUGAR SUB 8-1S-26E 0.74 ACRES; (OLD CODE# D-377) AMND C/S 289 TR 19B-1 IN LOT 19 SUGAR SUB 8-1S-26E 0.37 ACRES; (OLD CODE# D-378) AMND C/S 289 TR 19B-2 IN LOT 19 SUGAR SUB 8-1S-26E 0.37 ACRES; (OLD CODE# D-380) AMND C/S 289 TR 20A IN LOT 20 SUGAR SUB 8-1S-26E 0.74 ACRES; STAR SUB, BLK 1, LOTS 1 & 2 9-1S-26E 2.070 ACRES. The costs of the Improvements plus the proportionate share of the incidental costs of issuing the Bonds attributable to the parcels in the District is \$145,500.00. The total of \$145,500.00 shall be assessed against each lot, tract, or parcel of land in the District, as above-mentioned, for that part of the costs of the Improvements that the linear frontage of such lot, tract or parcel bears to the total linear frontage of all lots, tracts, or parcels of land in the District, as above-mentioned. The total linear frontage of parcels attributable to this assessment is 4,270.15 linear feet. The costs of the Improvements and the properties share of the incidental costs to be financed by the Bonds assessable to the above-mentioned parcels per linear frontage of each parcel are estimated to be \$34.07374415.

7.1.3 Assessment # 2 – Square Foot Method.

The assessment # 2 will include Improvements to curb, gutter, sidewalks, and necessary street improvements along South Billings Boulevard between King Avenue and Underpass Avenue. The properties to be assessed for these improvements shown on Exhibit “A” and listed as follows: OLD #(D347) AMND C/S 1456 TR 1A W2NW4 9-1S-26E 1.407ACRES ANNEX9'87); PP29-24@4848 UNDERPASS AVE N TRIANGLE OF LOT 6 SUGAR SUB 8-1S-26E 1.070 ACRES ANNEX(90); OLD #(D347-1) AMND C/S1456 TR 2A 9-1S-26E 5.196 ACRES; OLD #(D348) N70' OF S150.34' OF W160.0' OF LOT 13 SUGAR SUB 9-1S-26 0.26 ACRES; OLD #(D163) E200' OF S246.75' OF LOT 6 SUGARSUB 8-1S-26E 1.16 ACRES ANNEX(90); E473.6' OF S10' OF LOT 13, LOT 14 (INCLUDING C/S 349), N91' OF LOT15 SUGAR SUB & C/S 471 TR 1B 9-1S-26E 4.938 ACRES ANNEX(93); OLD #(D 165) LOT 7 SUGAR SUB (LESS ST-WONDERPARK DR) 8-1S-26E 3.37 ACRES ANNEX(90); AMND C/S 471 TR A & 2B IN LOT 15 SUGAR SUB 9-1S-26E 1.93 ACRES ANNEX(93); OLD #(D 166) N 85.2' OF E 274.9' OF LOT 8 SUGAR SUB 8-1S-26E 0.54 ACRES; OLD #(D 361) N2 OF LOT 4 SUB OF SECTION 9 IN SW4 9-1S-26E 4.75 ACRES ANNEX(90); PP # 9-244 & PP#9-243 LSD EQ S326' (LESS S15' & W 100') OF LOT8 SUGAR SUB 8-1S-26E 1.93 ACRES; (OLD CODE# D-362) C/S 473 IN LOT 4 OF SUB OF SECTION 9 IN SW4 9-1S-26E 2.87 ACRES ANNEX(90); AMND LOT 9 SUGAR SUB LOT 9C 8-1S-26E 0.865 ACRES ANNEX(91); OLD #(D 363)S 132' OF LOT 4 OF SUB OF SECTION 9 IN SW4 9-1S-26E 2.0

ACRES ANNEX (90); AMND LOT 9 SUGAR SUB LOT 9B 8-1S-26E 1.727 AC ANNEX(91); OLD #(D 364) N 2 ACRES OF LOT 5, SUB OF SECTION 9 IN SW4 9-1S-26E 2.0 ACRES ANNEX (90); OLD #(D 365) S2 ACRES OF N4 ACRES OF LOT 5, (LESS ST) SUB OF SECTION 9 IN SW4 9-1S-26E 1.91 ACRES ANNEX (90); OLD #(D 161-1) SUGAR SUB LOT 10 8-1S-26E 2.77 ACRES ANNEX(90); PP# 8-28 C/S 666 TR 1, IN SW4 9-1S-26E 0.52 ACRES ANNEX (90); (OLD CODE# D-367) C/S 666 TR 2, IN SW4 9-1S-26E 0.39 ACRES ANNEX (90); C/S 2783 TR IN SW4 & SE4 8-1S-26E 57.17 ACRES ANNEX(94); OLD #(D370) COS 3128 TR 1 IN SW4 9-1S-26E 1.286 ACRES(03) ANNEX (90); POPELKA INDUSTRIAL TRACTS 1ST TRACT 1 8-1S-26E 0.897 ACRES; OLD #(D 375) SUGAR SUB LOT 16 & N2 OF LOT 17 9 1S 26E (NEWMAN SCHOOL) 5.01 ACRES; (OLD CODE D01395) POPELKA COMMERCE CENTER SUB, BLK 1, LOT 3 8-1S-26E 11.51 ACRES (04); WEBER SUB 2ND, BLK 5, LOT 10 9-1S-26E 0.189 ACRES; (OLD CODE D01395) POPELKA COMMERCE CENTER SUB BLK 1, LOT 2, 8-1S-26E 0.442 ACRES (04); WEBER SUB 2ND, BLK 6, LOT 10 9-1S-26E 0.189 ACRES; (OLD CODE D0139) POPELKA COMMERCE CENTER SUB BLK 1, LOT 1, 8-1S-26E 1.172 ACRES (04); (OLD CODE# D-376) AMND C/S 289 TR 19A IN LOT 19 SUGAR SUB 8-1S-26E 0.74 ACRES; (OLD CODE# D-377) AMND C/S 289 TR 19B-1 IN LOT 19 SUGAR SUB 8-1S-26E 0.37 ACRES; (OLD CODE# D-378) AMND C/S 289 TR 19B-2 IN LOT 19 SUGAR SUB 8-1S-26E 0.37 ACRES; (OLD CODE# D-380) AMND C/S 289 TR 20A IN LOT 20 SUGAR SUB 8-1S-26E 0.74 ACRES; STAR SUB, BLK 1, LOTS 1 & 2 9-1S-26E 2.070 ACRES. For the purposes of equitably apportioning special benefit to each lot, tract or parcel of land in the District, as above-mentioned, the Engineer has determined that each lot, tract, or parcel of land, receiving curb, gutter, sidewalks, and necessary street improvements , shall equally bear the costs of the improvements as set forth hereto to arrive at an equal cost for the improvements. The total estimated cost of the Assessment is \$145,500.00and shall be assessed against each lot, tract, or parcel of land within the District, as above-mentioned, receiving curb, gutter, sidewalks, and necessary street improvements, on an square foot amount based on the bid price to be received. The square foot amount assessment is estimated to be \$0.149894045 per half of the recorded square footage of each lot (1,941,371.30 sf), tract or parcel of land.

7.2. Assessment Methodologies Equitable and Consistent With Benefit. This Council hereby determines that the methods of assessment and the assessment of costs of the specific improvements against the properties benefited thereby as prescribed in this Section 7 are equitable in proportion to and not exceeding the special benefits derived from the respective improvements by the lots, tracts, and parcels to be assessed therefore within the District.

Section 8. Payment of Assessments. The special assessments for the costs of the Improvements shall be payable over a term not exceeding 15 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds. Property Owners have the right to prepay assessments as provided by law. Further, all owners shall have the opportunity to prepay their assessments prior to sale of the SID bonds.

Section 9. Method of Financing; Pledge of Revolving Fund; Findings and Determinations. The City will issue the Bonds in an aggregate principal amount not to exceed \$291,000.00 in order to finance the costs of the Improvements. Principal of and interest on the

Bonds will be paid from special assessments levied against the properties in the District. This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the city to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

(f) **Estimated Market Value of Parcels.** The estimated market value of the lots, parcels, or tracts in the District as of the date of adoption of this resolution, as estimated, by the County Assessor for property tax purposes ranges from \$20,010.00 to \$1,336,194.00 and is set forth in Exhibit E. The average market value is \$192,361.33 with the median being \$70,263.50. The special assessments to be levied under Section 7 against each lot, parcel, or tract in the District is less than the increase in estimated value of the lot, parcel, or tract as a result of the construction of the Improvements.

(g) **Diversity of Property Ownership.** There are a total of 30 parcels within the district boundaries. No improvements, public or private, are located on any of the parcels within the District. There are 25 different owners of the 30 parcels in the district boundaries.

(h) **Comparison of Special Assessments and Property Taxes and Market Value.** Based on an analysis of the aggregate amount of the proposed, any outstanding special assessments (whether or not delinquent), and any delinquent property taxes (as well as any known industrial development bonds theretofore issued and secured by a mortgage against a parcel in the District) against each lot, parcel, or tract in the District in comparison to the estimated market value of such lot, parcel, or tract after the Improvements, the City concludes that, overall, the estimated market value of the lots, tracts, or parcels of land in the District exceeds the sum of special assessments, delinquent property taxes, and current assessments and is set forth in Exhibit E.

(i) **Delinquencies.** An analysis of the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against the properties in the District shows that of 30 properties, one (1) property was delinquent which represents 3.3% of the total number of properties in the District, and is set forth in Exhibit E.

(j) **The Public Benefit of the Improvements.** The total estimated cost of installing these public improvements is \$2,431,000.00, the full cost of which \$291,000.00 would be recovered through direct assessments to property owners within the District. There are a total of 30 parcels within the District. Of the 30 parcels within the District, 27 parcels are developed. This condition is necessary to satisfy the City's Special Improvement District Policy regarding raw land subdivision. The public improvements contemplated under the terms of this proposed District are required by the City

Subdivision, Site Development and Zoning Ordinances. Properties are zoned “Controlled Industrial”, “Residential 7000 / 6000 / 9600”, “Entryway General Commercial”, “Residential Manufactured Home”, “Public”, “Community Industrial”, “Highway Commercial”, and “Residential Multi Family”.

Section 10. Reimbursement Expenditures.

10.01. Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

10.02. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

10.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$291,000.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

10.04. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

10.05. Reimbursement Allocations. The City's financial officer shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidence by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

Section 11. Public Hearing Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the City Clerk until 5:00 p.m., M.T., on the expiration date of said 15-day period (March 18, 2005), written protest against the proposed Improvements, or against the extension or creation of the District or both, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said, regular meeting will be held on Monday the 28th day of March 2005, at 6:30 p.m., in the Council Chambers, at 220 North 27th Street, in Billings, Montana.

Section 12. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the Billings Times, a newspaper of general circulation in the county on March 3rd and March 10, 2005, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 28th day of February 2005.

Mayor

Attest:

City Clerk

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CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

MONDAY, FEBRUARY 28, 2005

TITLE: Public Hearing for Special Review #775

DEPARTMENT: Planning & Community Services

PRESENTED BY: Aura Lindstrand, Planner II

REQUEST: A Special Review to permit a structure containing six (6) residential units (6-plex) on a property zoned Residential 6000 (R-6000) located at 740 Avenue D. The property owner and representing agent is Gordon Bernhart. The Zoning Commission conducted a public hearing on February 1, 2005, and is forwarding a positive recommendation of conditional approval to the City Council.

ALTERNATIVES ANALYZED:

1. Approval;
2. Conditional approval; or
3. Denial.

FINANCIAL IMPACT

The Special Review, if approved, would create additional tax revenue for the City.

RECOMMENDATION

The Zoning Commission voted 4-0 to forward a positive recommendation to the City Council to grant conditional approval of Special Review #775.

Approved By: City Administrator City Attorney

ATTACHMENTS

- A. Zoning Map
- B. Proposed Site Plan
- C. Site Photographs

INTRODUCTION

The applicant is requesting a Special Review to permit the construction of a multi-family residential structure containing six (6) units (6-plex) on a property legally described as Lots 25-28, Block 3, Billings Heights Subdivision located within the Residential 6000 (R-6000) zoning district. The subject property is located at 740 Avenue D along the southeast corner of the intersection of 8th Street West and Avenue D and currently contains a 320 square foot storage building constructed in the 1930's.

Pursuant to Section 27-308 of the Billings City Code, the R-6000 zoning district permits single-family residences and duplexes with the required square footage and permits residential structures containing 3-10 units with a Special Review. The minimum square footage required for a 6-plex is 13,000 square feet; the subject property contains approximately 14,000 square feet.

Parking for the proposal is being provided along the alley with an entrance from 8th Street West. Section 6-1203 of the Billings City Code specifies that 1.5 parking spaces are required for multi-family residential units containing one (1) or more bedrooms. The applicant has provided the required nine (9) parking spaces including one (1) handicapped space along the alley. As required by Condition #2, the applicant will be required to pave the alley and parking spaces for the proposed units, as indicated on the submitted site plan.

In regard to landscaping, the applicant will be required to provide approximately 1150 square feet of landscaping per Section 27-1105. Fifty percent (50%) of the required landscaping shall be located along 8th Street West and Avenue D in order to provide for a positive street presence, as well as break up the bulk and scale of the proposed structure. Furthermore, a site obscuring fence or hedge is required as a buffer between the proposed structure and the adjacent residential uses to the south as specified in Condition #4.

The proposed 6-plex is compatible with the surrounding neighborhood, as it is bordered on the west by multi-family units and on the northeast by low income housing for seniors/handicapped persons (apartment complex). The applicant is proposing to construct the 6-plex to provide housing for moderate to low income residents.

PROCEDURAL HISTORY

- The application was received on January 3, 2005.
- On February 1, 2005, the City Zoning Commission voted 4-0 to forward a positive recommendation to the City Council for conditional approval.
- On February 28, 2005, the City Council will conduct a public hearing for consideration of this application.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this chapter.

This application complies with the requirements of the zoning regulations.

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The recommended conditions will ensure increased compatibility with and separation from the adjoining land uses.

The City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Deny the application for a special review use.
2. Grant the application for a special review use.
3. Conditionally grant the application for a special review use.
4. Delay action on the application for a period not to exceed thirty (30) days.
5. Give reasons for the recommendation.

Based upon the above criteria, the Zoning Commission has recommended conditional approval for this application.

The Zoning Commission is forwarding the following conditions of approval to the City Council for consideration:

1. The Special Review approval shall be limited to Lot 25-28, Block 3, Billings Heights Subdivision.
2. As indicated on the submitted site plan, dated December 31, 2005, the alley along the south property line and the parking spaces along the southern boundary shall be paved.
3. The applicant shall provide a minimum of 575 square feet of landscaping along 8th Street West and Avenue D. (*Required by Section 27-1105.A.1 of the BMCC*)
4. A site obscuring fence at least 6-feet in height shall be installed between the proposed parking spaces along the southern property line and the proposed structure. Said fence shall be constructed of wood, stone, vinyl, brick or block; wire or chain link fencing is not permitted. A continuous hedge may be substituted for the required fence, provided that the proposed hedge bushes are at least 3-feet tall when planted and reach a mature height of 6-feet. A 5-foot gated break in the fence or hedge is permitted to accommodate pedestrian traffic from the proposed parking area to the proposed residential structure; a fence permit shall be obtained prior to the construction of a fence on the property. (*Required by Section 27-1105.A.2 of the BMCC*)

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

There was no public comment on the Special Review. The owner, Gordon Bernhart was present to answer questions.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application conforms to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- The proposed multi-family residential units will provide housing for low to moderate income residents of Yellowstone County.
- The proposal will provide for a development that is compatible with the existing multi-family residential uses bordering the subject property on two (2) sides.
- The proposal provides contiguous development focused in and around an existing population center.

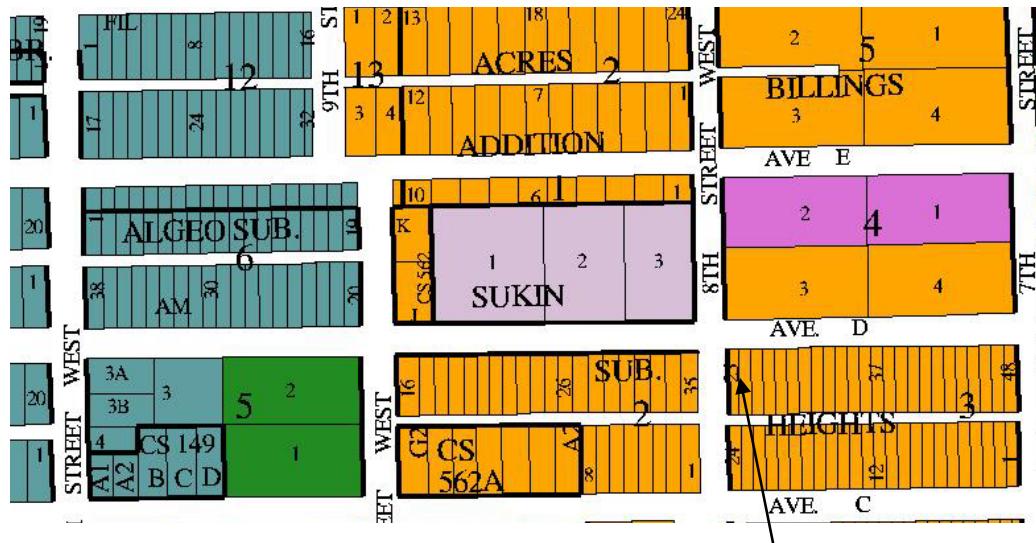
RECOMMENDATION

The Zoning Commission voted 4-0 to forward a positive recommendation to the City Council to grant conditional approval of Special Review #775.

ATTACHMENTS

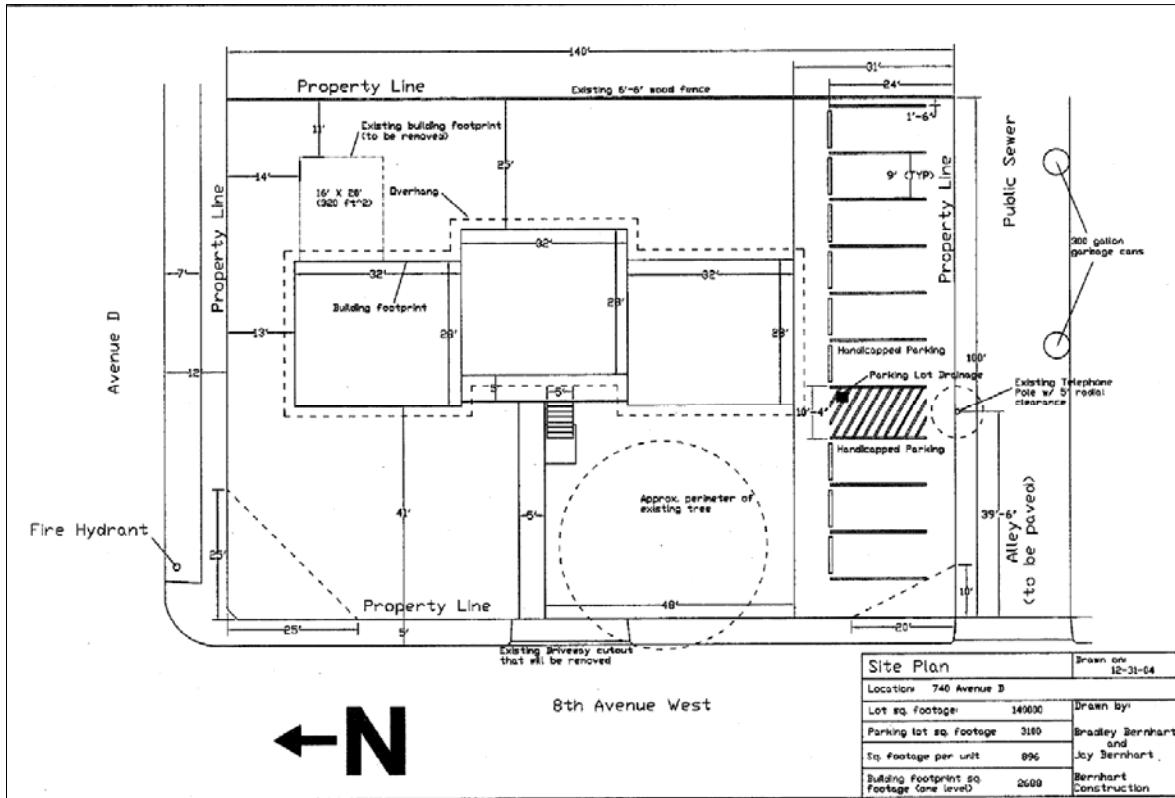
- A. Zoning Map
- B. Proposed Site Plan
- C. Site Photographs

ATTACHMENT A
Surrounding Zoning



**Subject
Property
R-7000**

ATTACHMENT B
Proposed Site Plan



ATTACHMENT C
Site Photographs



Figure 1: View from the center point of the property along Avenue D of the existing storage structure on the site.



Figure 2: View from center of the property along Avenue D looking west at the multi-family residential units located on 8th Street West.



Figure 3: View from the northwest corner of the property looking toward the northwest intersection of 8th Street West and Avenue D. The affordable senior/handicapped apartment complex is pictured.



Figure 4: View looking north from subject property at single-family residences located along Avenue D.



Figure 5: View looking east along Avenue D from the centerline of the subject property to the adjacent single-family residences to the east.

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CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, FEBRUARY 28, 2005

TITLE: Public Hearing for Special Review #776
DEPARTMENT: Planning & Community Services
PRESENTED BY: Nicole Cromwell, AICP, Planner II

REQUEST: A Special Review to permit the sale of alcohol (full beverage license) without gaming on a property zoned Highway Commercial (HC) located at 2010 Overland Avenue, Denny's Restaurant. The property owner is William O Ryan and the representing agent is Tim Ballou. The Zoning Commission conducted a public hearing on February 1, 2005 and is forwarding a recommendation of conditional approval to the City Council.

ALTERNATIVES ANALYZED:

4. Approval;
5. Conditional approval; or
6. Denial.

FINANCIAL IMPACT

The special review, if approved, would increase the City's tax base.

RECOMMENDATION

The Zoning Commission is recommending per a 4-0 vote that the City Council grant conditional approval for Special Review #776.

Approved By: City Administrator City Attorney

ATTACHMENTS

- D. Zoning Map
- E. Site Photographs

INTRODUCTION

The applicant is requesting a Special Review to permit on an all beverage liquor license without gaming in a Highway Commercial zone at the existing Denny's Restaurant at 2010 Overland Avenue. The subject property is generally located south of the intersection of King Avenue West and 20th Street West. The property has been fully developed as the Denny's Restaurant and contains approximately 1.67 acres and the main access is off Overland Avenue. The property has frontage along King Avenue West just west of the overpass on Interstate 90 although no physical access is provided from King Avenue West.

Section 27-612.A. Supplemental Commercial Development Standards specifies that a Special Review is necessary for any commercial establishment that serves alcoholic beverages as a primary or accessory use. Staff finds that the proposed use is compatible with the surrounding land uses, which are commercial in nature. No land uses such as schools, churches or public parks with playgrounds are within 600 feet of the subject property.

The City Council has approved the location of fifteen (15) liquor licenses within the immediate area since 1985. Six of these licenses include gaming facilities. This proposed location will not include gaming facilities. This is a major retail area and serves a regional market including customers from a four state area including North and South Dakota, Wyoming and Montana. An additional liquor license within an existing restaurant will enhance the ability of this food service provider to compete within in this retail area of Billings.

PROCEDURAL HISTORY

- The application was received on January 3, 2005.
- The City Zoning Commission voted 5-0 at its hearing on February 1, 2005 for conditional approval of the special review and is forwarding a positive recommendation to the City Council.
- The City Council will conduct a public hearing for consideration of this application on February 28, 2005.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this chapter.
This application complies with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.
The recommended conditions will ensure increased compatibility with and separation from

the adjoining land uses.

The City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Deny the application for a special review use.
2. Grant the application for a special review use.
3. Conditionally grant the application for a special review use.
4. Delay action on the application for a period not to exceed thirty (30) days.
5. Give reasons for the recommendation.

Based on the above criteria, the Zoning Commission has recommended conditional approval for this application.

The Zoning Commission is forwarding the following conditions of approval to the City Council for consideration:

5. The special review approval shall be limited to Lot 10A1A1 of Block 1 Hogan Homestead Subdivision.
6. The addition of any gaming facilities, an outdoor patio lounge or expansion of the gross floor area by more than 10% of the existing area will require additional special review approval.
7. All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

There was no public comment on the Special Review. Agent Tim Ballou provided testimony and answered all questions of the Zoning Commission. The applicant and agents have discussed the proposed development with all surrounding property owners and city departments and the submitted plan for approval has addressed all issues.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application conforms to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- The proposal provides development within an existing commercial corridor.
- The proposal provides contiguous development focused in and around an existing population center.

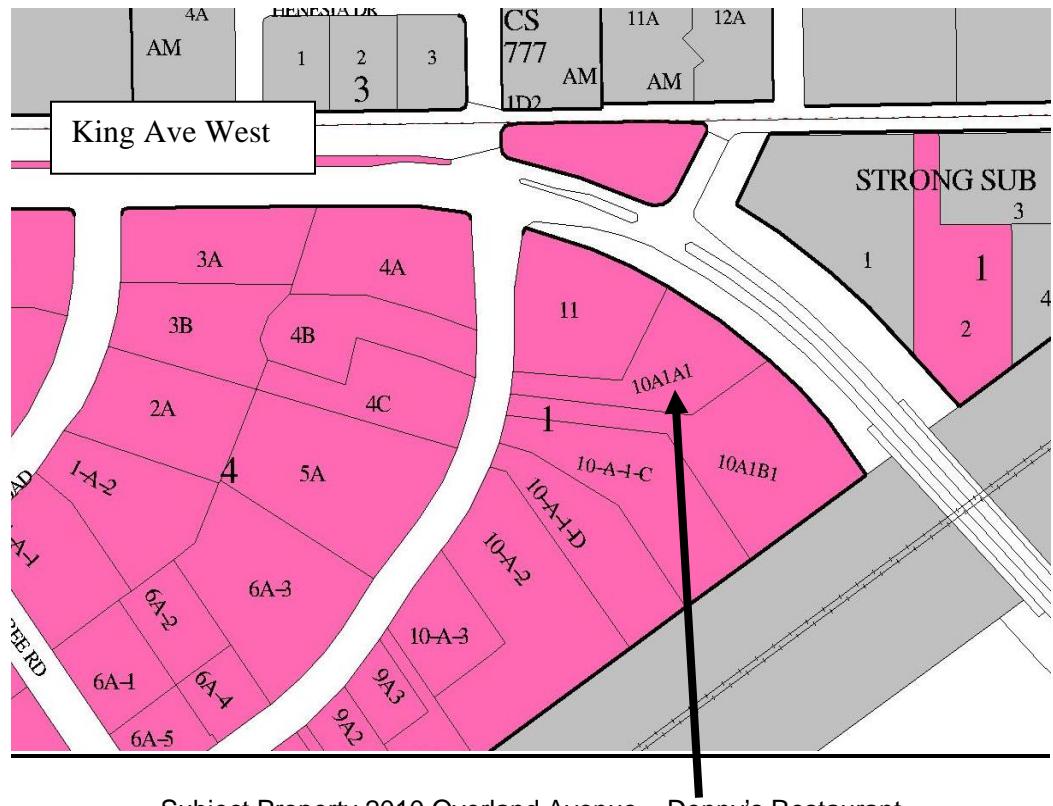
RECOMMENDATION

The Zoning Commission is recommending per a 4-0 vote that the City Council grant conditional approval for Special Review #776.

ATTACHMENTS

- D. Zoning Map
- E. Site Photographs

ATTACHMENT A
Surrounding Zoning



ATTACHMENT B
Site Photographs



Subject Property 2010 Overland Avenue – Denny's Restaurant



View west of subject property at Overland Avenue

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CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, FEBRUARY 28, 2005

TITLE: Public Hearing for Special Review #777

DEPARTMENT: Planning & Community Services

PRESENTED BY: Nicole Cromwell, AICP, Planner II

REQUEST: A Special Review to permit the sale of alcohol (full beverage license) with gaming on a property zoned Community Commercial (CC) located at 2248 Grand Avenue. The property owner is Nash Brothers and the representing agent is Roger Tuhy. The Zoning Commission conducted a public hearing on February 1, 2005 and is forwarding a recommendation of conditional approval to the City Council.

ALTERNATIVES ANALYZED:

7. Approval;
8. Conditional approval; or
9. Denial.

FINANCIAL IMPACT

The special review, if approved, would increase the City's tax base.

RECOMMENDATION

The Zoning Commission is recommending per a 4-0 vote that the City Council grant conditional approval for Special Review #777.

Approved By: City Administrator City Attorney

ATTACHMENTS

- F. Zoning Map
- G. Site Photographs

INTRODUCTION

The applicant is requesting a Special Review to permit on an all beverage liquor license with gaming in a Community Commercial zone in the rear portion of a building at 2244 Grand Avenue. The subject property is generally located east of the intersection of 24th Street West and Grand Avenue on the south side of Grand Avenue. Both of these streets are designated principal arterials and have the capacity to handle additional traffic. The property now supports the Rainbow Run Fly Shop that will remain and contains approximately 12,800 square feet and access to the site is off Grand Avenue. There is no alley at this location to handle deliveries, garbage collection or to provide a “buffer” between residential properties directly south of the location. The proposed casino, Boomtown Casino, will be located in the rear half of the existing building. There have been recent improvements to the adjacent parking lots.

Section 27-612.A. Supplemental Commercial Development Standards specifies that a Special Review is necessary for any commercial establishment that serves alcoholic beverages as a primary or accessory use. Staff finds that the proposed use can be made to be compatible with the surrounding land uses. The primary concern with this proposal is the adjacent residential uses to the south and conditions have been proposed to mitigate any potential impact from this proposed casino. No land uses such as schools, churches or public parks with playgrounds are within 600 feet of the subject property. Both Rose Park and Burlington Elementary School are just outside this 600 foot radius to the subject property.

The City Council has approved the location of twelve (12) liquor licenses within the immediate area (from 17th St West to Rehberg Lane along Grand Avenue) since 1984. Eight of the twelve licenses include gaming facilities. This proposed location will include gaming facilities. The difficulty with locating another liquor license with gaming at this location is due to the residential development immediately south of the property. The commercial uses along Grand Avenue are experiencing re-development and this is an opportunity to make these new facilities and uses more compatible with adjacent residential uses. The Zoning Commission considered the application and is recommending conditional approval.

PROCEDURAL HISTORY

- The application was received on January 3, 2005.
- The City Zoning Commission voted 5-0 at its hearing on February 1, 2005 for conditional approval of the special review and is forwarding a positive recommendation to the City Council.
- The City Council will conduct a public hearing for consideration of this application on February 28, 2005.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this chapter.

This application complies with the requirements of the zoning regulations.

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.
The recommended conditions will ensure increased compatibility with and separation from the adjoining land uses.

The City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Deny the application for a special review use.
2. Grant the application for a special review use.
3. Conditionally grant the application for a special review use.
4. Delay action on the application for a period not to exceed thirty (30) days.
5. Give reasons for the recommendation.

Based on the above criteria, the Zoning Commission has recommended conditional approval for this application.

The Zoning Commission is forwarding the following conditions of approval to the City Council for consideration:

8. The special review approval shall be limited to Lots 8-12 of Block 2, Arnold Subdivision 1st Amended.
9. An evergreen hedge consisting of shrubs at least 5 feet in height and spaced 4 feet apart shall be planted along the entire southern property line of Lots 8-12 in order to provide an adequate buffer to the adjacent residential properties. This hedge shall be installed no later than July 1, 2005 and be continuously maintained.
10. No outdoor seating, outdoor music or outdoor public announcement systems will be allowed with this application.
11. Any new lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
12. All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

There was public comment on the Special Review at the Zoning Commission public hearing. From neighbors John and Georganna Nash of 2305 Alderson Avenue. The previous owner of this property and the neighboring Kentucky Fried Chicken (now vacant) were not good neighbors. Their concerns focused on the existing parking lot lighting that spills over into their second-floor windows, the dead trees on the KFC lot, the garbage smells from the dumpster and potential for increased crime with a casino use. Agents Roger Tuhy and Marty Connell provided testimony and answered all the questions of the Zoning Commission and the concerns of Mr. Mrs. Nash. The owners of this property are negotiating to purchase the KFC property, will change out the existing parking lot lighting to shield the neighboring property from the light, install the evergreen hedge along the south property line and will work to be better neighbors than the previous owners. Reny Roma, the casino operator also provided testimony on the proposed casino operation. Their hours will be limited to 8:00 am to midnight and they do not intend to serve any food so the garbage combined with the existing Rainbow Run Fly shop waste will not create a nuisance. Ms. Roma also intends to be a better neighbor than the previous occupants of the building. All concerns of the neighbors were answered by the agents present at the hearing.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application conforms to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- The proposal provides development within an existing commercial corridor.
- The proposal provides contiguous development focused in and around an existing population center.

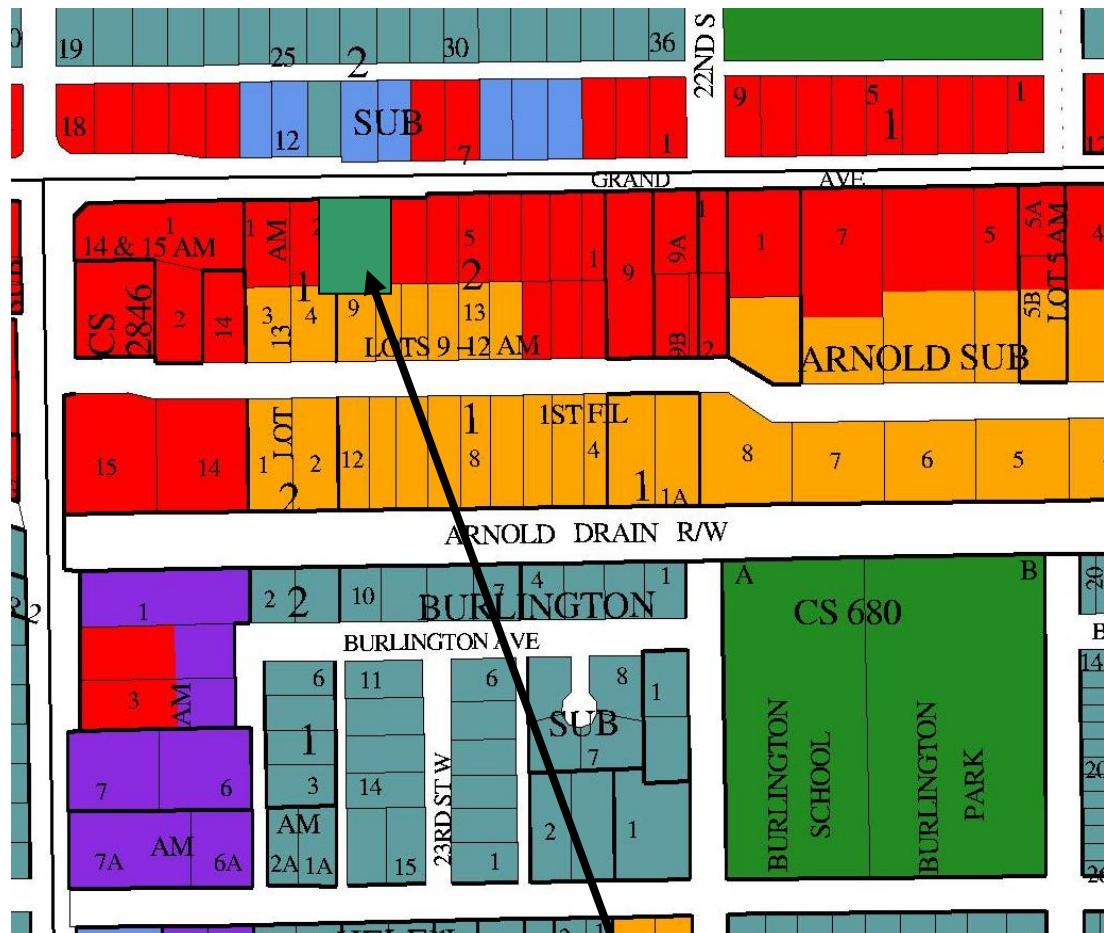
RECOMMENDATION

The Zoning Commission is recommending per a 5-0 vote that the City Council grant conditional approval for Special Review #777.

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs

ATTACHMENT A
Surrounding Zoning



Subject Property 2248 Grand Avenue – Proposed Boomtown Casino

ATTACHMENT B
Site Photographs



Subject Property 2248 Grand Avenue – Proposed Boomtown Casino



View west of subject property along Grand Avenue

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 28th, 2005

TITLE: Resolution Approving the 2006-11 CIP, ERP & TRP

DEPARTMENT: City Administrator's Office & Public Works

PRESENTED BY: Tina Volek, Asst. City Admin., & Vern Heisler, City Engineer

PROBLEM/ISSUE STATEMENT: A resolution adopting the City of Billings 2006-11 Capital Improvement Plan (CIP), Equipment Replacement Plan (ERP) and Technology Replacement Plan (TRP) is presented for consideration by the City Council. CIP amendments presented at the Feb. 14 public hearing and Feb. 7 Council Work Session also are attached for the Council's consideration.

ALTERNATIVES ANALYZED:

- Approve the CIP, ERP and TRP as presented by the staff at a Jan. 3, 2005, Work Session.
- Approve the CIP, ERP and TRP with amendments suggested at the Feb. 7 Work Session and/or at the Feb. 14 public hearing.
- Delay action to a future date.

FINANCIAL IMPACT: The CIP, ERP and TRP are financial tools that indicate the Council's priorities when budgets are prepared. For the 2006 budget year, the proposed CIP would result in expenditures totaling \$68.8 million if fully funded; the ERP would result in expenditures totaling \$1.9 million; and the TRP would result in expenditures totaling \$209,903. Projects are proposed in order of priority by staff, but Council amendments and the availability of funds in 2006 and future years could affect the actual costs.

RECOMMENDATION

Staff recommends that Council approve the CIP, ERP and TRP as presented by staff at the Jan. 3, 2005, Work Session.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS:

- A: Resolution adopting the CIP, ERP and TRP
- B: Potential amendments to the CIP

ATTACHMENT A

RESOLUTION No. 05- _____

**A RESOLUTION ADOPTING THE 2006-11 CAPITAL
IMPROVEMENT PLAN, EQUIPMENT REPLACEMENT
PLAN AND TECHNOLOGY REPLACEMENT PLAN**

WHEREAS, the Capital Improvements Plan (CIP), Equipment Replacement Plan (ERP) and Technology Replacement Plan (TRP) are financial tools adopted by the City Council as an indication of its priorities for funding projects in future budget years; and

WHEREAS, the City Council of the City of Billings was presented on January 3, 2005, with staff recommendations for a 2006-11 CIP, ERP and TRP; and

WHEREAS, the City Council subsequently held Ward meetings to collect comments on the CIP on January 11, 12, 13, 18 and 19, 2005; and

WHEREAS, the City Council further held a public hearing on the proposed CIP at its February 7, 2005, meeting.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1: The 2006-11 CIP, ERP and TRP are hereby adopted as presented by staff on January 3, 2005, and shown as Exhibit 1.

Section 2: City staff is hereby directed to prepare the 2006-11 budgets to reflect the priorities as listed in the CIP, ERP and TRP, to the extent funds are available.

APPROVED AND PASSED by the City Council of the City of Billings this 28th day of February, 2005.

THE CITY OF BILLINGS

By: _____
Charles F. Tooley, MAYOR

ATTEST:

By: _____
Marita Herold, CMC
CITY CLERK

ATTACHMENT B**POTENTIAL AMENDMENTS TO THE 2006-11 CIP**

“Mr. Mayor, I move that Exhibit 1 of the 2006-11 CIP be amended as follows....”

- a) Move the Castle Rock spray pad, now scheduled in 2008 for \$218,000, forwarded to 200_.
- b) Add a Hawthorne Park spray pad, estimated at \$175,000, to 200_.
- c) Move the Athletic and South Park pool heaters, now scheduled in 2011, forward to 200_ and add pool blankets for both facilities for a total estimated cost of \$200,000.
- d) Move the Heights Aquatic Facility, now scheduled in 2007 for \$4.75 million, back to 200_.
- e) Add a Cobb Field Stadium Replacement feasibility study, estimated at \$60,000, to 2006.
- f) Add a traffic signal at Shiloh and Central, estimated at \$260,000, to 200_.
- g) Restore Annandale Road, deleted from 2007, and add the completion of Glen Eagles Road, for a total cost of \$1.8 million.
- h) Move construction of a fire station at 54th and Grand, now scheduled in 2009 for \$1.5 million, forward to 2007.
- i) Move a Downtown Railroad Relocation Study, now scheduled in 2006 for \$7 million, to Planning in 2006 as a feasibility study, federally funded at \$300,000.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 28th, 2005

TITLE: Adoption of Council Goals
DEPARTMENT: City Administrator's Office
PRESENTED BY: Kristoff T. Bauer, City Administrator

PROBLEM/ISSUE STATEMENT: On Feb. 17, 2005, the City Council reviewed Fiscal Year 2006 Goals. These goals need to be adopted so that they can be incorporated into the upcoming budget.

ALTERNATIVES ANALYZED:

- Adopt the goals as agreed upon Feb. 17.
- Modify the goals.
- Postpone adoption to a later date.

FINANCIAL IMPACT: The financial impact was outlined with each of the goals at the review session.

RECOMMENDATION

Staff recommends that the Council adopt the goals as agreed upon Feb. 17

Approved By: **City Administrator** **City Attorney**

ATTACHMENT:

A: List of goals.

Attachment A

2006 Draft Council Goals

1. Create opportunities for increased interaction and communication between City Councilmembers and the City organization.
2. Develop methods that give the City Council better decision-making financial information and that help the public to understand the City's finances.
3. Increase the ways that the public may access City information and services by planning for and investing in technology and Plan for and invest in technology improvements that increase city service efficiency and effectiveness.
4. Create neighborhood councils to improve the Councils communication with residents and to provide a forum for resident concerns.
5. Create Tax Increment Financing Districts (TIF) to assist in redeveloping blighted or declining areas and investing in infrastructure improvement and in public facilities, and encouraging private development.
6. Develop a land acquisition and disposal policy and procedures manual that will address at a minimum:
 - Parkland ownership.
 - Acquisition for redevelopment.
 - Right-of-way acquisition.
 - Use of eminent domain.
7. Direct the development of a strategic plan to systematically address aging infrastructure that will allow high priority projects to be completed in a proactive, well planned and fiscally sound manner by June 30, 2006.

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