

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

August 22, 2005

6:30 P.M.

CALL TO ORDER – Mayor Tooley

PLEDGE OF ALLEGIANCE – Mayor Tooley

INVOCATION – Councilmember Peggie Gaghen

ROLL CALL

MINUTES – August 8, 2005

COURTESIES

PROCLAMATIONS

BOARD & COMMISSION REPORTS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, 14, & #15

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. **Bid Awards:**

(1) **Large Format Copier/Scanner and Printer for Public Works Dept - Utilities.** (Opened 8/9/05). Recommend Selby's ESSCO, \$34,401.50.
[Corresponding Staff Memo A1](#)

(2) **W.O. 04-13, Filter Building Expansion and Improvements.** (Opened 7/26/05). Delayed from 8/8/05. Recommend delaying until 9/12/05.
[Corresponding Staff Memo A2](#)

B. Amendment #2, Professional Services Contract, W.O. 05-01: Public Works Projects including Water and Sewer Replacement Projects, Morrison-Maierle, Inc., \$38,500.00.
[\(Corresponding Staff Memo B\)](#)

C. Contract with Golden Valley County for Library Services 2005/2006, \$1.70 per item circulated, term: 1 year.
[\(Corresponding Staff Memo C\)](#)

D. CTEP Project Specific Agreement, STPE 1099(47) - Jackson Street Sidewalks, \$69,515.00 CTEP grant; \$75,485.00 local match.
[\(Corresponding Staff Memo D\)](#)

E. Agreement to extend the term of the Inter-Creditor Agreement between the City and six banks for an additional five years.
[\(Corresponding Staff Memo E\)](#)

F. Authorization to apply for INTERCAP Loan through Montana Board of Investments for W.O. 03-02, Contract #1 and W.O. 02-14, \$288,780.00 to pay for two sidewalk projects.
[\(Corresponding Staff Memo F\)](#)

G. 2005 Heritage Trail CTEP Project Applications:

- (1) Big Ditch Trail
- (2) Gabel Road Connector Trail
- (3) Swords Park Trail

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

H. 2005 CTEP Project Application for Milton Lane as a school route improvements project, \$125,000.00 CTEP funds, \$488,500.00 local match.
[\(Corresponding Staff Memo H\)](#)

I. Acknowledge receipt of petition to vacate Conrad Road between S. 30th Street West and S. 32nd St. West, Harold Miller ETAL, petitioners; Engineering, Inc., agent, and setting a public hearing date for 9/12/05.
[\(Corresponding Staff Memo I\)](#)

J. Street Closure requests:

(1) Native American Development Corporation: "Just Do it" Health Walk, September 23, 2005, Sky Point on the corner of 2nd Ave. N and N. Broadway down 28th St. through 1st Ave. S and cross streets from 2nd Ave. S to South Park.
[\(Corresponding Staff Memo J1\)](#)

(2) O'Hara's Family Restaurant Fundraiser for the Optimist Club, September 10, 2005, 33rd St. between Montana Ave and 1st Ave. N.
[\(Corresponding Staff Memo J2\)](#)

(3) Beartooth Harley Owner's Group: 911 Remembrance Ride, September 11, 2005, Frontage Road down Montana Ave, 2nd Ave N between 26th and 27th Sts, 27th St. to 4th Ave N onto Main Street and follow Hwy 312 to Huntley.

[\(Corresponding Staff Memo J3\)](#)

K. Zone 4 Reservoir Appraisal establishing a fair market value of \$137,024.00 for a portion of Tract 1, C/S 3030 for the purpose of constructing water storage and pumping facilities and authorizing Staff to obtain the property from GSK Partners, LLP. (Delayed from 8/8/05).

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

L. Resolution to adopt the Revised Stewart Park Master Plan.

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

M. Resolution to adopt the Lampman Parkway Master Plan.

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

N. Resolution of Intent to create SID 1372: public improvements consisting of water, sanitary sewer, storm drain, curb, gutter and street improvements on Winter Green Dr., W. Antelope Tr. And Antelope Pl. in Summerhill Sub. and setting a public hearing date for 9/12/05.

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

O. Resolution relating to \$4,515,000.00 Sewer System Revenue Bonds (DNRC Water Pollution Control State Revolving Loan Program), Series 2005; authorizing the issuance and fixing the terms and conditions thereof.

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

P. Second/final reading ordinance amending BMCC Section 7-1504(c), providing that the MDU Franchise does not preclude MDU from challenging any fee or tax.

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

Q. Resolution setting the annual public safety, general obligation debt service parks and general obligation debt service streets mill levies for FY 2005-06.

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

R. Preliminary Plat of Ironwood Estates Subdivision, 4th filing, generally located east of Molt Road, west of Ironwood Estates Subdivision, 3rd filing., Dan Wells, owner; Engineering, Inc., agent, conditional approval of the preliminary plat, approval of the variances and adoption of the findings of fact.

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

S. Preliminary Plat of Legacy Subdivision, generally located on 52nd St. West midway between Grand and Central Aves, DC Capital Real Estate, owner; Engineering, Inc., agent, conditional approval of the preliminary plat, approval of the variances and adoption of the findings of fact.

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

T. Bills and Payroll.

(1) July 25, 2005

[\(Corresponding Staff Memo T1\)](#)

(2) July 29, 2005.

[\(Corresponding Staff Memo T2\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward IV to include recently annexed properties in Annexation #05-07: an undeveloped 172-acre parcel located east of the Ironwood Subdivision along Molt Road between the Yellowstone Country Club and the Rims, described as Tract 1, C/S 3030, GSK Partners, LLC petitioner. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

3. **PUBLIC HEARING AND SPECIAL REVIEW #790:** a special review to allow on-premise beer service without gaming on Block 2, Lot, 10 Claimstake Subdivision, located at 2701 Enterprise Ave., Suite 1. Delbert L. Bailey and Timothy Dernbach, owners; Tim Mohr, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

4. **PUBLIC HEARING AND SPECIAL REVIEW #791:** a special review to allow the change from one nonconforming use (gasoline service station) to another nonconforming use (automobile sales) on Lots 18, 19, Block 1, Descro Subdivision. J and D Industries, owner, John Bonner, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

5. **PUBLIC HEARING AND SPECIAL REVIEW #792:** a special review to permit the location of a cabinet maker in a Highway Commercial zone of Southgate Planned Development on Lot 7A, Block 2, Southgate Subdivision. Willie Dowdle, owner; Blaine Poppler of Coldwell Banker, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

6. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #761:** a zone change from Residential 7,000 to Residential 5,000 on Tract 1A of C/S 1335, located at 1545 Hawthorne Lane. First Free Will Baptist Church, owner; Wesley Prouse, agent. Zoning Commission recommends denial of the zone

change and adoption of the determination of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#762: a zone change from Residential 9,600 to Neighborhood Commercial on Lots 3A and 4, Block 1, Missions United Subdivision, located at 2117 and 2223 Shiloh Rd. St. Vincent's Healthcare, owner; Jim Shepard of CTA Architects and Engineers, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#763: a zone change from Community Commercial to Highway Commercial on Lot 4, Block 1, North Pointe Square Subdivision, located at 2376 Main St., (former K-mart retail center site). KMT DIL, LLC, owner; Michael Dockery, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#764: a zone change from Residential 9,600 to Residential 7,000 and Residential 6,000 on portion of Tract 123 of Sunny Cove Fruit Farm, located at the northeast intersection of Grand Ave. and 60th St. West. Mark Kennedy of Kenmark Corporation, owner and applicant. Zoning Commission recommends denial of the zone change and adoption of the determination of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

10. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#765: a zone change from Residential 7,000 to Residential 5,000 on Tracts 1 and 2 of C/S 3190, located at 120 Wicks Lane. Ernest and Francisca Shaw, owners; Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

11. PUBLIC HEARING AND RESOLUTION CREATING A DOWNTOWN BUSINESS IMPROVEMENT DISTRICT for litter control, snow removal, graffiti removal, security and other services. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

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

12. **SOUTH 27TH STREET CORRIDOR REDEVELOPMENT 2005-2.**
(A) **RESOLUTION** authorizing disposal of City-owned land described as: Lots 1-8, Block 226, O.T. Staff recommends delaying authorization indefinitely. (**Action:** approval or disapproval of Staff recommendation.)
(B) **AWARD OF BID** for purchase of subject property. No bids were received. Staff recommends delaying sale of subject property indefinitely. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 12\)](#)
13. **RESOLUTION APPROVING THE SANDSTONE DEVELOPMENT AGREEMENT.**
(PH held 7/25/05. Action delayed from 7/25/05). Staff recommends approval of the resolution and development agreement. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 13\)](#)
14. **APPROVAL OF A PROJECT COORDINATOR** for implementation of an east downtown Billings Tax Increment Finance District and Shiloh Road Corridor Project. Staff recommends approval for one year, with a 1-year renewal. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 14\)](#)
15. **BID AWARD: ONE NEW QUICKRANGE SELF-CONTAINED, TWO-LANE, PREFABRICATED SHOOTING RANGE FOR POLICE DEPARTMENT.** (Bids opened 8/19/05). Recommendation to be made at meeting.
[\(Corresponding Staff Memo 15\)](#)
16. **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

A1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 22, 2005

TITLE: Bid Award - Large Format Copier/Scanner/Printer
DEPARTMENT: Public Works Department
PRESENTED BY: Dave Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: The Public Works Distribution and Collection Division is replacing/upgrading a Large Format Copier with a Large Format Copier/Scanner/Printer. This piece of equipment will enable us to reproduce large-size, as-built construction drawings. It has been approved by the Technology Replacement Committee for Fiscal Year 2006.

FINANCIAL IMPACT: There is sufficient money in the approved FY 2006 Replacement and Depreciation Fund for the purchase of this equipment. Bids were received on August 9, 2005 as follows:

Selby's ESSCO\$34,401.50

BACKGROUND

We advertised for this contract on July 28 and August 4 which gave prospective bidders ample time to receive the bid packet, but we only received one bid.

RECOMMENDATION

Staff recommends that Council award the bid for the Large Format Copier/Scanner/Printer to Selby's ESSCO for the price of \$34,401.50.

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

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A2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 22, 2005

TITLE: W.O. 04-13—Filter Building Expansion and Improvements
DEPARTMENT: Public Works - Engineering
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: This project encompasses expansion and improvements to the Filter Building at the Water Treatment Plant, to include four new filters, renovation of the existing Filter Building, conversion of the old Filter Building into an Operations Center, addition of a new Maintenance Building, and all associated site work and miscellaneous improvements. HDR Engineering, Inc designed the project. Council approved an amendment to HDR's contract for professional services on June 13, 2005, to include bidding and construction administration.

Bids were opened on July 26, 2005. Due to the bids being well above the Engineer's Estimate, the bids were reviewed and action was delayed at the August 8 Council meeting. Funding is coming from State Revolving Fund (SRF), which must approve the bids prior to award of the contracts. SRF is still reviewing the bids.

FINANCIAL IMPACT: The project is to be funded by the State Revolving Fund (SRF) and the Public Utilities Reserve Fund.

Location of Work: Billings Water Treatment Plant

Funding Sources: SRF Loan, C.I.P. #PUD-103

Approved Dollar Amount for Project:	\$21,105,041
Spent (and obligated) to date:	(\$ 1,004,232)
Funding available:	\$20,100,809

Bids were opened on July 26, 2005 with the following results:

Firm	COP Construction	Williams Brother Construction	Dick Anderson Construction	Engineer's Estimate
Bid Schedule 1	\$16,400,000	\$17,170,000	\$22,100,000	\$12,720,100
Bid Schedule 2	\$1,020,000	\$922,200	\$1,200,000	\$740,100

RECOMMENDATION

Staff recommends that Council delay action until September 12 on awarding a construction contract for W.O. 04-13—Filter Building Expansion and Improvements.

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

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B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 22, 2005

TITLE: Professional Services Contract with Morrison-Maierle, Inc. - Amendment No. 2

DEPARTMENT: Public Works Department – Engineering Division

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

PROBLEM/ISSUE STATEMENT: The City of Billings has recommended an amendment to the Professional Services Contract with Morrison-Maierle, Inc. This contract, dated December 13, 2004, is for professional services for the 2005 City of Billings Water and Sewer Line replacement project. This Amendment represents a cost increase due to creation of the Gateway Triangle SID for street reconstruction in conjunction with the ongoing 2005 City of Billings Water and Sewer Line replacement project.

FINANCIAL IMPACT: Amendment No. 2 represents an increase in the amount of the contract by \$38,500.00. Funds are available through Public Works funds.

<u>Cumulative</u>			
<u>Original Professional Service Contract</u>	\$475,355.00	<u>% Of Contract</u>	<u>% Of</u>
Amendment No. 1	\$38,039.00	8.0%	
8.0%			
Amendment No. 2	<u>\$38,500.00</u>	8.1%	
16.1%			
Total to Date	\$76,539.00		

RECOMMENDATION

Staff recommends that Council approve amendment No. 2 to the Professional Services Contract with Morrison-Maierle, Inc., resulting in a net increase of \$38,500.00.

ATTACHMENT

- A. Amendment Number Two (3 copies)

Approved By: City Administrator City Attorney [\(Back to Consent Agenda\)](#)

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 22, 2005

TITLE: Golden Valley Contract for Library Services 2005/2006
DEPARTMENT: Parmly Billings Library
PRESENTED BY: Bill Cochran, Library Director

PROBLEM/ISSUE STATEMENT: Parmly Billings Library began contracting with Golden Valley County in 1977 to provide library service to its residents. Golden Valley is one of two counties in Montana that does not have its own public library and for this reason it contracts with Parmly Billings Library for service. The proposed contract is for a one-year period beginning July 1, 2005; either party may cancel the agreement with thirty (30) days written notice.

FINANCIAL IMPACT: The Library charges Golden Valley County \$1.70 for each item circulated, based on the actual activity for the prior year. There were 1,842 circulations from July 1, 2004 – June 30, 2005, which calculates to an annual payment of \$3,131.40 for the contract period July 1, 2005 – June 30, 2006. The Golden Valley payment is due to the Library no later than September 30, 2005.

RECOMMENDATION

Staff recommends that Council approve the one-year agreement to provide library service to Golden Valley County.

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

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D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 22, 2005

TITLE: CTEP Project Specific Agreement – Jackson Street Sidewalks

DEPARTMENT: Public Works Department – Engineering Division

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

PROBLEM/ISSUE STATEMENT: The City of Billings submitted a Montana Department of Transportation (MDT) Community Transportation Enhancement Project (CTEP) grant funding application for the Jackson Street Sidewalks project in 2004. This project will construct sidewalks, storm drain and associated public improvements between Kratz Lane and State Avenue. Another previously approved sidewalks project along Jackson Street will construct sidewalks, storm drain and associated public improvements from King Avenue East to Kratz Lane. The Jackson Street Sidewalks project was approved through the local selection process and approved by MDT. The Project Specific Agreement represents the formal agreement between the City and MDT for the project's scope, funding and federal aid compliance. Council must authorize the Mayor to execute a Project Specific Agreement for the Jackson Street Sidewalks to begin project development. The Project Specific Agreement is on file with the City Clerk's office.

ALTERNATIVES ANALYZED:

- Approve the CTEP Project Specific Agreement.
- Do not approve the CTEP Project Specific Agreement. This would result in the loss of CTEP funding for this project.

FINANCIAL IMPACT: The approved funding breakdown for this project is as follows:

CTEP Grant	\$ 60,800
Storm Drain	\$ 10,000
Property Assessments	\$ 57,000
Gas Tax	\$ 17,200
Total Funds Available	\$145,000

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the CTEP Project Specific Agreement for Jackson Street Sidewalks.

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

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E

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Agreement to Extend the Term of the Inter-Creditor Agreement
DEPARTMENT: Administration - Finance Division
PRESENTED BY: Patrick M Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Administration - Finance Division recommends that the City extend the term of the Inter-Creditor Loan Agreement between the City and the six banks for an additional five years. Otherwise, the agreement will automatically terminate on October 2, 2005, the fifth anniversary of the agreement. The purpose of the loan is to provide funds for the City to make end loans to entities for qualified improvements within the Tax Increment District. A loan committee consisting of five members, one representative each from the City, the banks, the DBP, the public and the Downtown Billings Property Owners' Committee, reviews applications and makes loan recommendations to the City Council based on revolving loan guidelines.

FINANCIAL IMPACT: The City has drawn \$2,438,700 of the available \$3,200,000 and has committed to additional loans totaling \$752,000, which leaves an uncommitted balance of \$9,300. The City expects to make the remaining draws subsequent to October 2, 2005.

RECOMMENDATION

Staff recommends that council approve to extend the term of the Inter-Creditor Agreement.

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

ATTACHMENT

A – Agreement to Extend the Term of the Inter-Creditor Agreement

AGREEMENT TO EXTEND THE TERM OF
THE INTER-CREDITOR AGREEMENT

WHEREAS, on the 2nd day of October, 2000, the parties entered into an Inter-Creditor Agreement (hereinafter "Agreement"), which provided, inter alia, that the Commitments of all Banks which were a party to the Agreement would automatically terminate, if not previously terminated, on the fifth anniversary of the Agreement, and

WHEREAS, all of the parties have found their participation in the Agreement to be mutually beneficial and of great benefit to the economic development of the City of Billings, and that the operation of this program has stimulated redevelopment of the downtown business district in particular and has assisted in maintaining interest in investment in the greater Billings area in general; and

WHEREAS, all of the parties wish to extend the term of the Agreement for an additional five (5) year term:

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties hereto, the aforesaid Agreement is hereby renewed and extended for an additional five (5) year term, through Saturday, the 2nd day of October, 2010, the Commitments of all Banks hereunder shall automatically terminate, if not previously terminated, on the 2nd day of October, 2010 and the Banks shall have no obligation to fund Loans after such termination date. In all other respects the Agreement, as amended, by means of a written amendment on the 19th day of November, 2003, is hereby reaffirmed by the parties hereto.

IN WITNESS WHEREOF, the Borrower and the Banks have caused this Agreement to be duly executed and sealed by their duly authorized officers, all as of this _____ day of _____, 2005.

The City of Billings

Attest:

By: Marita Herold, City Clerk
P.O. Box 1178
Billings, MT 59103

By: Charles F. Tooley, Mayor
P.O. Box 1178
Billings, MT 59103

(SEAL)

Banks

Yellowstone Bank

By: _____

Name:

Title:

Address

First Citizens Bank

By: _____

Name:

Title:

Address

Western Security Bank

By: _____

Name:

Title:

Address

First Interstate Bank

By: _____

Name:

Title:

Address

Wells Fargo Bank N. A.

By: _____

Name:

Title:

Address

U.S. Bank N.A.

By: _____

Name:

Title:

Address

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F

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Authorization to Apply for Intercap Loan for WO 03-02#1 and WO 02-14
DEPARTMENT: Administration-Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: This authorizes the application for an Intercap Loan through the Montana Board of Investments in the amount of \$288,780 to pay for two sidewalk projects WO 03-02#1 for \$212,580 and WO 02-14 for \$76,200.

FINANCIAL IMPACT: The Intercap Loan Program through the State Board of Investments offers loans for special improvement district bonds that are not marketable through a competitive bond sale. A bond sale may not attract competitive bids because of the small dollar amount of the bonds and the majority of the homes in WO 02-14 district, located in the area of North 22nd Street, will qualify for Community Development's Special Assessment Grants.

The current interest rate is 3.80%. The rate is variable and is adjusted on February 16 each year. This assessment will be placed on the tax bills in November if the loan is approved.

RECOMMENDATION

Staff recommends that City Council authorize the submission of the loan application and execution of related documents.

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

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G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 22, 2005

TITLE: 2005 CTEP Project Applications
DEPARTMENT: Planning and Community Services Department, Ramona Mattix, AICP, Director
PRESENTED BY: Darlene Tussing, Alternate Modes Coordinator

PROBLEM/ISSUE STATEMENT: Each year Billings submits projects to the Montana Department of Transportation for funding from the Community Transportation Enhancement Project (CTEP) program. These projects typically represent construction of pedestrian and/or bicycle facilities in the community. Council must approve and sign the project applications for submittal.

ALTERNATIVES ANALYZED: These trail projects were selected since each of them have had some construction begun within the corridor and were identified in the Heritage Trail Plan as priority projects. The 1999 GO Bond also identified the downtown connection, Swords Park Trail and the west end trails as projects that could receive the local match funds from that bond. The Council can offer other possible alternatives.

- Approve the CTEP applications for submission.
- Do not approve the CTEP applications for submission. This would result in the loss of CTEP funding for this year.

FINANCIAL IMPACT: These projects were budgeted and planned to utilize CTEP funding. Failure to approve the applications would result in the loss of the CTEP funding. As a result, the projects would not be fully funded, and additional funding would need to be allocated in order to proceed with construction. As part of the CTEP process each project will be reviewed and recommendations will be made as to which projects receive the limited funding. The total estimated costs of each of these trail projects are as follows: The **Big Ditch Trail**, \$110,000 requiring a \$14,762 local match, **Gabel Road Connector**, \$384,328 requiring a \$51,576 local match, **Swords Park Trail**, \$480,000 requiring a \$64,416 local match.

The Heritage Trail projects are eligible to use the 1999 General Obligation Bond for the required 13.42% local match. As of July, 2005, there is approximately \$90,000 available in the GO Bond account that has not been spent or has not been committed to trail related projects. BikeNet "Ales for Trails" funding can also be requested for some of the required CTEP match. The

Gabel Road Connector has some matching funds of \$23,500 from the 2004 Recreational Trails Program grant and has submitted an additional grant request in 2005.

RECOMMENDATION

Staff recommends that Council approve for submission the CTEP project applications for the Heritage Trail (Big Ditch Trail, Gabel Road Connector and Swords Park Trail)

ATTACHMENTS

- A. 3 copies of the CTEP application signature page to be signed for submittal with each grant application.
- B. Maps of each corridor
 - 1. The Big Ditch Trail
 - 2. The Gabel Road Connector
 - 3. Swords Park Trail

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

INTRODUCTION

Each year, projects are submitted for Community Transportation Enhancement Project (CTEP) funding which offsets some of the design and construction costs. These projects are typically pedestrian and/or multi-modal transportation projects that include construction of sidewalks, bike lanes and bike paths. In order for CTEP funding to be authorized, an application must be submitted and each application must go through a local selection process. The “approved” projects are then submitted to the Montana Department of Transportation (MDT) for final approval.

PROCEDURAL HISTORY

- Completed Items
 - Council approves CTEP project applications for submission – August 22, 2005
- Future Items
 - CTEP project applications received – August 26, 2005
 - Technical Advisory Committee (TAC) reviews applications, prioritizes them and makes recommendation on which projects to fund
 - Planning Board reviews the applications and TAC’s recommendations, and makes recommendations for funding and priority
 - County Commissioners reviews the applications, Planning Board’s and TAC’s recommendations, and makes recommendations for funding and priority
 - City Council reviews the applications, Planning Board’s and TAC’s recommendations, and makes recommendations for funding and priority
 - Policy Coordination Committee reviews the applications and action taken by the other groups and determines the final recommendation and prioritization
 - The final recommendation and prioritization are reviewed by the Montana Department of Transportation (MDT)
 - MDT forwards the recommendation and prioritization to the Highway Commission for final approval
 - Highway Commission approves the recommendation and prioritization
 - MDT creates the project specific agreements and forwards them to the City
 - City Council accepts and executes the project specific agreements
 - The executed agreements are returned to MDT
 - The Highway Commission approves the project agreements
 - MDT authorizes the City to begin project development
 - Project development and design
 - Project construction
 - Project close-out

BACKGROUND

Each CTEP project must follow an established approval procedure before funding is allocated. The first step of the process is the submission of project applications. All the applications are reviewed and prioritized through a previously approved process. The process includes a review

by Council. The applications are consistent with previous CTEP project agreements accepted and executed by Council.

If Council does not approve the submission of the applications, then no CTEP funding can be allocated from this year's allocation for these projects. It would be a full year before CTEP applications could be submitted again. This could cause lengthy project delays or require Council to allocate additional funding to the projects in order to remain on schedule.

The projects staff is recommending represented in the applications can be summarized as follows:

Heritage Trail Projects:

Big Ditch Trail

The potential project would construct a continuation of the trail on the west side of the Shiloh Underpass from Larchwood along the Rimrock West Estates Subdivision and through their parkland. A corridor has been preserved for a trail in this area and the adopted master park plan also includes the trail. Council has previously adopted the Heritage Trail plan and this corridor is one of the priority projects in the plan. Part of the project was partially funded through CTEP in 2004.

Gabel Road Connector

This project would extend the Descro Park Trail further south by building a portion of the trail from the Midland Trail behind Big Bear and Home Depot that was privately built, through the Gabel Road Connector corridor to the McCall trail (built privately) with a connection north across King Ave. to the trail by Famous Dave's (built privately). Eventually this trail will make the connection through TransTech to ZooMontana and also connect north from Famous Dave's Restaurant to the section of trail through Descro Park. This corridor is also part of the adopted Heritage Trail plan and was identified in the plan as one of the priority projects.

Swords Park Trail

This project would extend the Swords Park Trail further east in accordance with the Swords Park Master Plan. It will ultimately make the connections with the Airport Road project for future linkage. This section of trail would complete the Swords Park Trail project.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Council has previously approved these projects through the Capital Improvement Plan and the adoption of the Heritage Trail Plan. The Swords Park Trail is consistent with the Swords Park Master Plan and the Big Ditch Trail is consistent with the Rimrock West Park Master Plan. All the projects will proceed through the established CTEP project approval process for the City of Billings and Yellowstone County.

RECOMMENDATION

Staff recommends that Council approve for submission the CTEP project applications for the Heritage Trail (Big Ditch Trail, Gabel Road Connector, and Swords Park Trail)

ATTACHMENTS

- A. 3 Copies of the CTEP application signature page to be signed for submittal with each grant application.
- B. Maps of each corridor.
 - 1. The Big Ditch
 - 2. Gabel Road Connector
 - 3. Swords Park Trail

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: 2005 CTEP Project Application – Milton Lane
DEPARTMENT: Public Works Department – Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Each year Billings submits projects to the Montana Department of Transportation for funding from the Community Transportation Enhancement Project (CTEP) program. The Engineering Division has historically applied for CTEP funding to offset costs associated with the annual School Route Sidewalks program in the CIP. Milton Lane has been identified as a high priority project for more than a decade and attempted in the past but failed due to lack of property owner support for an improvements SID. Both sides of Milton Lane are now in an identified CDBG-eligible area. Until the 2000 census, just the north side of Milton Lane was identified as a CDBG-eligible area. There are \$50,000 of CDBG funds already allocated for this project. Council must approve and sign the Milton Lane CTEP project application for submittal. The CTEP application is on file with the City Clerk's office.

ALTERNATIVES ANALYZED:

- Approve this CTEP application for submission.
- Do not approve this CTEP application for submission.
- Direct Staff to prepare a CTEP application for a different location.

FINANCIAL IMPACT: The School Route Sidewalks projects were budgeted and planned in the CIP to utilize CTEP funding. Failure to submit any application would result in the loss of the CTEP funding for this year. As a result, the projects would not be fully funded, and additional funding would need to be allocated in order to proceed with construction. Additional funding information will be provided with the CTEP project presentations to Council at a future date.

Sidewalk construction projects use a combination of funding sources to meet the required local match funds. The CIP funding for the 2005 School Route Program (ENG28) is as follows:

CTEP	\$125,000
Property Assessments	\$200,000
Gas Tax/Storm Drain/Corner/C&G	\$238,500
<u>CDBG (already allocated for Milton Lane)</u>	<u>\$ 50,000</u>
Total	\$613,500

RECOMMENDATION

Staff recommends that Council approve for submission the CTEP project application for Milton Lane as a School Route Improvements project.

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

INTRODUCTION

Each year, projects are submitted for Community Transportation Enhancement Project (CTEP) funding which offsets some of the design and construction costs. These projects are typically pedestrian and/or multi-modal transportation projects that include construction of sidewalks, bike lanes and bike paths. In order for CTEP funding to be authorized, an application must be submitted and each application must go through a local selection process. The “approved” projects are then submitted to the Montana Department of Transportation (MDT) for final approval.

PROCEDURAL HISTORY

- Completed Items
 - SID for street and storm drain improvements attempted in 1990, 1993 and 1996
 - School Route Priority study completed in 1992, and identified Milton Lane sidewalks in Group I and Group II (highest priority categories)
 - Council approves Milton Lane CTEP project application – August 22, 2005 (**this memo**)
- Future Items
 - CTEP project applications received by MDT – August 24, 2005
 - Technical Advisory Committee (TAC) reviews applications, prioritizes them and makes recommendation on which projects to fund
 - Planning Board reviews the applications and TAC’s recommendations, and makes recommendations for funding and priority
 - County Commissioners reviews the applications, Planning Board’s and TAC’s recommendations, and makes recommendations for funding and priority
 - City Council reviews the applications, Planning Board’s and TAC’s recommendations, and makes recommendations for funding and priority
 - Policy Coordination Committee reviews the applications and action taken by the other groups and determines the final recommendation and prioritization
 - The final recommendation and prioritization are reviewed by the Montana Department of Transportation (MDT)
 - MDT forwards the recommendation and prioritization to the Highway Commission for final approval
 - Highway Commission approves the recommendation and prioritization
 - MDT creates the project specific agreements and forwards them to the City
 - City Council accepts and executes the project specific agreements
 - The executed agreements are returned to MDT
 - The Highway Commission approves the project agreements
 - MDT authorizes the City to begin project development
 - Project development and design
 - Project construction
 - Project close-out

BACKGROUND

Each CTEP project must follow an established approval procedure before funding is allocated. The first step of the process is the submission of project applications. All the applications are reviewed and prioritized through a previously approved process. The process includes a review by Council. This application is consistent with previous CTEP project agreements accepted and executed by Council.

If Council does not approve the submission of an application, then no CTEP funding can be allocated from this year's allocation for these projects. It would be a full year before CTEP applications could be submitted again. This could cause lengthy project delays or require Council to allocate additional funding to the projects in order to remain on schedule.

The Milton Lane project can be summarized as follows:

School Route Sidewalk Project – Milton Lane:

This potential project will construct missing sidewalk, drive approaches, accessibility ramps, curb & gutter, street improvements and storm drain improvements on Milton Lane from Lake Elmo Road to Main Street. Bench School is located on the north side of Milton Lane. This project will improve pedestrian access to Bench School directly, and complement street improvement projects planned in 2007 for Lake Elmo Road.

This segment of missing walk is classified as Group 1 and Group 2 (the two higher need categories) from the 1992 School Route Prioritization Study.

Street and storm drain improvements SIDs have been attempted in this area in 1990, 1993 and in 1996. In all cases, strong property owner opposition has stopped the creation of an SID. This project will require creation of an SID to build the improvements. The CTEP funds would be used to offset property owner's direct assessments. Until the last census, just the north side of Milton Lane was identified as a CDBG-eligible area. Both sides of Milton Lane are now in an identified CDBG-eligible area. There are \$50,000 of CDBG funds already allocated for this project.

This project has been identified for over 15 years as an important improvement. The addition of the federal aid funds in the form of CTEP, CDBG and CDBG Special Assessment Grant funds will greatly reduce the burden of property owner assessments.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

School Walking Routes Priority Update:

The School Walking Routes Priority Update project is in progress at this time. Criteria and weighting have been selected and the City's consultant is applying the criteria to the different segments of sidewalk throughout the city. The Milton Lane project would score 69 (out of a theoretical 100 point maximum) based on our update criteria and weighting.

Capital Improvement Plan and CTEP Public Process

Council has previously approved the School Route Sidewalks projects through the Capital Improvement Plan. This project will proceed through the established CTEP project approval process for the City of Billings and Yellowstone County.

RECOMMENDATION

Staff recommends that Council approve for submission the CTEP project application for Milton Lane as a School Route Improvements project.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Vacation of Conrad Road Right of Way
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: The property owners adjacent to Conrad Road between South 30th Street West and South 32nd Street West have requested that the city vacate Conrad Road between South 30th Street West and South 32nd Street West. Conrad Road is undeveloped and the property owners are currently replatting the lots adjacent to Conrad Road, which if vacated, will include the Conrad Road Right-of-Way. Attached is copy of the proposed plat showing the proposed vacated area.

ALTERNATIVES ANALYZED:

1. Approve acknowledgement of petition to vacate Conrad Road Right-of-Way as shown on Attachment A and set a public hearing for September 12, 2005.
2. Do not approve acknowledgement of petition to vacate Conrad Road Right-of-Way.

FINANCIAL IMPACT: Attached are two buy/sell agreements for properties recently sold within the Tierra Yellowstone Industrial Park Subdivision. Lots 5 through 9 were purchased for about \$1.20 per square foot and Lots 10 through 12 were purchased for about \$1.16 per square foot. Both of these purchases were in 2003. The total area proposed to be vacated is 98,060 square feet. With the comparison prices from the buy/sell agreements, the Conrad Road Right-of-Way would be valued anywhere between \$113,749.60 to \$117,672.00.

RECOMMENDATION

Staff recommends that Council acknowledge the receipt of petition to vacate Conrad Road and set a public hearing for September 12, 2005.

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

ATTACHMENT

- A. Map Depicting Area to be Vacated
- B. Buy/Sell Agreements of Properties Sold Within the Area

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J1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 22, 2005

TITLE: Native American Development Corporation Health Walk Street Closure
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Gene Blackwell, Parks, Recreation and Public Lands Interim Director

PROBLEM/ISSUE STATEMENT: The Native American Development Corporation requests a temporary street closure on Friday, September 23, 2005 at the Sky Point on the corner of 2nd Avenue North and N. Broadway from 8:30 am to 10:00 am for a "Just Do It" Health Walk to raise awareness about diabetes prevention and to encourage healthy lifestyles. The procession will then move down 28th Street abiding by traffic signals through 1st Avenue South. They are also requesting temporary closure of the cross streets from 2nd Avenue South to South Park and will reach the park by 1:00 pm.

Recommended conditions of approval include the Native American Development Corporation:

1. Have no alcohol consumption in the public right of way
2. Contact all businesses and make them aware of the event 30 days in advance
3. Clean the area to be used and provide and empty waste cans
4. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
5. Provide traffic control at intersections from 2nd Avenue South to South Park
6. Provide and install adequate traffic barricades and signs directing motorists around closure
7. Provide certificate of insurance naming City of Billings as additional insured

ALTERNATIVES ANALYZED:

1. Approve request to close streets for the event (recommended).
2. Deny the street closures

FINANCIAL IMPACT: There are no costs to the City of Billings for this event other than administrative time to process the permit.

RECOMMENDATION

Staff recommends that Council approve closure of the above named streets on Friday, September 23, 2005, for the "Just Do It" Health Walk.

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

ATTACHMENTS

- A. Cover letter outlining event (1 page)
- B. Right of Way Special Activity Permit Application (2 pages)
- C. Course map (1 page)
- D. Certificate of insurance (1 page)

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J2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 22, 2005

TITLE: O'Hara's Fundraiser for Optimist Club Street Closure Request

DEPARTMENT: Parks, Recreation and Public Lands

PRESENTED BY: Gene Blackwell, Parks, Recreation and Public Lands Interim Director

PROBLEM/ISSUE STATEMENT: O'Hara's Family Restaurant requests street closure of 33rd Street between Montana Avenue and 1st Avenue North from 12:00 noon to 5:00 pm on Saturday, September 10, 2005, for the 1st Annual Optimist Family Fun Day, Barbeque, and Street Dance.

Recommended conditions of approval include O'Hara's Family Restaurant:

1. Obtain the proper open container from the Police Department if alcohol will be consumed in the public right of way
2. Contact Police Department to determine if noise permit will be required
3. Contact all businesses and make them aware of the event as soon as possible
4. Clean the area to be used and provide and empty waste cans
5. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
6. Provide and install adequate traffic barricades and signs directing motorists around closure
7. Provide certificate of insurance naming City of Billings as additional insured

ALTERNATIVES ANALYZED:

1. Approve request to close streets for the event (recommended).
2. Deny the street closures

FINANCIAL IMPACT: There are no costs to the City of Billings other than administrative time to process permit. Police, traffic control and litter removal are to be paid for by O'Hara's Family Restaurant.

RECOMMENDATION

Staff recommends that Council approve the closure named above for the fundraiser for the Optimist Club on Saturday, September 10, 2005.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Letter outlining event (1 page)
- B. Right of way special activity permit application (2 pages)
- C. Map outlining closure (1 page)
- D. Certificate of insurance (1 page)

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J3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 22, 2005

TITLE: 911 Remembrance Ride Temporary Street Closure
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: The Beartooth Harley Owner's Group requests temporary street closure for a 911 Remembrance Ride on Sunday, September 11, 2005. They will assemble on Main Street in Laurel at 10:30 am, follow Main Street east out of Laurel to Frontage Road, and down Montana Avenue to 27th Street. The parade will then congregate at the Yellowstone County Courthouse and temporarily close 2nd Avenue North between 26th and 27th Street for a short remembrance ceremony from 11:30 am to 12:30 pm. The parade will re-assemble at 12:30 pm, proceed on 27th Street to 4th Avenue North, turn on Main Street and follow Hwy 312 to Huntley disbanding by 2:00 pm.

Recommended conditions of approval include the Beartooth Harley Owner's Group:

1. Have no alcohol consumption in the public right of way
2. Contact all businesses and make them aware of the event as soon as possible
3. Clean the area to be used and provide and empty waste cans
4. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
5. Provide and install adequate traffic barricades directing motorists around closure
6. Coordinate with the Police and Traffic Engineering Departments to ensure proper traffic control and police assistance during parade
7. Provide a certificate of insurance naming City of Billings as additional insured

ALTERNATIVES ANALYZED:

1. Approve request to close streets for the event (recommended)
2. Deny the street closures

FINANCIAL IMPACT: There are no costs to the City of Billings other than administrative time to process permit. Police, traffic control and litter removal are to be paid for by the Beartooth Harley Owner's Group.

RECOMMENDATION

Staff recommends that Council approve closure of the event route described above on Sunday, September 11, 2005, for the 911 Remembrance Ride.

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

ATTACHMENTS

- A. Letter from Beartooth Harley Owner's Group (3 pages)
- B. Right of Way Special Activity Permit (2 pages)
- C. Event route map (1 page)
- D. Certificate of insurance (1 page)

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K

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Zone 4 Reservoir Appraisal

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The Public Works water utility needs to acquire property as a site for future water storage and pumping facilities in the northwest portion of the City's service area near Yellowstone County Club. The proposed acquisition is comprised of temporary and permanent easements and fee simple purchase. The proposed site is part of Tract 1, Certificate of Survey 3030 located approximately ½ mile north of the Yellowstone Country Club at about 54th St. West. In accordance with the City's property acquisition policy, Resolution 93-16740, staff obtained two appraisals establishing the value of the property at \$137,024. In further accordance with the acquisition policy staff is requesting that Council establish the fair market value of the property based on the appraisals. A copy of the review appraisal was supplied in the August 8 council agenda material. This item was considered by the Council on August 8 and was delayed to August 22 for further staff consideration of alternatives. Should the staff recommendation change from that contained herein, the revised recommendation will be supplied to the Council prior to the August 22 meeting.

FINANCIAL IMPACT: There is sufficient money budgeted in the FY 06 water major capital budget to cover the property purchase.

RECOMMENDATION

Staff recommends that Council establish a fair market value of \$137,024 for a portion of Tract 1, Certificate of Survey 3030 for the purpose of constructing water storage and pumping facilities and authorize staff to obtain the property from GSK Partners, LLP.

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

BACKGROUND

The Zone 4 water reservoir project has been discussed over the last several years and is identified in the City's Capital Improvement Plan in FY 06 and 07. Geographically pressure zone 4 covers the area along Rimrock Road west from 17th St. West to the Yellowstone Country Club area. Water system studies have identified the need for additional reservoir capacity in this pressure zone for the following reasons:

- 1) Improve hydraulic balance – During the summer pressures along the westerly portions of Rimrock Road fluctuate. Having additional storage on the westerly end of this zone will help even out these fluctuations.
- 2) Provide emergency storage for fire and power outages – Fires place increased demands on the system and power outages reduce the ability to run pumps. Having additional storage minimizes the impacts of these types of events.

The interest the City is seeking in the property includes the following:

- 3.632 acres of fee simple acquisition (\$79,515)
- 2.328 acres of permanent easement (\$48,419)
- 2.076 acres of temporary construction easement (\$9,090)

RECOMMENDATION

Staff recommends that Council establish a fair market value of \$137,024 for a portion of Tract 1, Certificate of Survey 3030 for the purpose of constructing water storage and pumping facilities and authorize staff to obtain the property from GSK Partners, LLP.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

SUBJECT: Resolution to Adopt the Revised Stewart Park Master Plan
DEPARTMENT: Department of Parks, Recreation & Public Lands
PRESENTED BY: Gene Blackwell, Interim Director of PRPL

PROBLEM/ISSUE STATEMENT: The final draft of the revised master plan for Stewart Park was presented to the Billings Parks, Recreation and Cemetery (PRC) Board for review at the July 13th, 2005, regular meeting. After review and consideration, the Board approved a recommendation to the City Council to adopt the Resolution and Revised Master Plan for Stewart Park as proposed. The Master Plan Revision is necessary to update the original master plan and incorporate proposed trail segments through Stewart Park. The plan was prepared by Land Design, Inc., of Billings. The Master Plan ensures that Stewart Park will be an integral part of the overall Billings park system, and when completed will provide a continuous trail alignment through the park from the end of the trail at Central Avenue in Descro Park to Monad Road and the Lampman Parkway proposed trail. The Public had opportunity through 2 public meetings to view plan alternatives and provide comment. Land Design, Inc. has incorporated input from the public meetings as well as staff recommendations into the draft of the master plan revision. Attachment A – Stewart Park Master Plan Revision Resolution to Adopt, and Attachment B – Stewart Park Master Plan Revision, and Attachment C – Cost Estimates and Narrative.

FINANCIAL IMPACT: There is funding available for the trail segments identified through the revision. The total amount is \$274,000 of which \$237,230 will be funded through a CTEP grant and \$36,770 from the 1999 General Obligation Bonds. There are no other funds currently budgeted or that have been proposed in the CIP to construct other parts of the proposed park plan at this time. The estimated cost of maintenance for the trail improvements will be \$1,100 annually, if approved.

RECOMMENDATION:

Staff recommends that the Billings City Council adopt the proposed Stewart Park Master Plan Revision as the governing plan for the development of the park as recommended by the staff and the Parks, Recreation, and Cemetery Board, with or without changes.

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

ATTACHMENTS

- A. Stewart Park Resolution to Adopt the Master Plan Revision
- B. Stewart Park Master Plan Revision
- C. Cost Estimates and Narrative

INTRODUCTION

The PRPL staff and consultant, Land Design Inc., have developed a final draft of the Master Plan Revision that addresses and maps recent improvements made to the park since the original master plan was adopted. It also seeks to determine uses and facilities that are appropriate for the park given current and projected use, location and neighborhood context. A major component of the Master Plan Revision seeks to determine a trail alignment to enable planning to move forward with the construction of the Heritage Trail through the park. The staff feels that this plan best addresses the future needs and functions of the park, improves the public access and circulation by developing the Heritage Trail system and connecting it to existing near by trail segments, and best meets the community needs for public safety and maintenance.

PROCEDURAL HISTORY

- In 2002 City County Planning applied for and received \$237,230 in the form of a CTEP grant to fund trail development and connections to existing trails by Stewart Park between Central and King Avenues. Stewart Park was identified in the Bikenet Plan as being connected to the trail corridor but was not reflected in the parks' master plan. Therefore it was decided to revise and update the existing park master plan to include the trail system.
- The consultant selected to do the Master Plan is Land Design Inc. of Billings. The process follows the Public Park planning process adopted in 1980 and focuses on the opportunities, needs, constraints and limitations affecting a park, such as the Billings Parks 20/20 Plan, the Heritage Trail Plan, transportation and growth plans, community and neighborhood need, terrain, easements, public utility installations, federal and state regulations. That information was used to develop a base map and preliminary set of plan options.
- Two Town Hall meetings were held on March 22nd, 2005, at the Billings West High School, and April 19th, 2005, at Meadowlark Elementary School at which public input was received regarding the development of Stewart Park.
- PRPL Staff along with Land Design, Inc. and other city staff reviewed and discussed comments and concerns received at those meetings. Land Design, Inc. used the information to develop and draft the revised master plan.
- The final draft plan was reviewed by the Park, Recreation, and Cemetery Board at the July 13th, 2005, regular meeting, at the Billings Community Center.
- The trail alignment project will not be able to proceed until the Stewart Park Master Plan Revision is adopted to guide and control location of the trail and future improvement projects within the park boundaries.

BACKGROUND

A master plan for Stewart Park was first adopted in the early 1970's and several updates have followed with the most recent in 1992. With the receipt of a CTEP grant in 2002 it became necessary again to update and revise the master plan to reflect the new trail plans. City policy for Park Master Plan preparation as outlined in the Neighborhood Parks Planning Process, followed by the PRPL Department since 1980, requires that a park may not be developed until a Master Plan has been prepared and adopted by the Billings City Council. Once adopted, all park development and proposals for the development of portions of parks or facilities within parks must be consistent with an approved Master Plan. It is prepared by a qualified park planning

consultant, and considers surrounding zoning and land uses and local and general park and recreation needs as well as specific requests from interested users. This is to assure development of parks and recreation facilities to a minimum set of standards, and to assure that adequate public input is included in the planning, development, sale, or use, of Billings' parklands. Any proposed modification to a park that will be a significant departure from the approved Master Plan requires a revision of the Master Plan following the above process. Only if it is determined that the proposed change is acceptable and appropriate for that park is it allowed to move forward. The Stewart Park Master Plan Revision, as presented, is the final draft for review by the PRC Board and for presentation to the City Council.

The basic elements determined to be necessary in the revised master plan for Stewart Park is as follows:

- Assure that there are links between the park and the Heritage Trail segments that will go along the BBWA Canal.
- Provide a safe pedestrian crossing at Monad Road.
- Define and increase traffic circulation and parking by widening roads and drive lanes to accept two way traffic and paving and striping parking lots.
- Develop connection/through street at the Southeast corner of the park to Phyllis Street.
- Develop elevated plazas between baseball fields for improved spectator viewing and ease of access to seating.
- Provide a soccer/football field.
- Improve playground/day use area.
- Develop pond/detention area as a water feature and storm water structure.
- Develop a skate park.
- Develop a miniature golf course.
- Develop primary entry feature signage.

ALTERNATIVE ANALYSIS

The staff considered a number of major components to the master plan:

1. To extend the Stewart Park Drive south through to Phyllis Lane or not. This would provide an additional access to park facilities and alleviate congestion at the intersection at Central Ave. Officials at the Rimrock Mall are also in favor of the connection to alleviate congestion by park traffic and through traffic by utilizing Stewart Park Road rather than their parking lots. The City Traffic Department and Met Transit favor the street extension to improve park access and traffic circulation especially for City busses accessing the bus transfer station in the park. Street alignment and traffic calming devices should be employed to reduce the speed of though traffic on Stewart Park Road. Staff recommends the Drive be extended to Phyllis Lane.
2. To develop a water feature in the park or plan a different facility or park improvement at that location. The water feature would be located in a natural low area of the park and act as an amenity while providing detention capabilities for storm water runoff. Access and safety concerns would be addressed through designing access barriers such as walls and fencing or by providing a gradually sloping basin bottom. Staff recommends the plan with the water feature.

3. Currently the Heritage Trail extends through Descro Park North of Stewart Park across Central Ave. and ends on the Northwest corner of the Stewart Park property. The intent is to connect Descro Park to Stewart Park. At the South end of the park the trail alignment is proposed to continue along the canal to Monad Road or continue East in the park to an access easement through Ryan Subdivision south of the park and connecting to Phyllis Street, then following the street right of way to Monad Road. The preferred alignment is to continue South parallel to the BBWA Canal. This is the most direct route and will be the most cost effective to construct. However, obtaining an access easement from the south west corner of Stewart Park to Monad Road along the BBWA canal is problematic at this time. The staff recommends a proposed trail alignment that will extend along the west side of the park property and run parallel with the BBWA Canal.
4. Staff recommends ballfield complex improvements to upgrade buildings, playing fields and backstop areas as shown on the plans. Support from user organizations would be key to implementing them.

CONSISTENT WITH ADOPTED POLICIES AND PLANS

The Stewart Park Revised Master Plan follows recommendations contained in the Neighborhood Park Planning Process, adopted in 1980; Parks 20/20 Plan adopted in 1996; the Billings Heritage Trails Plan, adopted by the city in 2004 and the City of Billings Growth Policy Adopted in 2004.

RECOMMENDATION:

Staff recommends that the Billings City Council adopt the proposed Stewart Park Master Plan Revision as the governing plan for the development of the park as recommended by the staff and the Parks, Recreation, and Cemetery Board, with or without changes.

ATTACHMENTS

- A. Stewart Park Resolution to Adopt the Revised Master Plan
- B. Stewart Park Revised Master Plan
- C. Cost Estimates and Plan Narrative

RESOLUTION NUMBER 05-
A RESOLUTION ADOPTING A MASTER PLAN FOR THE
DEVELOPMENT AND MANAGEMENT OF STEWART
PARK, BILLINGS, MONTANA

WHEREAS, the public interest requires the creation and adoption of a Master Plan for Stewart Park located south of Central Avenue and east of the BBWA Canal in Billings, Montana;

WHEREAS, a Master Plan controls and guides the development and management of the park in accordance with the needs of the surrounding neighborhoods and the community, recognizes the limitations and constraints of the lands within the park, and provides for improvements suited to and appropriate for the park and the surrounding neighborhoods;

WHEREAS, a Master Plan assures development to acceptable standards, according to Federal, State, local regulations, and adopted plans including the Billings Parks 20/20 Plan, adopted in 1997; and the Billings Heritage Trail Plan, adopted in 2004, and the Billings Growth Policy, adopted in 2003; and

WHEREAS, on March 22, 2005, and April 19, 2005, Town Hall Meetings were conducted to obtain verbal and written comments regarding the development of the park, for review and evaluation; and

WHEREAS, it is in the public interest and necessary that the management and development of the park shall conform to the adopted master plan:

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

1. *Master Plan.* The master plan for Stewart Park attached and labeled as *Attachment "A"* is hereby made the official Master Plan for the park. The purpose of the plan is to control the development, and guide the management, of the park. The Master Plan shall be on file and available at the office of Director of Parks, Recreation, and Public Lands;
2. *Park Designation.* Stewart Park is hereby designated a Special Use Park, as provided for in the Billings Parks 20/20 Plan, to be maintained in accordance with the program elements consistent with *Attachment B*;
3. *General Character of Improvements Provided for by the Plan.* The general character of the improvements approved for the park are signs, trails, amenities, and park enhancements as are in keeping with the uses and programs located there, as shown on *Attachment "B" through "C"*.

4. *Changes.* Any uses, installations, and improvements not consistent with the adopted master plan as outlined are prohibited. Any proposal to construct improvements or make use of the park not consistent with the adopted Master Plan shall not be allowed unless approved by the Billings City Council in a revised Park Master Plan.

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

CITY OF BILLINGS

By: _____
Charles F. Tooley Mayor

ATTEST:

By: _____
Marita Herold, CMC City Clerk

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M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 22, 2005

SUBJECT: Resolution to Adopt the Lampman Parkway Master Plan
DEPARTMENT: Department of Parks, Recreation & Public Lands
PRESENTED BY: Gene Blackwell, Interim Director of PRPL

PROBLEM/ISSUE STATEMENT: The final draft of the master plan amendment for Lampman Parkway was presented to the Parks Recreation and Cemetery (PRC) Board at the July 13th, 2005, regular meeting for review and a recommendation regarding the adoption of the Master Plan by the Billings City Council. After a presentation of the plan, the PRC Board moved to recommend approval of the Master Plan as proposed. The master plan is necessary to develop a set of guiding documents to direct the future development of park features and proposed trail segments along Lampman Parkway. The master plan ensures that Lampman Parkway will be an integral part of the overall Billings park system, and when completed will function well as a community park and provide a continuous trail alignment through the parks from Monad Road to King Avenues. The plan was prepared by Land Design, Inc. The Public had opportunity through 2 public meetings to view plan alternatives and provide comment. Land Design, Inc. has incorporated input from the public meetings as well as staff recommendations into the draft of the master plan. See Attachment A – Lampman Parkway Master Plan Resolution to Adopt, and Attachment B – Lampman Parkway Master Plan, and Attachment C – Cost Estimates and Plan Narrative.

FINANCIAL IMPACT: There is funding available for the trail development in Lampman Parkway and Stewart Park as identified through the respective master plans. The total amount is \$274,000 of which \$237,230 will be funded through a CTEP grant and \$36,770 from the 1999 General Obligation Bonds. There are no other funds currently budgeted or that have been proposed in the CIP to construct other parts of the proposed park plan at this time. The estimated cost of maintenance for the trail improvements will be \$2,200, if approved.

RECOMMENDATION:

Staff recommends that the City Council adopt the Lampman Parkway Master Plan as recommended by the Billings Park, Recreation and Cemetery Board.

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

ATTACHMENTS

- A. Stewart Park and Lampman Parkway Resolution to Adopt the Master Plan
- B. Lampman Parkway Master Plan
- C. Cost Estimates and Plan Narrative

INTRODUCTION

The PRPL staff and consultant, Land Design Inc., have developed a final draft of the master plan that identifies uses, programs and facilities that are appropriate for the park given current and projected use, location, and neighborhood context. A major component of the master plan was to recommend a trail alignment to enable planning to move forward with the construction of the Heritage Trail through the park. The staff feels that this plan best addresses the future needs and functions of the park, improves the public access and circulation by developing the Heritage Trail system and connecting it to existing near by trail segments, and best meets the community needs for public safety and maintenance. .

PROCEDURAL HISTORY

- In 2002 City County Planning applied for and received \$237,230 in the form of a CTEP grant to fund trail development from Descro Park south through Stewart Park, connecting to Lampman Parkway and to the existing trail section by Famous Dave's Restaurant that connects King Avenue. Lampman Parkway was identified in the Heritage Trail Plan as a trail corridor. With no plan in place to guide development, it was decided to develop a park master plan for this property to include the trail system.
- The consultant selected to do the Master Plan is Land Design Inc. of Billings. The process follows the Public Park planning process adopted in 1980 and focuses on the opportunities, needs, constraints and limitations affecting a park, such as the Billings Parks 20/20 Plan, the Heritage Trail Plan, transportation and growth plans, community and neighborhood need, terrain, easements, public utility installations, federal and state regulations. That information was used to develop a base map and preliminary set of plan options.
- Two Town Hall meetings were held on March 22nd, 2005, at the Billings West High School, and April 19th, 2005, at Meadowlark Elementary School at which public input was received regarding the development of Lampman Parkway.
- Staff along with Land Design, Inc. and other city staff reviewed and discussed comments and concerns received at those meetings. Land Design used the information to develop and draft the master plan.
- The final draft plan was reviewed by the Park, Recreation, and Cemetery Board at the July 13th, 2005, regular meeting, at the Billings Community Center.
- The trail alignment project will proceed once the Lampman Parkway Master Plan is adopted and will control design and location of the trail and future improvement projects within their boundaries.

BACKGROUND

A master plan for Stewart Park was first adopted in the early 1970's and several updates have followed with the most recent in 1992. With the receipt of a CTEP grant in 2002 it became necessary to develop a master plan to guide park and trail development. City policy for Park Master Plan preparation as outlined in the Neighborhood Parks Planning Process, followed by the PRPL Department since 1980, requires that a park may not be developed until a Master Plan has been prepared and adopted by the Billings City Council. Once adopted, all park development and proposals for the development of portions of parks or facilities within parks must be consistent with an approved master plan. It is prepared by a qualified park planning

consultant, and considers surrounding zoning and land uses and local and general park and recreation needs as well as specific requests from interested users. This is to assure development of parks and recreation facilities to a minimum set of standards, and to assure that adequate public input is included in the planning, development, sale, or use, of Billings' parklands. Any proposed modification to a park that will be a significant departure from the approved master plan requires a revision of the master plan following the above process. Only if it is determined that the proposed change is acceptable and appropriate for that park is it allowed to move forward. The Lampman Parkway Master Plan, as presented, is the final draft.

The basic elements determined to be necessary in the Lampman Parkway Master Plan are as follows:

- Extend and link the Heritage Trail from Monad Road to the existing trail segment on the south end of the park by Famous Dave's Restaurant connecting to King Ave.
- Develop Lampman Strip as a park with amenities that may include; disk golf course, off leash dog area (dog park), BMX bicycle course, open park land.
- Assure that there are links between the park and the Heritage Trail.
- Provide a safe pedestrian crossing at Monad Road.

ALTERNATIVE ANALYSIS

The staff considered a number of major components to the master plan:

5. During the master planning process and at the public meetings a number of programmed use themes were put forth including; disk golf course, off leash dog area (dog park), BMX Bycycle couese, open park land. Comments received at the public meetings were very positive for these types of programs. However no one program seemed to have overwhelming fayor. As the plans proceed for Lampman Parkway, staff recommends that further studies be done and an additional public meeting be held to determine the program best suited for this land and surrounding neighborhoods.
2. Currently the Heritage Trail extends through Descro Park north across Central Ave. from Stewart Park and ends on the Northwest corner of the Stewart Park property. The intent is to connect Descro Park to the existing trail segment at the south end of Lampman Parkway next to Famous Dave's Restaurant. The trail system for Lampman Parkway would be developed concurrently with Stewart Park and the trail alignment though Lampman Parkway would be coordinated and complement the park uses. The staff recommends a proposed trail alignment that services the program needs of the park and accommodates the needs and abilities of all users.

CONSISTENT WITH ADOPTED POLICIES AND PLANS

The Stewart Park and Lampman Strip Park master plan follows recommendations contained in the Neighborhood Park Planning Process, adopted in 1980; Parks 20/20 Plan adopted in 1996; the Billings Heritage Trails Plan, adopted by the city in 2004 and the City of Billings Growth Policy Adopted in 2004.

RECOMMENDATION:

Staff recommends that the Billings City Council adopt the proposed Lampman Parkway Master Plan as the governing plan for the development of the park as recommended by the PRC Board, with or without changes.

ATTACHMENTS

- A. Stewart Park and Lampman Parkway Resolution to Adopt the Master Plan
- B. Lampman Parkway Master Plan
- C. Cost Estimates and Plan Narrative

RESOLUTION NUMBER 05-
A RESOLUTION ADOPTING A MASTER PLAN FOR THE
DEVELOPMENT AND MANAGEMENT OF LAMPMAN
STRIP PARK, BILLINGS, MONTANA

WHEREAS, the public interest requires the creation and adoption of a Master Plan for Lampman Strip Park located on a strip of land between South 29th Street West and the BBWA Canal and between Monad Road and King Avenue West in Billings, Montana;

WHEREAS, a Master Plan controls and guides the development and management of the park in accordance with the needs of the surrounding neighborhoods and the community, recognizes the limitations and constraints of the lands within the park, and provides for improvements suited to and appropriate for the park and the surrounding neighborhoods;

WHEREAS, a Master Plan assures development to acceptable standards, according to Federal, State, local regulations, and adopted plans including the Billings Parks 20/20 Plan, adopted in 1997; and the Billings Heritage Trail Plan, adopted in 2004, and the Billings Growth Policy, adopted in 2003; and

WHEREAS, on March 22, 2005, and April 19, 2005, Town Hall Meetings were conducted to obtain verbal and written comments regarding the development of the park, for review and evaluation; and

WHEREAS, it is in the public interest and necessary that the management and development of the park shall conform to the adopted master plan:

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

1. *Master Plan.* The master plan for Lampman Strip Park attached and labeled as *Attachment "B"* is hereby made the official Master Plan for the park. The purpose of the plan is to control the development, and guide the management, of the park. The Master Plan shall be on file and available at the office of Director of Parks, Recreation, and Public Lands;
5. *Park Designation.* Lampman Strip Park is hereby designated a Community Park, as provided for in the Billings Parks 20/20 Plan, to be maintained in accordance with the program elements consistent with *Attachment B*;
6. *General Character of Improvements Provided for by the Plan.* The general character of the improvements approved for the park are signs, trails, amenities, and park enhancements as are in keeping with the uses and programs located there, as shown on *Attachment "B" through "C"*.

7. *Changes.* Any uses, installations, and improvements not consistent with the adopted master plan as outlined are prohibited. Any proposal to construct improvements or make use of the park not consistent with the adopted Master Plan shall not be allowed unless approved by the Billings City Council in a revised Park Master Plan.

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

CITY OF BILLINGS

By: _____
Charles F. Tooley Mayor

ATTEST:

By: _____
Marita Herold, CMC City Clerk

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

N

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: SID 1372 Summerhill Subdivision

DEPARTMENT: Public Works/Engineering

PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Jeff Essman, owner of 12 of the 22 lots proposed in the SID district boundary, has the desire to construct public improvements on Winter Green Drive, West Antelope Trail, and Antelope Place within Summerhill Subdivision. These improvements generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements within Summerhill Subdivision as shown on the attached exhibit.

ALTERNATIVES ANALYZED:

1. Approve the Resolution of Intent to Create SID 1372; or
2. Do not approve the Resolution of Intent to Create SID 1372.

FINANCIAL IMPACT: The total estimated costs of the Improvements are \$467,315.67. The costs of the Improvements are to be paid from the following sources: (1) \$242,000.00 of Special Improvement District bonds hereinafter described; and (2) \$225,315.67 of cash contribution by Jeff Essman, the owner of 12 of the 23 lots in the District.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1372 and set a public hearing date for September 12, 2005.

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

ATTACHMENT

- A. Boundary of Proposed Special Improvement District (1 page)

INTRODUCTION

Jeff Essman, owner of 12 of the 23 lots within the proposed boundary of the SID, has a desire to develop lots within Summerhill Subdivision. In order to develop these lots, all the necessary street improvements need to be constructed on Winter Green Drive, West Antelope Trail, and Antelope Place. These improvements generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements. To complete the project, it is necessary to create a Special Improvement District.

PROCEDURAL HISTORY

- August 22, 2005 – Resolution of Intent to Create SID 1372.
- September 12, 2005 – Public Hearing and Resolution Creating SID 1372.
- Spring 2006 – Resolution Authorizing for Construction Bids and Construction Contract Award. (Proposed Schedule)

BACKGROUND

The boundary of this proposed special improvement district is as indicated on the attached map. The public improvements contemplated under the terms of this project include water, sanitary sewer, storm drain, curb and gutter, street improvements to Winter Green Drive, West Antelope Trail, and Antelope Place. Jeff Essman, owner of 12 of the 23 lots in the District will pay a cash contribution to the project. The total cost of the project including bond costs is \$467,315.67, however, the total cost of the project excluding the bond costs is \$431,855.04. The total cash contribution is equal to \$225,315.67 and represents 54.44 percent of the construction and administrative costs of the Improvements excluding the bond costs. This condition is necessary to satisfy the City's Special Improvement District Policy regarding raw land subdivision.

The public hearing will be held at the September 12, 2005 Council Meeting. If approved, it is anticipated that construction of SID 1372 will begin in the spring of 2006 and be completed by the spring of 2006.

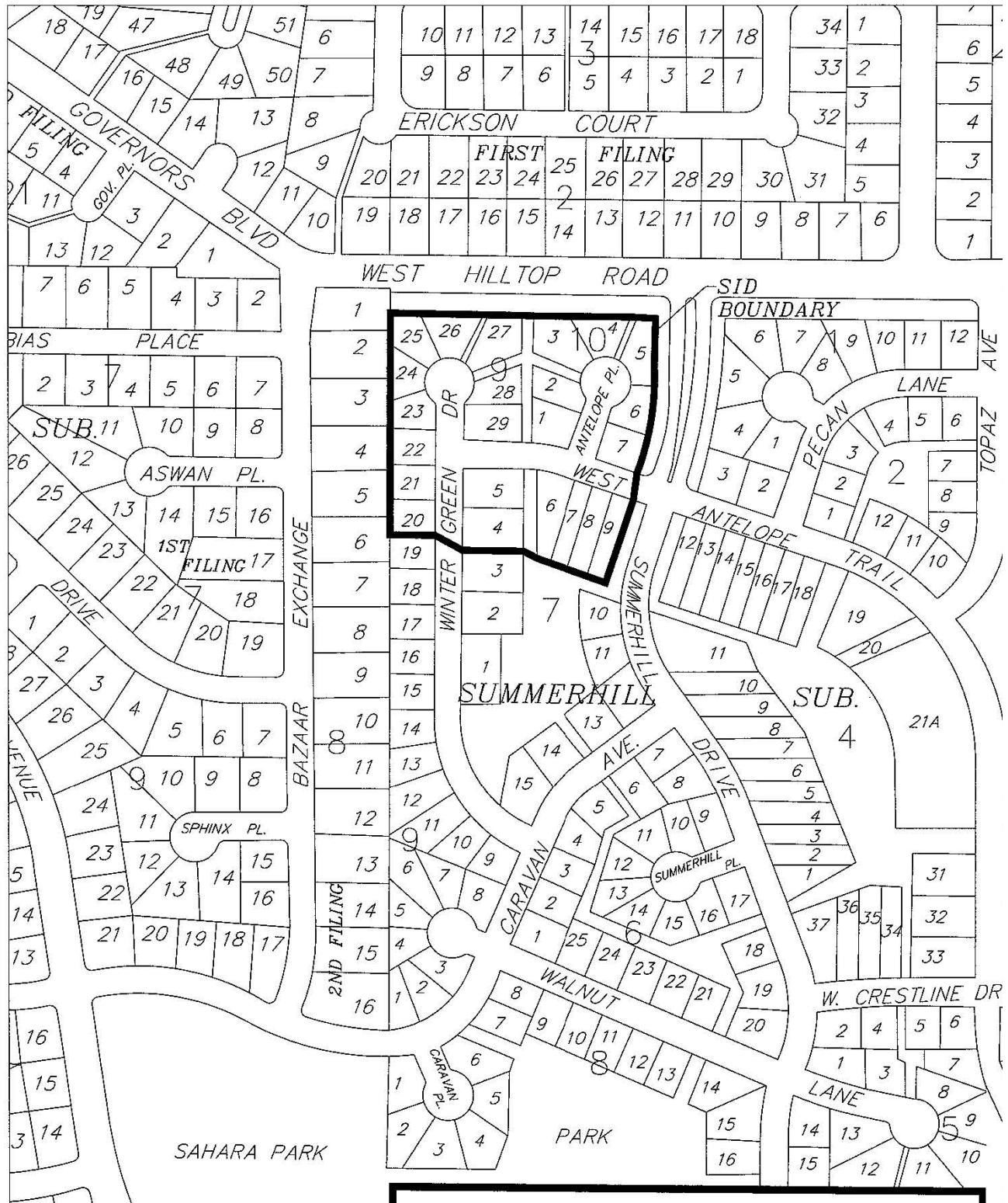
RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1372 and set a public hearing date for September 12, 2005.

ATTACHMENTS

- A. Boundary of Proposed Special Improvement District (1 page)

EXHIBIT A



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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 22, 2005

SUBJECT: Resolution Relating to \$4,515,000 Sewer System Revenue Bond Series 2005; Authorizing the Issuance and Fixing the Terms and Conditions

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: On June 27, 2005 the council authorized Commitment Letters for the issuance of Department of Natural Resources and Conservation revenue bonds to pay for the cost of upgrading the City's wastewater treatment plant system and improvements to the headworks. The resolution authorizes the issuance and fixes the terms and conditions of the bond.

FINANCIAL IMPACT: The council approved a water and wastewater rate increase in April 2005. Part of the money from the rate increase will go towards the debt service payment for the bonds.

RECOMMENDATION

It is recommended that the City Council approve the attached resolution.

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

ATTACHMENT

A - Resolution prepared by Dorsey & Whitney

CERTIFICATE AS TO RESOLUTION

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 a resolution entitled: “RESOLUTION RELATING TO \$4,515,000 SEWER SYSTEM REVENUE BOND (DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM), SERIES 2005; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on August 22, 2005, and 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 Council Members voted in favor thereof: _____
_____; voted against the same: _____; abstained from voting thereon: _____
_____; or were absent: _____.

WITNESS my hand officially this _____ day of August, 2005.

City Clerk

BOND RESOLUTION

Relating to

**\$4,515,000 SEWER SYSTEM REVENUE BOND
(DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM),
SERIES 2005**

CITY OF BILLINGS

Adopted: August 22, 2005

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RESOLUTION NO. _____

RESOLUTION RELATING TO \$4,515,000 SEWER SYSTEM
REVENUE BOND (DNRC WATER POLLUTION CONTROL
STATE REVOLVING LOAN PROGRAM), SERIES 2005;
AUTHORIZING THE ISSUANCE AND FIXING THE TERMS
AND CONDITIONS THEREOF

WHEREAS, pursuant to the Montana Water Pollution Control State Revolving Fund Act, Montana Code Annotated, Title 75, Chapter 5, Part 11, as amended (the "Act"), the State of Montana (the "State") has established a revolving loan program (the "Program") to be administered by the Department of Natural Resources and Conservation of the State of Montana, an agency of the State (the "DNRC"), and by the Department of Environmental Quality of the State of Montana, an agency of the State (the "DEQ"), and has provided that a revolving wastewater treatment works revolving fund (the "Revolving Fund") be created within the state treasury and all federal, state and other funds for use in the Program be deposited into the Revolving Fund, including, but not limited to, all federal grants for capitalization of a state water pollution control revolving fund under the Federal Water Pollution Control Act (also known as the Clean Water Act) (the "Clean Water Act"), all repayments of assistance awarded from the Revolving Fund, interest on investments made on money in the Revolving Fund and payments of principal of and interest on loans made from the Revolving Fund; and

WHEREAS, the Act provides that funds from the Program shall be disbursed and administered for the purposes set forth in the Clean Water Act and according to rules adopted by the Department of Environmental Quality and the Department of Natural Resources and Conservation; and

WHEREAS, the City of Billings, Yellowstone County, Montana (the "Borrower"), has applied to the DNRC for a loan (the "Loan") from the Revolving Fund to enable the Borrower to finance, refinance or reimburse itself for the costs of the Project (as hereinafter defined) which will carry out the purposes of the Clean Water Act; and

WHEREAS, the Borrower is authorized under applicable laws, ordinances and regulations to adopt this Resolution and to issue the Series 2005 Bond (as hereinafter defined) to evidence the Loan for the purposes set forth herein; and

WHEREAS, the DNRC will fund the Loan in part, directly or indirectly, with proceeds of Recycled Money (as hereinafter defined).

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

ARTICLE I

DEFINITIONS, RULES OF CONSTRUCTION AND APPENDICES

Section 1.1. Definitions. In this Resolution, unless a different meaning clearly appears from the context:

“Accountant” or “Accountants” means an independent certified public accountant or a firm of independent certified public accountants satisfactory to the DNRC.

“Acquisition and Construction Account” means the account within the Fund established pursuant to Sections 11.1 and 11.2.

“Act” means Montana Code Annotated, Title 75, Part 5, Chapter 11, as amended from time to time.

“Administrative Expense Surcharge” means a surcharge on the Loan charged by the DNRC to the Borrower equal to seventy-five hundredths of one percent (0.75%) per annum on the outstanding principal amount of the Loan, payable by the Borrower on the same dates that payments of interest on the Loan are due.

“Authorized DNRC Officer” means the Director or Deputy Director of the DNRC, and, when used with reference to an act or document, also means any other individual authorized by resolution of the Department of Natural Resources and Conservation to perform such act or sign such document. If authorized by the Department of Natural Resources and Conservation, an Authorized DNRC Officer may delegate all or a portion of his authority as an Authorized DNRC Officer to another individual, and such individual shall be deemed an Authorized DNRC Officer for purposes of exercising such authority.

“Bond Counsel” means any Counsel acceptable to the DNRC which is nationally recognized as bond counsel. Counsel is nationally recognized as bond counsel if it has rendered a legal opinion as to the validity and enforceability of state or municipal bonds and as to the exclusion of interest thereon from gross income for federal income tax purposes (short-term issues excluded) during the two-year period preceding the date of determination.

“Bonds” means the Series 2005 Bond and any Sewer Debt to be issued on a parity therewith pursuant to Article X.

“Borrower” means the City of Billings, Montana.

“Business Day” means any day which is not a Saturday or Sunday and is not a day on which banks in Montana are authorized or required by law to close.

“Clean Water Act” means the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, as amended, and all regulations, rules and interpretations issued by the EPA thereunder.

“Closing” means the date of delivery of the Series 2005 Bond to the DNRC.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral Documents” means any security agreement, guaranty or other document or agreement delivered to the DNRC securing the obligations of the Borrower under this Resolution and the Series 2005 Bond. If no Collateral Documents secure such obligations, any reference to Collateral Documents in this Resolution shall be without effect.

“Committed Amount” means the amount of the Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1, as such amount may be reduced pursuant to Sections 3.2(b) and 3.4.

“Consultant” means a nationally recognized consultant or firm of consultants, or an independent engineer or firm of independent engineers, or an Accountant, which in any case is qualified and has skill and experience in the preparation of financial feasibility studies or projections for facilities similar to the System or the Project, selected by the Borrower and satisfactory to the DNRC.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state and satisfactory to the DNRC.

“Debt” means, without duplication, (1) indebtedness of the Borrower for borrowed money or for the deferred purchase price of property or services; (2) the obligation of the Borrower as lessee under leases which should be recorded as capital leases under generally accepted accounting principles; and (3) obligations of the Borrower under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clause (1) or (2) above.

“DEQ” means the Department of Environmental Quality of the State of Montana, an agency of the State, or any successor to its powers, duties and obligations under the Act or the EPA Agreements.

“DNRC” means the Department of Natural Resources and Conservation of the State of Montana, an agency of the State, and any successor to its powers, duties and obligations under the Act.

“Enabling Act” means Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, which authorizes the Borrower to own and operate the System, to undertake the Project and to issue the Series 2005 Bond to finance a portion of the costs of the Project.

“EPA” means the Environmental Protection Agency, an agency of the United States of America, and any successor to its functions under the Clean Water Act.

“EPA Agreements” means all capitalization grant agreements and other written agreements between the DEQ and the EPA concerning the Program.

“EPA Capitalization Grant” means a grant of funds to the State by the EPA under Title VI of the Clean Water Act and any grant made available by the EPA for deposit in the Revolving Fund pursuant to Section 205(m) of the Clean Water Act.

“Fund” means the Sewer System Fund established pursuant to Section 11.1.

“Governmental Unit” means governmental unit as such term is used in Section 145(a) of the Code.

“Indenture” means the Indenture of Trust, dated as of June 1, 1991, between the Board of Examiners of the State and the Trustee, as such may be supplemented or amended from time to time in accordance with the provisions thereof, pursuant to which, among other things, the State Bonds are to be or have been issued.

“Loan” means the loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the Committed Amount to provide funds to pay all or a portion of the costs of the Project under the Program.

“Loan Loss Reserve Surcharge” means a fee equal to one percent (1%) per annum on the outstanding principal amount of the Loan, payable on the same dates that payments of interest on the Loan are due.

“Loan Repayments” means periodic installments of principal and interest by Borrower in repayment of the Loan, at the rate and times specified in Article V.

“Loan Term” means that period of time commencing and ending as set in Sections 4.2 and 4.3.

“Net Revenues” means the entire amount of the gross revenues of the System (as described in Section 11.1) remaining upon each such monthly apportionment, after crediting to the Operating Account the amount required hereby, including sums required to maintain the Operating Reserve in the minimum amount herein stated.

“Operating Account” means the account within the Fund established pursuant to Sections 11.1 and 11.3.

“Operating Expenses” means those expenses of the System defined as such in Section 11.3.

“Operating Reserve” means the reserve to be maintained in the Operating Account as required by Section 11.3.

“Opinion of Counsel” means a written opinion of Counsel.

“Outstanding Bonds” shall have the meaning assigned in Section 9.2. If no Outstanding Bonds are identified in Section 9.2, then there shall be no bonds outstanding as of the date hereof payable from the revenues of the System.

“Person” means any Private Person or Public Entity.

“Private Person” means an individual, corporation, partnership, association, joint venture, joint stock company or unincorporated organization, except a Public Entity.

“Program” means the Water Pollution Control State Revolving Loan Program established by the Act.

“Project” means the costs of designing and engineering of the facilities, improvements and activities financed, refinanced or the cost of which is being reimbursed to the Borrower in part with proceeds of the Loan, described in Exhibit A hereto.

“Public Entity” means a municipality, City, county, school district, political or administrative subdivision of State government, irrigation district, drainage district or other public body established by State law.

“Recycled Money” means payments and prepayments of principal of any Loan, and any other amounts transferred to the Principal Subaccount in the Revenue Subaccount in the State Allocation Account.

“Regulations” means the Treasury Regulations, whether final, temporary or proposed, promulgated under the Code or otherwise applicable to the Series 2005 Bond.

“Replacement and Depreciation Account” means the account within the Fund established pursuant to Sections 11.1 and 11.6.

“Reserve Account” means the account within the Fund established pursuant to Sections 11.1 and 11.5.

“Reserve Requirement” means, as of the date of calculation, an amount equal to the maximum amount of principal and interest payable on the Bonds in any future fiscal year (giving effect to mandatory sinking fund redemption, if any).

“Reserved Amounts” means any undisbursed Committed Amount which will or may be required to pay any remaining costs of the Project upon completion thereof as provided in Section 3.4(a).

“Resolution” means this Resolution as it may from time to time be amended or supplemented in accordance with its terms.

“Revenue Bond Account” means the account within the Fund established pursuant to Sections 11.1 and 11.4.

“Series 2005 Bond” means the \$4,515,000 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2005, issued to the DNRC to evidence the Loan.

“Sewer Debt” means all Bonds and any other Debt incurred to acquire, construct, extend, improve, add to or otherwise pay expenses of or related to the System, without regard to the source of payment and security for such Debt (i.e., without regard to whether it is general obligation or revenue Debt).

“Sewer Revenues” means revenues (gross or net) received by the Borrower from or in connection with the operation of the System.

“State” means the State of Montana.

“State Bonds” means the State’s General Obligation Bonds (Water Pollution Control State Revolving Fund Program), issued pursuant to the Indenture.

“Surplus Account” means the account within the Fund established pursuant to Sections 11.1 and 11.7.

“Surplus Net Revenues” shall mean that portion of the Net Revenues in excess of the current requirements of the Operating Account, the Revenue Bond Account and the Reserve Account.

“System” means the existing sewer system of the Borrower and all extensions, improvements and betterments thereof hereafter constructed and acquired, including, without limitation, the Project.

“Trustee” means U.S. Bank National Association, in Seattle, Washington, or any successor trustee under the Indenture.

Section 1.2. Other Rules of Construction. For all purposes of this Resolution, except where the context clearly indicates otherwise:

- (a) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted government accounting standards.
- (b) Terms in the singular include the plural and vice versa.
- (c) All references to time shall refer to Helena, Montana time, unless otherwise provided herein.
- (d) All references to mail shall refer to first-class mail postage prepaid.
- (e) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(f) “Or” is not exclusive, but is intended to permit or encompass one, more or all of the alternatives conjoined.

Section 1.3. Appendices. Attached to this Resolution and hereby made a part hereof are the following Appendices:

Appendix A: a description of the Project;

Appendix B: the form of the Series 2005 Bond; and

Appendix C: additional agreements and representations of the Borrower.

ARTICLE II

REPRESENTATIONS AND COVENANTS

Section 2.1. Representations. The Borrower represents as follows:

(a) Organization and Authority. The Borrower:

(i) is duly organized and validly existing as a municipal corporation and political subdivision of the State;

(ii) has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the System and to carry on its current activities with respect to the System, to adopt this Resolution and to enter into the Collateral Documents and to issue the Series 2005 Bond and to carry out and consummate all transactions contemplated by this Resolution, the Bond and the Collateral Documents;

(iii) is a Governmental Unit and a Public Entity; and

(iv) has taken all proper action to authorize the execution, delivery and performance of its obligations under this Resolution, the Series 2005 Bond and the Collateral Documents and the incurrence of the Debt evidenced by the Series 2005 Bond in the maximum amount of the Committed Amount.

(b) Pending Litigation. There is no litigation or proceeding pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower in any court or before or by any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the existence, corporate or otherwise, of the Borrower, or the ability of the Borrower to make all payments and otherwise perform its obligations under this Resolution, the Series 2005 Bond and the Collateral Documents, or the financial condition of the Borrower, or the transactions contemplated by this Resolution, the Bond and the Collateral Documents or the validity and enforceability of this Resolution, the Series 2005 Bond and the Collateral Documents. No referendum petition has been filed with respect to any resolution or other action of the Borrower relating to the Project, the Series 2005 Bond or any Collateral

Documents and the period for filing any such petition will have expired before issuance of the Bond.

(c) Borrowing Legal and Authorized. The adoption of this Resolution, the execution and delivery of the Series 2005 Bond and the Collateral Documents and the consummation of the transactions provided for in this Resolution, the Series 2005 Bond and the Collateral Documents and compliance by the Borrower with the provisions of this Resolution, the Series 2005 Bond and the Collateral Documents:

(i) are within the powers of the Borrower and have been duly authorized by all necessary action on the part of the Borrower; and

(ii) do not and will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to any ordinance, resolution, indenture, loan agreement or other agreement or instrument (other than this Resolution and any Collateral Documents) to which the Borrower is a party or by which the Borrower or its property may be bound, nor will such action result in any violation of the provisions of any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Borrower, its properties or operations are subject.

(d) No Defaults. No event has occurred and no condition exists that, upon execution and delivery of the Bond and the Collateral Documents, would constitute a default under this Resolution or the Collateral Documents. The Borrower is not in violation of any term of any agreement, bond resolution, trust indenture, charter or other instrument to which it is a party or by which it or its property may be bound which violation would materially and adversely affect the transactions contemplated hereby or the compliance by the Borrower with the terms hereof or of the Series 2005 Bond and the Collateral Documents.

(e) Governmental Consent. The Borrower has obtained or made all permits, findings and approvals required to the date of adoption of this Resolution by any governmental body or officer for the making and performance by the Borrower of its obligations under this Resolution, the Bond and the Collateral Documents (including any necessary sewer rate increase) or for the Project, the financing or refinancing thereof or the reimbursement of the Borrower for the costs thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the Borrower as a condition to adopting this Resolution, issuing the Bond or entering into the Collateral Documents and the performance of the Borrower's obligations hereunder and thereunder. If a utility board or commission manages or controls the System, such board or commission has agreed with the DNRC to abide by the terms of this Resolution and the Collateral Documents, including approving any necessary sewer rate increases.

(f) Binding Obligation. This Resolution, the Series 2005 Bond and any Collateral Documents to which the Borrower is a party are the valid and binding obligations and agreements of the Borrower, enforceable against the Borrower in accordance with their terms except to the extent that the enforceability thereof may be limited by laws relating to bankruptcy,

moratorium, reorganization, insolvency or similar laws affecting creditors' rights and general principles of equity.

(g) The Project. The Project consists and will consist of the facilities, improvements and activities described in Appendix A, as such Appendix A may be amended from time to time in accordance with the provisions of Article III of this Resolution.

(h) Full Disclosure. There is no fact that the Borrower has not specifically disclosed in writing to the DNRC that materially and adversely affects or (so far as the Borrower can now foresee), except for pending or proposed legislation or regulations that are a matter of general public information, that will materially and adversely affect the properties, operations and finances of the System, the Borrower's status as a Public Entity and Governmental Unit, its ability to own and operate the System in the manner it is currently operated or the Borrower's ability to perform its obligations under this Resolution, the Series 2005 Bond and the Collateral Documents and to pledge any revenues or other property pledged to the payment of the Bond.

(i) Compliance With Law. The Borrower:

(1) is in compliance with all laws, ordinances, governmental rules and regulations and court or other governmental orders, judgments and decrees to which it is subject and which are material to the properties, operations and finances of the System or its status as a Public Entity and Governmental Unit; and

(2) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of the System and the operation thereof and agrees to obtain all such licenses, permits, franchises or other governmental authorizations as may be required in the future for the System and the operation thereof, which failure to obtain might materially and adversely affect the ability of the Borrower to conduct the operation of the System as presently conducted or the condition (financial or otherwise) of the System or the Borrower's ability to perform its obligations under this Resolution, the Series 2005 Bond and the Collateral Documents.

Section 2.2. Covenants.

(a) Insurance. The Borrower at all times shall keep and maintain with respect to the System property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by State law, against such risks and in such amounts, and with such deductible provisions, as are customary in the State in the case of entities of the same size and type as the Borrower and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance. Nothing herein shall be construed to prohibit or preclude the Borrower from self-insuring or participating in a self-insurance program in compliance with the provisions of Montana law. All such insurance policies shall name the DNRC as an additional insured. Each policy must provide that it cannot be cancelled by the insurer without giving the Borrower and the DNRC 30 days' prior written notice. The Borrower shall give the DNRC prompt notice of each insurance policy it obtains or maintains to comply with this Section 2.2(a) and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of

each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy. Such notice shall specifically note any adverse change as being an adverse change. The Borrower shall deliver to the DNRC at Closing a certificate providing the information required by this Section 2.2(a).

(b) Right of Inspection and Notice of Change of Location. The DNRC, the DEQ and the EPA and their designated agents shall have the right at all reasonable times during normal business hours and upon reasonable notice to enter into and upon the property of the Borrower for the purpose of inspecting the System or any or all books and records of the Borrower relating to the System.

(c) Further Assurance. The Borrower shall execute and deliver to the DNRC all such documents and instruments and do all such other acts and things as may be necessary or required by the DNRC to enable the DNRC to exercise and enforce its rights under this Resolution, the Series 2005 Bond and the Collateral Documents and to realize thereon, and record and file and re-record and refile all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or required by the DNRC to validate, preserve and protect the position of the DNRC under this Resolution, the Series 2005 Bond and the Collateral Documents.

(d) Maintenance of Security, if Any; Recordation of Interest.

(i) The Borrower shall, at its expense, take all necessary action to maintain and preserve the lien and security interest of this Resolution and the Collateral Documents so long as any amount is owing under this Resolution or the Series 2005 Bond;

(ii) The Borrower shall forthwith, after the execution and delivery of the Series 2005 Bond and thereafter from time to time, cause this Resolution and any Collateral Documents granting a security interest in revenues or real or personal property and any financing statements or other notices or documents relating thereto to be filed, registered and recorded in such manner and in such places as may be required by law in order to perfect and protect fully the lien and security interest hereof and thereof and the security interest in them granted by this Resolution and, from time to time, shall perform or cause to be performed any other act required by law, including executing or causing to be executed any and all required continuation statements and shall execute or cause to be executed any further instruments that may be requested by the DNRC for such perfection and protection; and

(iii) Except to the extent it is exempt therefrom, the Borrower shall pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of the documents described in subparagraph (ii), and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Series 2005 Bond and the Collateral Documents and the documents described in subparagraph (ii).

(e) Additional Agreements. The Borrower covenants to comply with all representations, covenants, conditions and agreements, if any, set forth in Appendix C hereto.

(f) Financial Information. The Borrower agrees that for each fiscal year it shall furnish to the DNRC and the DEQ, promptly when available:

(1) the preliminary budget for the System, with items for the Project shown separately; and

(2) when adopted, the final budget for the System, with items for the Project shown separately.

The Borrower will cause proper and adequate books of record and account to be kept showing complete and correct entries of all receipts, disbursements and other transactions relating to the System, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with this Resolution, in such reasonable detail as may be determined by the Borrower in accordance with generally accepted governmental accounting practice and principles. It will cause such books to be maintained on the basis of the same fiscal year as that utilized by the Borrower. The Borrower shall, within 180 days after the close of each fiscal year, cause to be prepared and supply to the DNRC a financial report with respect to the System for such fiscal year. The report shall be prepared at the direction of the financial officer of the Borrower in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the financial officer to be included therein, shall include the following:

(A) A statement in detail of the income and expenditures of the System for the fiscal year, identifying capital expenditures and separating them from operating expenditures;

(B) A balance sheet as of the end of the fiscal year;

(C) The number of premises connected to the System at the end of the fiscal year;

(D) The amount on hand in each account of the Fund at the end of the fiscal year;

(E) A list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond; and

(F) A determination that the report shows full compliance by the Borrower with the provisions of this Resolution during the fiscal year covered thereby, including proper segregation of the capital expenditures from operating expenses, maintenance of the required balance in the Revenue Bond Account (as hereinafter defined), and receipt of Net Revenues during each fiscal year at least equal to 125% of the maximum amount of principal and interest payable on outstanding Bonds in any subsequent fiscal year, or, if the report should reveal that the revenues have been insufficient for compliance with this Resolution, or that the methods used in accounting for such revenues were contrary to

any provision of this Resolution, the report shall include a full explanation thereof, together with recommendations for such change in rates or accounting practices or in the operation of the System as may be required.

The Borrower shall also have prepared and supplied to the DNRC and the DEQ, within 180 days of the close of every other fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principles and practice with respect to the financial statements and records of the System. The audit report shall include an analysis of the Borrower's compliance with the provisions of this Resolution.

(g) Project Accounts. The Borrower shall maintain Project accounts in accordance with generally accepted government accounting standards, and as separate accounts, as required by Section 602(b)(9) of the Clean Water Act.

(h) Records. After reasonable notice from the EPA, the Borrower shall make available to the EPA such records as the EPA reasonably requires to review and determine compliance with Title VI of the Clean Water Act, as provided in Section 606(e) of the Clean Water Act.

(i) Compliance with Clean Water Act. The Borrower has complied and shall comply with all conditions and requirements of the Clean Water Act pertaining to the Loan and the Project.

(j) Program Covenant. The Borrower agrees that neither it nor any "related person" to the Borrower (within the meaning of Section 147(a)(2) of the Code) shall, whether pursuant to a formal or informal arrangement, acquire bonds issued by the State under the Indenture in an amount related to the amount of the Series 2005 Bond.

ARTICLE III

USE OF PROCEEDS; THE PROJECT

Section 3.1. Use of Proceeds. The Borrower shall apply the proceeds of the Loan from the DNRC solely as follows:

(a) The Borrower shall apply the proceeds of the Loan solely to the financing, refinancing or reimbursement of the costs of the Project as set forth in Appendix A hereto and this Section 3.1. The Loan will be disbursed in accordance with Article IV hereof and Article VII of the Indenture. If the Project has not been completed prior to Closing, the Borrower shall, as quickly as reasonably possible, complete the Project and expend proceeds of the Series 2005 Bond to pay the costs of completing the Project.

(b) No portion of the proceeds of the Loan shall be used to reimburse the Borrower for costs paid prior to the date of adoption of this Resolution of a Project the

construction or acquisition of which occurred or began earlier than March 7, 1985. In addition, if any proceeds of the Loan are to be used to reimburse the Borrower for Project costs paid prior to the date of adoption of this Resolution and in a prior fiscal year of the Borrower, the Borrower represents that at the time it incurred such costs it intended to finance them with tax-exempt debt or a loan under a state revolving fund program such as the Program.

(c) Any Debt to be refinanced with proceeds of the Loan was incurred after March 7, 1985, or a Project the construction or acquisition of which began after March 7, 1985. No proceeds of the Loan shall be used for the purpose of refinancing an obligation the interest on which is exempt from federal income tax or excludable from gross income for purposes of federal income taxation unless the DNRC has received an Opinion of Bond Counsel, satisfactory to it, to the effect that such refinancing will not adversely affect the exclusion of interest on the State Bonds from gross income for purposes of federal income taxation.

Section 3.2. The Project. Set forth in Appendix A to this Resolution is a description of the Project, which describes the property which has been or is to be acquired, installed, constructed or improved and the other activities, if any to be funded from the Loan (the Project may consist of more than one facility or activity). The Project may be changed and the description thereof in Appendix A may be amended from time to time by the Borrower but only after delivery to the DNRC of the following:

(a) A certificate of the Borrower setting forth the amendment to Appendix A and stating the reason therefor, including statements whether the amendment would cause an increase or decrease in the cost of the Project, an increase or decrease in the amount of Loan proceeds which will be required to complete the Project and whether the change will materially accelerate or delay the construction schedule for the Project;

(b) A written consent to such change in the Project by an Authorized DNRC Officer; and

(c) An Opinion or Opinions of Bond Counsel stating that the Project, as constituted after such amendment, is, and was at the time the State Bonds were issued, eligible for financing under the Act and is, and was at the time the Series 2005 Bond was issued, eligible for financing under the Enabling Act, such amendment will not violate the Act or the Enabling Act and such amendment will not adversely affect the exclusion of interest on the State Bonds or the Series 2005 Bond from gross income for purposes of federal income taxation. Such an Opinion of Bond Counsel shall not be required for amendments which do not affect the type of facility to be constructed or activity to be financed.

The Borrower acknowledges and agrees that an increase in the principal amount of the Loan may be made only upon an application to the DEQ, the DNRC and the Trustee, in such form as the DEQ shall specify, which is approved by the DEQ and the DNRC, in their sole and absolute discretion, and adoption by the governing body of the Borrower of a resolution amendatory of or supplementary to this resolution authorizing the additional loan and delivery of

written certifications by officers of the Borrower to the DEQ, the DNRC and the Trustee to the effect that all representations and covenants contained in this resolution as it may be so amended or supplemented are true as of the date of closing of the additional loan. No assurance can be given that any additional loan funds will be available under the Program at the time of any such application or thereafter. The Borrower acknowledges and agrees that neither the DEQ, the DNRC, the Trustee nor any of their agents, employees or representatives shall have any liability to the Borrower and have made no representations to the Borrower as to the sufficiency of the Loan to pay Project Costs or as to the availability of additional funds under the Program to increase the principal amount of the Loan.

Section 3.3. Project Representations and Covenants. The Borrower hereby represents to and covenants with the DNRC that:

- (a) all construction of the Project has complied and will comply with all federal and state standards, including, without limitation, EPA regulations and standards;
- (b) all future construction of the Project will be done only pursuant to fixed price construction contracts. The Borrower shall obtain a performance and payment bond from the contractor for each construction contract in the amount of 100% of the construction price and ensure that such bond is maintained until construction is completed to the Borrower's, the DNRC's and the DEQ's satisfaction;
- (c) all future construction will be done in accordance with plans and specifications on file with the DNRC and the DEQ, provided that changes may be made in such plans and specifications with the written consent of an Authorized DNRC Officer and the DEQ;
- (d) the Project is a project of the type permitted to be financed under the Enabling Act, the Act and the Program and Title VI of the Clean Water Act; and
- (e) the Borrower will undertake the Project promptly after the Closing Date and will cause the Project to be completed as promptly as practicable with all reasonable dispatch, except only as completion may be delayed by a cause or event not reasonably within the control of the Borrower; it is estimated by the Borrower that the Project will be substantially completed by August 31, 2007 (the "Estimated Completion Date").

Section 3.4. Completion or Cancellation or Reduction of Costs of the Project.

- (a) Upon completion of the Project, the Borrower shall deliver to the DNRC a certificate stating that the Project is complete, stating the amount, if any, of the Reserved Amounts, and releasing the remaining amount, if any, of the Committed Amount. If any Reserved Amount is not later needed, the Borrower shall so inform the DNRC and release such amount. If Appendix A describes two or more separate projects as making up the Project, a separate completion certificate shall be delivered for each.

(b) If all or any portion of the Project is cancelled or cut back or its costs are reduced or for any other reason the Borrower will not require the full Committed Amount, the Borrower shall promptly notify the DNRC in writing of such fact and release the portion of the Committed Amount which will not be needed.

ARTICLE IV

THE LOAN

Section 4.1. The Loan; Disbursement of Loan. The DNRC has agreed to lend to the Borrower, from time to time as the requirements of this Section 4.1 are met, an amount up to \$4,515,000 (the “Committed Amount”) for the purposes of financing, refinancing or reimbursing the Borrower for a portion of the costs of the Project; provided the DNRC shall not be required to loan any proceeds of the State Bonds to the Borrower after 360 days following the Estimated Completion Date. The Committed Amount may be reduced as provided in Sections 3.2(b) and 3.4. The Loan shall be disbursed as provided in this Section 4.1. The DNRC intends to disburse the Loan through the Trustee.

(a) In consideration of the issuance of the Series 2005 Bond by the Borrower, the DNRC shall make, or cause the Trustee to make, a disbursement of all or a portion of the Loan upon receipt of the following documents:

- (1) an Opinion of Bond Counsel as to the validity and enforceability of the Series 2005 Bond and the security therefor and stating in effect that interest on the Series 2005 Bond is not includable in gross income of the owner thereof for purposes of federal income taxation, in form and substance satisfactory to the DNRC;
- (2) the Series 2005 Bond, fully executed and authenticated;
- (3) a certified copy of this Resolution;
- (4) any other security instruments or documents required by the DNRC or DEQ as a condition to their approval of the Loan;
- (5) if all or part of a Loan is being made to refinance a Project or reimburse the Borrower for the costs of a Project paid prior to the Closing, evidence, satisfactory to the DNRC and the Bond Counsel referred to in (1) above, (A) that the acquisition or construction of the Project was begun no earlier than March 7, 1985 or the debt was incurred no earlier than March 7, 1985, (B) of the Borrower’s title to the Project, (C) of the costs of such Project and that such costs have been paid by the Borrower and (D) if such costs were paid in a previous fiscal year of the Borrower, that the Borrower intended at the time it incurred such costs to finance them with tax-exempt debt or a loan under a state revolving fund program such as the Program;

(6) the items required by the Indenture for the portion of the Loan to be disbursed at Closing; and

(7) such other certificates, documents and other information as the DNRC, the DEQ or the Bond Counsel giving the opinion referred to in subparagraph (1) may require (including any necessary arbitrage rebate instructions).

(b) In order to obtain a disbursement of a portion of the Loan to pay costs of the Project, the Borrower shall submit to the DNRC and the Trustee a signed request for disbursement on the form prescribed by the DNRC, with all attachments required by such form. The Borrower may obtain disbursements only for costs which have been legally incurred and are due and payable. All Loan disbursements will be made to the Borrower only upon proof that cost was incurred.

(c) For refinancings, a disbursement schedule complying with the requirements of the Clean Water Act shall be established by the DNRC and the Borrower at Closing. The Trustee shall disburse Loan amounts directly to the holder of the debt being refinanced according to such schedule. If the Borrower should repay all or a portion of the debt to be refinanced from other sources or should otherwise not need any portion of the Loan which was to have been used to refinance such debt, it shall inform the DNRC and the Trustee of such fact pursuant to Section 3.4(b) and a new disbursement schedule shall be drawn up by the DNRC. The DNRC shall obtain a receipt from the holder of the debt being refinanced for each disbursement made to pay or prepay a portion of such debt.

(d) If all or a portion of a Loan is made to reimburse a Borrower for Project costs paid by it prior to Closing, the Borrower shall present at Closing the items required by Section 4.1(b) relating to such costs. The Trustee shall disburse such amounts to the Borrower pursuant to a disbursement schedule complying with the requirements of the Clean Water Act established by the DNRC and the Borrower at the Closing.

(e) Notwithstanding anything else provided herein, the Trustee shall not be obligated to disburse the Loan any faster or to any greater extent than it has available EPA Capitalization Grants, Bond proceeds and other amounts available therefor in the Revolving Fund. The DNRC shall not be required to do "overmatching" pursuant to Section 5.04(b) of the Indenture, but may do so in its discretion. The Borrower acknowledges that if Project costs are incurred faster than the Borrower projected at Closing, there may be delays in making Loan disbursements for such costs because of the schedule under which EPA makes EPA Capitalization Grant money available to the DNRC. The DNRC will use its commercially reasonable efforts to obtain an acceleration of such schedule if necessary.

(f) Upon making each Loan disbursement, the Trustee shall note such disbursement on Schedule A to the Series 2005 Bond.

(g) The Borrower agrees that it will deposit in the Reserve Account upon receipt thereof, either on the Closing Date of the Loan or upon any disbursement date, any proceeds of the Loan borrowed for the purpose of increasing the balance in the Reserve Account to the Reserve Requirement. The Borrower further acknowledges and agrees that any portion of the Loan representing capitalized interest shall be advanced only on Payment Dates and shall be transferred by the Trustee on the Payment Date directly to the Debt Service Account. The amount of any such transfer shall be a credit against the interest payments due on the Series 2005 Bond and interest thereon shall accrue only from the date of transfer.

Section 4.2. Commencement of Loan Term. The Borrower's obligations under this Resolution and the Collateral Documents shall commence on the date hereof unless otherwise provided in this Resolution. However, the obligation to make payments under Article V hereof shall commence only upon the first disbursement by the Trustee of Loan proceeds.

Section 4.3. Termination of Loan Term. The Borrower's obligations under this Resolution and the Collateral Documents shall terminate upon payment in full of all amounts due under the Series 2005 Bond and this Resolution; provided, however, that the covenants and obligations provided in Article VII and Section 12.4 shall survive the termination of this Resolution.

Section 4.4. Loan Closing Submissions. On or prior to the Closing, the Borrower will have delivered to the DNRC and the Trustee the closing submissions required by Section 7.05 of the Indenture.

ARTICLE V

REPAYMENT OF LOAN

Section 5.1. Repayment of Loan. The Borrower shall repay the amounts lent to it pursuant to Section 4.1 hereof, plus interest on the unpaid amounts lent at the rate of two percent (2.00%) per annum, in semiannual Loan Repayments. In addition, the Borrower shall pay an Administrative Expense Surcharge on the outstanding principal amount of the Loan at the rate of seventy-five hundredths of one percent (0.75%) per annum and a Loan Loss Reserve Surcharge equal to one percent (1.00%) per annum on the outstanding principal amount of the Loan. For purposes of this Resolution and the Program, the term "interest" on the Loan shall include the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge. The Borrower shall pay all Loan Repayments and Administrative Expense Surcharges and Loan Loss Reserve Surcharge in lawful money of the United States of America to the DNRC. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a year of 360 days comprising 12 months of 30 days each.

The Loan Repayments required by this Section 5.1, and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge, shall be due on each January 1 and July 1 (the "Payment Dates"), as follows:

(1) interest and the Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal balance of the Loan shall be payable on each January 1 and July 1, beginning on July 1, 2006, which is the first Payment Date after the closing of the Loan; and

(2) the principal of the Loan shall be repayable on each Payment Date, beginning on January 1, 2006 and concluding on July 1, 2025, and the amount of each principal payment shall be calculated on the basis of level debt service at a rate of 3.75% per annum.

The payments of principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the Loan shall be due on the dates and in the amounts shown in Schedule B to the Series 2005 Bond, as such Schedule B shall be modified from time to time as provided below. The portion of each such Loan Repayment consisting of principal and the portion consisting of interest and the amount of each Administrative Expense Surcharge and the amount of each Loan Loss Reserve Surcharge shall be set forth in Schedule B to the Series 2005 Bond. Upon each disbursement of Loan amounts to the Borrower pursuant to Section 4.1 hereof, the Trustee shall enter or cause to be entered the amount advanced on Schedule A to the Series 2005 Bond under "Advances" and the total amount advanced under Section 4.1, including such disbursement, under "Total Amount Advanced."

If the advance was made to pay costs of the Project pursuant to Section 4.1(b), interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on such advance shall accrue from the date the advance is made and shall be payable on each Payment Date thereafter. Once the completion certificate for a Project has been delivered to the DNRC, the Trustee shall revise Schedule B to the Series 2005 Bond in accordance with this Section 5.1 and the Trustee shall send a copy of such Schedule B to the Borrower within one month after delivery of the completion certificate.

Past-due payments of principal and interest and Administrative Expense Surcharges and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid.

Any payment of principal, interest or Administrative Expense Surcharge and Loan Loss Reserve Surcharge under this Section 5.1 shall also be credited against the same payment obligation under the Series 2005 Bond.

Section 5.2. Additional Payments. The Borrower shall also pay, within 30 days after receipt of a bill therefor, from any legally available funds therefor, including proceeds of the Loan, if the Borrower so chooses, all reasonable expenses of the DNRC and the Trustee in connection with the Loan, the Collateral Documents and the Series 2005 Bond, including, but not limited to:

(1) the cost of reproducing this Resolution, the Collateral Documents and the Series 2005 Bond;

(2) the fees and disbursements of Bond Counsel and other Counsel utilized by the DNRC and the Trustee in connection with the Loan, this Resolution, the Collateral Documents and the Series 2005 Bond and the enforcement thereof; and

(3) all taxes and other governmental charges in connection with the execution and delivery of the Collateral Documents or the Series 2005 Bond, whether or not the Series 2005 Bond is then outstanding, including all recording and filing fees relating to the Collateral Documents and the pledge of the State's right, title and interest in and to the Series 2005 Bond, the Collateral Documents and this Resolution and all expenses, including attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof or thereof.

Section 5.3. Prepayments. The Borrower may not prepay all or any part of the outstanding principal amount of the Series 2005 Bond unless (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2005 Bond is prepaid in part pursuant to this Section 5.3, such prepayments shall be applied to principal payments in inverse order of maturity.

Section 5.4. Obligations of Borrower Unconditional. The obligations of the Borrower to make the payments required by this Resolution and the Series 2005 Bond and to perform its other agreements contained in this Resolution, the Series 2005 Bond and Collateral Documents shall be absolute and unconditional, except as otherwise provided herein or in such documents. The Borrower (a) shall not suspend or discontinue any payments provided for in this Resolution and the Series 2005 Bond, (b) shall perform all its other agreements in this Resolution, the Series 2005 Bond and the Collateral Documents and (c) shall not terminate this Resolution, the Series 2005 Bond or the Collateral Documents for any cause, including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project or the System, commercial frustration of purpose, any dispute with the DNRC or the EPA, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the DNRC to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Resolution. Provided, however, if the loan contemplated herein is not made and no funds are disbursed to the Borrower, this Resolution may be terminated.

Section 5.5. Limited Liability. All payments of principal of and interest on the Loan and other payment obligations of the Borrower hereunder and under the Series 2005 Bond shall be special, limited obligations of the Borrower payable solely out of the Net Revenues or out of the Revenue Bond Account and shall not be payable out of any other funds or revenues of the Borrower. The obligations of the Borrower under this Resolution and the Series 2005 Bond shall never constitute an indebtedness of the Borrower within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Borrower or a charge against its general credit or taxing power. The taxing powers of the Borrower are not pledged to pay principal of or interest on the Series 2005 Bond, and no funds or property of the Borrower other than the Net Revenues are pledged to pay principal of or interest on the Series 2005 Bond.

ARTICLE VI

OTHER AGREEMENTS OF BORROWER

Section 6.1. Maintenance of System; Liens. The Borrower shall maintain the System, including the Project, in good condition and make all necessary renewals, replacements, additions, betterments and improvements thereto. The Borrower shall not grant or permit to exist any lien on the Project or any other property making up part of the System, other than liens securing Debt where a parity lien secures the Series 2005 Bond; provided that this Section 6.1 shall not be deemed to be violated if a mechanic's or contractor's lien is filed against any such property so long as the Borrower uses its best efforts to obtain the discharge of such lien and promptly reports to the DNRC the filing of such lien and the steps it plans to take and does take to discharge such lien.

Section 6.2. Maintenance of Existence; Merger, Consolidation, Etc.; Disposition of Assets. The Borrower shall maintain its corporate existence, except that it may consolidate with or merge into another Governmental Unit or permit one or more Governmental Units to consolidate with or merge into it or may transfer all or substantially all of its assets to another Governmental Unit and then dissolve if the surviving, resulting or transferee entity (if other than the Borrower) (i) is a Public Entity and (ii) assumes in writing all of the obligations of the Borrower under this Resolution, the Series 2005 Bond and the Collateral Documents, and (a) such action does not result in any default in the performance or observance of any of the terms, covenants or agreements of the Borrower under this Resolution, the Bond and the Collateral Documents, (b) such action does not violate the Act or the Clean Water Act and does not adversely affect the exclusion of interest on the Series 2005 Bond or the State Bonds from gross income for federal income tax purposes and (c) the Borrower delivers to the DNRC on the date of such action an Opinion of Bond Counsel that such action complies with this Section 6.2.

Other than pursuant to the preceding paragraph, the Borrower shall not transfer the System or any portion thereof to any other Person, except for property which is obsolete, outmoded, worn out, is being replaced or otherwise is not needed for the operation of the System, unless the provisions of (a) and (b) of the preceding paragraph are satisfied and the Borrower delivers to the DNRC an Opinion of Bond Counsel to that effect and, in addition, the DNRC consents to such transfer.

Section 6.3. Covenants Relating to the Tax-Exempt Status of the State Bonds.

(a) The Borrower covenants and agrees that it will not use or permit to be used any of the proceeds of the Series 2005 Bond or any other funds of the Borrower, directly or indirectly, in a manner that would cause, or take any other action that would cause, any State Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code or would otherwise cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation. In addition, the Borrower agrees that it will not enter into, or allow any "related person" (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the State Bonds or any other obligations of the DNRC in an amount related to the amount of the Loan or the portion of the Loan derived directly or

indirectly from proceeds of the State Bonds or that would otherwise cause any State Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code.

(b) The Borrower shall not use or permit the use of the Project directly or indirectly in any trade or business carried on by any Person who is not a Governmental Unit. For the purpose of this subparagraph, use as a member of the general public shall not be taken into account and any activity carried on by a Person other than a natural person shall be treated as a trade or business.

(c) Any portion of the Project being refinanced or the cost of which is being reimbursed was acquired by and is now and shall, during the term of the Loan, be owned by the Borrower and not by any other Person. Any portion of the Project being financed shall be acquired by and shall, during the term of the Loan, be owned by the Borrower and not by any other Person. Notwithstanding the previous two sentences, the Borrower may transfer the Project or a portion thereof to another Governmental Unit which is also a Public Entity if such transfer is otherwise permitted hereunder and if such organization agrees with the DNRC to comply with Sections 2.2(h), 2.2(i) and 6.3 hereof and if the DNRC receives an Opinion of Bond Counsel that such transfer will not violate the Act or the Clean Water Act or adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation. In addition, except as otherwise provided herein or in any Collateral Documents, the Borrower may sell or otherwise dispose of any portion of the Project which has become obsolete or outmoded or is being replaced or for other reasons is not needed by the Borrower or beneficial to the general public or necessary to carry out the purposes of the Clean Water Act.

(d) At the Closing of the Loan the DNRC will, if necessary to obtain the Opinion of Bond Counsel described in Section 7.05(a) of the Indenture, deliver to the Borrower instructions concerning compliance by the Borrower with the arbitrage rebate requirements of Section 148 of the Code (the “Arbitrage Rebate Instructions”). The Borrower shall comply with the Arbitrage Rebate Instructions, if any, delivered to it by the DNRC at Closing, as such Instructions may be amended or replaced by the DNRC from time to time. The Arbitrage Rebate Instructions may be amended or replaced by new Arbitrage Rebate Instructions delivered by the DNRC and accompanied by an Opinion of Bond Counsel to the effect that the use of said amended or new Arbitrage Rebate Instructions will not adversely affect the excludability of interest on the State Bonds or any Additional State Bonds (except Additional State Bonds the interest on which the State did not intend to be excluded from gross income for federal income tax purposes) from gross income of the recipients thereof for federal income tax purposes.

(e) The Borrower agrees that during the Loan Term it will not contract with or permit any Private Person to manage the Project or any portion thereof except according to a written management contract which complies with the following provisions:

(1) If any contract between the Borrower and the Private Person with respect to the Project provides for compensation based on a percentage of fees charged for services rendered by the Private Person, the contract may not exceed a term of five years (including any renewal options). At least 50% of the compensation to the Private Person must be based upon a periodic fixed fee. In addition, the Borrower must be able to cancel the contract without penalty or cause at the end of any three-year period of the

contract term. The compensation must be reasonable, and it may not be based on a percentage of the net profits of the Project or the System or any portion thereof or any other division or activity of the Borrower.

(2) If any contract between the Borrower and the Private Person with respect to the Project provides for compensation based on a periodic flat fee, the compensation must be reasonable and the contract may not exceed a term of five years (including any renewal options). In addition, the Borrower must be able to cancel the contract without penalty or cause at the end of any three-year period of the contract term. If the contract provides for automatic increases in the periodic flat fee, the increases may not exceed the percentage increases determined by particular external standards for computing such increases that are mutually agreed upon in the contract. The percentage increases reflected in the Consumer Price Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, or the actual percentage increases for services that result from the application of external criteria (for example, increases in rates paid by insurance companies) are illustrations of two external standards that may be used.

(3) If a Private Person and the Borrower enter into a contract described in subparagraph (1) or (2) above and the governing body of the Borrower contains five or more members, no more than one member of the governing body of the Borrower may be the Private Person or a related person (as described in Section 144(a)(3) of the Code) (a “Related Person”), an employee of the Private Person or a Related Person, or a member of the governing body of the Private Person or a Related Person. However, such Private Person or a Related Person, employee of the Private Person or a Related Person or a member of the governing body of the Private Person or a Related Person may not serve as the chief executive of the Borrower. If a Private Person and the Borrower enter into a contract described in (1) or (2) above and the governing body contains less than five members, no member of the governing body may be the Private Person or a Related Person, an employee of the Private Person or a Related Person or a member of the governing body of the Private Person or a Related Person.

(4) The Borrower may depart from any of its agreements contained in subparagraphs (1) through (3) if it delivers to the DNRC, at the Borrower’s expense, an Opinion of Bond Counsel that to do so would not adversely affect the exclusion of interest on the State Bonds from gross income for purposes of federal income taxation.

(f) The Borrower may not lease the Project or any portion thereof to any Person other than a Nonexempt Person which agrees in writing with the Borrower and the State not to cause any Default to occur under this Resolution, provided the Borrower may lease all or any portion of the Project to a Nonexempt Person pursuant to a lease which in the Opinion of Bond Counsel delivered to the DNRC will not cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

(g) The Borrower shall not change the use or nature of the Project if (i) such change will violate the Clean Water Act, or (ii) so long as the State Bonds are outstanding unless, in the Opinion of Bond Counsel delivered to the DNRC, such change will not result in the inclusion in gross income of interest on the State Bonds for federal income tax purposes.

Section 6.4. Competing Service. The Borrower will not establish or authorize the establishment of any other system for the public supply of service or services in competition with any or all of the services supplied by the facilities of the System.

Section 6.5. Billing. The charges for sewer services shall be billed at least monthly, and if the bill is not paid within 60 days of the date of billing, or if the customer fails to comply with all rules and regulations established for the System within 60 days after notice of violation thereof (which notice shall be given promptly upon discovery of any such violation), the sewer service to the premises involved shall be discontinued and shall not be resumed until payment of all past-due bills for sewer service and compliance with all such rules and regulations. The Borrower shall take appropriate legal action to collect the unpaid charges, including, to the extent now or hereafter authorized by law, making the charge a lien against the real property served by the sewer connection for which the charge remains unpaid and causing charges with respect to such properties to be collected in the same manner as taxes levied against property within the Borrower.

Section 6.6. Remedies. The DNRC, so long as it owns the Series 2005 Bond, or the owners of not less than 25% in principal amount of the outstanding Bonds issued and secured under the provisions of this Resolution shall have the right, either at law or in equity, through suit, action or other proceedings, to protect and enforce the rights of all owners of such Bonds and to compel the performance of any and all of the covenants required herein to be performed by the Borrower, and its officers and employees, including but not limited to the fixing and maintaining of rates, fees and charges and the collection and proper segregation of gross revenues and the application and use thereof. The owners of a majority in principal amount of such outstanding Bonds shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Bondholders or the exercise of any power conferred on them and the right to waive a default in the performance of any such covenant, and its consequences, except a default in the payment of the principal of, premium, or interest on any Bond when due. However, nothing herein shall impair the absolute and unconditional right of the owner of each such Bond to receive payment of the principal of, premium, if any, and interest on such Bond as such principal and interest respectively become payable, and to institute suit for any such payment. Any court having jurisdiction of the action may appoint a receiver to administer the System on behalf of the Borrower with power to charge and collect rates, fees and charges sufficient to provide for the payment of any Bonds or obligations outstanding against the System, and to apply the gross revenues in conformity with this Resolution and the laws of the State.

Section 6.7. Rate Covenant. While any Bonds are outstanding and unpaid, the rates, charges and rentals for all services and facilities furnished and made available by the System to the Borrower and its inhabitants, and to all customers within or without the boundaries of the Borrower, shall be reasonable and just, taking into consideration the cost and value of the System and the cost of maintaining and operating it, and the amounts necessary for the payment of all Bonds and the interest accruing thereon, and the proper and necessary allowances for the depreciation of the System, and no free service shall be provided to any person or corporation. It is covenanted and agreed that the rates, charges and rentals to be charged to all recipients of sewer services shall be maintained and shall be revised whenever and as often as may be

necessary, according to schedules such that the revenues for each fiscal year will be at least sufficient to pay the current expenses of operation and maintenance as herein defined, to maintain the Operating Reserve herein established, and to produce net revenues during each fiscal year commencing with the fiscal year ending June 30, 2005, not less than 125% of the maximum annual principal and interest payable on any outstanding Bonds in the current or any future fiscal year.

If at the close of any fiscal year the net revenues actually received during such year have been less than required hereby, the Borrower will forthwith prepare a schedule of altered rates, charges and rentals which are just and equitable and sufficient to produce Net Revenues and Surplus Net Revenues in such amount, and will do all things necessary to the end that such schedule will be placed in operation at the earliest possible date.

ARTICLE VII

INDEMNIFICATION OF DNRC, DEQ AND TRUSTEE

The Borrower shall defend, indemnify and save and hold harmless the DNRC, the DEQ, the Trustee and their officers, employees and agents (each an "Indemnified Party" or, collectively, the "Indemnified Parties") against and from any and all claims, damages, demands, expenses, liabilities and losses of every kind asserted by or on behalf of any Person arising out of, resulting from or in any way connected with the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation or financing of the Project. The Borrower shall also defend, indemnify and save and hold harmless the Indemnified Parties against and from all costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. If any proceeding is brought against an Indemnified Party by reason of any such claim or demand, the Borrower shall, upon notice from the Indemnified Party, defend such proceeding on behalf of the Indemnified Party. Notwithstanding the foregoing, the Borrower shall not be obligated to indemnify an Indemnified Party or any of its officers, employees or agents or hold any of them harmless against or from or in respect of any claim, damage, demand, expense, liability or loss arising from the intentional or willful misconduct or gross negligence of the Indemnified Parties.

ARTICLE VIII

ASSIGNMENT

Section 8.1. Assignment by Borrower. The Borrower may not assign its rights and obligations under this Resolution or the Series 2005 Bond, except as provided in Section 6.3.

Section 8.2. Assignment by DNRC. The DNRC will pledge its rights under and interest in this Resolution, the Series 2005 Bond and the Collateral Documents (except to the extent otherwise provided in the Indenture) as security for the payment of the State Bonds.

Section 8.3. State Refunding Bonds. In the event the State Bonds are refunded, all references in this Resolution to State Bonds shall be deemed to refer to the refunding bonds and any bonds of the State on a parity with such refunding bonds (together, the “Refunding Bonds”) or, in the case of a crossover refunding, to the State Bonds and the Refunding Bonds. In the event the State Bonds are refunded by an issue of bonds other than State Bonds, all references in this Resolution to the State Bonds shall be deemed to refer to such other bonds or, in the case of a crossover refunding, both the State Bonds and such other bonds.

ARTICLE IX

THE SERIES 2005 BOND

Section 9.1. Authorization. Under the provisions of the Enabling Act, the Borrower is authorized to issue and sell its revenue bonds payable during a term not exceeding forty years from their date of issue, to provide funds for the reconstruction, improvement, betterment and extension of the System or to refund its revenue bonds issued for such purpose; provided that the bonds and the interest thereon are to be payable solely out of the net income and revenues to be derived from rates, fees and charges for the services, facilities and commodities furnished by the undertaking, and are not to create any obligation for the payment of which taxes may be levied except to pay for services provided by the undertaking to the Borrower.

Section 9.2. Outstanding Bonds. No bonds or indebtedness are outstanding that are payable from Sewer Revenues of the System.

Section 9.3. Sources of Funding. The Project is set forth on Exhibit A. It is proposed that a portion of the costs of the Project will be paid from the proceeds of the Bonds.

Section 9.4. Net Revenues Available. The Borrower is authorized to charge just and equitable rates, charges and rentals for all services directly or indirectly furnished by the System, and to pledge and appropriate to the Series 2005 Bond the net revenues to be derived from the operation of the System, including improvements, betterments or extensions thereof hereafter constructed or acquired. The net revenues to be produced by such rates, charges and rentals during the term of the Series 2005 Bond will be more than sufficient to pay the principal and interest when due on the Series 2005 Bond, and to create and maintain reasonable reserves therefor and to provide an adequate allowance for replacement and depreciation, as prescribed herein.

Section 9.5. Issuance and Sale of the Series 2005 Bond. The Council has investigated the facts necessary and hereby finds, determines and declares it to be necessary and desirable for the Borrower to issue the Series 2005 Bond to evidence the Loan. The Series 2005 Bond is issued to the DNRC without public sale pursuant to Montana Code Annotated, Section 7-7-4433(2)(a).

Section 9.6. Terms. The Series 2005 Bond shall be in the maximum principal amount equal to the original Committed Amount of the Loan, shall be issued as a single, fully

registered bond numbered R-1, shall be dated as of the date of delivery to the DNRC, and shall bear interest at the rate charged by the DNRC on the Loan. The principal of and interest on the Series 2005 Bond shall be payable on the same dates and in the same amounts on which principal and interest of the Loan Repayments are payable. Advances of principal of the Series 2005 Bond shall be deemed made when advances of the Loan are made under Section 4.1, and such advances shall be payable in accordance with Schedule B to the Series 2005 Bond, as it may be revised by the DNRC from time to time in accordance with Section 5.1.

The Borrower may prepay the Series 2005 Bond, in whole or in part, only upon the terms and conditions under which it can prepay the Loan under Section 5.3.

Section 9.7. Negotiability, Transfer and Registration. The Series 2005 Bond shall be fully registered as to both principal and interest, and shall be initially registered in the name of and payable to the DNRC. While so registered, principal of and interest on the Series 2005 Bond shall be payable to the DNRC at the Office of the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620 or such other place as may be designated by the DNRC in writing and delivered to the Borrower. The Series 2005 Bond shall be negotiable, subject to the provisions for registration and transfer contained in this section. No transfer of the Series 2005 Bond shall be valid unless and until (1) the holder, or his duly authorized attorney or legal representative, has executed the form of assignment appearing on the Bond, and (2) the City Clerk of the Borrower (the "Registrar"), as Bond Registrar, has duly noted the transfer on the Series 2005 Bond and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. The Borrower shall be entitled to deem and treat the person in whose name the Series 2005 Bond is registered as the absolute owner of the Series 2005 Bond for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to satisfy and discharge the Borrower's liability upon such Bond to the extent of the sum or sums so paid.

Section 9.8. Execution and Delivery. The Series 2005 Bond shall be executed on behalf of the Borrower by the manual signatures of the Mayor and the City Clerk. Any or all of such signatures may be affixed at or prior to the date of delivery of the Series 2005 Bond. The Bond shall be sealed with the corporate seal of the Borrower. In the event that any of the officers who shall have signed the Series 2005 Bond shall cease to be officers of the Borrower before the Bond is issued or delivered, their signatures shall remain binding upon the Borrower. Conversely, the Series 2005 Bond may be signed by an authorized official who did not hold such office on the date of adoption of this Resolution. The Series 2005 Bond shall be delivered to the DNRC, or its attorney or legal representative.

Section 9.9. Form. The Series 2005 Bond shall be prepared in substantially the form attached as Appendix B.

ARTICLE X

PRIORITIES AND ADDITIONAL SEWER DEBT

Section 10.1. Priority of Bond Payments. Each and all of the Bonds shall be equally and ratably secured without preference or priority of any one Bond over any other by reason of serial number, date of issue, or otherwise; provided that if at any time the Net Revenues on hand in the Fund are insufficient to pay principal and interest then due on all such Bonds, any and all Net Revenues then on hand shall be first used to pay the interest accrued on all outstanding Bonds, and the balance shall be applied toward payment of the maturing principal of such Bonds to be paid first, and pro rata in payment of Bonds maturing on the same date.

Section 10.2. Refunding Revenue Bonds. The Borrower reserves the right and privilege of refunding any or all of the Bonds subject to the following terms and conditions:

(a) Any matured Bonds may be refunded if moneys available for the payment thereof at maturity, within the limitation prescribed in Section 10.01, should at any time be insufficient to make such payment in full.

(b) Any Bonds may be refunded prior to maturity as and when they become prepayable according to their terms.

(c) Provision may be made for the payment and refunding of any unmatured Bonds by the deposit with a duly qualified depository bank, as escrow agent, of cash sufficient, or of securities of the kinds authorized by law, the payments of interest on and principal of which are sufficient, to pay the principal amount of and premium, if any, on such Bonds with interest to maturity or to any prior date or dates on which they are prepayable, and have been called for redemption or provision has been irrevocably made for their redemption, on such date or dates.

(d) Any refunding revenue Bonds issued for the above purposes may be made payable from the net revenues on a parity as to interest with all then outstanding Bonds; provided that (1) if not all of the Bonds of a series are refunded, the maturity of each refunding revenue Bond shall be subsequent to the last maturity of any then outstanding Bonds of such series which are not refunded or to be refunded out of moneys on deposit with such escrow agent, and (2) no Bondowner shall be required to accept a refunding revenue Bond in exchange for any Bond owned by him.

Section 10.3. Other Parity Bonds. The Borrower reserves the right to issue additional Bonds payable from the Revenue Bond Account of the Fund, on a parity as to both principal and interest with the Series 2005 Bond, if the Net Revenues of the System for the last complete fiscal year preceding the date of issuance of such additional Bonds have equaled at least 125% of the maximum amount of principal and interest payable from said Revenue Bond Account in any subsequent fiscal year during the term of the outstanding Bonds, on all Bonds then outstanding and on the additional Bonds proposed to be issued. For the purpose of the foregoing computation, the net revenues for the fiscal year preceding the issuance of additional Bonds shall be those shown by the financial reports caused to be prepared by the Borrower pursuant to Section 2.2(f), except that if the rates and charges for services provided by the System have been changed since the beginning of such preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional Bonds or finally authorized to go into effect within 60 days thereafter shall be applied to the quantities of service actually rendered and

made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted to determine the net revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the Consultant estimates will be incurred because of the improvement or extension of the System to be constructed from the proceeds of the additional Bonds proposed to be issued. In no event shall any additional Bonds be issued and made payable from the Revenue Bond Account if the Borrower is then in default in any payment of principal of or interest on any outstanding Bonds payable therefrom or if there then exists any deficiency in the balances required by this Resolution to be maintained in any of the accounts of the Fund, which will not be cured or restored upon the issuance of the additional Bonds. In connection with the issuance of a series of additional Bonds, the Borrower shall cause the Reserve Account in the Revenue Bond Account to be increased, from the proceeds of the additional Bonds or from surplus Net Revenues, to an amount equal to the Reserve Requirement during the term of the outstanding Bonds or so much thereof as will not cause the Borrower to violate the provisions of Section 12.2 hereof.

Section 10.4. Subordinate Bonds. Nothing in this Resolution shall preclude the Borrower from issuing additional Bonds which are expressly made a charge on only the Surplus Net Revenues of the System subordinate to the pledge of Net Revenues to the Revenue Bond Account.

ARTICLE XI

SEWER SYSTEM FUND

Section 11.1. Bond Proceeds and Revenues Pledged and Appropriated. A special Sewer System Fund is hereby created and shall be maintained as a separate and special bookkeeping account on the official books of the Borrower until all Bonds and interest and redemption premiums due thereon have been fully paid, or the Borrower's obligations with reference to such Bonds have been discharged as provided in this Resolution. All proceeds of Bonds issued hereunder and all other funds presently on hand derived from the operation of the System are irrevocably pledged and appropriated to the Fund. In addition, there is hereby irrevocably pledged and appropriated to the Fund all gross revenues and receipts from rates, fees, charges and rentals imposed for connections with and for the availability, benefit and use of the System and from any sales of property acquired for the System and all income received from the investment of such gross revenues, including investment of the Reserve Account established in the Revenue Bond Account and the Operating Reserve established in the Operating Account, but excluding any special assessments or taxes levied for construction of any part of the System and the proceeds of any grant or loan from the State or the United States, and any investment income thereon, to the extent such exclusion is a condition to such grant or loan. The Fund shall be subdivided into separate accounts as designated and described in Sections 11.2 through 11.7, to segregate income and expenses received, paid and accrued for the respective purposes described in those sections. The gross revenues received in the Fund shall be apportioned monthly, commencing as of the first day of the calendar month immediately following the date of closing of the Loan.

Section 11.2. Acquisition and Construction Account. The Acquisition and Construction Account shall be used only to pay as incurred and allowed costs which under

accepted accounting practice are capital costs of the Project and of such future reconstructions, improvements, betterments or extensions of the System as may be authorized in accordance with law, including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, reimbursement of any advances made from other Borrower funds, and all other expenses incurred in connection with the acquisition, construction and financing of any such undertaking. To the Acquisition and Construction Account shall be credited as received all proceeds of Bonds issued hereunder (except proceeds of refunding bonds appropriated to the payment of outstanding Bonds and amounts required to be credited to the Revenue Bond Account), all other funds appropriated by the Borrower for the System and any other funds appropriated by the Borrower to the Acquisition and Construction Account for improvements to the System, and all income received from the investment of the Acquisition and Construction Account. Upon completion of a capital improvement or program of capital improvements for the System, except the Project, the balance remaining in the Acquisition and Construction Account shall be credited to the reserve balance in the Revenue Bond Account to the extent required to establish the required balance therein and, to the extent not so required, to the Replacement and Depreciation Account.

Section 11.3. Operating Account. On each monthly apportionment there shall first be set aside and credited to the Operating Account, as a first charge on the gross revenues, such amount as may be required over and above the balance then held in the account to pay the reasonable and necessary operating expenses of the System which are then due and payable, or are to be paid prior to the next monthly apportionment. The term "operating expenses" shall mean the current expenses, paid or accrued, of operation, maintenance and current repair of the System and its facilities, as calculated in accordance with sound accounting practices, and shall include, without limitation, administrative expenses of the Borrower relating solely to the System, premiums for insurance on the properties thereof, labor and the cost of materials and supplies used for current operation and for maintenance, and charges for the accumulation of appropriate reserves for current expenses which are not recurrent monthly but may reasonably be expected to be incurred in accordance with sound accounting practices. Such expenses shall not include any allowance for interest expense or depreciation, renewals or replacements of capital assets of the System and shall not include any portion of the salaries or wages paid to any officer or employee of the Borrower, except such portion as shall represent reasonable compensation for the performance of duties necessary to the operation of the System. There shall also be credited to this account forthwith upon the delivery of the Series 2005 Bond and from available funds other than the proceeds therefrom a sum equal to the estimated average monthly operating expenses of the System to establish an Operating Reserve, which sum shall be maintained by additional transfers upon each monthly apportionment whenever necessary, or may be augmented by transfers of additional amounts from the Surplus Account described below if determined by the governing body of the Borrower to be necessary to meet contingencies arising in the operation and maintenance of the System. Money in the Operating Account shall be used solely for the payment of current operating expenses of the System.

Section 11.4. Revenue Bond Account. Upon each monthly apportionment there shall be set aside and credited to the Revenue Bond Account out of the net revenues an amount equal to not less than one-twelfth of the interest and principal to become due within the next

twelve months with respect to outstanding Bonds payable from the Revenue Bond Account; provided that the Borrower shall be entitled to reduce a monthly credit by the amount of any surplus previously credited and then on deposit in the Revenue Bond Account. Money from time to time held in the Revenue Bond Account shall be disbursed only to meet payments of principal of, premium, if any, and interest on the Bonds payable therefrom as such payments become due. If any payment of principal or interest becomes due when moneys in the Revenue Bond Account are temporarily insufficient therefor, such payment shall be advanced out of any net revenues theretofore segregated and then on hand in the Reserve Account, the Replacement and Depreciation Account or the Surplus Account.

Section 11.5. Reserve Account. The Borrower agrees to establish and maintain a Reserve Account in the Fund. On the Closing Date, the Borrower shall deposit in the Reserve Account an amount equal to \$323,718.75. Thereafter, upon each monthly apportionment, from the Net Revenues remaining after the apportionment to the Revenue Bond Account, the Borrower shall credit to the Reserve Account such additional Net Revenues as may be required to establish and thereafter maintain the balance in an amount equal, as of the date of calculation, to the Reserve Requirement. Money in the Reserve Account shall be used only to pay maturing principal, premium and interest when money within the Revenue Bond Account is insufficient therefor; provided that on any date when all outstanding Bonds of a series are due or prepayable by their terms, if the amount then on hand in the Reserve Account allocable to such Bonds and available for such appropriation is sufficient with money available for the purpose to pay all such Bonds and the interest accrued thereon in full, it may be used for that purpose; and provided, further, that so long as the amount on hand in the Reserve Account is not less than the Reserve Requirement, the Borrower may credit earnings on investment of the Reserve Account to the Replacement and Depreciation Account.

Section 11.6. Replacement and Depreciation Account. There shall next be set aside and credited, upon each monthly apportionment, to the Replacement and Depreciation Account Surplus Net Revenues of the System, as the governing body of the Borrower shall determine to be required for the accumulation of a reasonable allowance for depreciation of the System and for replacement or renewal of worn out, obsolete or damaged properties and equipment thereof. Money in this account shall be used only for the purposes above stated or, if so directed by the governing body of the Borrower, to redeem Bonds which are prepayable according to their terms, to pay principal or interest when due thereon as required in Section 11.5, or to pay the cost of improvements to the System; provided that in the event construction and installation of additional improvements or additions to the System are financed other than from proceeds of Bonds payable from the Revenue Bond Account, surplus net revenues from time to time received may be segregated and paid into one or more separate and additional accounts for the repayment of such indebtedness and interest thereon, in advance of payments required to be made into the Replacement and Depreciation Account.

Section 11.7. Surplus Account. Any amount of the surplus net revenues from time to time remaining after the above required applications thereof shall be credited to the Surplus Account (or such other account in the Fund as the Borrower may establish for bookkeeping purposes to account for surplus money in accordance with the purposes of this Resolution), and the money from time to time in that account, when not required to restore a

current deficiency in the Revenue Bond Account as provided in Section 11.4, may be used for any of the following purposes and not otherwise:

- (a) To redeem bonds payable from the Net Revenues when and as such bonds become prepayable according to their terms; or
- (b) To purchase Bonds on the open market, whether or not the Bonds or other such Bonds may then be prepayable according to their terms; or
- (c) To be held as a reserve for redemption of bonds payable from the Net Revenues which are not then but will later be prepayable according to their terms; or
- (d) To pay for repairs of or for the construction and installation of improvements or additions to the System; or
- (e) To restore the Operating Reserve or increase the same when determined to be necessary by the governing body of the Borrower.

No money shall at any time be transferred from the Surplus Account or any other account of the Fund to any other fund of the Borrower, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvement bonds or other obligations payable from other funds, except as provided in Section 11.8.

Section 11.8. Deposit and Investment of Funds. The finance officer of the Borrower shall cause all money appropriated to the Fund to be deposited as received with one or more depository banks duly qualified in accordance with the provisions of Montana Code Annotated, Section 7-6-201, in a deposit account or accounts. The balance in such accounts, except such portion thereof as shall be guaranteed by federal deposit insurance, shall at all times be secured to its full amount by bonds or securities of the types set forth in said Section 7-6-201. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Fund as defined and authorized in this Resolution; except that money from time to time on hand in the Fund may at any time, in the discretion of the governing body of the Borrower, be invested in securities which are direct, general obligations of, or obligations the prompt payment of the principal of and the interest on which is fully and unconditionally guaranteed by, the United States of America, bank repurchase agreements with respect to such obligations, certificates of deposits of national banks having a combined capital and surplus of at least \$1,000,000 or in the Montana short-term investment program administered by the Board of Investments, which investments mature and bear interest at the times and in the amounts estimated to be required to provide cash when needed for the purposes of the respective accounts; provided that funds on hand in the Reserve Account, the Replacement and Depreciation Account and the Surplus Account may be invested in said securities maturing not later than five years from the date of the investment; and provided, further, that money on hand in the Surplus Account of the Fund may, in the discretion of the governing body of the Borrower, be invested in any securities which are direct, general obligations of the Borrower. Income received from the deposit or investment of moneys in said accounts shall be credited to the account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys in that account.

ARTICLE XII

TAX MATTERS

Section 12.1. Use of Project and System. The Project and the System will be owned and operated by the Borrower and available for use by members of the general public on a substantially equal basis. The Borrower shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Project or the System or security for the payment of the Series 2005 Bond which might cause the Series 2005 Bond to be considered a “private activity bond” or “private loan bond” within the meaning of Section 141 of the Code.

Section 12.2. General Covenant. The Borrower covenants and agrees with the owners from time to time of the Series 2005 Bond that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Series 2005 Bond to become includable in gross income for federal income tax purposes under the Code and the Regulations, and covenants to take any and all actions within its powers to ensure that the interest on the Series 2005 Bond will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

Section 12.3. Arbitrage Certification. The Mayor and the City Clerk, being the officers of the Borrower charged with the responsibility for issuing the Series 2005 Bond pursuant to this Resolution, are authorized and directed to execute and deliver to the DNRC a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2005 Bond, it is reasonably expected that the proceeds of the Series 2005 Bond will be used in a manner that would not cause the Series 2005 Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code and the Regulations.

Section 12.4. Arbitrage Rebate. The City acknowledges that the Series 2005 Bond is subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Series 2005 Bond from gross income for federal income tax purposes, unless the Series 2005 Bond qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no “gross proceeds” of the Series 2005 Bond (other than amounts constituting a “bona fide debt service fund”) arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the City Administrator is hereby authorized and directed to execute a Rebate Certificate, substantially in the form of the Rebate Certificate currently on file in the office of the City Clerk of Council, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

Section 12.5. “Qualified Tax-Exempt Obligations.” Pursuant to Section 265(b)(3)(B)(i)(III) of the Code, the Borrower hereby designates the Bond as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code. The Borrower has not

designated any obligations in 2005 other than the Series 2005 Bond under Section 265(b)(3). The Borrower hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the Borrower and all “subordinate entities” of the Borrower in 2005 in an amount greater than \$10,000,000.

ARTICLE XIII CONTINUING DISCLOSURE

The Borrower understands and acknowledges that the DNRC is acquiring the Series 2005 Bond under the Program pursuant to which the State issues from time to time State Bonds to provide funds therefor. The Borrower covenants and agrees that, upon written request of the DNRC from time to time, the Borrower will promptly provide to the DNRC all information that the DNRC reasonably determines to be necessary or appropriate to offer and sell State Bonds or to provide continuing disclosure in respect of State Bonds, whether under Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) or otherwise. Such information shall include, among other things and if so requested, financial statements of the Borrower prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Montana law, as in effect from time to time (such financial statements to relate to a fiscal year or any period therein for which they are customarily prepared by the Borrower, and, if for a fiscal year and so requested by the DNRC, subject to an audit report and opinion of an accountant or government auditor, as permitted or required by the laws of the State). The Borrower will also provide, with any information so furnished to the DNRC, a certificate of the Mayor and the City Clerk to the effect that, to the best of their knowledge, such information does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make the statements made, in light of the circumstances under which they are made, not misleading.

ARTICLE XIV MISCELLANEOUS

Section 14.1. Notices. All notices or other communications hereunder shall be sufficiently sent or given and shall be deemed sent or given when delivered or mailed by certified mail, postage prepaid, to the parties at the following addresses:

DNRC: Department of Natural Resources
 and Conservation
 1625 Eleventh Avenue
 Helena, Montana 59620
 Attention: Conservation and Resource Development Division

Trustee: U.S. Bank National Association
c/o Corporate Trust Services
1420 – 5th Avenue, 7th Floor
Seattle, Washington 98101
Attn: Corporate Trust Department

Borrower: City of Billings
P.O. Box 308
Billings, Montana 59226
Attention: City Clerk

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices or other communications shall be sent.

Section 14.2. Binding Effect. This Resolution shall inure to the benefit of and shall be binding upon the DNRC, the Borrower and their respective permitted successors and assigns.

Section 14.3. Severability. If any provision of this Resolution shall be determined to be unenforceable at any time, it shall not affect any other provision of this Resolution or the enforceability of that provision at any other time.

Section 14.4. Amendments. This Resolution may not be effectively amended without the written consent of the DNRC.

Section 14.5. Applicable Law. This Resolution shall be governed by and construed in accordance with the laws of the State.

Section 14.6. Captions; References to Sections. The captions in this Resolution are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Resolution. References to Articles and Sections are to the Articles and Sections of this Resolution, unless the context otherwise requires.

Section 14.7. No Liability of Individual Officers, Directors or Council Members. No recourse under or upon any obligation, covenant or agreement contained in this Resolution shall be had against any director, officer or employee, as such, past, present or future, of the DNRC or the Trustee, either directly or through the DNRC or the Trustee, or against any officer, or member of the governing body or employee of the Borrower, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or member of the governing body or employee of the DNRC, the Trustee or the Borrower is hereby expressly waived and released by the Borrower and by the DNRC as a condition of and in consideration for the adoption of this Resolution and the making of the Loan.

Section 14.8. Payments Due on Holidays. If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Resolution or the Series 2005 Bond, shall not be a Business Day, such payments may be made or

act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Resolution or the Series 2005 Bond.

Section 14.9. Right of Others to Perform Borrower's Covenants. In the event the Borrower shall fail to make any payment or perform any act required to be performed hereunder, then and in each such case the DNRC or the provider of any Collateral Document may (but shall not be obligated to) remedy such default for the account of the Borrower and make advances for that purpose. No such performance or advance shall operate to release the Borrower from any such default and any sums so advanced by the DNRC or the provider of any Collateral Document shall be paid immediately to the party making such advance and shall bear interest at the rate of ten percent from the date of the advance until repaid. The DNRC and the provider of any Collateral Document shall have the right to enter the Project or the facility or facilities of which the Project is a part or any other facility which is a part of the System in order to effectuate the purposes of this Section.

Section 14.10. Authentication of Transcript. The officers of the Borrower are hereby authorized and directed to furnish to the DNRC and to Bond Counsel certified copies of all proceedings relating to the issuance of the Series 2005 Bond and such other certificates and affidavits as may be required to show the right, power and authority of the Borrower to issue the Series 2005 Bond, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the Borrower as to the truth of the statements purported to be shown thereby.

Section 14.11. Effective Date. This Resolution shall take effect immediately.

Adopted by the City Council of the City of Billings, Montana, on this 22nd day of August, 2005.

Mayor

Attest: _____
City Clerk

(SEAL)

APPENDIX A

DESCRIPTION OF THE PROJECT

The project will include upgrading the wastewater treatment plant and improvements to the headworks.

APPENDIX B

[Form of the Bond]

UNITED STATES OF AMERICA
STATE OF MONTANA
YELLOWSTONE COUNTY

CITY OF BILLINGS

SEWER SYSTEM REVENUE BOND
(DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM),
SERIES 2005

No. R-1	\$4,515,000
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FOR VALUE RECEIVED, the City of Billings, Montana (the "Borrower"), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the "DNRC"), or its registered assigns, solely from the Revenue Bond Account of its Sewer System Fund, the principal sum equal to the sum of the amounts entered on Schedule A attached hereto under "Total Amount Advanced," with interest on each such amount from the date such amount is advanced hereunder at the rate of two percent (2.00%) per annum on the unpaid balance until paid. In addition, the Borrower shall pay an Administrative Expense Surcharge and a Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond at the rate of seventy-five hundredths of one percent (0.75%) and one percent (1.00%), respectively, per annum. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a "Loan Repayment Date") commencing January 1, 2006. Principal shall be payable on the dates set forth in Schedule B hereto. Each installment shall be in the amount set forth opposite its due date in Schedule B attached hereto under "Total Loan Payment." The portion of each such payment consisting of principal, the portion consisting of interest, and the portion consisting of Administrative Expense Surcharge and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B hereto. Upon each disbursement of Loan amounts to the Borrower pursuant to the Resolution described below, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under "Advances" and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under "Total Amount Advanced." The DNRC shall prepare Schedule B and any revised Schedule B, or cause Schedule B and any revised Schedule B to be prepared, as provided in Section 5.1 of the Resolution. Schedule B shall be calculated and recalculated on a level debt service basis assuming an interest rate of 3.75% per annum. Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30

days each. All payments under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

This Bond is one of an issue of Sewer System Revenue Bonds of the Borrower authorized to be issued in one or more series from time to time, and constitutes a series in the maximum authorized principal amount of \$4,515,000 (the "Series 2005 Bond"). The Series 2005 Bond is issued to finance a portion of the costs of the construction of certain improvements to the sewer system of the Borrower (the "System"), and to pay costs of issuance of the Series 2005 Bond. The Series 2005 Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, and ordinances and resolutions duly adopted by the governing body of the Borrower, including Montana Code Annotated, as amended, Title 7, Chapter 7, Parts 44 and 45, as amended, and Resolution No. _____ duly enacted by the City Council on August 22, 2005 (collectively, the "Resolution"). The Series 2005 Bond is issuable only as a single, fully registered bond.

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2005 Bond has been issued, the net revenues of the System pledged and appropriated for the payment and security thereof, the conditions upon which additional bonds may be issued under the Resolution and made payable from such net revenues on a parity with the Series 2005 Bond (the "Bonds") or otherwise, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the Borrower, and the rights of the owners of the Series 2005 Bond.

The Borrower may prepay the principal of the Series 2005 Bond only if (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest, and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2005 Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

The Bonds, including interest and any premium for the redemption thereof, are payable solely from the net revenues pledged for the payment thereof and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision.

The Borrower may deem and treat the person in whose name this Series 2005 Bond is registered as the absolute owner hereof, whether this Series 2005 Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and the Borrower shall not be affected by any notice to the contrary. The Series 2005 Bond may be transferred as hereinafter provided.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Borrower will forthwith construct and complete the improvements to the System hereinabove described, that it will prescribe and collect reasonable rates and charges for all services and facilities afforded by the System, including all additions thereto and replacements and

improvements thereof, and has created a special Sewer System Fund into which the gross revenues of the System will be paid, and a separate and special Revenue Bond Account in that fund, into which will be paid each month, from and as a first and prior lien on the Net Revenues of the System then on hand, an amount equal to not less than the sum of one-twelfth of the interest and principal due within the next twelve months with respect to all Bonds payable from that Account, that the Borrower has created a Reserve Account in such fund into which shall be paid additional Net Revenues, after required credits to the Revenue Bond Account sufficient to maintain a reserve therein equal to the maximum amount of principal and interest payable in any subsequent fiscal year on all such Bonds; that the Revenue Bond Account will be used only to pay the principal of, premium, if any, and interest on the Series 2005 Bonds and any other additional Bonds issued pursuant to the Resolution on a parity therewith; that the rates and charges for the System will from time to time be made and kept sufficient, to provide gross income and revenues adequate to pay promptly the reasonable and current expenses of operating and maintaining the System and to produce in each fiscal year Net Revenues in excess of such current expenses, equal to 125% of the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent fiscal year; that additional Bonds and refunding Bonds may be issued and made payable from the Revenue Bond Account on a parity with the Series 2005 Bonds and other parity Bonds, upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues of the System, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2005 Bond and additional parity Bonds on such Net Revenues; that all provisions for the security of the holder of this Series 2005 Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the Borrower to be done, to exist, to happen and to be performed in order to make this Series 2005 Bond a valid and binding special obligation of the Borrower according to its terms have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; and that this Series 2005 Bond and the interest hereon are payable solely from the Net Revenues of the System pledged and appropriated to the Revenue Bond Account and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision and the issuance of the Series 2005 Bond does not cause either the general or the special indebtedness of the Borrower to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Billings, Montana, by its governing body, has caused this Bond to be executed by the signatures of the Mayor and the City Clerk, and has caused the official seal of the Borrower to be affixed hereto, and has caused this Bond to be dated as of the _____ day of _____, 2005.

Mayor

(SEAL)

City Clerk

REGISTRATION AND TRANSFER

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or his duly authorized attorney or legal representative, executes the form of assignment appearing on this Bond, and (2) the City Clerk as bond registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the Registrar's registration books. The Borrower shall be entitled to deem and treat the person in whose name this Bond is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of the Bond shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge the Borrower's liability upon the Bond to the extent of the sum or sums so paid.

REGISTER

The ownership of the unpaid Principal Balance of this Bond and the interest accruing thereon is registered on the books of the City of Billings, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of City Clerk</u>
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,2005	<u>Department of Natural Resources and Conservation</u> <u>1625 Eleventh Avenue</u> <u>Helena, MT 59620</u>	
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THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE BOND REGISTRAR UPON REGISTRATION OF EACH TRANSFER

The City Clerk of the City of Billings, Montana, acting as Bond Registrar, has transferred, on the books of the Borrower, on the date last noted below, ownership of the principal amount of and the accrued interest on this Bond to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

<u>Date of Transfer</u>	<u>Name of New Registered Holder</u>	<u>Signature of Bond Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

FORM OF ASSIGNMENT

For value received, this Bond is hereby transferred and assigned by the undersigned holder, without recourse, to _____
on this _____ day of _____, _____.

By: _____
(Authorized Signature)

For: _____
(Holder)

SCHEDULE A
SCHEDULE OF AMOUNTS ADVANCED

SCHEDULE B

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Administrative Expense Surcharge</u>	<u>Loan Loss Reserve Surcharge</u>	<u>Total Loan Payment</u>
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APPENDIX C

ADDITIONAL REPRESENTATIONS AND COVENANTS

[None]

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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Second/Final Reading on Amendment to the Ordinance Granting Montana Dakota Utilities Co. a Franchise to Provide Gas Distribution Services

DEPARTMENT: City Administrator's Office

PRESENTED BY: Tina Volek, Acting City Administrator
Brent Brook, City Attorney

PROBLEM/ISSUE STATEMENT: Montana Dakota Utilities Co. ("MDU") was provided a franchise to operate a gas distribution system within the City of Billings by way of Ordinance 4232 in 1979. This franchise was scheduled to expire on October 25, 2004 but was extended through April, 2005, by Council action in August, 2004.

More recently, on April 11, 2005, and April 25, 2005, the Council conducted a first and second reading of a new ordinance granting MDU a franchise for an additional 15 years. This ordinance was updated through discussions between MDU and staff which produced a consensus document approved by the Council.

In late June, 2005, MDU officials contacted former City Administrator Kristoff Bauer suggesting a brief amendment to Section 7-1504 of the new ordinance and agreement. This new language simply reaffirms that MDU's acceptance of the franchise agreement granted through ordinance does not prevent MDU from challenging the lawfulness of any future fee imposed by the City upon MDU. This brief, additional language is shown by underline under Section 7-1504(c) within the Ordinance as attached to this memo. The proposed amendment does not affect the current franchise fee assessed upon MDU by the City. Rather, the amendment simply clarifies that MDU is not wanting a potential challenge to any future fee in a different form that may be imposed. A public hearing and first reading on the proposed amendment was held at the Council's meeting on August 8, 2005.

FINANCIAL IMPACT: None.

RECOMMENDATION

Staff recommends that Council adopt on second/final reading the proposed amended ordinance as provided in Section 7-1504(c).

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

ATTACHMENT

A – Amended Ordinance Granting MDU's Gas Distribution Franchise

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BILLINGS, MONTANA,
PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE
AMENDED BY REVISING SECTION 7-1504; PROVIDING THAT THE
MDU FRANCHISE DOES NOT PRECLUDE MDU FROM
CHALLENGING ANY FEE OR TAX**

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

Section 1. That Section 7-1504 of the Billings, Montana, City Code be amended so that such section shall read as follows:

“Sec. 7-1504. Fees or Taxes.

As a material term of this Franchise agreement, and in consideration of the right granted to Utility to occupy City rights-of-way for the purpose of operating a gas utility within the City, Utility agrees:

- (a) Subject to subsection (c) of this section, to timely pay all fees or taxes currently adopted, or as hereinafter may be adopted by the City pertaining to the Utility's operations within the City.
- (b) Proceeds of any fee or tax shall be distributed to the City in accordance with the terms of any adopting document or, if not specified in such document, no later than 30 days after the end of each calendar quarter (quarters ending at the end of March, June, September and December).
- (c) Neither this ordinance nor the Utility's acceptance of the franchise granted by this ordinance precludes the Utility from challenging the lawfulness of any fee or tax imposed by the City upon the Utility. If the Utility successfully challenges the legality of a fee or tax adopted by the City or the City is otherwise prevented by judicial or legislative action from collecting a fee or tax adopted by the City or any portions thereof, then the Utility shall be excused from the collection and distribution of that portion of the fee or tax.”

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any Section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other Section, sentence, clause or phrase of this Franchise Ordinance. The Parties may amend, repeal, add, replace, or modify any provision of this Franchise to preserve the intent of the parties as

expressed herein prior to any finding of invalidity or unconstitutionality. To this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 8th day of August, 2005.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2005.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk

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Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Approval of Resolution Setting Mill Levy Rates
DEPARTMENT: Administration-Finance Division
PRESENTED BY: Patrick Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: This resolution establishes the city property tax mill levy rates for the Public Safety Fund, which voters approved a levy in the amount of \$2.6 million in November of 2004 (19.64 mills), General Obligation Debt Service Parks (1.18 mills), and General Obligation Debt Service Streets (2.99 mills) for the fiscal year 2006. These mills are based on predetermined levy amounts and could not be calculated until the City received a copy of the certified taxable valuation from the Montana Department of Revenue.

The total mill levy rate for fiscal year 2006 will be 132.81, which is 19.08 more than fiscal year 2005. This increase in the total mill levy rate is due to the increase in the public safety levy.

RECOMMENDATION

Staff recommends that the City Council approve the resolution setting the mill levy rates for fiscal year 2006.

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

ATTACHMENT

A - Resolution Making the Annual Public Safety Funds, General Obligation Debt Service Parks, and General Obligation Debt Service Streets for the Fiscal Year 2005-2006.

RESOLUTION 05-_____

**A RESOLUTION MAKING THE ANNUAL MILL LEVY AND
MILL LEVIES FOR PUBLIC SAFETY (NOVEMBER 2004
VOTER APPROVED) AND GENERAL OBLIGATION DEBT
FOR PARKS AND STREET DEBT SERVICE FOR FISCAL
YEAR 2005-2006.**

WHEREAS, pursuant to law, the City of Billings is required to make annual mill levies.

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

1. That a Public Safety Mill Levy, which voters approved in November of 2004 in the amount of \$2.6 million (19.64 mills), is hereby imposed on all taxable property within the City of Billings, Montana, for the Fiscal Year **July 1, 2005 through June 30, 2006**.

2. **That additional Mill Levies in the amounts stated are hereby imposed on all taxable property within the City of Billings, Montana, to provide payment for the following:**

- A. 1.18 mills-General Obligation Debt Service Parks
- B. 2.99 mills-General Obligation Debt Service Streets

3. That when said taxes are collected, the same shall be placed in respective funds for the City and expended pursuant to the annual budget.

4. The City Clerk is hereby directed upon final passage and approval of this Resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Treasurer and a copy to the Yellowstone County Assessor.

5. This Resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **22nd day of August, 2005**

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

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R

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Ironwood Estates Subdivision, 4th Filing Preliminary Plat
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: On June 1, 2005, the subdivider of this property, Regal Land Development (Dan Wells), applied for preliminary plat approval for the Ironwood Estates Subdivision, 4th Filing. The City-County Board of Planning conducted a public hearing on July 26, 2005. The City Council will review the preliminary plat and make a decision regarding approval at the August 22, 2005, meeting.

ALTERNATIVES ANALYZED: State and City subdivision regulations require that preliminary plats be reviewed using criteria that are set out in those laws. 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.

FINANCIAL IMPACT: When the property is developed the new residents will need City services. It is unknown if the value of these proposed homes will generate sufficient taxes and fees to pay for the required services.

RECOMMENDATION

The Yellowstone County Board of Planning recommends that the Billings City Council conditionally approve the preliminary plat of Ironwood Estates Subdivision, 4th Filing, accept the attached findings of fact, and approve the variances from Sections 23-601(k), 23-601(m), 23-702(e) and 23-703(a) BMCC.

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

ATTACHMENTS

- A. Preliminary Plat & Master Plan
- B. Site photographs
- C. Findings of Fact
- D. Mayor's approval letter

INTRODUCTION

On June 1, 2005, the Planning Department received a preliminary plat application for the Ironwood Estates Subdivision 4th Filing. The property is located north of Ironwood Estates 1st and 2nd Filings, east of Molt Road and west of Ironwood Estates 3rd Filing. The plat includes 100.15 total acres with a net acreage of 71.03 acres. This includes a total of 83 total single family residential lots and one 28.3 acre parcel zoned Residential-7,000 that may be developed as a condominium unit or further subdivided. The Yellowstone County Board of Planning held a public hearing on this proposed subdivision at its meeting on July 26, 2005, and recommends that the Billings City Council conditionally approve this preliminary plat and the requested variances from the City Subdivision Regulations.

PROCEDURAL HISTORY

- The subject property was annexed into the City limits on May 13, 2002.
- The subject property was approved for R-7000, R-9,600, Residential Professional and Public on May 24, 2004.
- The preliminary plat application was submitted to the Planning Department on June 1, 2005.
- The Yellowstone County Board of Planning reviewed the plat on July 12, 2005.
- The Planning Board conducted a public hearing on July 26, 2005, and made its recommendations to the Billings City Council.
- The City Council will consider the application at its meeting on August 22, 2005.

BACKGROUND

The subject property is legally described as a portion of Tract 2 of Certificate of Survey 3030. The land is currently zoned R-9,600, R-7,000 and Public. This is the final filing of the Ironwood Estates Master Planned area.

General location:	East of Molt Road, west of Ironwood Estates Subdivision 3 rd Filing
Subdivider:	Regal Land Development
Owner:	Dan Wells
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	R-7000, R-9,600 and Public
Surrounding zoning:	North: R-15,000 and Special Zoning District #12 South: R-9,600 and Public East: R-15,000 West: Residential Professional and Special Zoning District #12
Existing land use:	Vacant –un-irrigated crop land

Proposed land use:	Single-family residential, condominium units, parkland
Gross area:	100.15 acres
Lot area:	71.03 acres
Proposed number of lots:	84
Lot size:	Max.: 1,236,049 sq. ft. (condominium lot) Min.: 16,365 sq. ft.
Parkland requirements:	3.83 acres of parkland dedication is required; 18.20 acres of parkland is proposed

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potentially negative effects of property subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments reviewed this application and provided input on effects and mitigation. The Planning Board develops and recommends conditions of approval that are based on the departments' comments. The Findings of Fact, which are presented as an attachment, discuss the potential negative effects and the following conditions are recommended as measures that will mitigate them.

RECOMMENDED CONDITIONS

1. The subdivider shall depict 8-foot easements on the plat in accordance with the highlighted easement areas indicated on the plat review by the Montana-Dakota Utilities Company. *(Recommended by Montana-Dakota Utilities)*
2. 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.
3. 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.

VARIANCES

The applicant is requesting the following variances in conjunction with the preliminary plat:

- Section 23-601(k) that requires a local residential street pavement width of 37 feet back of curb to back of curb. The subdivider proposes a 28 foot pavement width plus a two-foot concrete ribbon on each side for total width of 32 feet.
- Section 23-601(m) that requires a cul-de-sac residential street be no longer than 600 feet. The subdivider proposes a 675 foot long cul-de-sac (Aspenridge Drive).

- Section 23-702(e) that requires curb and gutter on collector street and drive-over curbing on residential streets. The subdivider is proposing a two-foot concrete ribbon with adjacent swales to accommodate storm water drainage.
- Section 23-703(a) that requires sidewalks on both sides of all streets. The subdivider is proposing a series of linear parks, bike trails and on-street connectors to provide pedestrian mobility within the subdivision.

The proposed variances will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformities with the zoning regulations. Identical variances, with the exception of the cul-de-sac length, have been approved in the previous three filings for Ironwood Estates Subdivision. The off-street park and trail system is well underway, the drainage system of swales adjacent to the roads has performed well and the pavement design and layout has not caused any access or public safety issues. The Fire Department and the Police Department had no objections to the increase in the cul-de-sac length for Aspenridge Drive from 600 feet to 675 feet.

STAKEHOLDERS

A public hearing was held by the Planning Board on July 26, 2005. There was no public comment received at that meeting or any other public input up to the time this report was written.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, West Billings Plan, Transportation Plan and Heritage Trail Plan is discussed in the Findings of Fact.

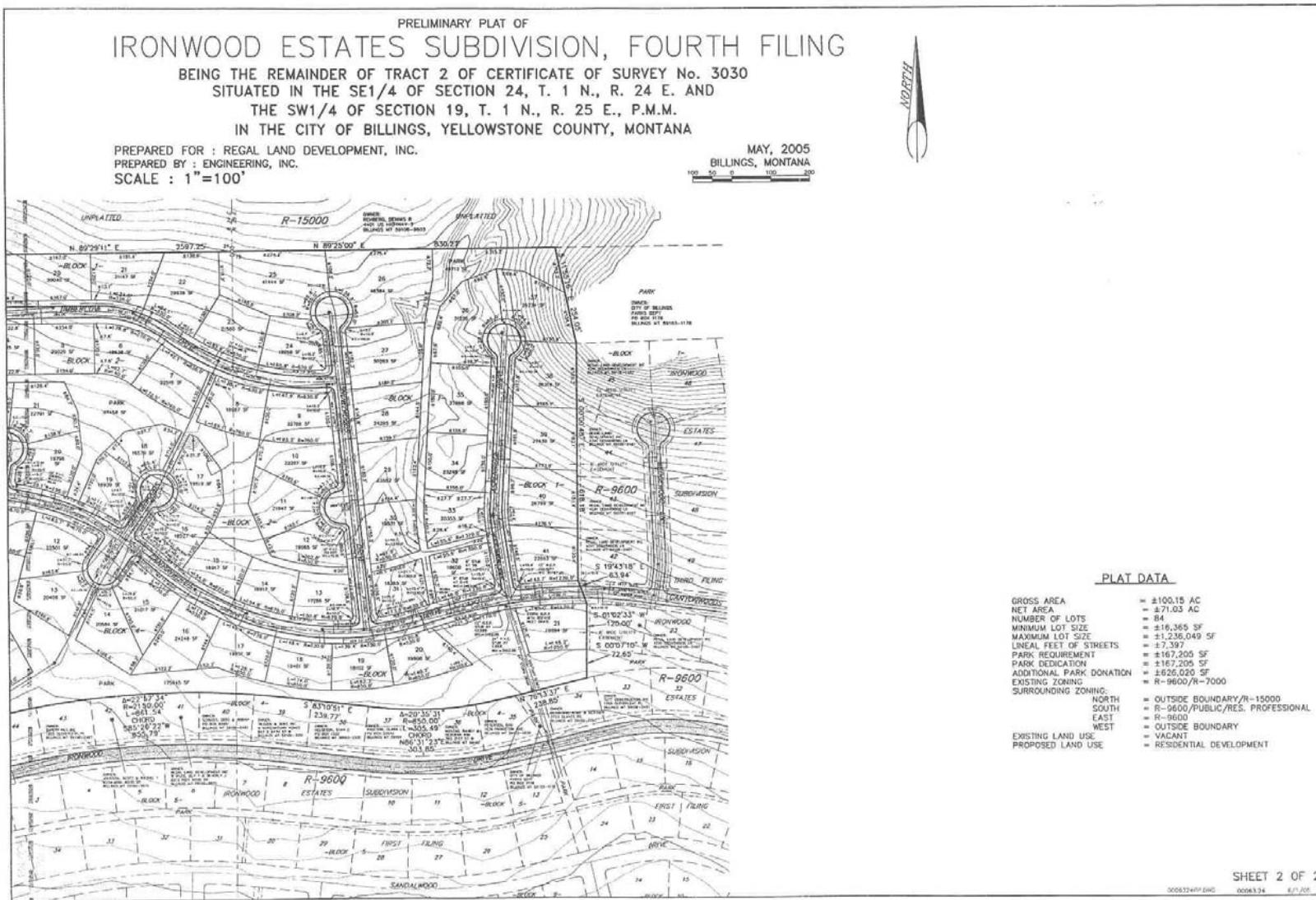
RECOMMENDATION

The Yellowstone County Board of Planning recommends that the Billings City Council conditionally approve the preliminary plat of Ironwood Estates Subdivision, 4th Filing, accept the attached findings of fact, and approve the variances from Sections 23-601(k), 23-601(m), 23-702(e) and 23-703(a) BMCC.

ATTACHMENTS

- A. Preliminary Plat & Master Plan
- B. Site photographs
- C. Findings of Fact
- D. Mayor's approval letter

ATTACHMENT A
Ironwood Estates Subdivision 4th Filing preliminary plat



ATTACHMENT A, continued
Ironwood Estates Subdivision 4th Filing preliminary plat

IRONWOOD ESTATES SUBDIVISION, FOURTH FILING

BEING THE REMAINDER OF TRACT 2 OF CERTIFICATE OF SURVEY No. 3030
SITUATED IN THE SE1/4 OF SECTION 24, T. 1 N., R. 24 E. AND
THE SW1/4 OF SECTION 19, T. 1 N., R. 25 E., P.M.M.
IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

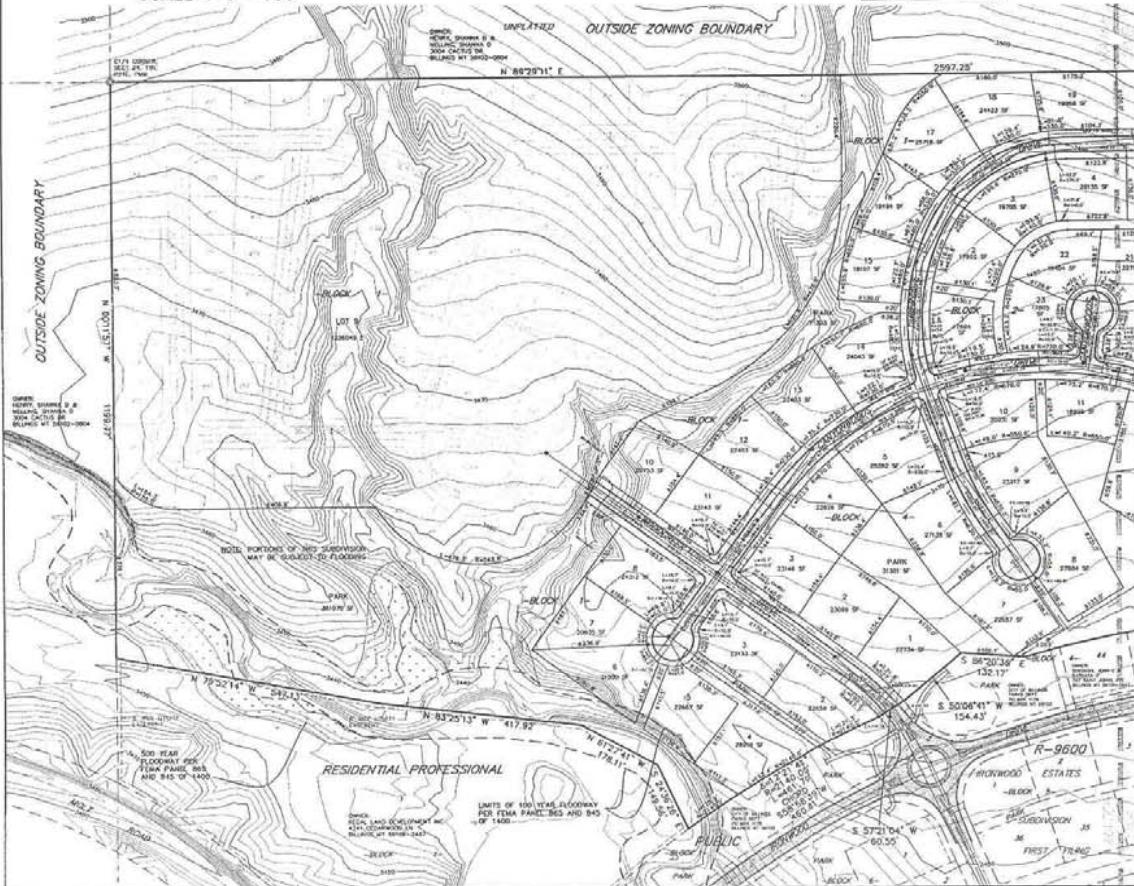
PREPARED FOR : REGAL LAND DEVELOPMENT, INC.
PREPARED BY : ENGINEERING, INC.

SCALE : 1"=100'

SCALE : 1 - 100

MAY, 2005
BILLINGS, MONTANA

NORTH



VICINITY MAP

PLAT DATA

GROSS AREA = 100.15 AC
 NET AREA = 71.03 AC
 NUMBER OF LOTS = 84
 MINIMUM LOT SIZE = 16.365 SF
 MAXIMUM LOT SIZE = 11,256.049 SF
 LINEAR FEET OF STREETS = 1,200 FT
 PARK REQUIREMENT = 167.205 SF
 PARK DEDICATION = 167.205 SF
 ADDITIONAL PARK DONATION = \$262.020 SF
 EXISTING ZONING = R-9600/R-7000
 SURROUNDING ZONING = OUTSIDE BOUNDARY/R-15000
 NORTH = R-9600/PUBLIC/RES. PROFESSIONAL
 SOUTH = R-9600
 EAST = OUTSIDE BOUNDARY
 WEST = VACANT
 EXISTING LAND USE = RESIDENTIAL DEVELOPMENT
 PROPOSED LAND USE =

Ironwood Estates Subdivision, Master Plan



ATTACHMENT B
Ironwood Estates Subdivision, 4th Filing Site Photographs



Figure 1: Looking north at the subject property.



Figure 2: Looking west across subject property

ATTACHMENT C
Findings of Fact

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

1. Effect on agriculture

There will be no effect on agriculture and agricultural water users. The property is 100.15 acres in size and has been out of active agricultural use for a number of years. It is located in a rapidly developing part of Billings and is no longer suitable for agriculture.

2. Effect on local services

- a. Utilities – Water and sanitary sewer facilities will be extended by the developer to serve this subdivision. All stormwater will be retained and then discharged to Cove Creek through a series of swales and detention ponds. Private utilities will be extended to this property under the companies' operating rules. Encroachment agreements with Conoco Phillips have been executed for all areas where public improvements for the 1st and 2nd filings of Ironwood Estates Subdivision and no further encroachments are necessary for this filing. Water pressure zones #4 and #41/2 are included within the Ironwood Subdivision. The City is preparing a design and construction contract for the installation of the storage reservoirs above Ironwood Estates Subdivision. Until these improvements are completed, local residents may experience fluctuation of water pressure. This condition is noted in the SIA.
- b. Solid waste – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - The subdivider will construct the internal streets to match the streets in the 1st, 2nd and 3rd filings of Ironwood Estates Subdivision: the local streets will have a 28 foot wide paved surface with 2 foot concrete ribbons on each side and the short cul-de-sacs will have a 24 foot wide paved surface with 2 foot concrete ribbons on each side. Traffic from this subdivision will use Canyonwoods Drive, Woodcreek Drive and Ironwood Drive to enter and leave the subdivision. The emergency access road improvements required as a condition of approval for Ironwood Estates 2nd Filing have been guaranteed. This emergency access road will be fully constructed if a secondary access cannot be obtained or constructed on or before April 15, 2010. One hundred seventy two acres of land directly east of Ironwood Estates is now in the preliminary stages of design and may offer a secondary access route.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #3, located at Parkhill and 17th, which is approximately 5.5 miles from this property. Police response will depend upon officer availability and location when a call for service is placed. AMR provides medical care and transport and response would probably come from the west-end station that is located on Grand Avenue at about 25th Street West.

- e. Schools – The subdivision is in School District 2. Elementary students will be assigned to Arrowhead Elementary and Will James for Middle School and West High School. The School District and the developer have designated an elementary school bus route through Ironwood Estates.
- f. Parks and Recreation – Because this is a major plat the subdivider must dedicate parkland or cash in lieu of parkland. The subdivider is providing 18.20 acres of parkland with this filing. The property will be included in a Park Maintenance District that will include all of the parkland and bikeways to be developed and maintained in Ironwood Subdivision. The subdivider has completed the Park Master Plan and the plan has been approved by the City Council.

3. Effect on the natural environment

There should be a small effect on the natural environment. There may be minor increases in air pollution during construction and from additional vehicle traffic in the area. Erosion control during construction is required by state law. Stormwater runoff is regulated by City and state authorities.

4. Effect on wildlife and wildlife habitat

There will be a small effect on wildlife and its habitat. The land is non-irrigated farmland and indigenous species may periodically inhabit the site. There are no known threatened or endangered species on the property.

5. Effect on the public health, safety and welfare

There is a mapped floodway and flood plain for Cove Creek and will be noted in the SIA and on the plat. There are also potentially expansive soils and future owners will be notified in the SIA and on the plat.

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

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

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

1. Growth Policy:

The subdivision meets the following goals/policies of the growth policy

- Predictable land use decisions that are consistent with neighborhood character.
- New developments that are sensitive and compatible with existing development.
- Rational consideration of neighborhoods for parks.
- Recreational facilities that serve the diverse needs of Billings.
- Accessible public lands including trails near the rims.
- More housing & business choices within neighborhoods.

The subdivision does not meet the following goals/policies of the growth policy

- Contiguous development focused in and around existing population centers.

- Affordable housing for all income levels
- Unobstructed views of the rimrocks surrounding the City of Billings.

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2005 Transportation Plan. The subdivision complies with the requirements of this plan. Preliminary study has been conducted for a Molt Road to Highway 3 connector road. A possible route corridor has been identified that includes the use of Ironwood Drive as the collector for this connection. This subdivision should not interfere with the design or location of this connector.

3. Heritage Trail Plan

The subdivision is also within the jurisdictional area of the Heritage Trail Plan. There are a number of bikeways planned within the subdivision that will allow connections to the rims. A direct connection to Yellowstone Club Estates is not planned at this time. The only connection to the south will be the emergency access road.

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

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

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

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

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

The property is in the Residential R-9,600, R-7,000 and Public zoning districts. The proposed subdivision conforms to the existing zoning.

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

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

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

All lots will have access to a public street.

CONCLUSIONS OF FINDING OF FACT

- The overall conclusion of the Findings of Fact is that the proposed Ironwood Estates 4th Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision will impact local services and cause some increase in demand for those services. However, when the vacant parcel is developed the homeowners will pay property taxes and fees that should help to support those services.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and doesn't conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, sanitary requirements and provides legal and physical access to each parcel.

ATTACHMENT D
Mayor's Approval Letter

August 22, 2005

Dan Wells
c/o Regal Land Development
P.O. Box 80445
Billings, MT 59108

Dear Sir:

On August 22, 2005, the Billings City Council conditionally approved the preliminary plat of the Ironwood Estates Subdivision, 4th Filing. The conditions of approval are as follows:

1. The subdivider shall depict 8-foot easements on the plat in accordance with the highlighted easement areas indicated on the plat review by the Montana-Dakota Utilities Company. *(Recommended by Montana-Dakota Utilities)*
2. 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.
3. 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.

The Council also approved the following variances from the City Subdivision Regulations.

- Section 23-601(k) that requires a local residential street pavement width of 37 feet back of curb to back of curb. The subdivider proposes a 28 foot pavement width plus a two-foot concrete ribbon on each side for total width of 32 feet.
- Section 23-601(m) that requires a cul-de-sac residential street be no longer than 600 feet. The subdivider proposes a 675 foot long cul-de-sac (Aspenridge Drive).
- Section 23-702(e) that requires curb and gutter on collector street and drive-over curbing on residential streets. The subdivider is proposing a two-foot concrete ribbon with adjacent swales to accommodate storm water drainage.
- Section 23-703(a) that requires sidewalks on both sides of all streets. The subdivider is proposing a series of linear parks, bike trails and on-street connectors to provide pedestrian mobility within the subdivision.

If you have questions please contact Nicole Cromwell in the Planning Department at 247-8662 or by email at cromwelln@ci.billings.mt.us .

Sincerely,

Charles F. Tooley, Mayor

Cc: Kjersten Olson, Engineering, Inc.
Rick Leuthold, P.E. Engineering, Inc.

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S

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Preliminary Plat of Legacy Subdivision
DEPARTMENT: Planning and Community Services, Ramona Mattix, AICP, Planning Director
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On June 1, 2005, the subdivider applied for preliminary major plat approval for Legacy Subdivision, which contains 57 lots on approximately 23 acres of land; the lots are proposed for single-family residences. The subject property is located on 52nd Street West midway between Grand Avenue and Central Avenue. The City Council will review the preliminary plat and approve, conditionally approve, or deny the proposed subdivision at the August 22, 2005, meeting. The owner is DC Capital Real Estate, LLC and the representing agent is Engineering, Inc.

ALTERNATIVES ANALYZED: State and City subdivision regulations require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated.

FINANCIAL IMPACT: Should the City Council approve the preliminary plat, the subject property may further develop, resulting in additional tax revenues for the City. However, it is unknown if the value of these proposed homes will generate sufficient taxes and fees to pay for the required services.

RECOMMENDATION

The Yellowstone County Board of Planning recommends conditional approval of the preliminary plat of Legacy Subdivision, approval of the variances, and adoption of the Findings of Fact as presented in the staff report to the City Council.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Preliminary Plat
- B. Site Photographs
- C. Findings of Fact
- D. Mayor's Approval Letter

INTRODUCTION

On June 1, 2005, the Planning Department received a preliminary plat application for Legacy Subdivision. The subject property is located on 52nd Street West midway between Grand Avenue and Central Avenue and contains approximately 23 acres of land to be subdivided into 57 lots for residential development. The subdivider is proposing three (3) phases for improvements and construction within the subdivision. Due to the annexation of the property by the City, the property, which was originally zoned Agricultural Suburban (AS), is now zoned Residential 9600 (R-9600).

PROCEDURAL HISTORY

- The preliminary plat application was submitted to the Planning Division on June 1, 2005.
- The subject property was annexed into the City of Billings by Ordinance #05-5327, on June 13, 2005.
- A departmental review meeting was conducted with the subdivider and their representative on June 16, 2005.
- The preliminary plat was resubmitted with revisions based on department reviews on June 23, 2005.
- The Planning Board reviewed the plat on July 12, 2005.
- The Planning Board conducted a public hearing on July 26, 2005, and forwarded a positive recommendation to the City Council.
- The City Council will consider the preliminary plat on August 22, 2005.

BACKGROUND

On June 1, 2005, the Planning Department received a preliminary plat application for Legacy Subdivision. The subject property contains approximately 23 acres of land; 56 lots are proposed for single-family residences and one (1) lot is proposed for multi-family. The subdivider is proposing three (3) phases for improvements and construction within the subdivision. Due to the annexation of the property by the City, the property, which was originally zoned Agricultural Suburban (AS), is now zoned Residential 9600 (R-9600).

The subject property is bordered on the north by single-family residences within Grand Acres Subdivision and vacant land proposed for Vintage Estates Subdivision, on the east by single-family residences within Oak Ridge Estates Subdivision and agricultural land and on the south and west by agricultural land and single-family residences.

General location: 52nd Street West midway between Grand Avenue and Central Avenue

Legal Description: Tract 3, Certificate of Survey Number 1877 located in the NW^{1/4}, Section 4, T1S, R25E

Subdivider: DC Capital Real Estate, LLC

Owner: Same

Engineer and Surveyor: Engineering Inc.

Existing Zoning:	R-9600
Existing land use:	Vacant Land
Proposed land use:	Residential Uses
Gross area:	23.57 acres
Net area:	15.31 acres
Proposed number of lots:	57
Lot size:	Max: 9,600 square feet Min.: 34,929 square feet
Parkland requirements:	Subdivider is proposing to pay a cash-in-lieu acres of parkland within the subdivision.

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potentially negative effects of property subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments reviewed this application and provided input on effects and mitigation. The Planning Board develops and recommends conditions of approval that are based on departmental comments. The Findings of Fact, which are presented as an attachment, discuss the potential negative impacts of the subdivision and the following conditions of approval are recommended as measures to further mitigate any impacts.

RECOMMENDED CONDITIONS OF APPROVAL

In order to mitigate the effects on agriculture and agricultural water users' facilities, local services, the natural environment, wildlife and wildlife habitat and protect public health, safety and welfare, the planning staff recommends the following conditions of approval:

1. Five (5) foot easements shall be provided on each side of each side of Camp Lane, Rich Lane, Dovetail Avenue, and Will Avenue for the provision of street lights, sidewalks, and fire hydrants. Said easements shall be separate from the required 8-foot utility easements along the lots. *(Recommended by City Engineering)*
2. The developer shall provide a monetary security guarantee for the Big Ditch crossing on Beringer Way prior to starting construction of Phase II. If for any reason the actual construction of the ditch crossing does not take place with Phase II, the monetary security shall remain in place until the crossing is constructed. *(Recommended by City Engineering)*
3. A gate stating "EMERGENCY ACCESS ONLY" shall be installed on 52nd Street West at the northeastern corner of the property to prevent access to the proposed subdivision from this street. *(Recommended by City Engineering)*

4. Rich Lane shall be realigned to a 90-degree angle at its intersection with 52nd Street West. (*Recommended by City Engineering*)
5. Section 2.G. of the SIA shall be revised to state that no more than three (3) detached single-family residences will be constructed on Lot 8, Block 5. (*Recommended by City-County Planning*)
6. One foot no access easements shall be provided along the eastern borders of Lots 9 and 10, Block 3, to prevent accesses from 52nd Street West. (*Recommended by City-County Planning*)
7. Section VI. A and B shall be revised to state the Public Works Director instead of the City Engineer. (*Recommended by the Public Utilities Department*)
8. A Park Maintenance District (PMD) shall be created for the maintenance of the park to be located in the southeastern corner of the property. (*Recommended by the Parks and Recreation Department*)
9. The Cottonwood Park Special Improvement District (SID) and Park Maintenance District (PMD) shall be expanded to include the proposed subdivision for the maintenance and construction of Cottonwood Park. (*Recommended by the Parks and Recreation Department*)
10. The subdivider shall depict 8-foot easements on the plat in accordance with the highlighted easement areas indicated on the plat review by the Montana-Dakota Utilities Company. (*Recommended by Montana-Dakota Utilities*)
11. The applicant shall provide centralized delivery box with a sufficient pullout to accommodate a mailbox carrier vehicle. The location of the box shall be reviewed and approved by the post office. (*Recommended by the United States Postal Service*)
12. A note shall be added to the SIA that construction traffic shall be limited to Beringer Way. (*Recommended by the Yellowstone County Board of Planning*)
13. Prior to the submission of the final plat, a petition for Annexation of the County Park (Grand Acres Park) on the southern portion of the site shall be submitted and approved by the City Council. (*Recommended by City-County Planning*)
14. Prior to the submittal of the final plat, the subdivider shall work with the County to transfer ownership of the existing County Park to the City. The subdivider shall work with the City Legal Department and the City Parks and Recreation Department to transfer the parkland to the southeastern portion of the subject property. (*Recommended by Yellowstone County Board of Planning, the County Legal Department and City-County Planning*)
15. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

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

VARIANCES REQUESTED

A variance to permit 50-feet of right-of-way, where Section 23-601(k), BMCC, requires 60-feet of right-of-way for local residential streets. Engineering staff is supportive of this variance, as a 50-foot width is adequate to accommodate the proposed traffic generation for the subdivision. Similar variances have been approved by the City Council, provided that 5-foot easements for sidewalks, street lights, and fire hydrants are provided on both sides of the right-of-way. Condition #1 requires that the 5-foot easements be depicted on the plat. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformities with the zoning regulations.

A variance from Section 23-605(d), BMCC, which states that double frontage lots should be avoided. As depicted on the plat, proposed Lots 9 and 10, Block 3, will be bordered on the east by 52nd Street West and on the west by a cul-de-sac off of Camp Lane. Staff finds that this variance is acceptable, provided that a 1-foot no access strip is provided along the eastern boundaries of Lots 9 and 10 in order to prevent access from 52nd Street West. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformities with the zoning regulations.

STAKEHOLDERS

A public hearing was conducted on July 22, 2005. There was public comment received at that meeting regarding the proposed road improvements to 52nd Street West and whether there would be increased traffic within Oak Ridge Estates, as a result of this application. The entire width of the portion of 52nd Street West that borders the subject property was annexed on June 13, 2005. Therefore, it is now a City right-of-way, in which the subdivider will be paving a 30-foot half-width for access to the proposed subdivision. At such time that Oak Ridge Estates is annexed into the City, it is anticipated that the remaining 30-foot width along this portion of 52nd Street West will be paved. The Traffic Accessibility Study submitted with this application indicates that the main road into the subdivision will be via Beringer Way through Vintage Estates to the north; however a secondary access will be through Dovetail Avenue from Oak Ridge Estates. In order to minimize impacts to the surrounding properties, Condition #12 requires a statement be added to the SIA that construction traffic shall be limited to Beringer Way.

Additionally, there were concerns regarding the County Park located along the southern boundary of the site, approximately in the location of Lots 13-15, Block 6. The property, known as Grand Acres Park, was not annexed into the City with the subject property on June 13, 2005. As such, Condition #13 requires the subdivider to submit a petition for annexation, to be approved by the City Council prior to the submission of the final plat. Furthermore, in order to address ownership of the property, which is currently County land, Condition #14 requires the subdivider to work with the County regarding the transfer of the land from County ownership to the City. Once the property is deeded to the City, the subdivider shall work with the City Legal Department and the City Parks and Recreation Department to transfer the land to the southeastern portion of the site for a parkland dedication.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, the Transportation Plan and Heritage Trail Plan are discussed within the Findings of Fact.

RECOMMENDATION

The Yellowstone County Board of Planning recommends conditional approval of the preliminary plat of Legacy Subdivision, approval of the variances, and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

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

ATTACHMENT B

Site Photographs



Figure 1: View from the northeast corner of the property looking south along the 52nd Street West right-of-way.



Figure 2: View from the northeast corner of the property north along the 52nd Street West right-of-way and residences within Grand Acres Subdivision.



Figure 3: View from the 52nd Street West right-of-way where it crosses the Big Ditch looking west at the ditch. Vintage Estates is proposed for the vacant land directly west of the pictured single-family residence.



Figure 4: View from the northeast corner southwest toward the subject property.

ATTACHMENT C
Findings of Fact

The Planning Board is forwarding the recommended Findings of Fact for Legacy Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Sections 23-304(c), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The land to be subdivided is currently utilized for crop production. The proposed subdivision will remove approximately 24 acres from agricultural production. By virtue of the subdivision being annexed into the City, the conversion of agricultural land to residential development is appropriate. There may be conflicts between the proposed residential subdivision and existing agricultural operations

There is a 60-foot wide Big Ditch right-of-way located along the northern boundary of the subject property. There are no water rights from this ditch for the subject property. A permanent access and culvert are proposed for both 52nd Street West and Beringer Way across the Big Ditch as part of Phase II. The subdivider will obtain permission from the ditch company prior to altering the ditch for the accesses.

2. Effect on local services

- g. **Utilities** – Water to the subject property will be extended from the existing 8-inch water main to be located in Beringer Way when Vintage Estates is developed. An additional 12-inch water main will be installed in 52nd Street West. Sewer lines will be extended from Beringer Way to a lift station located at the southern boundary of the subject property. The 8-inch line will be extended from this main into the internal streets proposed for the subdivision.
- h. **Stormwater** – As specified in the submitted Subdivision Improvements Agreement (SIA), stormwater will be retained onsite through a combination of surface drainage and curbs and gutters that drain to subsurface storage located under the proposed park in the southeastern corner of the subject property. All drainage improvements, including the subsurface storage shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual*.
- i. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

Streets - Access to the proposed subdivision will be via Beringer Way from the north (Vintage Estates) and Dovetail Avenue (Oak Ridge Estates) from the east. All internal roads are to be dedicated to the public. Beringer Way, which enters the subdivision from the north, will be continued south from Vintage Estates with the standard 60-foot width. Camp Lane, Dovetail Avenue, Will Avenue, and Rich Lane are proposed to be 50-feet in width per the requested variance. Though the proposed pavement widths satisfy the standards necessary for emergency vehicle access and traffic circulation, the subdivider has requested a variance to permit 50-feet of right-of-way where 60-feet is required. Staff is supportive of this variance, provided that 5-foot easements are provided on each side of the street to accommodate sidewalks, street lights, and fire hydrants. Condition #1 requires that these easements be depicted on the plat.

The subdivider is proposing to dedicate 40-feet of right-of-way and pave a 30-foot half width for 52nd Street West along the property frontage with curb, gutter, and a 5-foot wide sidewalk. The existing wooden bridge located across the Big Ditch will be removed and a culvert and paved road surface will be constructed to accommodate emergency vehicle traffic. At this time, 52nd Street West is being proposed for emergency access only and is required to be gated by Condition #3, to prevent through traffic on this street until such time that the adjacent properties develop.

The Engineering Department expressed concerns regarding the proposed angle of the curve at the intersection of Rich Lane and 52nd Street West. A 90-degree angle would be more conducive for aligning streets when the property to the east develops, as well as improve sight distance at this intersection when 52nd Street West is constructed. Therefore, Condition #4, specifies that Rich Lane shall be realigned at its intersection with 52nd Street West.

A Traffic Accessibility Study (TAS) was submitted to the Engineering Department for review and approval. The TAS determined that the subdivision will have the most impact on the intersections of 54th Street West and Grand Avenue and 48th Street West and Grand Avenue. Therefore, as stated within the SIA, the subdivider will be required to provide 0.9 percent of the cost of improvements to the 54th Street West/Grand Avenue intersection and 3.0 percent to the cost of improvements to the intersection of 54th Street West and Grand Avenue.

- j. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24th Street West (Station #5). The subdivision is located within the ambulance service area of American Medical Response(AMR). In their review AMR stated that there are no necessary changes required for staffing at this time, however, as the City expands additional staff will be required.
- k. **Schools** – The subdivision is located within School District #2. No comments have been received from School District #2.

1. **Parks and Recreation** – As part of this major plat, the subdivider is required to provide 1.61 acres of dedicated parkland. The subdivider will be providing a cash-in-lieu for the proposed park dedication.

As indicated on the submitted plat, the applicant is proposing to provide a small 19,554 square foot park in the southeastern portion of the subject property. This park will serve as subsurface storm drainage for the subdivision, which is proposed to be at a depth of 5 to 6 feet, which will allow for useable park space on the surface. The Parks and Recreation Department has indicated that the proposed park will not count toward the required parkland dedication for this subdivision as it has been the position of the Parks Department to not accept parcels less than 4 acres in size for parkland dedication. However, Parks and Recreation has agreed to maintain the park, provided that a Park Maintenance District (PMD) is created for its maintenance (required by Condition #8) and that the developer agrees to the terms set forth in the Cottonwood Park Special Improvement District (SID) and Park Maintenance District (PMD). Condition #9 requires that the Cottonwood Park PMD and SID be expanded to include the proposed subdivision.

- h. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #11. The location of the mail box shall be reviewed and approved by the post office.

3. Effect on the natural environment

The Soil Survey of Yellowstone County indicates that the soils in this area consist of predominately silty clays, which with the high water table in this area have a potential for flooding, shrinking, and swelling. The movement of these layers can cause shifting in footings and structural damage to foundations if not properly designed. A note has been added to the SIA regarding the presence of these soils and that a geotechnical study may be required with building permit submittals.

Based on previous a flood hazard study, this area is located within a potential flood zone, though not mapped by the Federal Emergency Management Agency (FEMA). The natural drainage for Cove Creek has been obliterated by agricultural development south of Rimrock Road. Consequently, the flood waters tend to spread laterally along the topographic depressions as they head southward. While the subdivision is designed to handle additional runoff resulting from development, the detention facilities are not designed to handle the 100-year flood volumes from Cove Creek. The same problem exists throughout the west end where existing and proposed developments intersect the flood hazard zone. A comprehensive study and strategies to mitigate the flood hazards along the entire drainage length is currently in process. Unfortunately, the mitigation strategies of a single subdivision will not resolve the issue, and may actually exacerbate the problem for downstream properties. As this is a known area for potential flooding, the submitted SIA states that it is recommended that each house be constructed a minimum of 18 inches above the top of the curb elevation fronting each lot.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. As indicated within the General Conditions the Run with the Land section of the submitted SIA, future property owners should be aware that the proposed subdivision is in close proximity to prime deer, antelope and wild turkey habitat and it is likely that homeowners will experience damage to landscaping.

5. Effect on the public health, safety and welfare

There are three (3) conditions that exist on the subject property that may potentially create problems for future landowners: flood hazard, expandable clay soil, and wildlife. These conditions are noted within the “Conditions that Run with the Land” section of the submitted SIA.

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

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-210, MCA.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? [BMCC 23-304 (c) (3)]

1. Yellowstone County-City of Billings 2003 Growth Policy

The proposed subdivision is consistent with the following goals of the Growth Policy:

- a. **Goal: More housing and business choices within each neighborhood (p. 6).**
The proposed subdivision would provide for more housing choices within this portion of the city.
- b. **Goal: Safe and efficient transportation system characterized by convenient connections and steady traffic flow (p. 10).**
The proposed subdivision will provide public streets improved to city standards that connect with existing streets. Thus, creating more efficient transportation connections and ease of traffic flow.
- c. **Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness (p. 9).**

The subdivider has proposed a Heritage Trail easement along the southeastern boundary of the site. Additionally, there is a trail along the southern boundary of Vintage Estates to the north along the Big Ditch.

The proposed subdivision is inconsistent with the following goals of the growth policy:

- a. **Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (p. 6).**

With the exception of Oak Ridge Estates to the east and Vintage Estates proposed to the north, the subject property is predominately surrounded by agricultural land and low density residential. Although inconsistent with the surrounding land uses, as the western portion of the City continues to expand it is anticipated that more residential developments such as the one proposed will be created.

- b. **Goal: Contiguous development focused in and around existing population centers separated by open space (p. 6).**

The subject property is not an infill development within the City and was annexed for the purpose of subdividing.

2. Urban Area 2000 Transportation Plan

The proposed subdivision adheres to the goals and objectives of the 2000 Transportation Plan and preserves the street network and street hierarchy specified within the plan.

3. Heritage Trail Plan

The proposed subdivision lies within the jurisdiction of the Heritage Trail Plan. The Big Ditch is depicted as a multi-use trail area, which has been provided on the north side of the ditch with the previous preliminary plat approval of Vintage Estates. The applicant is proposing a 510-foot long trail easement along the southeastern boundary of the property, which may connect to the property to the east in the future.

In addition, the Heritage Trail depicts 52nd Street West as a Primary Bikeway, which will be striped in the future.

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)]

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in 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 subdivision will utilize City water, sanitary sewer, and solid waste collection and disposal services. All services are approved and regulated by state and federal authorities.

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

The subject property is located within the Residential 9600 (R-9600) zoning district and shall comply with the standards set forth in Section 27-310(e)(1), BMCC.

The SIA specifies that Lot 8 of Block 5 shall contain no more than four (4) residential units. However, the minimum lot square footage necessary for four (4) units in the R-9600 zoning district is 38,400; Lot 8 contains 34,929 square feet. Condition #5 requires that the SIA be revised to state that no more than three (3) units shall be constructed on Lot 8, Block 5.

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)]

As required by Condition #10, the applicant shall provide 8-foot utility easements, where indicated on the plat review submitted by the Montana-Dakota Utilities Company.

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 to the proposed subdivision will be provided through internal dedicated right-of-ways from Dovetail Avenue and Beringer Way. Internal access is provided by five (5) streets to be dedicated to the public.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Legacy Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, August 22, 2005.

Charles F. Tooley, Mayor

ATTACHMENT D
Mayor's Approval Letter

August 22, 2005

DC Capital Real Estate, LLC
2680 Overland Avenue, Suite F
Billings, Montana 59102

Dear Applicant:

On August 22, 2005, the Billings City Council conditionally approved the preliminary plat of Legacy Subdivision. The conditions of approval are as follows:

1. Five (5) foot easements shall be provided on each side of each side of Camp Lane, Rich Lane, Dovetail Avenue, and Will Avenue for the provision of street lights, sidewalks, and fire hydrants. Said easements shall be separate from the required 8-foot utility easements along the lots. *(Recommended by City Engineering)*
2. The developer shall provide a monetary security guarantee for the Big Ditch crossing on Beringer Way prior to starting construction of Phase II. If for any reason the actual construction of the ditch crossing does not take place with Phase II, the monetary security shall remain in place until the crossing is constructed. *(Recommended by City Engineering)*
3. A gate stating "EMERGENCY ACCESS ONLY" shall be installed on 52nd Street West at the northeastern corner of the property to prevent access to the proposed subdivision from this street. *(Recommended by City Engineering)*
4. Rich Lane shall be realigned to a 90-degree angle at its intersection with 52nd Street West. *(Recommended by City Engineering)*
5. Section 2.G. of the SIA shall be revised to state that no more than three (3) detached single-family residences will be constructed on Lot 8, Block 5. *(Recommended by City-County Planning)*
6. One foot no access easements shall be provided along the eastern borders of Lots 9 and 10, Block 3, to prevent accesses from 52nd Street West. *(Recommended by City-County Planning)*
7. Section VI. A and B shall be revised to state the Public Works Director instead of the City Engineer. *(Recommended by the Public Utilities Department)*
8. A Park Maintenance District (PMD) shall be created for the maintenance of the park to be located in the southeastern corner of the property. *(Recommended by the Parks and Recreation Department)*

9. The Cottonwood Park Special Improvement District (SID) and Park Maintenance District (PMD) shall be expanded to include the proposed subdivision for the maintenance and construction of Cottonwood Park. *(Recommended by the Parks and Recreation Department)*
10. The subdivider shall depict 8-foot easements on the plat in accordance with the highlighted easement areas indicated on the plat review by the Montana-Dakota Utilities Company. *(Recommended by Montana-Dakota Utilities)*
11. The applicant shall provide centralized delivery box with a sufficient pullout to accommodate a mailbox carrier vehicle. The location of the box shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
12. A note shall be added to the SIA that construction traffic shall be limited to Beringer Way. *(Recommended by the Yellowstone County Board of Planning)*
13. Prior to the submission of the final plat, a petition for Annexation of the County Park (Grand Acres Park) on the southern portion of the site shall be submitted and approved by the City Council. *(Recommended by City-County Planning)*
14. Prior to the submittal of the final plat, the subdivider shall work with the County to transfer ownership of the existing County Park to the City. The subdivider shall work with the City Legal Department and the City Parks and Recreation Department to transfer the parkland to the southeastern portion of the subject property. *(Recommended by Yellowstone County Board of Planning, the County Legal Department and City-County Planning)*
15. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
16. The final plat shall comply with all requirements of the County Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

The Billings City Council also approved the following variances from the City Subdivision Regulations with the preliminary plat approval:

- A variance to permit 50-feet of right-of-way, where Section 23-601(k), BMCC, requires 60-feet of right-of-way for local residential streets.
- A variance from Section 23-605(d), BMCC, which states that double frontage lots should be avoided.

Should you have questions please contact Aura Lindstrand with the Planning Division at 247-8663 or by email at lindstranda@ci.billings.mt.us.

Sincerely,

Charles F. Tooley, Mayor

Pc: Will Ralph, Engineering, Inc.

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

T1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$925,708.24 have been audited and are presented for your approval for payment. A complete listing of the claims dated July 25, 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

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

T2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$498,316.07 have been audited and are presented for your approval for payment. A complete listing of the claims dated July 29, 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, August 22, 2005

TITLE: Public Hearing and First Reading of an Ordinance expanding Ward IV
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On August 8, 2005, the City Council adopted Resolution No. 05-18317 annexing 172.395 acres located between Ironwood Subdivision and the rimrocks, north of Yellowstone Club Estates (Annexation #05-07). The property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward IV will be held on August 22, 2005. The second reading of the ordinance is scheduled for Council action on September 12, 2005.

FINANCIAL IMPACT: There are no direct financial impacts if this ordinance is approved.

RECOMMENDATION

Staff recommends that the City Council hold the public hearing and approve the first reading of this ordinance that adds property to City Ward IV.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

A: Ward Ordinance and Exhibit A

ORDINANCE NO. 05-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD IV PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

1. **AMENDMENT.** Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to the following designated Ward the following described real property:

A tract of land situated in the S1/2 of Section 19, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: Certificate of Survey 3030, Tract 1, Recorded February 14, 2000, Under Document No. 3081121, Records of Yellowstone County, Montana; Containing 172.395 gross and net acres, more or less.

(# 05-07) See Exhibit "A" Attached

2. **CERTIFICATION.** Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.
3. **REPEALER.** All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 22nd day of August, 2005.

PASSED by the City Council on the second reading this 12th day of September, 2005.

THE CITY OF BILLINGS:

Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CITY CLERK

EXHIBIT A



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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, AUGUST 22, 2005

TITLE: Public Hearing for Special Review #790

DEPARTMENT: Planning & Community Services

PRESENTED BY: Lora Mattox, Planner II, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: A special review request to allow on premise beer service without gaming in Claimstake Subdivision, Block 2, Lot 10, zoned Controlled Industrial. The subject property is located at 2701 Enterprise, Suite 1. The owner is Delbert L. Bailey and Timothy Dernbach; the agent is Tim Mohr. The Zoning Commission conducted a public hearing on August 2, 2005 and is forwarding a 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 increase tax revenue to the city.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation per a 5-0 vote that the City Council grant conditional approval for Special Review #790.

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

ATTACHMENTS

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

INTRODUCTION

The applicant is requesting a special review to allow on premise beer service without gaming at a proposed microbrewery in Claimstake Subdivision, Block 2, Lot 10 zoned Controlled Industrial. The property is located at 2701 Enterprise, Suite 1. The property currently contains a 9,600 square foot office/warehouse complex which is divided into four units.

The applicant proposed to start a microbrewery in an existing but vacant office/warehouse. Although the current warehouse space meets the building requirements unique to a brewery, such as large overhead doors, high ceilings and concrete floors, the space will be altered to house the microbrewery and to meet the codes for the intended use. The proposed brewery will initially create one job with a minimum average annual wage equal to the living wage index. As the brewery's production increases, a second job will be created. The sample room will create one part-time job.

The intended use of the property is a seven-barrel (217 gallons per batch) microbrewery with a small sample room. Modifications to the building will include the addition of a floor drain and a ventilation system. The brewing equipment is self-contained and will only need to be wired and plumbed into the building's current electrical and plumbing systems. The proposed sample room would operate between the hours of 4 p.m. and 8 p.m., Monday through Saturday. The sampling room will provide snacks only during these hours, no other food service is planned. The sample room seats approximately 40 people. There will be no entertainment, no live music, and no gaming machines.

The special review is being requested to allow the proposed microbrewery can operate a sample room on premise. Section 16-3-213-(2)(b) of the Montana Code Annotated provides:

“A small brewery may, at one location for each brewery license, provide samples of beers that were brewed and fermented on the premises in a sample room located on the licensed premises. The samples may be provided with or without charge between the hours of 10 a.m. and 8 p.m.; no more than 48 ounces of malt beverage may be sold or given to each individual customer during a business day.”

Per Article 6-1200 of the Billings Municipal Code, the microbrewery is considered a warehouse classification with the accessory sampling room. The microbrewery will need to provide 10 parking spaces. The current site offers 18 parking spaces. At the time of this application, the remaining three office/warehouse sites are vacant. When the adjacent units are occupied, the tenants may need to develop a shared parking agreement or request a variance from the parking requirements.

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.

Section 27-612.A.1. Supplemental Commercial Development Standards specified that a distance of six hundred (600) feet between property lines, measured in a straight line, is maintained from any building that is predominantly used as a church or school or from a public park that contains

a children's playground or playfield. Staff finds that this criterion is met through this application.

The Planning Department reviewed the application and recommended conditional approval to the Zoning Commission. Staff felt that this use was compatible with the surrounding zoning and uses.

The Zoning Commission conducted a public hearing on August 2, 2005. The applicants' agent, Tim Mohr attended the public hearing. There was no one in opposition to the proposed special review present at the public hearing and the Planning Department did not receive negative comments from other city departments on this proposal.

This business is exempt from Chapter 27-1100 Landscaping by definition in Section 27-1102 C (b).

PROCEDURAL HISTORY

- The application was received on July, 5, 2005.
- The City Zoning Commission voted 5-0 at its hearing on August 2, 2005 for conditional approval of the special review, therefore, forwarding a recommendation to the City Council of conditional approval.
- The City Council will conduct a public hearing for consideration of this application on August 22, 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.
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 voted 5-0 on Special Review #783 and therefore is forwarding a recommendation of conditional approval this application.

The Planning Department during review of this special review forwarded the following conditions of approval to the Zoning Commission for consideration:

1. The special review approval shall be limited to Lot 10, Block 2 of Claimstake Subdivision at 2701 Enterprise, Suite 1, as shown on the submitted site plan.
2. All limitations on expansion of the alcohol service area shall be in accordance with Section 27-613 of the Billings Montana City Code.
3. Trash enclosures shall be constructed of wood, vinyl, brick, stone or concrete block or other building materials and provide a closing gate on one side. No chain link or wire material is allowed for this enclosure.

****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

The Zoning Commission conducted a public hearing on August 2, 2005, for the proposed special review. The result of that hearing resulted in a 5-0 vote, therefore forwarding a recommendation of conditional approval to the City Council.

- The applicants' agent spoke at the public hearing on the microbrewery business. There was no other public comment during the public 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:

- Coordinated economic development efforts that target business recruitment, retention, and expansion.
- Strengthen area economy.
- Create living-wage jobs.

RECOMMENDATION

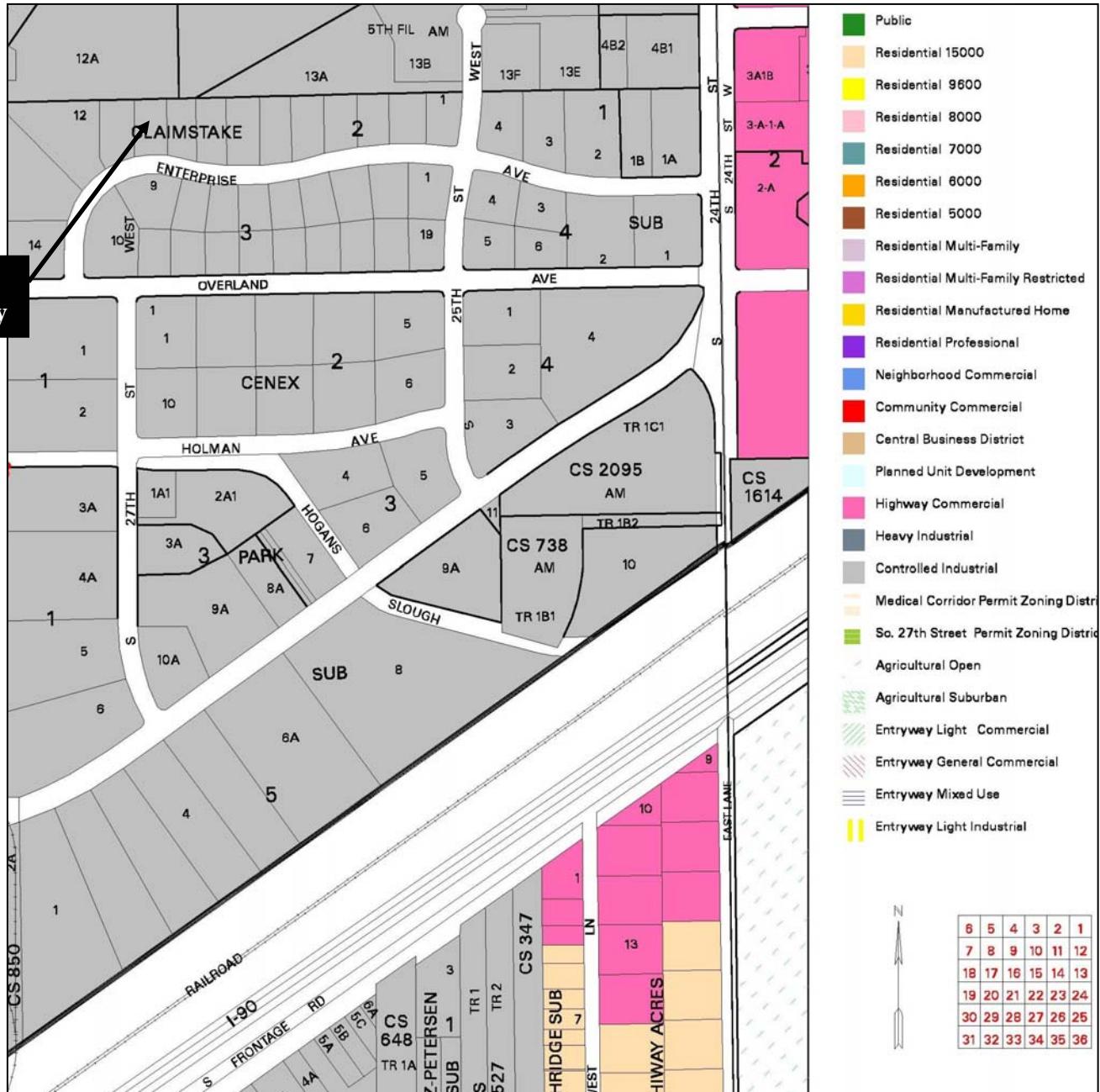
The Zoning Commission is forwarding a recommendation of conditional approval for Special Review #790.

ATTACHMENTS

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

ATTACHMENT A
Zoning Map

**Subject
Property**



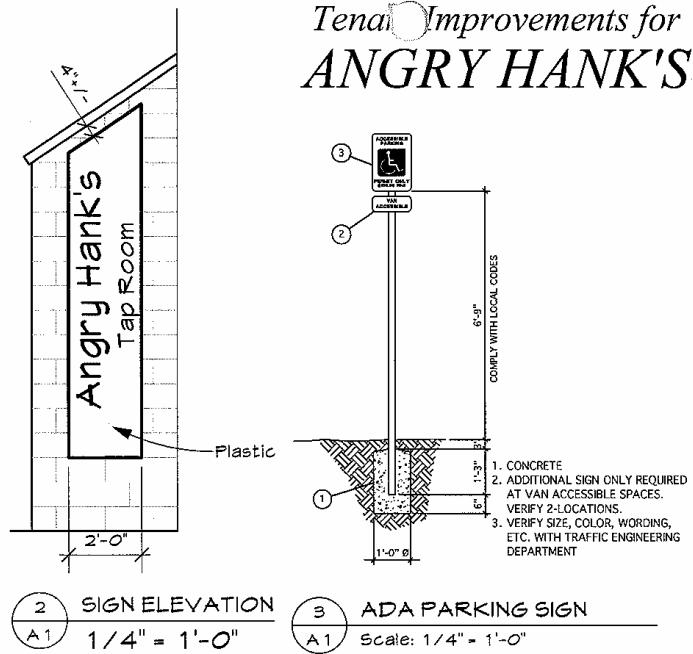
ATTACHMENT B



View looking north towards the subject property.



Tenant Improvements for
ANGRY HANK'S MICROBREWERY
 2701 Enterprise Avenue
 Billings, Montana 59102



BUILDING CODE SUMMARY

CODE - 2003 IBC, ARM/Title 24/Ch. 301, 1997 UFC, 1999 NEC
 1997 LMC, 1997 UPC

Occupancy Classification - S-1, F-2, A-2

Type of Construction - III-B - 8" masonry ext. walls

Allowable Floor Area

Table 503 allowable area:

F-2	-	18,000 s.f.
A-2	-	9,500 s.f.
S-1	-	17,500 s.f.

Area Modifications 508:

F-2	-	4,500 s.f.
A-2	-	2,375 s.f.
S-1	-	4,375 s.f.

Total Allowable Area:

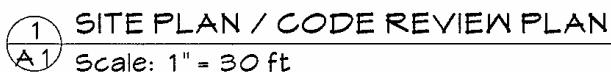
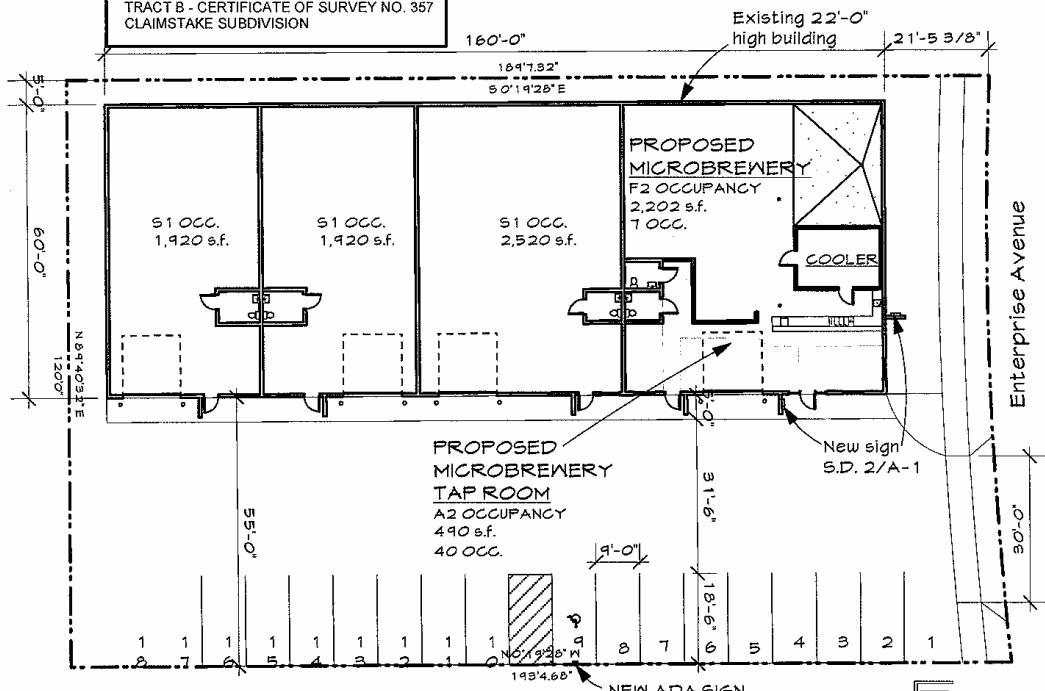
F-2	-	18,000 + 4,500 = 22,500 s.f.
A-2	-	9,500 + 2,375 = 11,875 s.f.
S-1	-	17,500 + 4,375 = 21,875 s.f. xx

Actual Total Area - 9,600 s.f.

302.3.1 - Nonseparated uses allowed

Parking Requirements

Microbar - 490 s.f. / 100 =	5 spaces
Microbrewery - 2,200 s.f. / =	3 spaces
Warehouse - 6,420 s.f. =	10 spaces
	18 spaces



ATTACHMENT C: - Site Plan

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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, AUGUST 22, 2005

TITLE: Public Hearing for Special Review #791

DEPARTMENT: Planning & Community Services

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

PROBLEM/ISSUE STATEMENT: This is a Special Review to allow the change from one nonconforming use (gasoline service station) to another nonconforming use – an automobile sales lot on Lots 18, 19 and 20, Block 1, Descro Subdivision. The subject property is currently a vacant gasoline service station and located at 2404 Broadwater Avenue, zoned Neighborhood Commercial. J and D Industries, is the owner of the property and John Bonner is the agent. The Zoning Commission conducted a public hearing on August 2, 2005, and is forwarding a recommendation of conditional approval to the City Council.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, should have little financial impact to the City.

RECOMMENDATION

The Zoning Commission is recommending that the City Council grant conditional approval for Special Review #791.

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

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plans

INTRODUCTION

The applicant is requesting a Special Review to convert a previous nonconforming use – Dick's 24th Street Conoco gas and service station to a new and used car sales lot for Philip Hurling Motors. The property is zoned Neighborhood Commercial and is located at 2404 Broadwater Avenue, the southwest corner of the intersection of 24th Street West and Broadwater Avenue. The Zoning Commission voted 5-0 to recommend conditional approval to the City Council.

PROCEDURAL HISTORY

- A special review application to convert from one nonconforming use to another nonconforming use was received on July 5, 2005.
- The City Zoning Commission voted 5-0 at its public hearing on August 2, 2005 for conditional approval of the special review.
- The City Council will conduct a public hearing and consider this application on August 22, 2005.

BACKGROUND

Section 27-405(c) of the BMCC allows the change from one nonconforming use to another nonconforming use in any zoning provided the governing body finds the new use to be equally appropriate or more appropriate to the district. The owner considered a zone change to Community Commercial, which allows auto sales, however considering the previous owners experience and the existing neighborhood, he opted to seek a special review for this specific use. The property was the subject of a zone change request to Community Commercial in 2001. Many of the existing neighbors objected to the zone change due to the potential increase in the types of commercial activity and further intrusion into the Descro Neighborhood. That application was withdrawn before the City Council vote.

The City Zoning Commission has considered the application and is recommending conditional approval. The gasoline service station at this location was an automobile oriented service establishment and operated daily. The proposed use, an automobile sales lot, is also an automobile related service. The overall impact should be lower on the existing residential neighborhood to the south, west and north. Hours of operation will be fewer than the gas station and any noise, dust and fumes normally associated with a gasoline station will not be present with this auto sales lot. The remodeling of the building will change the interior space for an office area and detailing of vehicles will be done in the existing garage bays. Display of vehicles will be on the re-paved portion of the lot facing 24th St West and Broadwater Avenue.

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 Article (27-1500).
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 proposed use is compatible with the adjoining land uses.

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

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is recommending approval with the following conditions:

4. The special review approval shall be limited to Lots 19, 20 and the east 10 feet of Lot 18 of Block 1, Descro Subdivision.
5. The special review is for a new and used vehicle sales lot. No other use is allowed or intended by this special review approval.
6. Any 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).
7. There shall be no auto body repair work done on this site including but not limited to painting and sandblasting.
8. Building alarms and security devices for vehicles shall be silent alarms.
9. There shall be no public address system designed to broadcast outside the building.
10. All vehicles parked or stored on the site shall be operable and shall not be stored across sidewalks or on the street right of way.
11. A change to any other use shall be in conformance with the uses and restrictions for Neighborhood Commercial zones.

****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

The public hearing held on August 2, 2005, before the City Zoning Commission was attended by Mr. John Bonner of J and D Industries. Mr. Bonner offered testimony to the Zoning Commission. No surrounding property owners attended the public hearing or submitted objections to the proposed special review use.

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.

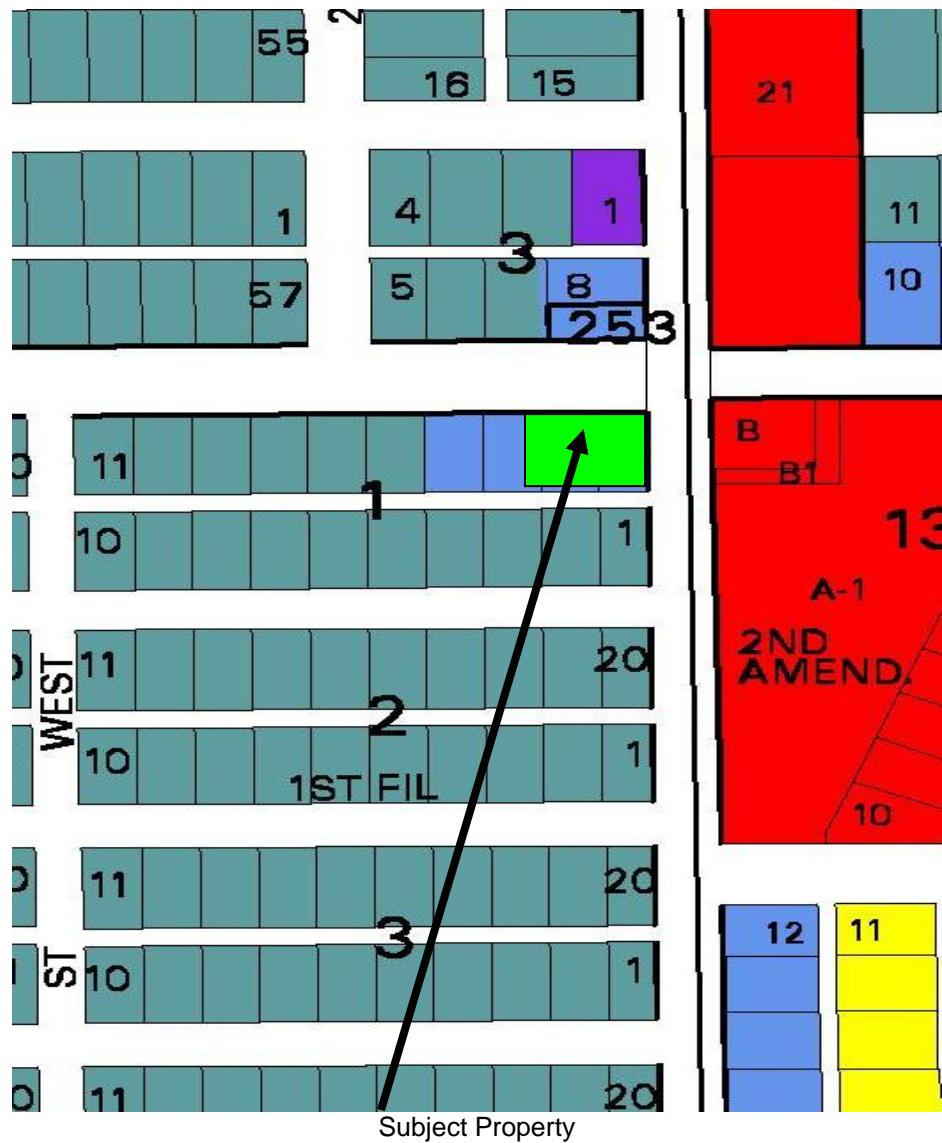
RECOMMENDATION

The Zoning Commission is recommending that the City Council grant conditional approval for Special Review #791.

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plans

ATTACHMENT A
Zoning Map



ATTACHMENT B
Site Photographs for Special Review #791

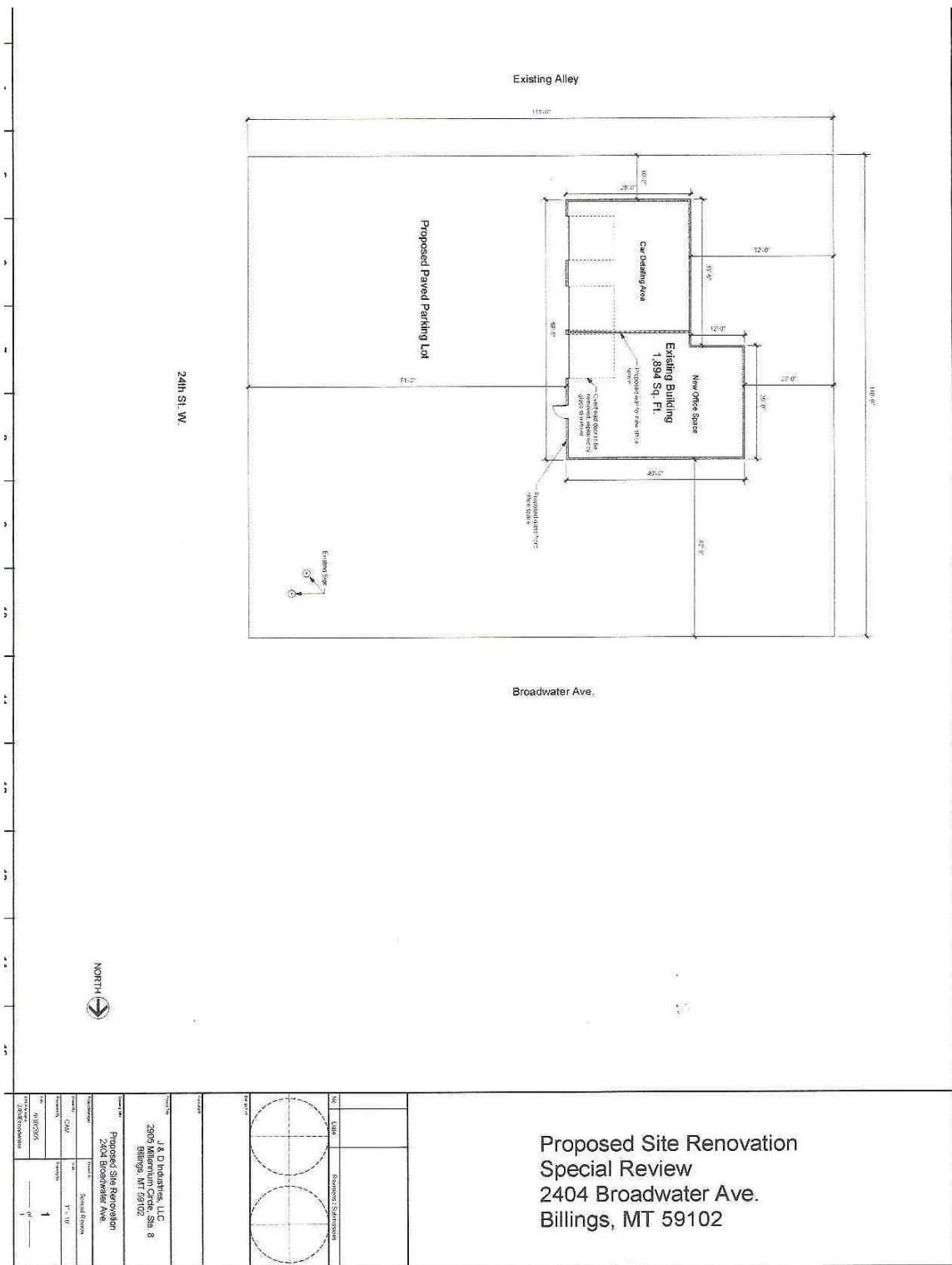


Subject Property at 2404 Broadwater Avenue



View south to alley abutting residential property

ATTACHMENT C
Site Plan



Proposed Site Renovation
Special Review
2404 Broadwater Ave.
Billings, MT 59102

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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, AUGUST 22, 2005

TITLE: Public Hearing for Special Review #792

DEPARTMENT: Planning & Community Services

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

PROBLEM/ISSUE STATEMENT: This is a Special Review to permit the location of a cabinet maker in a Highway Commercial zone of Southgate Planned Development on Lot 7A of Block 2 Southgate Subdivision. The subject property has a vacant warehouse and is located at 5201 Southgate Drive and is zoned Planned Development - Highway Commercial. Willie Dowdle is owner, Blaine Poppler of Coldwell Banker is the agent, and the potential buyer is WoodCo Custom Casework of 309 Erie Drive in Billings. The Zoning Commission conducted a public hearing on August 2, 2005, and is forwarding a recommendation of conditional approval to the City Council.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, should have little financial impact to the City.

RECOMMENDATION

The Zoning Commission is recommending that the City Council grant conditional approval for Special Review #792.

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

ATTACHMENTS

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

INTRODUCTION

The applicant is requesting a Special Review to permit on a cabinet making shop to be located in an existing building at 5201 Southgate Drive. This property is within the Southgate Planned Development area with an underlying zoning of Highway Commercial. Cabinet making and other wood working uses are allowed only by special review approval. The existing building was previously used as a food warehouse and shipping location (Keebler, Inc.). Remodeling will occur to accommodate the proposed use. The Zoning Commission voted 5-0 to recommend conditional approval to the City Council.

PROCEDURAL HISTORY

- A special review application to allow a cabinet maker was received on July 5, 2005.
- The City Zoning Commission voted 5-0 at its public hearing on August 2, 2005, for conditional approval of the special review.
- The City Council will conduct a public hearing and consider this application on August 22, 2005.

BACKGROUND

The subject property has an existing warehouse building of about 21,000 square feet that can accommodate the cabinet making business. WoodCo Custom Casework has outgrown its location at 309 Erie Drive and needs this type and size of building for its business. The property at 5201 Southgate Drive has an underlying zoning of Highway Commercial in the Southgate Planned Development. In Highway Commercial zones, cabinet making and woodworking require a special review approval.

The City Zoning Commission has considered the application and is recommending conditional approval. The applicant has agreed to the conditions of approval.

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 Article (27-1500).
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 proposed use is compatible with the adjoining land uses.

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

4. Street and road capacity;
5. Ingress and egress to adjoining streets;

6. Off-street parking;
7. Fencing, screening and landscaping;
8. Building bulk and location;
9. Usable open space;
10. Signs and lighting; and/or
11. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is recommending approval with the following conditions:

12. The special review approval shall be limited to Lot 7A of Block 2, Southgate Subdivision.
13. Dust from woodworking shall be controlled within the structure. Exhaust fans and dust collection equipment may be installed outside of the building. No stockpiling or storage of wood waste, sawdust or other debris will be allowed outside of the building except within a closed waste container.
14. All other limitations on expansion shall apply in accordance with Section 27-613(c) 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

The public hearing held on August 2, 2005 before the City Zoning Commission was attended by Mr. Blain Poppler and Jonathan Conn of WoodCo Custom Casework. Mr. Poppler and Mr. Conn offered testimony to the Zoning Commission. No surrounding property owners attended the public hearing or submitted objections to the proposed special review use.

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.

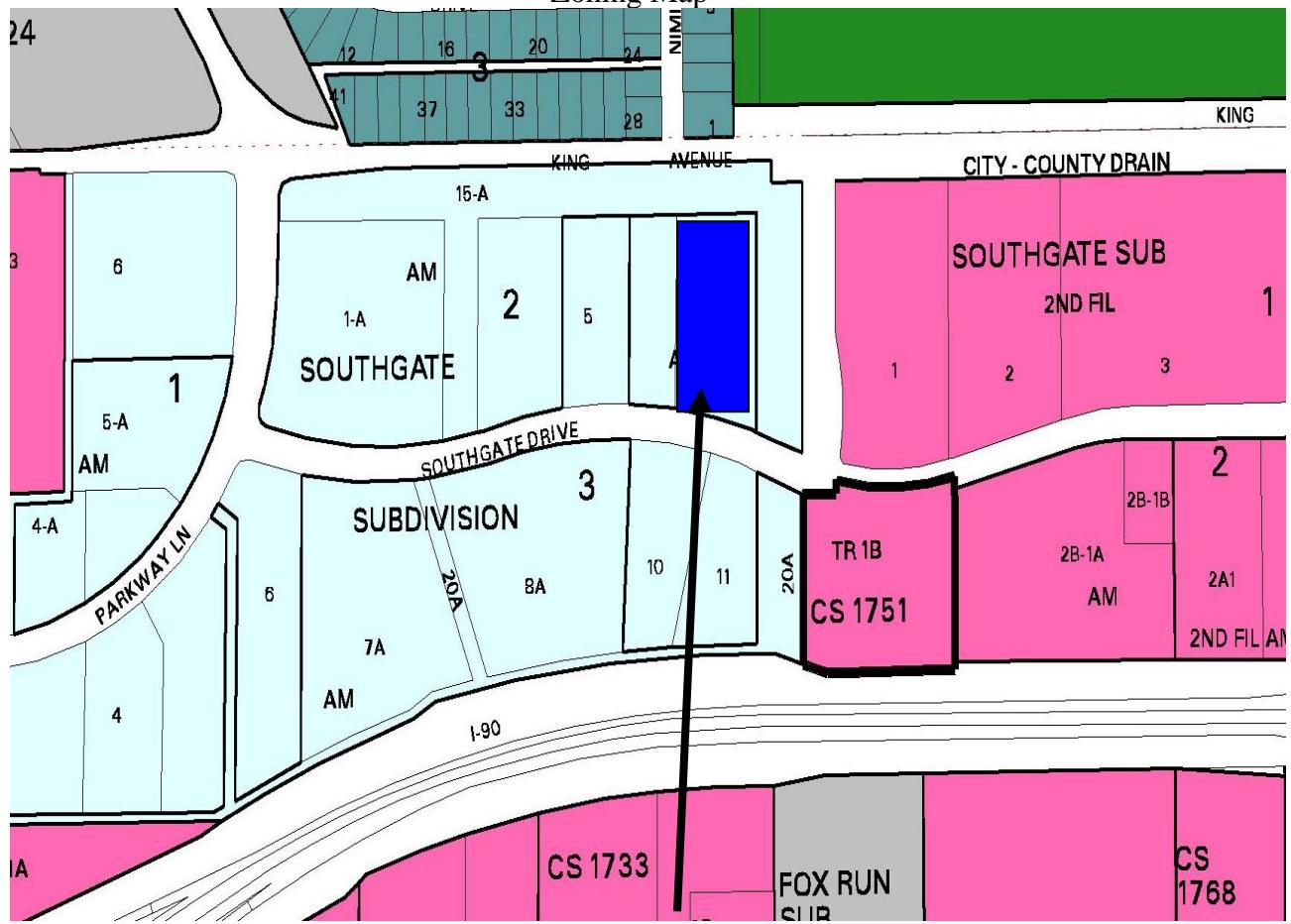
RECOMMENDATION

The Zoning Commission is recommending that the City Council grant conditional approval for Special Review #792.

ATTACHMENTS

- a. Zoning Map
- b. Site Photographs
- c. Site Plan

ATTACHMENT A
Zoning Map



ATTACHMENT B
Site Photographs for Special Review #792



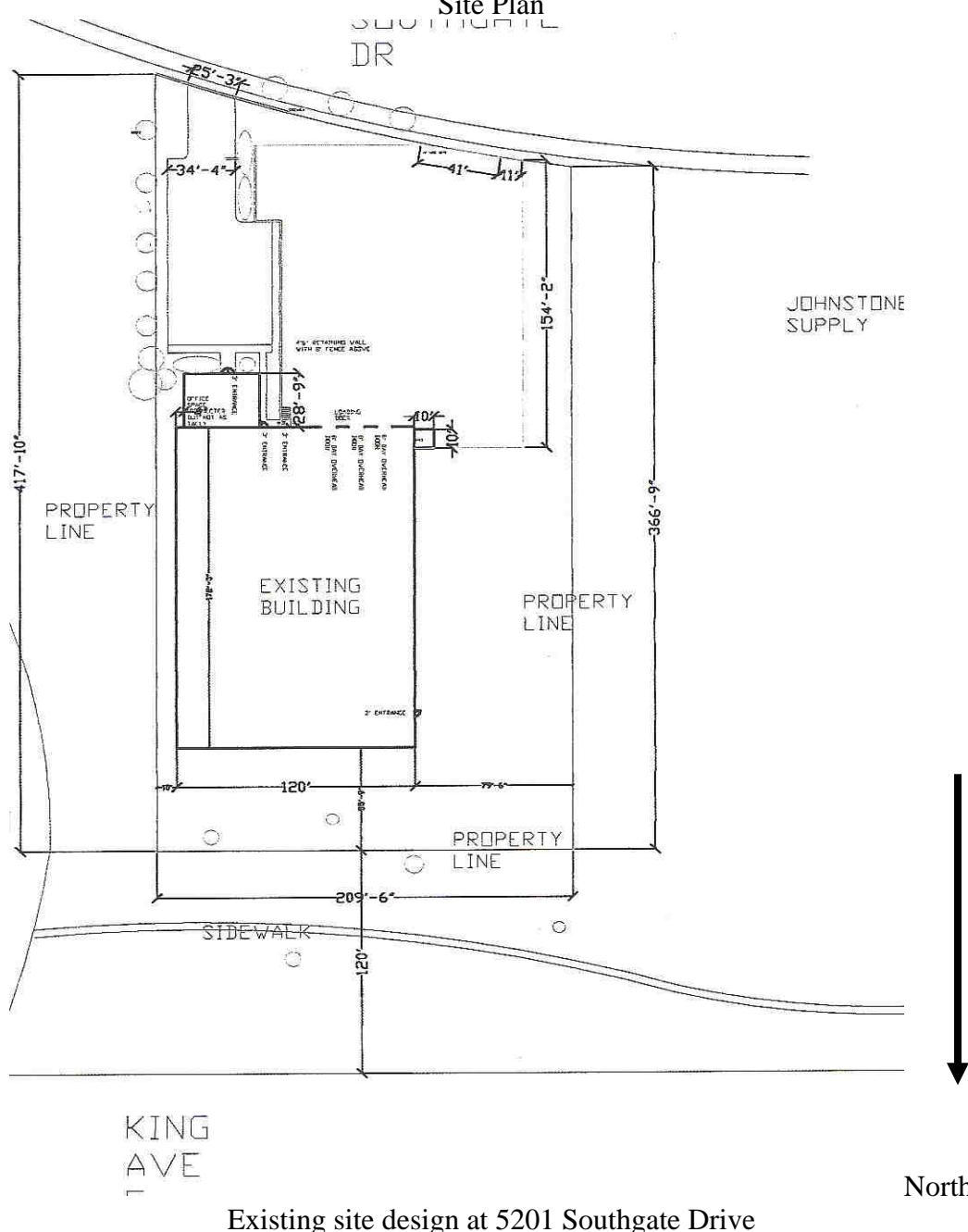
Existing building at 5201 Southgate Drive – view north from Southgate Drive



View east from 5201 Southgate Drive to Hampton Inn and South Billings Boulevard

ATTACHMENT C

Site Plan



Existing site design at 5201 Southgate Drive

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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Zone Change #761 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Lora Mattox, Planner II, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: This is a zone change request from Residential 7000 (R-7000) to Residential 5000 (R-5000) on Tract 1A of C/S 1335. The subject property is located at 1545 Hawthorne Lane. The property owner is First Free Will Baptist Church and the agent is Wesley Prouse. If approved, the resulting zoning would create a development pattern that locates higher residential density (R-5000) along Wicks Lane. The Zoning Commission held a public hearing on August 2, 2005, and voted 3-2 to recommend denial to the City Council.

ALTERNATIVES ANALYZED: State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using 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: This zone change could increase the City's tax base when the property is developed.

RECOMMENDATION

The Zoning Commission recommends that the City Council deny Zone Change #761. The Planning Division recommended approval based on the determinations of the discussed 12 criteria.

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

ATTACHMENTS:

- A: Site photographs
- B: Zoning Map
- C: Ordinance

INTRODUCTION

This is a zone change request from Residential 7,000 to Residential 5,000 on Tract 1A of C/S 1335. The subject property is located at 1545 Hawthorne Lane and has 164,221 square feet in lot area and currently supports a church. The applicant intends to construct 10 single-family homes on 5000 square foot plus lots in a fenced community.

PROCEDURAL HISTORY

- On July 5, 2005, the Planning Department received the application for a zone change.
- The Zoning Commission held a public hearing on August 2, 2005, and voted 3-2 to recommend denial of the requested Zone Change.
- The City Council will conduct a public hearing on August 22, 2005, and take action on the first reading of the zone change ordinance.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading.

BACKGROUND

Across Wicks Lane to the north of the subject property there is a 3 G's Convenience Store and Edgewood Vista Assisted Living complex. This area to the north is zoned Neighborhood Commercial. To the south the property is vacant; to the east and west of this property are single family homes that are zone Residential 7000. Wicks Lane is a Principal Arterial which allows for a high level of mobility that include higher speeds, long distance continuity, and higher levels of service to travelers. Hawthorne Lane is designated as a Collector Street which functions to link local streets to the arterial roads.

The Planning Department reviewed the application and recommended approval based on the attached twelve (12) criteria for zone changes. The property is adjacent to Neighborhood Commercial to the north and Residential 7000 to the east, west and south. This property is located on a Principal Arterial and would provide housing density that is transitional to other less dense residential development. The Residential 5000 zoning is also compatible with the adjacent collector street. The City Zoning Commission reviewed this application and held a public hearing on August 2, 2005. The Zoning Commission voted 3-2 to recommend denial based on the attached twelve (12) criteria for zone changes.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated using the 12 criteria that are set out in MCA 76-2-304. The 12 criteria and the Zoning Commission's determinations are listed below.

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

The proposed zone change is generally consistent with the following goals of the Growth Policy:

- *Contiguous development focused in and around existing population centers separated by open space.* The proposed rezoning concentrates development adjacent to existing City services.
- *More housing and business choices with each neighborhood.* The proposed rezoning offers residential options.

The City Zoning Commission found the zone change application to be inconsistent with the following goals:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns.* The proposed Residential 5000 zoning would permit “spot zoning”.
- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites.* Regardless of the owner’s intention to build only single family homes in the proposed R-5000 zone, the Zoning Commission voiced concern about this zone change establishing “spot zoning”.

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

The new zoning will not increase the traffic generated from this site significantly. During the subdivision process, access to this development on Wicks Lane will be limited.

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

This lot has public street frontage and is served by the City Fire and Police Departments. No public health or safety issues have been raised with this application.

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

The new zoning contains restrictions on uses allowed and provides for minimum setback requirements for structures.

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

The new zoning provides for sufficient setbacks for structures to allow for adequate lights and air.

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

The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. The Residential 5000 allows for maximum lot coverage of 40 percent or 2,000 square feet on a 5,000 square foot lot. These features should prevent overcrowding of the land.

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

The new zoning of Residential 5000 allows single-family detached dwellings and two-family units, based on minimum lot areas. The new zoning 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: The new zoning will not affect the adjacent streets or traffic patterns.

Water and Sewerage: The City currently provides water and sewer service to the property and has adequate facilities to serve this property.

Schools and Parks: The tax records state that children from this development would attend Bitterroot Elementary, Castlrock Middle and Skyview High Schools. There are two developed parks near this area, Hawthorne and Primrose. There is also a multi-use trail easel of this development that is a Heritage Trail link to Two Moon Park. This trail can also be used to reach Bitterroot Elementary School.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate service will be reviewed and ensured at the time of subdivision review. .

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

This area of the city has recently been acknowledged by the City Council as one that is likely to be developed in the near future at urban densities. Although it is currently vacant land, the availability of municipal water and sewer lines in the adjacent streets has made urban density development possible.

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.

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

The new zoning is not expected to appreciably alter the value of buildings in the area.

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

Yes, the new zoning will allow for more dense development on lots that are currently served with City water and sanitary sewer.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on August 2, 2005, and forwarded a negative recommendation to the City Council by a 3-2 vote. The applicant's agent, Wesley Prouse spoke in favor of the request. Mr. Prouse contended that the church could condominium the site but chose not to. The applicant wants to develop 1.25 out of the 3.77 acres for ten single family lots for a market price of \$150,000 - \$180,000. With the proceeds of the sale of these lots, the church would then be renovated and expanded. The agent also stated that this will not be a multi-family development. The agent met with the Heights Neighborhood Task Force and adjoining residents and did not receive any opposition.

The Planning Department did receive one email correspondence who spoke in opposition to this request. This person also spoke at the public hearing in opposition to the request. Mr. Pete Hansen stated this rezoning is spot zoning. Mr. Hansen also asked why with the amount of acreage, why there are plans for only ten single family lots. With the amount of land available, up to 32 lots could be developed. He also stated that there are few areas of the city that are zoned R-5000 and this approval would set a precedent. Mr. Hansen recommended a rezoning to R-7000R.

Zoning Commissioner Thomas Grimm asked if the subdivision application would be submitted if the rezoning request was approved. The agent indicated that the church will only move forward with the development if the rezoning is approved. Commissioner Leonard Dailey Jr. reminded the commission that the entire parcel would be rezoned, not just the ten proposed lots. The motion to deny was approved on a vote of 3 in favor and 2 opposed.

RECOMMENDATION

The Zoning Commission recommends that the City Council deny Zone Change #761. The Planning Division recommended approval based on the determinations of the discussed 12 criteria.

ATTACHMENTS:

- A: Site photographs
- B: Map
- C: Ordinance

ATTACHMENT A
Site Photographs – Zone Change #761



1545 Hawthorne Lane view south from Wicks Lane



View west on Wicks Lane towards Hawthorne Lane

ATTACHMENT A continued
Zone Change #761

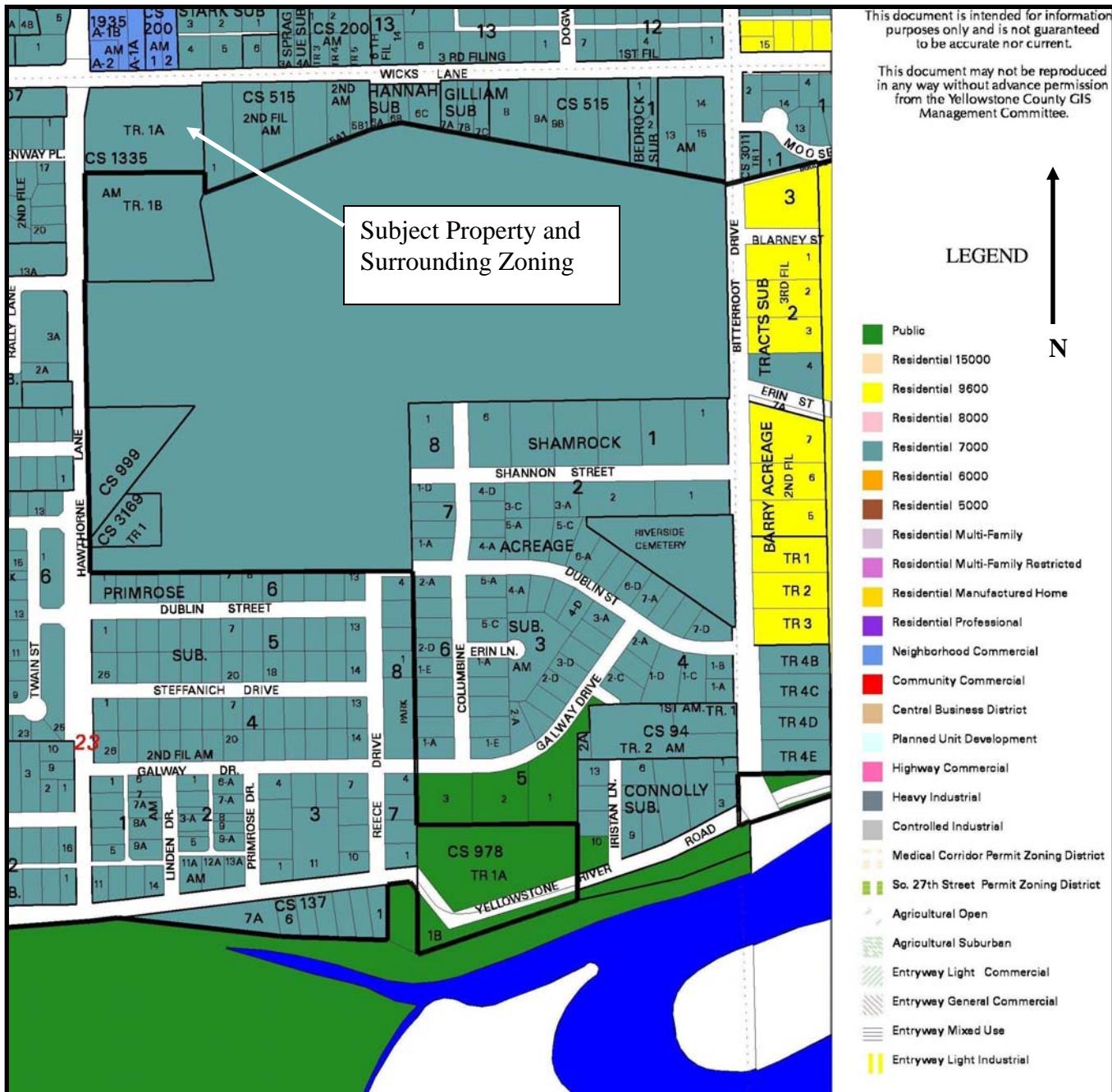


View east from subject property



View north from Wicks Lane Existing convenience store

ATTACHMENT B
Zoning Map
Zone Change #761



**ATTACHMENT C
ORDINANCE NO. 05-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
ON Tract 1A of C/S 1335 a 164,221 square foot parcel of
land. **THE SUBJECT PROPERTY IS LOCATED AT 1545
HAWTHORNE LANE.**

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.** A tract of land known as Tract 1A of C/S 1335 containing 164,221 square feet of land, more or less and is presently zoned Residential 7,000 and is shown on the official zoning maps within this zone.
3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 7,000** to **Residential 5,000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 5000** zones as set out 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 August 22, 2005.

PASSED, ADOPTED AND APPROVED on second reading September 12, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#761

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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Zone Change #762 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole Cromwell, AICP, Planner II, Zoning Coordinator

PROBLEM/ISSUE STATEMENT: This is a zone change request from Residential 9,600 to Neighborhood Commercial on Lots 3A and 4 of Block 1, Missions United Subdivision. The property is located at 2117 and 2223 Shiloh Road and is currently vacant. The property owner is St Vincent's Healthcare and the agent is Jim Shepard of CTA Architects and Engineers. The Zoning Commission held a public hearing on August 2, 2005, and voted 5-0 to recommend approval.

ALTERNATIVES ANALYZED: State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using 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: This zone change should increase the City's tax base when the new zoning takes effect.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #762 and adopt the determinations of the discussed 12 criteria.

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

ATTACHMENTS:

- A: Site photographs
- B: Map
- C: Ordinance

INTRODUCTION

This is a zone change request from Residential-9,600 to Neighborhood Commercial on Lots 3A and 4, Block 1, of Missions United Subdivision. The subject property is located at 2117 and 2223 Shiloh Road and is currently vacant land. The total area for the zone change is 10.35 acres. St. Vincent's Healthcare owns the property and intends to construct a Center for Healthy Aging, a medical office use. Medical and doctor's offices are not allowed in R-9,600 zoning. St. Vincent's Healthcare intends to also develop additional medical offices and health-care related facilities on the remaining undeveloped portion of the property at a future date. St. John's Lutheran Ministries owns the remaining two lots north of this site and does not intend to change the zoning. The development proposal will go through the Special Review process as allowed in the zoning regulations.

PROCEDURAL HISTORY

- On July 5, 2005, the Planning Department received the application for a zone change.
- The Zoning Commission held a public hearing on August 2, 2005, and voted 5-0 to recommend approval of the requested Zone Change.
- The City Council will hold a public hearing on August 22, 2005, and make a decision on the zone change application.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on September 12, 2005.

BACKGROUND

The West Billings Neighborhood Plan states that areas at or near the intersection of arterial streets should be used for commercial purposes. The zoning around the intersection of Grand Avenue and Shiloh Road is Community Commercial. Northbound on Shiloh Road the zoning quickly changes from Community Commercial to Residential Multifamily and Residential Professional. The location of several assisted living developments, nursing homes and multifamily dwellings north of this busy intersection increases the need for more neighborhood-oriented services such as doctor's offices, specialty food stores, smaller retail and service shops. The Neighborhood Commercial zoning district is an appropriate zone for these types of uses. The proposed location away from the high traffic intersection of Grand Avenue & Shiloh Road and close to existing and developing residential neighborhoods is an appropriate location for the new zoning.

The Planning Department reviewed the application and recommended approval to the Zoning Commission based on the attached twelve (12) criteria for zone changes. The property is adjacent to Poly Vista Park to the east (Public zoning), and north of the Circle Fifty Townhomes (zoned RMF-R). Access onto Shiloh Road has been limited to shared drive approaches required in the Missions United Subdivision approval. The new development will also need to comply with the new Shiloh Road Corridor Overlay district design and landscape standards. These standards will assure that existing single family neighborhoods west of Shiloh Road will not be overwhelmed by this neighborhood commercial development east of Shiloh Road.

The City Zoning Commission reviewed this application and held a public hearing on August 2, 2005. The Zoning Commission voted 5-0 to recommend approval based on the attached twelve (12) criteria for zone changes.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated using the 12 criteria that are set out in MCA 76-2-304. The 12 criteria and the Zoning Commission's determinations are listed below.

1. *Is the new zoning designed in accordance with the Growth Policy?*
The new zoning will help to provide smaller retail services and neighborhood services in this densely developed area of West Billings. The 2003 Growth Policy supports the development of commercial uses, multifamily uses and neighborhood services along existing arterial streets. The proposed zoning is compatible with surrounding zoning and with existing developments.
2. *Is the new zoning designed to lessen congestion in the streets?*
The new zoning will increase the traffic generated from this site. The new traffic generated will be controlled by the limited access to Shiloh Road. The proposed use, the Center for Healthy Aging, will not generate a large amount of off-site trips since the center is meant to serve the existing and new residents of the assisted living facilities on the east side of Shiloh Road.
3. *Will the new zoning secure safety from fire, panic and other dangers?*
This lot has public street frontage and is served by the City Fire Department and Police Departments. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*
The new zoning contains restrictions on uses allowed and provides for minimum setback requirements for structures. Neighborhood Commercial zones do not allow liquor licenses or gaming and generally restricts the size of retail establishments to no greater than 3,000 square feet in floor area.
5. *Will the new zoning provide adequate light and air?*
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air. Neighborhood Commercial has the same height limitation for new buildings as the existing zoning of R-9,600 – 34 feet.
6. *Will the new zoning prevent overcrowding of land?*
The new zoning, as do all districts, has limits on the maximum percentage of lot that can be covered with structures. The Neighborhood Commercial zone allows maximum lot coverage of 50 percent while the R-9,600 zone allows 30 percent. The maximum lot coverage should still prevent the overcrowding of land in this area.
7. *Will the new zoning avoid undue concentration of population?*
The new zoning of Neighborhood Commercial allows single-family and multifamily dwellings, based on minimum lot area. The allowable density under the zoning code for this 10.35 acre lot is a maximum of 298 dwelling units in a single structure. The property is not likely to develop for this type of residential use and the new zoning 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:* The new zoning will not have a significant effect on the adjacent streets or traffic patterns.
- Water and Sewerage:* The City will provide water and sewer service to the property and has adequate facilities to serve this property. Any additional development of the property will require evaluation of the existing services.
- Schools and Parks:* There should be no effect on parks or schools from this rezoning.
- Fire and Police:* The property is served by existing services and there should be no effect on these services from the new zoning.
9. *Does the new zoning give reasonable consideration to the character of the district?*
- The primary zoning in this area is Residential-9,600 with Residential Multifamily-Restricted to the south on both sides of Shiloh Road. The existing neighborhood to the west of Shiloh Road is primarily single family residential with some assisted living homes. Highgate House, a 3-story assisted living apartment building, as well as St. John's Nursing Home and assisted living facilities are located on the east side of Shiloh, south and north of this location respectively. The new district of Neighborhood Commercial allows smaller retail shops to serve local residents, multifamily developments and professional services such as doctor's and lawyer's offices, accountants and similar uses. This change fits with the character of the existing neighborhood.
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.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*
- The new zoning is not expected to appreciably alter the value of buildings in the area. The site development requirements for this site include the Shiloh Road Corridor Overlay standards and screening from existing residential uses to the south.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*
- Yes, the new zoning will encourage the most appropriate use of this land in the area.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission held the public hearing on August 2, 2005, and Jim Shepard from CTA Architects and Engineers, the agent, explained the proposal to the commission. Mr. Shepard explained the conceptual development plan and timeline. No opponents of the proposal were present at the public hearing and the Planning Department did not receive any written objections.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #762 and adopt the determinations of the discussed 12 criteria.

ATTACHMENTS:

- A: Site photographs
- B: Map
- C: Ordinance

ATTACHMENT A
Site Photographs – Zone Change # 762



2117 & 2223 Shiloh Road

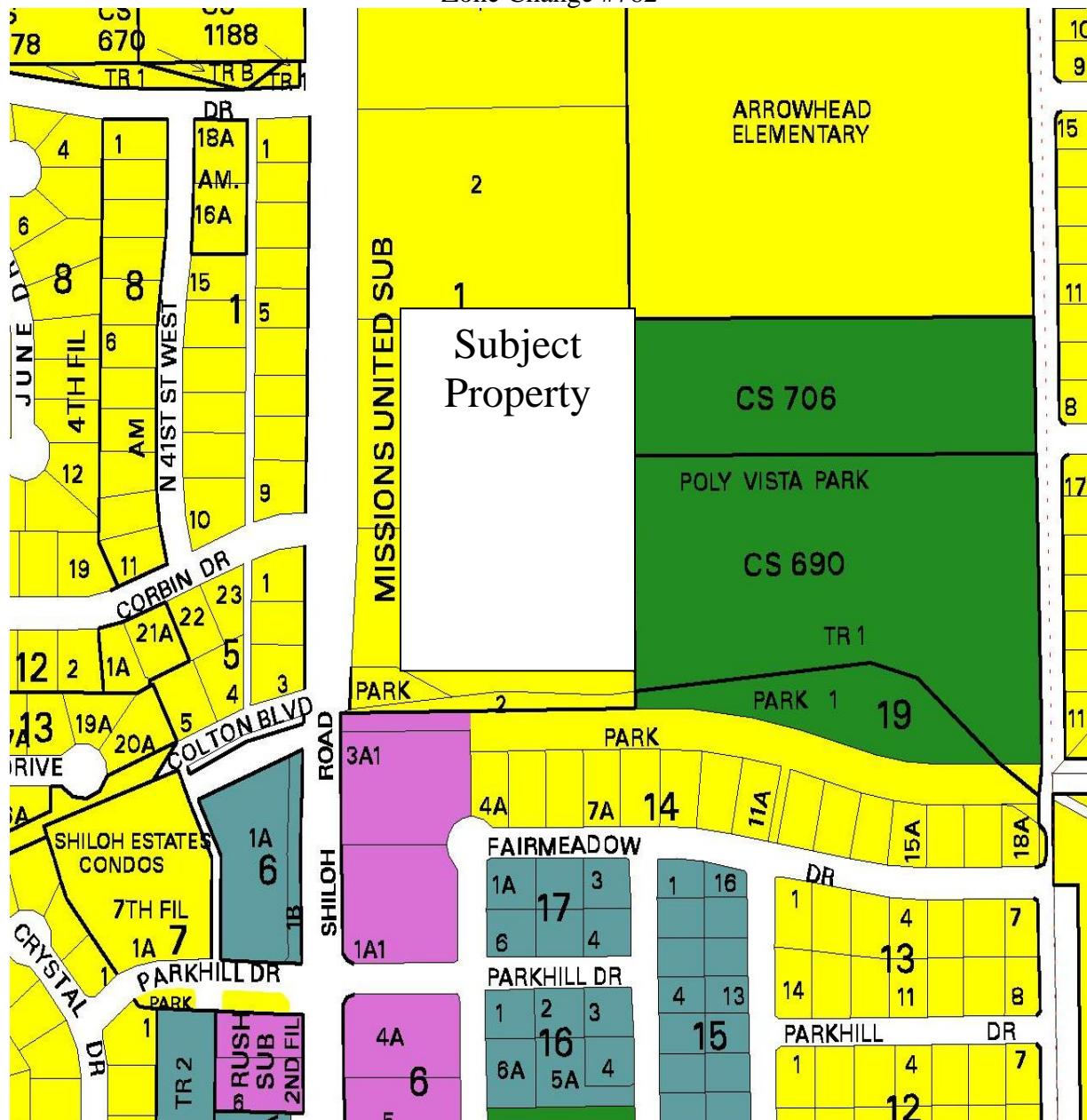


View north along east side of Shiloh Road

ATTACHMENT B

Zoning Map

Zone Change #762



**ATTACHMENT C
ORDINANCE NO. 05-**

**AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
ON Lot 3A and Lot 4 of Block 1 Missions United Subdivision, a
10.35 acre parcel of land. THE SUBJECT PROPERTY IS
LOCATED AT 2117 AND 2223 SHILOH ROAD.**

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. A tract of land known as Lots 3A and Lot 4 of Block 1 Missions United Subdivision containing 10.35 acres of land, more or less and is presently zoned Residential-9,600 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential-9,600** to **Neighborhood Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Neighborhood Commercial** zones as set out 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 August 22, 2005.

PASSED, ADOPTED AND APPROVED on second reading September 12, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#762

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AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Zone Change #763 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole Cromwell, AICP, Planner II, Zoning Coordinator

PROBLEM/ISSUE STATEMENT: This is a zone change request from Community Commercial to Highway Commercial on Lot 4 of Block 1, North Pointe Square Subdivision. The property is located at 2376 Main Street and is the site of the former K-mart retail center. The property owner is KMT DIL, LLC of Dallas, TX and Michael Dockery is the agent. All American Nutrition of 1831 Main Street in Billings is the prospective buyer of the property. The Zoning Commission held a public hearing on August 2, 2005, and voted 5-0 to recommend approval.

ALTERNATIVES ANALYZED: State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using 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: This zone change should increase the City's tax base when the new zoning takes effect.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #763 and adopt the determinations of the discussed 12 criteria.

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

ATTACHMENTS:

- A: Site photographs
- B: Map
- C: Ordinance

INTRODUCTION

This is a zone change request from Community Commercial to Highway Commercial on Lot 4, Block 1 of North Pointe Square Subdivision. The subject property is located at 2376 Main Street and is the former K-mart shopping center. The total area for the zone change is 7.74 acres. All American Nutrition intends to move a limited pharmaceutical manufacturing facility from its current location at 1831 Main Street to this new location.

PROCEDURAL HISTORY

- On July 5, 2005, the Planning Department received the application for a zone change.
- On July 26, 2005, the Planning Board initiated a zone change to the Unified Zoning Regulations to allow limited pharmaceutical manufacturing in Highway Commercial zones. The Zoning Commission will consider this text amendment on September 6, 2005.
- The Zoning Commission held a public hearing on August 2, 2005, and voted 5-0 to recommend approval of the requested Zone Change.
- The City Council will hold a public hearing on August 22, 2005, and make a decision on the zone change application.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on September 12, 2005.

BACKGROUND

All American Nutrition intends to purchase the former K-Mart building and move its operation to this location. This is an appropriate re-use of this vacant 90,000+ square foot building. It was discovered in discussions with the Planning Department this type of use is allowed only in Heavy Industrial zoning districts. The applicants have requested the Planning Board initiate a zoning amendment that would allow a limited pharmaceutical manufacturing use in Highway Commercial zones. The Planning Board on July 26, 2005, initiated the regulation change and this text amendment will come before the Zoning Commission on September 6, 2005.

The Planning Department reviewed this application and recommended approval to the Zoning Commission based on the attached twelve (12) criteria for zone changes. The property is adjacent to Highway Commercial zones to the east, is fully developed as a commercial property and has frontage on Main Street, a principal arterial street and state highway. No objections were received from the surrounding property owners and this will convert a large vacant building to active use.

The City Zoning Commission reviewed this application and held a public hearing on August 2, 2005. The Zoning Commission voted 5-0 to recommend approval based on the attached twelve (12) criteria for zone changes.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated using the 12 criteria that are set out in MCA 76-2-304. The 12 criteria and the Zoning Commission's determinations are listed below.

1. *Is the new zoning designed in accordance with the Growth Policy?*
The new zoning will help to curb leapfrog development by allowing redevelopment and in an existing city neighborhood. The 2003 Growth Policy supports the development of

commercial uses along existing arterial streets. The proposed zoning is compatible with surrounding zoning and with existing developments.

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

The new zoning will increase the traffic generated from this site. The new traffic generated will generally be less than the previous K-mart shopping center use, since this will not be a primary retail use of the property. The traffic signal at Pemberton Lane and Main Street will control the majority of the traffic into the site.

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

This lot has public street frontage and is served by the City Fire Department and Police Departments. No public health or safety issues have been raised with this application.

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

The new zoning contains restrictions on uses allowed and provides for minimum setback requirements for structures.

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

The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.

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

The new zoning, as do all districts, has limits on the maximum percentage of lot that can be covered with structures. The Highway Commercial zone allows maximum lot coverage of 75 percent while the Community Commercial zone allows 50 percent. The maximum lot coverage should still prevent the overcrowding of land in this area.

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

The new zoning of Highway Commercial allows single-family and multifamily dwellings, based on minimum lot area. The allowable density under the zoning code for this 7.74 acre lot is a maximum of 220 dwelling units in a single structure. The property is not likely to develop for residential use and the new zoning 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: The new zoning will not have a significant effect on the adjacent streets or traffic patterns.

Water and Sewerage: The City currently provides water and sewer service to the property and has adequate facilities to serve this property. Any additional development of the property will require evaluation of the existing services.

Schools and Parks: There should be no effect on parks or schools from this rezoning.

Fire and Police: The property is served by existing services and there should be no effect on these services from the new zoning.

9. *Does the new zoning give reasonable consideration to the character of the district?*
The primary zoning in this area is Highway Commercial with Residential Manufactured Home neighborhoods to the south across Pemberton Lane. The existing neighborhood has experienced and has been compatible with the retail use of the property. The new district of Highway Commercial allows some types of small manufacturing uses that are not currently allowed in Community Commercial. This change fits with the character of the existing neighborhood.
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.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*
The new zoning is not expected to appreciably alter the value of buildings in the area. The existing building on the property will retain its value and will be conforming to the zoning regulations.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*
Yes, the new zoning will encourage the most appropriate use of this land in the area.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission held the public hearing on August 2, 2005, and Michael Dockery, the agent for KMT DIL, explained the proposal to the commission. Joe McClure of the Big Sky Economic Development Authority spoke in favor of the application. No opponents of the proposal were present at the public hearing and the Planning Department did not receive any written objections.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #763 and adopt the determinations of the discussed 12 criteria.

ATTACHMENTS:

- A: Site photographs
- B: Map
- C: Ordinance

ATTACHMENT A
Site Photographs – Zone Change # 763



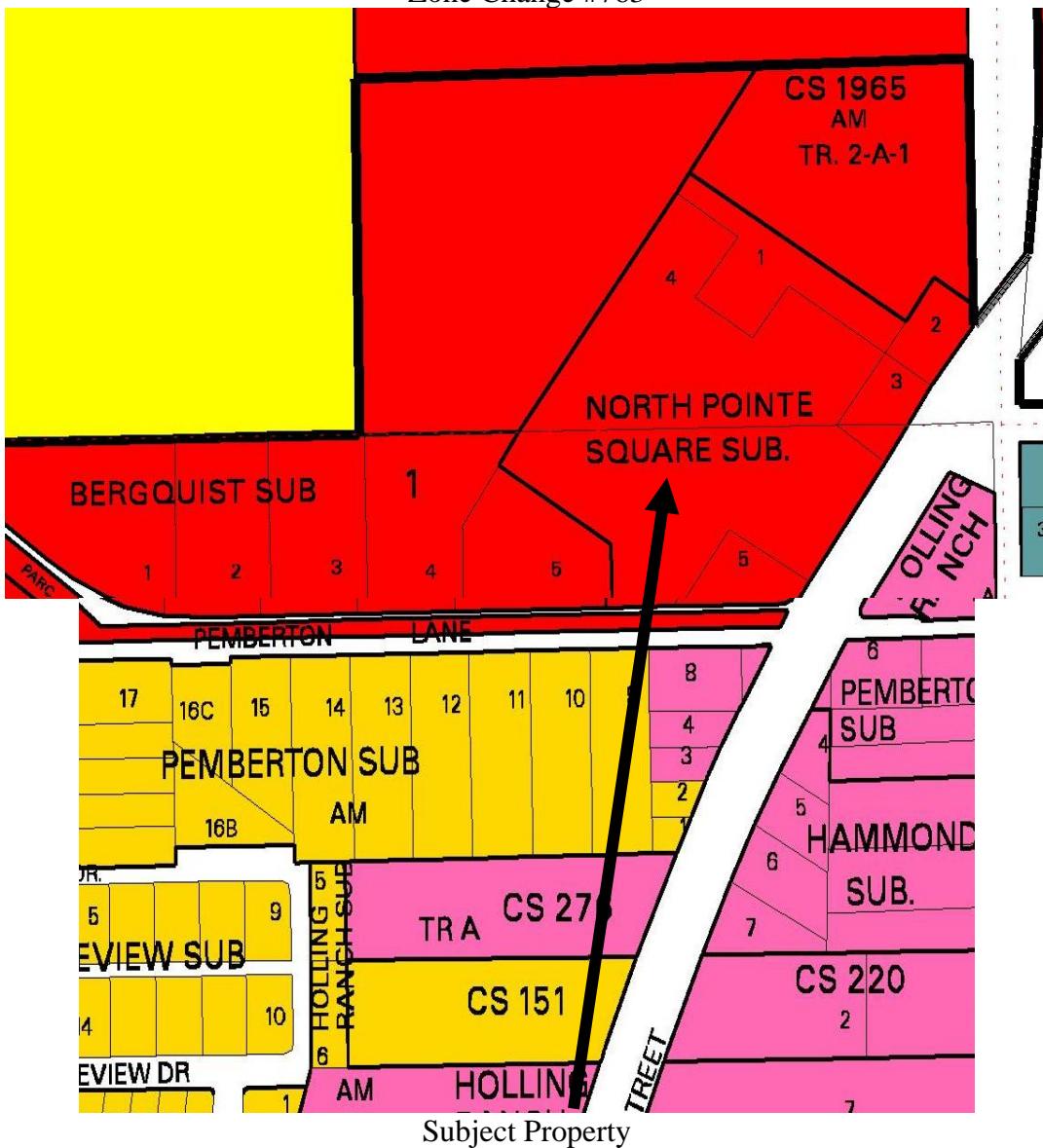
2376 Main Street



View south across Pemberton Lane to vacant commercial lots

ATTACHMENT B

Zoning Map
Zone Change #763



**ATTACHMENT C
ORDINANCE NO. 05-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
ON Lot 4 of Block 1 North Pointe Square Subdivision a 7.74
acres parcel of land. **THE SUBJECT PROPERTY IS
LOCATED AT 2376 MAIN STREET.**

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.** A tract of land known as Lot 4 of Block 1 North Pointe Square Subdivision containing 7.74 acres of land, more or less and is presently zoned Community Commercial and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Community Commercial** to **Highway Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Highway Commercial** zones as set out 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 August 22, 2005.

PASSED, ADOPTED AND APPROVED on second reading September 12, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#763

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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Zone Change #764 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Mr. Mark Kennedy of Kenmark Corporation, applicant and owner, is requesting to rezone portions of Tract 123 of Sunny Cove Fruit Farm from Residential 9600 (R-9600) to Residential 7000 (R-7000) and Residential 6000 (R-6000). If approved, the resulting zoning would create a development pattern that locates higher residential density (R-6000) along Grand Avenue and the lowest density (R-9600) along the north boundary. The subject property is located at the northeast intersection of Grand and 60th Street West and is currently vacant. The Zoning Commission conducted a public hearing on August 2, 2005, and voted 4-1 to recommend denial to the City Council.

ALTERNATIVES ANALYZED: State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using 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 could increase the City's tax base, when the property is developed.

RECOMMENDATION

The Zoning Commission recommends that the City Council deny Zone Change #764 and adopt the determinations of the discussed 12 criteria.

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

ATTACHMENTS:

- A. Site Photographs
- B. Zoning Map
- C. Zoning Exhibit
- D. Valid Protest Petition
- E. Ordinance

INTRODUCTION

The applicants are requesting to rezone the southern two-thirds of a property described as Tract 123 Sunny Cove Fruit Farm from Residential 9600 to Residential 6000 (R-6000) to Residential 7000 (R-7000). The northern portion of the property was automatically rezoned Residential 9600 (R-9600) upon annexation and is not included in this application. The subject property is generally located at the northeast corner of Grand Avenue and 60th Street West and is currently vacant.

PROCEDURAL HISTORY

- 4/26/2004 – Zone Change #729 from R-9600 to R-7000 for Foxtail Village Subdivision, First Filing, approved.
- 7/11/2005 – Property automatically rezoned from Agricultural-Open Space to R-9600 upon annexation.
- 7/5/2005 – Zone Change application submitted for Tract 123, Sunny Cove Fruit Farms.
- 8/2/2005 – The Zoning Commission conducted a public hearing and voted 4-1 to recommend denial to the City Council of the requested zone change.
- 8/22/2005 – The City Council will conduct a public hearing on August 22, 2005, and take action on the first reading of the zone change ordinance.
- 9/12/2005 – If the zone change ordinance is approved on the first reading, the City Council will consider it for second reading.

Concurrent Application – A major subdivision submittal for the subject property is currently under review. The City Council will act on this submittal on September 12, 2005.

BACKGROUND

The applicants are requesting to rezone the south two-thirds of a property described as Tract 1 of Sunny Cove Fruit Farms from Residential 9600 (R-9600) to Residential 6000 (R-6000) and Residential 7000 (R-7000). The northern third will remain Residential 9600 (R-9600). The new zoning configuration will create higher density multi-family options along Grand Avenue and moderately dense single-family residential development on the interior lots. The northern tier of lots, adjacent to existing 10-acre residential lots, would remain Residential 9600 (R-9600). The 9.33-acre property, located at the northeast corner of the intersection of Grand and 60th Street West, is currently vacant.

An application for a 25-lot subdivision is being processed concurrent with this zone change request. If the property were developed with the same layout and lot sizes shown on the preliminary plat for Foxtail Village Subdivision, 2nd Filing, 7 single-family dwellings could be developed on 9,600-square foot lots and 16 single-family dwellings on 7,000-square foot lots. Up to 4 ten-plexes could be built on two lots totaling 94,895 square feet.

The proposed rezoning is consistent with the uses and densities permitted in the Foxtail Village Subdivision, 1st Filing, immediately to the east, with one exception. The first filing does not include R-6000 and there are no multifamily units other than duplexes. The original zone change for the 1st Filing elicited considerable negative response from nearby landowners, primarily because it included Residential Multifamily-Restricted zoning. After meeting with the landowners, the applicant withdrew the original application and resubmitted a request to rezone

the property to R-7000 only. Council approved this zone change on first reading of the resolution on April 26, 2004.

The Planning Department received a Valid Protest opposing Zone Change #764 on July 29, 2005. The petitioners are owners of the properties that comprise 25% or more of the area of lots within 150 feet of the lot included in the proposed zone change. Pursuant to Section 27-1502, BMCC, the petition triggers a requirement for a favorable vote of two-thirds of the City Council to approve this zone change application. A favorable vote of less than two-thirds of the City Council would result in denial.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated using the 12 criteria that are set out in MCA 76-2-304. The 12 criteria and the Zoning Commission's determinations are listed below.

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

The proposed annexation is generally consistent with the following goals of the Growth Policy:

- *Contiguous development focused in and around existing population centers separated by open space.* The proposed rezoning concentrates development adjacent to existing City limits.
- *Affordable housing for all income levels dispersed throughout the City and County.* The proposed zoning would allow for multifamily housing affordable to a greater number of households than would single-family.
- *More housing and business choices with each neighborhood.* The proposed zoning offers several residential options.

The City Zoning Commission found the zone change application to be inconsistent with the following goals:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns.* The proposed Residential 6000 zoning would allow up to 4 ten-plexes in an area that is predominantly rural in character.
- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites.* Regardless of the owner's intention to only build two eight-plexes in the proposed R-6000 zone, the Zoning Commission voiced concern about this zone change establishing a precedent to allow multi-family housing in an area that is predominantly rural.

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

The proposed zoning could add approximately 640 trips per day to the local street network (10 trips per unit). The proposed development however, would generate only 400 trips. The traffic accessibility study conducted for the Foxtail Village Subdivision, First Filing identified the off-site street improvements required to accommodate this increased traffic. Furthermore, because the development will have three accesses, two of

which are on to a new street, the additional traffic will not be concentrated at existing intersections. This should lessen potential congestion.

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

Multiple accesses to the proposed development will facilitate emergency service to the future uses allowed by the new zoning.

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

The proposed zoning will allow single-family residences, duplex and multifamily structures. The Unified Zoning Regulations contain minimum setbacks and lot coverage requirements, as well as height restrictions for the proposed zoning districts.

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

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

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

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-7000 zoning district permits maximum lot coverage of 30%. The R-6000 zoning district allows 40% lot coverage but requires increasing lot square footage as the number of units increase. These requirements will help prevent overcrowding of land.

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

The proposed R-7000 zoning district permits detached single-family residential units and duplexes. The lot sizes of proposed development however, would limit development to single-family only. There is sufficient square footage on the lots proposed to be rezoned to R-6000 to allow 4-ten-plexes. The square footage requirement for this zoning district takes into account the need for additional space as the number of multifamily units increase. These requirements will help avoid 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: The new zoning will not affect the adjacent streets or traffic patterns. Any proposed roads or improvements will be reviewed during the subdivision process.

Water and Sewerage: The property was recently annexed to the City of Billings. The City will provide water and sewer to the property through existing lines from Foxtail Village Subdivision, First Filing.

Schools and Parks: The proposed zoning could result in an overcrowding of West High School which is currently over capacity. The middle and elementary schools which serve this property have capacity for additional students.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate service will be reviewed and ensured at the time of subdivision review.

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 multifamily residential uses on the south and the large lot development to the north. The zoning is similar to the Foxtail Village Subdivision, First Filing directly to the east. This development, however, does not include multifamily dwellings. This will be the first multifamily development in this part of the City.

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 because it locates higher density development along Grand Avenue near intersection of major streets.

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

Because the existing 10-acre residential lots are separated from the proposed zoning by the Residential 9600 zoning, the new zoning is not expected to appreciably alter the value of structures in the area.

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

The proposed zoning will permit more dense development than what currently exists in the area. However, the proposed zoning may set precedence for locating high density development in the West Billings area where it is not appropriate.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on August 2, 2005, and forwarded a negative recommendation to the City Council by a 4-1 vote. The applicant's agent, Rick Leuthold spoke in favor of the request. Mr. Leuthold contended that the zoning request was consistent with the West Billings Plan because the location of higher density zoning was along Grand Avenue and near the corner of 56th and Grand, a potential school/commercial site.

Mr. Leuthold also explained that the proposal is for 2 8-unit, owner-occupied, condominium units, not the typical apartment style rentals. Furthermore, the lot configuration needed to create the transitional zoning does not lend itself to single-family units along Grand Avenue.

Four individuals spoke in opposition to the proposed zone change. Mr. Don Lohrenz stated that the owner previously assured him that multi-family structures would not be built on this lot. The proposed development is not consistent with that promise. He also felt that by allowing R-6000 in this location, it would establish precedence for future multi-family zoning. The housing density allowed in R-6000 is not compatible with the existing uses in this area. Mr. Lohrenz's property is located adjacent to the subject property to the north.

Mr. Dan Sloan, owner of the properties north and west of the subject property, also stated that he was told the property would not be rezoned to R-6000 by the owner. Mr. Sloan believes the rezoning request is not compatible with the existing uses and is opposed to the zone change.

Mrs. Kim Lohrenz and John Stanek, both adjoining property owners, opposed the zone change to R-6000 on grounds that it is not compatible with existing uses.

Zoning Commissioner Thomas Grimm considered the zoning appropriate because it transitioned the low density zoning along the north edge to higher density zoning along Grand Avenue. Mike Boyett, Zoning Commissioner in opposition to the zone change, felt that it was not compatible with existing uses and that it would set precedence for future multi-family development. The motion to deny was approved on a vote of 4 in favor and 1 opposed.

RECOMMENDATION

The Zoning Commission recommends that the City Council deny Zone Change #764 and adopt the determinations of the discussed 12 criteria.

ATTACHMENTS:

- A. Site Photographs
- B. Zoning Map
- C. Zoning Exhibit
- D. Valid Protest Petition
- E. Ordinance

ATTACHMENT A
SITE PHOTOGRAPHS



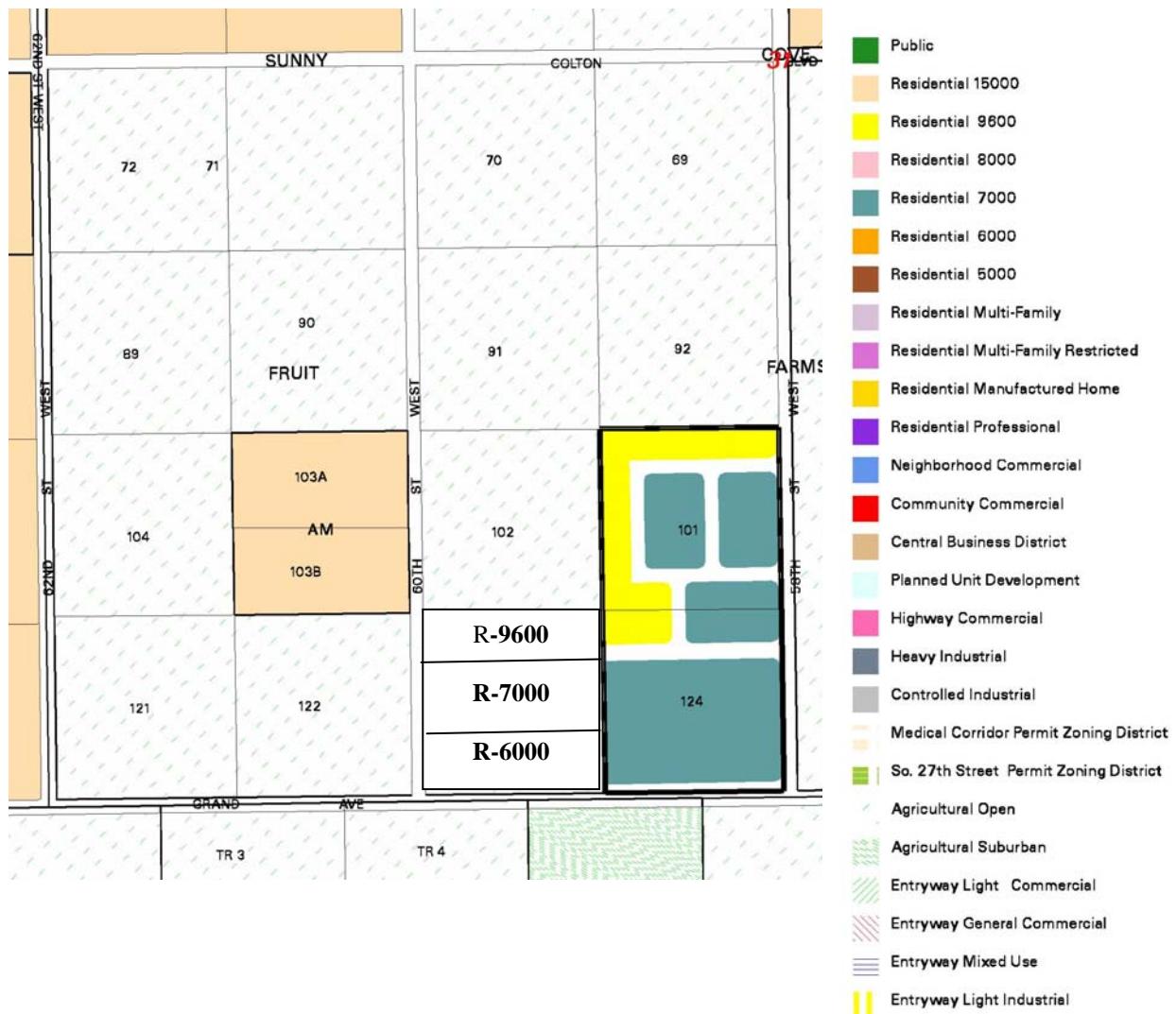
View of proposed rezoning looking southwest towards Grand Avenue. Line of trees delineates Birely Ditch located on the area to be rezoned R-6000. Area of proposed R-7000 zoning is shown in foreground.



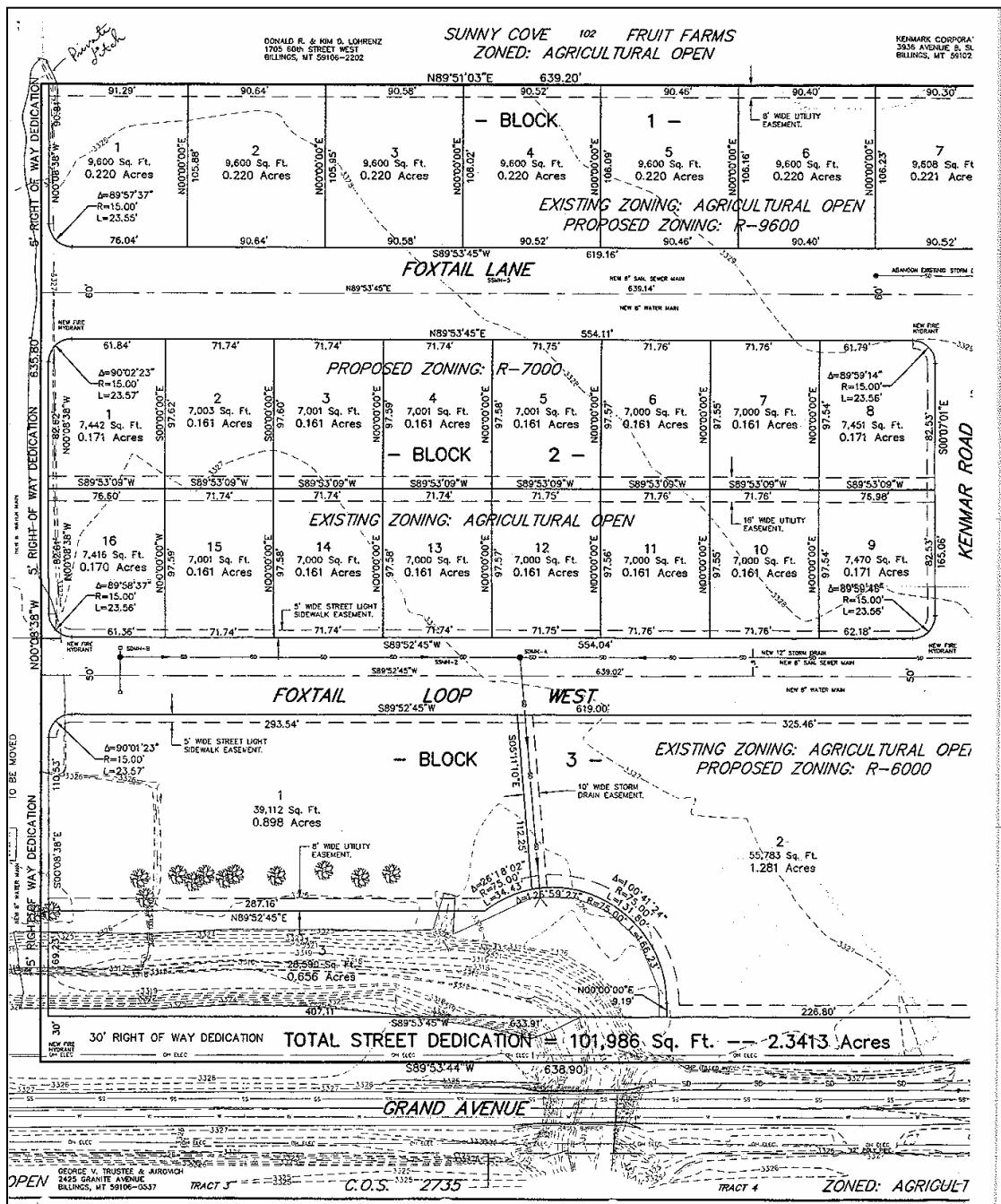
F. View of residential development located on 10-acre tracts north of area to be rezoned. Area of proposed R-7000 is shown in foreground and R-9600 zoning in midground.

ATTACHMENT B ZONING MAP

LEGEND



ATTACHMENT C
ZONING EXHIBIT



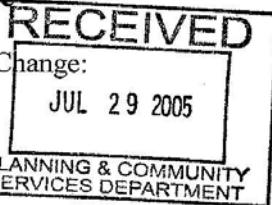
ATTACHMENT D
VALID PROTEST PETITION

Petition Against Zone Change

We, the undersigned, are against the following Zone Change:

Zone Change: #764

General Location: 60th Street West & Grand Avenue



Reasons: Mark Kennedy/Kenmark Construction made a promise to us that there would be no buildings larger than duplex, patio/townhomes built on Tract 123, Sunny Cove Fruit Farms. This promise was made to us in 2004 so we would cease our protest of the zone change and annexation of Tracts 101 & 124, Sunny Cove Fruit Farms (Zone Change # 729).

NAME	ADDRESS	LEGAL DESC.
<u>John Stevens</u>	<u>1705 60th SW</u>	<u>T 102 Sunny Cove Fruit Farm</u>
<u>Rebelle Stew</u>	<u>1700 60th SW</u>	<u>T 103 B Sunny Cove Fruit Farm</u>
<u>George Juravich</u>	<u>2435 Granite</u>	<u>36 Acres Across Grand Ave</u>
<u>Kim Lohrey</u>	<u>1705 60th St. W.</u>	<u>T 102 Sunny Cove Fruit Farm</u>

Candi Beaudry

Received By

8-1-05

Date

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION ON THE
SOUTH 7.26 ACRES OF TRACT 123 OF SUNNY COVE
FRUIT FARMS. THE SUBJECT PROPERTY IS
GENERALLY LOCATED NEAR THE NORTHEAST
CORNER OF THE INTERSECTION OF GRAND AVENUE
AND 60TH STREET WEST.

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. The south 7.26 acres of a tract of land known as Tract 123 of Sunny Cove Fruit Farms and is presently zoned Residential 9600 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **north 3.79 acres of the above described parcel is hereby changed from Residential 9600 to Residential 7000 and the south 3.47 acres of the above described parcel is hereby changed from Residential 9600 to Residential 6000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 7000 and Residential 6000 zones, respectively**, as set out in the Billings, Montana City Code. (See Exhibit A).

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 August 22, 2005.

PASSED, ADOPTED AND APPROVED on second reading September 12, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

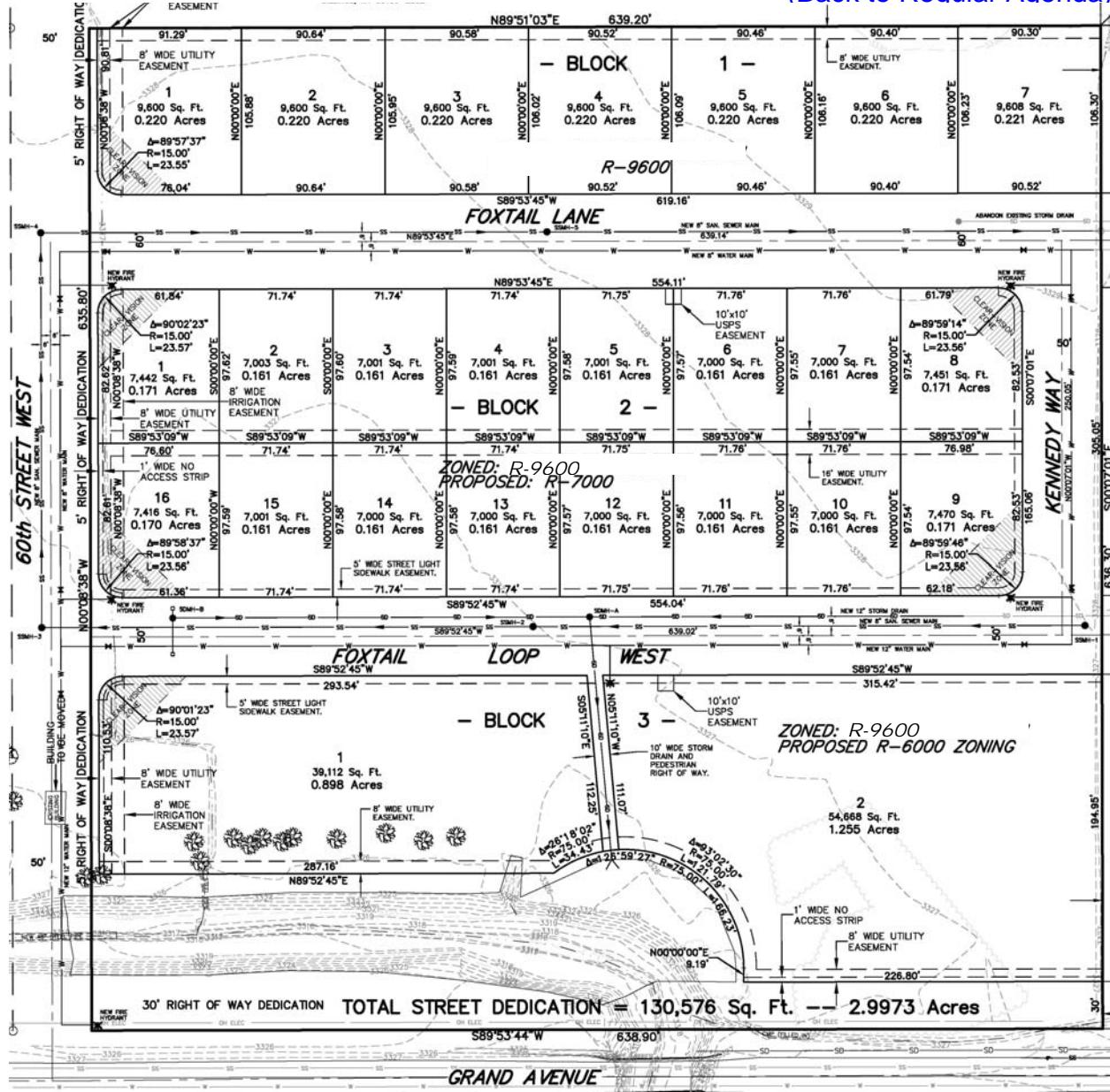
BY:

Marita Herold, CMC/AAE, City Clerk

ZC#764

EXHIBIT A
ZONE CHANGE #764

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Zone Change #765 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicants are requesting to rezone the northern portion of a property described as Tracts 1 and 2 of Certificate of Survey 3190 from Residential 7000 (R-7000) to Residential 5000 (R-5000). The southern portion of the property is zoned Residential 6000 (R-6000) and is not included in this application. The subject property is located at 120 Wicks Lane and contains a single-family residence and uncultivated agricultural land. The owners are Ernest and Francisca Shaw and their representative is Engineering, Inc. The Zoning Commission conducted a public hearing on August 2, 2005, and voted 4-1 to recommend approval to the City Council.

ALTERNATIVES ANALYZED: State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using 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 could increase the City's tax base, when the property is developed.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #765 and adopt the determinations of the discussed 12 criteria.

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

ATTACHMENTS:

- A: Site Photographs
- B: Zoning Map
- C: Zoning Exhibit
- D: Ordinance

INTRODUCTION

The applicants are requesting to rezone the northern portion of a property described as Tracts 1 and 2 of Certificate of Survey 3190 from Residential 7000 (R-7000) to Residential 5000 (R-5000). The southern portion of the property is zoned Residential 6000 (R-6000) and is not included in this application. The subject property is located at 120 Wicks Lane and contains a single-family residence and uncultivated agricultural land.

PROCEDURAL HISTORY

- On July 5, 2005, the Planning Department received an application for a zone change on the subject property.
- The Zoning Commission conducted a public hearing on August 2, 2005, and voted 5-0 to recommend approval to the City Council of the requested zone change.
- On August 8, 2005, the City Council will acknowledge the petition for proposed annexation of the property and set a public hearing date for September 12, 2005.
- The City Council will conduct a public hearing on August 22, 2005, and take action on the zone change application.
- The City Council will conduct a public hearing on September 12, 2005, and take action on the proposed annexation.
- If the zone change ordinance is approved on the first reading, the City Council will consider it for second reading on September 12, 2005.
- If the annexation request is approved, the applicant will be considered for a first reading on September 26, 2005.
- The second reading for the annexation request will be considered on October 11, 2005.

BACKGROUND

The applicants are requesting to rezone the northern portion of a property described as Tracts 1 and 2 of Certificate of Survey 3190 from Residential 7000 (R-7000) to Residential 5000 (R-5000). The southern portion of the property is zoned Residential 6000 (R-6000) and is not included in this application. The subject property is located at 120 Wicks Lane and contains a single-family residence and uncultivated agricultural land. Staff finds that the proposed rezone would provide a transitional zone between the existing medical offices on the west and the church and multi-family residential units to the east. The proposed zoning is also compatible with the R-6000 and R-7000 zoning districts to the north and south of the subject property.

As stated within the submitted application the zone change is being proposed in order to permit a greater lot coverage (up to 40% can be covered with structures) for the construction of twinhomes or duplexes. The result would be a larger living space for families and a greater overall density for the property. The R-5000 zoning district permits only single-family residences or duplexes on a smaller lot area (8,000 square feet). The applicant further states that this would help lower construction costs and provide residents with a more affordable housing option.

There is a concurrent annexation request with the proposed zone change, as the subject property is currently a wholly surrounded parcel within the County. The City Council will acknowledge

the receipt of the petition on August 8, 2005, and will set a public hearing date for September 12, 2005.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated using the 12 criteria that are set out in MCA 76-2-304. The 12 criteria and the Zoning Commission's determinations are listed below.

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

The proposed annexation will provide the subject property with City services and will provide for infill development, if approved. The proposed zoning will address urban sprawl by providing for greater density within this infill development. The 2003 Growth Policy supports contiguous development in and around existing population centers, as well as compatibility with the surrounding neighborhood.

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

The proposed zoning will not increase the traffic generated from this site significantly. Any traffic impacts will be addressed during the subdivision process and/or site development.

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

Wicks Lane provides public street frontage along the northern boundary of the subject property. The property will be served by interior roads upon development.

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

The proposed zoning, limits development to single-family residences and duplexes. The Unified Zoning Regulations contain minimum setbacks and lot coverage requirements, as well as height restrictions for the R-5000 zoning district.

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

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

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

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-5000 zoning district permits maximum lot coverage of 40%; a maximum building footprint of 2,000 square feet on a 5,000 square foot lot. This requirement will help prevent overcrowding of land.

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

The proposed zoning permits detached single-family residential units and duplexes. The applicant is proposing twin homes on the northern portion of the subject property and is requesting R-5000 in order to provide for larger footprints. The subject property is bordered on the east by multi family residential and on the west by R-6000, which both permit multi-family residential uses. The proposed zoning will not create any more of a concentration of population than the adjacent residential zoning districts.

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

Transportation: The new zoning will not affect the adjacent streets or traffic patterns. Any proposed roads or improvements will be reviewed upon site development.

Water and Sewerage: The applicants have submitted an annexation petition. Upon approval of the annexation, the City will provide water and sewer to the property through existing lines along the southern and eastern border of the property and within Wicks Lane.

Schools and Parks: According to the Yellowstone County tax records for the subject property, children from this development would attend Bench Elementary, Castlerock Middle School and Skyview High School. There are several parks within the vicinity of this property including a private park within Uinta Subdivision directly adjacent to the south. There is a multi-use trail located along the portion of the BBWA Canal bordering Uinta Park Subdivision on the west.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate service will be reviewed and ensured at the time of subdivision review.

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 on the east and the commercial offices to the west. In addition, Wicks Lane is a Principle Arterial and has been identified for more dense residential development, as well as intermittent Neighborhood Commercial development.

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.

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

The new zoning is not expected to appreciably alter the value of structures in the area.

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

The proposed zoning will permit for more dense development, as well as provide an infill project within an already urbanized portion of the City.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on August 2, 2005, and forwarded a positive recommendation to the City Council by a 4-1 vote. There was discussion on whether the proposed zone change would be compatible with the surrounding neighborhood and the location of any other R-5000 zoning districts within the immediate vicinity of this application. Due to the multi-family residential uses to the west and the commercial uses and higher density residential uses (R-6000) to the east, the proposed zoning is compatible with the surrounding neighborhood. There are two (2) zoning requests for R-5000 zoning districts within the Heights in process at this time; the second is located on the southeast corner of Wicks Lane and Hawthorne Lane. If approved, these properties would be the first R-5000 zoning districts within the Heights.

The applicant's representative, Mac Folgelsong with Engineering, Inc, was present at the meeting and the Commissioners inquired why the owner did not rezone the entire property to R-6000 to maintain consistency with the southern portion of the property. Mr. Folgelsong stated that the developer is requesting R-5000 zoning in order to construct duplexes with a greater density than the current R-7000 zoning district would permit. While the R-6000 zoning district would allow for duplexes, it would also permit up to 10-plexes, which is not the desired outcome for the development. He further stated that with the location of the property on Wicks Lane, a Principal Arterial, that the R-6000 zoning would be more conducive to multi-family, which they find, is not in keeping with the character of the neighborhood.

There was public comment received from two (2) surrounding property owners. There were concerns regarding the lack of information on site layout for this property and whether this is considered a "spot zone." The applicant's representative did provide a conceptual layout of the property at the meeting and stated that the density for the entire property would be approximately 98 duplexes (a total of 196 units). The proposed layout and design, as well as access, traffic,

parks and open space will be addressed upon submittal of a subdivision application for the subject property.

As defined, “spot zoning” typically refers to the rezoning of a small parcel of land to a use category different from the surrounding area. In this case, the portion of the parcel to be rezoned is approximately 18 acres and the proposed zoning is a residential district that is compatible with the surrounding Residential-7000, Residential-6000, Residential Multi-Family, and Neighborhood Commercial zoning. The proposed zoning will not provide for more density than permitted within the surrounding zoning and will maintain a residential character within the neighborhood.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #765 and adopt the determinations of the discussed 12 criteria.

ATTACHMENTS:

- A: Site Photographs
- B: Zoning Map
- C: Zoning Exhibit
- D: Ordinance

ATTACHMENT A
Site Photographs



Figure 1: View from the adjacent property to the west, southeast across the subject property. The BBWA Canal is pictured and borders the subject property on the northwest.



Figure 2: View west across adjacent property toward the existing medical facility on the neighboring property.

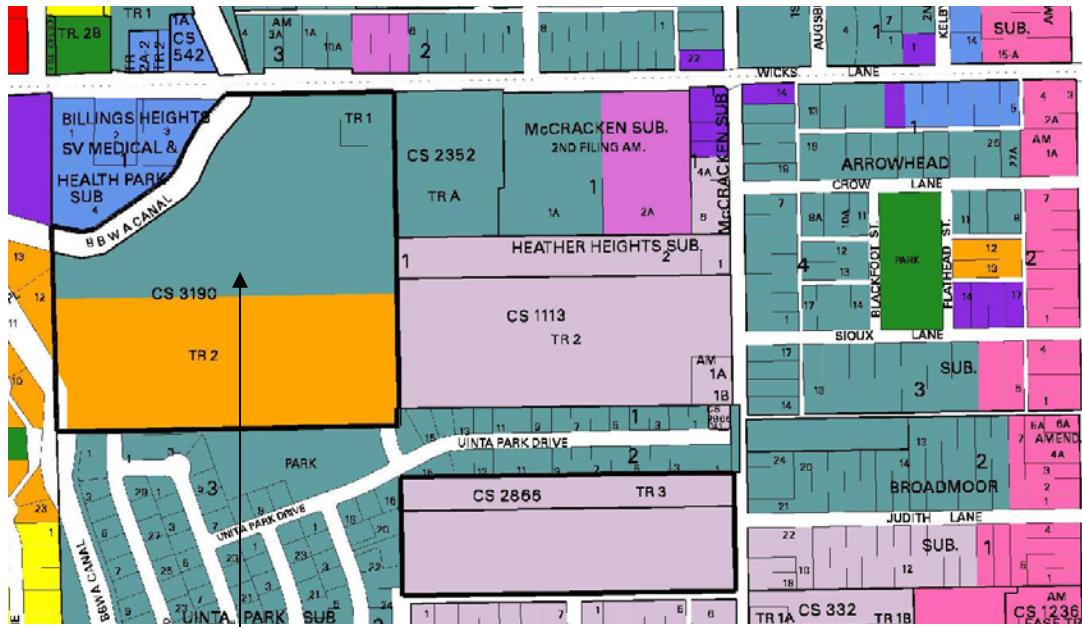


Figure 3: View south across the subject property toward single-family residences within Uinta Park Subdivision.



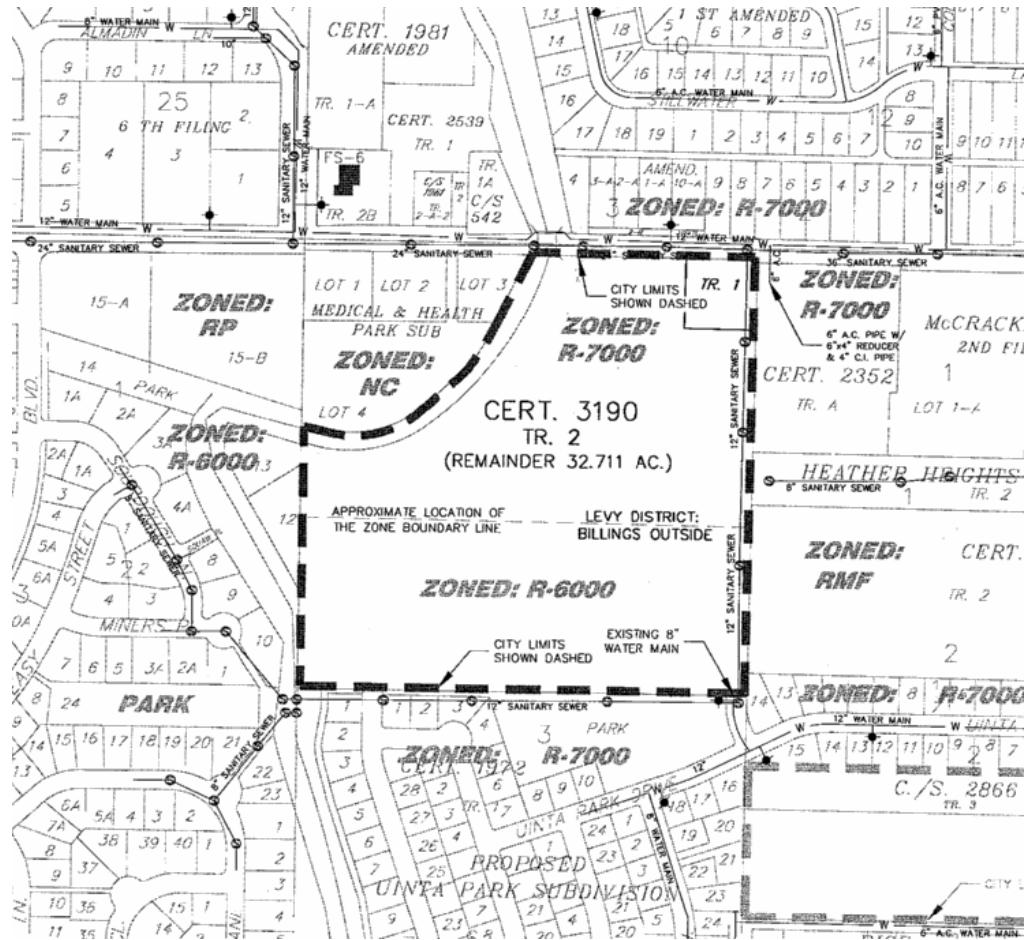
Figure 4: View from the northeast corner of the subject property, east along Wicks Lane. The adjacent church parking lot is pictured.

ATTACHMENT B
Zoning Map



Subject Property

ATTACHMENT C
Zoning Exhibit



ATTACHMENT D
ORDINANCE NO. 05-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
ON Tract 1 and the northern portion of Tract 2, Certificate of
Survey 3190, containing approximately 18 acres. **THE
SUBJECT PROPERTY IS LOCATED AT 120 WICKS
LANE.**

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.** A tract of land known as Tract 1 and the northern portion of Tract 2, Certificate of Survey 3190, containing approximately 18 acres and is presently zoned Residential 6000 and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 6000** to **Residential 5000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 5000** zones as set out 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 August 22, 2005.

PASSED, ADOPTED AND APPROVED on second reading September 12, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#765

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Public Hearing & Resolution Creating a Downtown Business Improvement District

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The City Council is being asked to adopt a resolution to create a downtown Business Improvement District (BID). The BID would provide litter control, snow removal, graffiti removal, security and could provide other services that are requested by property owners. The petition that requests the BID creation is signed by owners of 61.5% of the affected property, including the City. The Council is asked to conduct a public hearing, review any protests that were filed with the City Clerk and consider adopting a resolution to create the district.

ALTERNATIVES ANALYZED: The Council may adopt or reject the resolution.

FINANCIAL IMPACT: The City has two roles in the proposed BID. It is the only body that can create and administer the district and it is a major property owner. The total annual assessments are estimated to range between \$135,000 and \$150,000 per year. The assessments average \$951.22 per tax code number for the 143 properties within the proposed district. The City's estimated assessment would be \$13,800 per year.

RECOMMENDATION

Staff recommends that Council hold a public hearing and approve a resolution creating the downtown Business Improvement District.

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

ATTACHMENTS

A: Resolution (will be provided in the Aug. 19, 2005, Friday Packet).

INTRODUCTION

The Council is asked to adopt a resolution creating a new downtown BID. The BID will allow property owners to collectively provide cleaning, security and other services to properties within the district. 61.5% of property owners in the proposed district are requesting that the Council approve a resolution that creates the district.

PROCEDURAL HISTORY

- Council authorized Mayor to sign BID petition on March 28, 2005
- Council approved a Resolution of Intent to create the BID on July 25, 2005
- Public hearing notice published and mailed to property owners on July 28, 2005

BACKGROUND

The BID proposes to maintain improvements to benefit certain property located in the downtown. The purpose of BIDs is to provide funding for the purposes and powers that will serve a public use, will promote the health, safety, prosperity, security, and general welfare and will be of special benefit to the property within the boundaries of the district. The services of this BID will initially include public sidewalk sweeping, security, public sidewalk snow removal and graffiti removal and abatement within the boundaries shown in Exhibit A. Services may be expanded in subsequent years if requested by owners.

The state code allows cities to create BIDs if owners of at least 60% of the property within a proposed district petition for its creation. This petition contains 61.5% of the property within the proposed district. The City Council authorized the Mayor to sign the petition and the City's property represents about 9% of the total.

The funding for the FY 06 operation comes from the tax increment district funds that are allocated to the Partnership. If the BID is created, the Mayor must appoint a Board of Trustees and the Board must submit a work plan and assessment proposal. The District's first assessments will be collected in November 2006 for the FY 07 budget year.

ALTERNATIVES ANALYSIS

The Council may approve the resolution or reject it. If the Council approves the resolution the district will be created. The Partnership is performing BID services this year using tax increment, so no assessments will be collected this year. If the Council rejects the resolution the district will not be created but the Partnership may continue providing services as long as its budget allows.

STAKEHOLDERS

There are a total of 143 properties within the proposed district and the submitted petitions contain the signatures of the property owners representing 61.5% of the area. At a public meeting of the affected property owners, seven prospective directors were identified and recommended to the Mayor for his consideration as District Trustees.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The proposed BID is consistent with the 1997 Downtown Framework Plan and the Urban Renewal Plan (tax increment).

RECOMMENDATION

Staff recommends that Council hold a public hearing and approve the Resolution creating the downtown Business Improvement District.

ATTACHMENTS

A: Resolution (will be provided in the Aug. 19, 2005, Friday Packet).

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: South 27th Street Corridor Land Sale

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Ramona Mattix, AICP, Director

PROBLEM/ISSUE STATEMENT: Since no bids were received for the South 27th Street property, staff is requesting the Council delay this item indefinitely during the Council meeting of August 22, 2005. This would have the effect of killing the resolution.

RECOMMENDATION: Staff is recommending delaying the sale of 27th Street property indefinitely.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Sandstone Development Agreement

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The Council will consider approving a development agreement with Downtown Billings Investors, LLC for the proposed Sandstone redevelopment project, located in the 100 block of N. 27th Street. The project scope and responsibilities have changed substantially since the Council first considered the project and viewed the initial development agreement. The agreement is being redrafted by legal staff and has not been reviewed by the developer's attorney. Staff will obtain the revised agreement next week and transmit it to the Council no later than August 19.

ALTERNATIVES ANALYZED: The Council may approve, reject, delay or modify the agreement.

FINANCIAL IMPACT: The City will construct all parking spaces (approx. 215) using up to \$2,000,000 in tax increment bonds and using up to \$1,725,000 of parking reserve funds. A \$2,000,000 Fannie Mae loan is requested but the developer will repay the full cost of the loan. The City will be required to set aside \$500,000 of General Fund money to secure the loan and it will have to remain in escrow until the loan is repaid in no more than two years. City land, valued at \$458,000, would be offered to the developer at low or no cost. The completed project is expected to add over \$14,000,000 in taxable value to the downtown.

RECOMMENDATION

Staff recommends that Council approve the development agreement with Downtown Billings Investors, LLC.

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

ATTACHMENTS

A: Development agreement will be delivered to Council no later than August 19

ATTACHMENT A

RESOLUTION 05-

A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT FOR THE
REDEVELOPMENT OF LOTS 5-10, BLOCK 92 OF THE BILLINGS
ORIGINAL TOWNSITE WITH DOWNTOWN BILLINGS INVESTORS, LLC
AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT

WHEREAS, the City of Billings finds it desirable to redevelop downtown property located in the 100 block of N. 27th Street and described as Lots 5, 6, 8, 9 and 10, Block 92 of the Billings Original Townsite, and,

WHEREAS, Downtown Billings Investors, LLC submitted a development proposal that, in cooperation with the City of Billings, will accomplish this redevelopment by constructing a 12-15 story building with retail, parking, office and residential units.

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

The City Council approves the Development Agreement for the property redevelopment as described in the agreement and which is attached to this Resolution, and

The Mayor is authorized to execute said agreement on behalf of the City of Billings and other such documents that effectuate the agreement.

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

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: TIF and Shiloh Corridor Project Coordinator

DEPARTMENT: City Administrator's Office

PRESENTED BY: Tina Volek, Interim City Administrator

PROBLEM/ISSUE STATEMENT: As discussed at the Aug. 1, 2005, Council Work session, the Big Sky Economic Development Authority (BSEDA) has suggested partnering with the City and other groups to hire a project coordinator to help implement an east downtown Tax Increment Finance District (TIFD) and to perform liaison duties between the business community and the State of Montana on the construction of Shiloh Road from Poly Drive to Canyon Creek Bridge.

ALTERNATIVES ANALYZED:

- Agree to support the proposed Project Coordinator, who would be supervised by BSEDA, for a period of one year with a 1-year renewal at a City cost of \$10,833 per year;
- Agree to support the proposed Project Coordinator for a 2-year period for \$10,833 per year; or
- Do not support the creation of a Project Coordinator position, and assign the duties of creating the TIFD to existing City staff in addition to their regular duties.

FINANCIAL IMPACT: Total cost of the program would be \$150,000 over two years. BSEDA would be responsible for \$85,000, with the remaining \$65,000 split among the City, Downtown Billings Partnership and Celebrate Billings. Celebrate Billings already has pledged \$10,000 a year for two years to the project. The City allocation of \$10,833 can be split, with $\frac{3}{4}$ to cover the TIF implementation coming from a professional services account (Acct. No. 010-1412-414-3590 for \$40,000, with nothing spent to date) and $\frac{1}{4}$ to cover the Shiloh portion coming from an additional \$80,000 recently received in Federal transportation funds.

RECOMMENDATION

Staff recommends that Council support creation of the proposed Project Coordinator at BSEDA for a period of one year, with a 1-year renewal. Total City cost to be \$21,666 over two years.

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

ATTACHMENTS

A: BSEDA Proposal

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 22, 2005

TITLE: Bid Award – QuickRange Shooting Range

DEPARTMENT: Billings Police Department

PRESENTED BY: Jerry Archer, Chief of Police

PROBLEM/ISSUE STATEMENT: The City of Billings has been awarded the 2005 Technology Grant for the purchase of an indoor shooting range. The City has advertised in the Billings Gazette on August 6th and 13th, 2005 and the Billings Times on Thursday, August 11th, 2005. Bids were opened on Friday, August 19th, 2005 and will be provided to Council at the August 22nd meeting. We are requesting Council award the bid for the QuickRange shooting range to the lowest bidder.

FINANCIAL IMPACT: This is a grant funded project and there will be no cost to the City.

RECOMMENDATION

Staff recommends that Council award the bid for (1) QuickRange shooting range to the lowest bidder.

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

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