

# CITY OF BILLINGS

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

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## AGENDA

COUNCIL CHAMBERS

November 28, 2005

6:30 P.M.

CALL TO ORDER – Mayor Tooley

PLEDGE OF ALLEGIANCE – Mayor Tooley

INVOCATION – Councilmember Dick Clark

ROLL CALL

MINUTES – November 14, 2005

COURTESIES

- Finance & Administrative Services – GFOA Certificate, MMIA First & Second Class Cities Safety Award

PROCLAMATIONS

BOARD & COMMISSION REPORTS

ADMINISTRATOR REPORTS – Tina Volek

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, and #12 through #17 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) Sale of Used City Transit Buses.** (Opened 11/15/05).

Recommend Ron Kindsfather for Bus #1843, \$1326.00; Transit Sales International, Bus #1845 - #1852, \$15,888.00. No bids were received on Bus #1681 and #1749.

[\(Corresponding Staff Memo A1\)](#)

**(2) Seven (7) new 40-Cubic yard Capacity Roll-Off Containers.**  
(Opened 11/22/05). Recommend delaying award until 12/12/05.  
[\(Corresponding Staff Memo A2\)](#)

**(3) Vehicles, City of Billings.** (Opened 11/15/05). Recommend Frontier Chevrolet for Schedules I and IV with no trades, \$50,690.00 and Archie Cochrane Ford for Schedules II and III with trades and Schedule V with no trade, \$94,860.00.  
[\(Corresponding Staff Memo A3\)](#)

**(4) 4<sup>th</sup> & Broadway Redevelopment – 2005.** (Opened 11/15/05). Recommend delaying to 12/12/05.  
[\(Corresponding Staff Memo A4\)](#)

**B. Final Change Order #1, Airport Paving Project.** Hardrives Construction, Inc., deduct \$19,563.77.  
[\(Corresponding Staff Memo B\)](#)

**C. Final Change Order #1, Airport Parking Lot Revenue Control System,** Yellowstone Electric, deduct \$1,553.91.  
[\(Corresponding Staff Memo C\)](#)

**D. Amendment #9, AIP 30 Engineering Services,** Morrison-Maierle, Inc., \$535,030.00 for engineering design, survey, and construction administration services for the Terminal Ramp Rehabilitation, Overlay of Runway 10R/28L, and Airport Incursion Road Rehabilitation and Drainage Upgrade projects for the airport.  
[\(Corresponding Staff Memo D\)](#)

**E. W.O. 05-10: Stewart Park Trail – Billings,** Federal Aid No. STPE 1099(40), Contract for Professional Engineering Services, Engineering, Inc., \$51,043.00.  
[\(Corresponding Staff Memo E\)](#)

**F. W.O. 05-12: Big Ditch Trail – Billings,** Federal Aid No. STPE 1099(49), Contract for Professional Engineering Services, Engineering, Inc., \$33,356.00.  
[\(Corresponding Staff Memo F\)](#)

**G. W.O. 05-15: Howard Heights Storm Drain,** Contract for Professional Services, Interstate Engineering, Inc., \$119,490.00.  
[\(Corresponding Staff Memo G\)](#)

**H. Local Telephone Service Contract,** One Eighty Communications, \$66,852.02, term: 3 years.  
[\(Corresponding Staff Memo H\)](#)

**I. Compensation Agreement**, Private Contract #540: Riverfront Pointe Subdivision, Phase I, Regal Land Development, Inc., \$399,069.39 including a 10% construction contingency.

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

**J. City-County Special Investigations Unit (CCSIU) Agreement**, Yellowstone County, term: 1/1/06 – 12/31/06.

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

**K. W.O. 00-15: Grand Avenue Right-of-Way Agreements:**

(1) Reifschneider Investments Inc., c/o The Rax Restaurant, a tract of land located in Lot 4, Block 2, Cellan Acre Tracts, \$0.00.

[\(Corresponding Staff Memo K1\)](#)

(2) KRV Partnership LLP, a tract of land located in Tract C, C/S 114 Amended, \$0.00.

[\(Corresponding Staff Memo K2\)](#)

**L. Acceptance of State Highway Traffic Safety Grant Contract #2006-09-02-03 & 2006-11-03-03**, Montana Dept. of Transportation, \$47,250.00, term: 10/01/05 – 9/30/06.

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

**M. Approval of Architectural Fees** for Passenger Loading Bridge Replacement Project, CTA Architects and Engineers, \$258,421.61.

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

**N. Authorization of Sale of Surplus Property** -- kitchen equipment in the new Crime Prevention Center located in the former Sidney's Restaurant at Rimrock Mall.

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

**O. Assignment and Transfer of West End Hangar Ground Leases:**

(1) Lot 5: From Martin Elshire to Moore, Scott and Tostenrud, LLC, \$0.00.

[\(Corresponding Staff Memo O1\)](#)

(2) Lot 7: From Martin Elshire to Julia Holdings, LLC, \$0.00

[\(Corresponding Staff Memo O2\)](#)

**P. Amendment of Lighting Agreement for Lighting District #97**, Northwestern Energy, recommend a six-month extension.

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

**Q. Preliminary Plat** of Falcon Ridge Estates Subdivision, generally located north of Rimrock Road and west of Molt Road in West Billings; recommend approval of the preliminary plat and adoption of the findings of fact.

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

**R. Cottonwood Grove Subdivision, First and Second Filings,** Amendment to the Subdivision Improvements Agreement; recommend denial of the request.

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

**S. Final Plat** of Amended Lot 3A of Amended Lot 1, Block 1, Goodman Subdivision, Second Filing.

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

**T. Final Plat** of Greenfield Subdivision.

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

**U. Final Plat** of Amended Lot 18B of McKay Acres Subdivision.

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

**V. Final Plat** of Reiter-Beswick Subdivision.

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

**W. Bills and Payroll.**

(1) October 1 - 31, 2005 (Court)

[\(Corresponding Staff Memo W1\)](#)

(2) October 28, 2005

[\(Corresponding Staff Memo W2\)](#)

(3) November 4, 2005

[\(Corresponding Staff Memo W3\)](#)

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

## **REGULAR AGENDA:**

- 2. PUBLIC HEARING AND FIRST READING ORDINANCE** providing that the BMCC be amended by revising portions of Section 4-400 of said code; updating language for definitions, small animal permits, noisy animals, potentially dangerous animals, quarantine procedures, dogs at large, vaccination of small animals for rabies, impoundment, penalty requirements and issuance; establishing a deadline for registration of a dangerous animal and providing proof of vaccination.. Staff



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

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

3. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #769:** A zone change from Residential Manufactured Home to Community Commercial on an 11.87 acre portion of Tract 2 of C/S 1163. MHC Casa Village, LLC, applicant and Terry Seiffert, agent. Zoning Commission recommends denial of the zone change on first reading and adoption of the determinations of the 12 criteria. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

4. **PUBLIC HEARING AND SPECIAL REVIEW #794: (see zone change #769 above)** A special review to allow parking for camping purposes in a Community Commercial zone described as an 11.87 acre portion of Tract 2 C/S 1163. MHC Casa Village, LLC, applicant and Terry Seiffert, agent. Zoning Commission recommends denial. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

5. **PUBLIC HEARING AND SPECIAL REVIEW #795:** A special review for a beer & wine license with gaming in an existing building in a Community Commercial zone described as Tract 3 of C/S 2631 and located at 3213 Grand Avenue. Calmont, LLC, applicant and Ken Kunkel, agent. Zoning Commission recommends denial. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

6. **PUBLIC HEARING AND SPECIAL REVIEW #796:** A special review to change from one nonconforming use, a muffler repair shop, to another nonconforming use a general auto repair shop for Soelter Auto in an R-6,000 zone described as Lot 1, Block 4 and all of Block 1, Central Avenue Addition and located at 640 St. John's Avenue. Michael & Colleen Manion, owners and Ernie Dutton, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

7. **PUBLIC HEARING AND SPECIAL REVIEW #797:** A special review to allow an all beverage license with gaming in a Community Commercial zone described as Lot 5A-1, Block 2 Descro Central Subdivision and located at 2545 Central Avenue. Qayum Investment Properties, LLC owners and Ernie Dutton, agent. Zoning Commission recommends denial. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

8. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #770:** A zone change from Residential Manufactured Home to R-6,000 on a 1.858 acre tract of land described as Lots 21A & 22A of Pemberton Subdivision and located at North Lakeview Drive & Lake Elmo Drive. Don McLennaghan, applicant and Tom Mulford, agent. Zoning Commission recommends approval of the zone change on first reading 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 ZONE CHANGE #771:** A text amendment to BMCC Sections 27-703, 27-705(a), 27-705(b) and 27-707(b); City sign code definitions, signs permitted and exempt signs, adoption of the revisions as an amendment to the zoning regulations and setting a time period for the regulation to be effective. Zoning Commission recommends approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 9\)](#)
10. **PUBLIC HEARING AND RESOLUTION** transferring Zimmerman Trail ownership from Highway 3 South to the Billings' city limits from Yellowstone County to the City of Billings. Staff recommends approval of the transfer of Zimmerman Trail ownership through a quitclaim deed. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 10\)](#)
11. **PUBLIC HEARING AND FIRST READING ORDINANCE** amending Section 2-204 of the BMCC, providing that the Deputy Mayor be elected at the City Council's first regular meeting following the City General Election. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 11\)](#)
12. **APPROVAL** of the Fair Housing Action Plan for FY05-06. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 12\)](#)
13. **RESOLUTION** adopting the *Cobb Field Feasibility Study Report* and preliminary planning recommendations for the repair or replacement of Cobb Field Stadium in Athletic Park. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 13\)](#)
14. **LIBRARY EXPANSION/GSA LEASE.** Staff recommends terminating further negotiations with the GSA for interim U.S. District Court space. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 14\)](#)

15. **PRELIMINARY PLAT** of Twin Oaks Subdivision. Staff recommends conditional approval of the plat, approval of the variances, and adoption of the Findings of Fact. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 15\)](#)
16. **PRELIMINARY PLAT** of Bellville Subdivision, generally located north of Wicks Lane, west off of Brewington Lane at the terminus of Kyhl Lane.  
[\(Corresponding Staff Memo 16\)](#)
17. **RESOLUTION** setting the annual salary of the Municipal Court Judge.  
[\(Corresponding Staff Memo 17\)](#)
18. **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**

## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 28, 2005

TITLE: Bid Award for Sale of Used MET Buses

DEPARTMENT: Aviation and Transit Department

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

**PROBLEM/ISSUE STATEMENT:** On October 11, 2005 MET Transit received Council approval to sell eleven (11) used Transit buses. Bids were solicited by placing ads in the *Billings Gazette*, *Billings Times*, and mailing bid packets to four national vendors who purchase used buses. The MET also distributed an additional ten bid packets to interested individuals. Bids were opened on November 15, 2005, and the following responses were received:

<u>Bus Number</u>	<u>Bid Response</u>	<u>Vendor</u>
Bus #1843	\$1,326	Ron Kindsfather
Bus #1845	\$2,111	Transit Sales International
Bus #1846	\$2,111	Transit Sales International
Bus #1847	\$2,111	Transit Sales International
Bus #1848	\$2,111	Transit Sales International
Bus #1849	\$2,111	Transit Sales International
Bus #1850	\$2,111	Transit Sales International
Bus #1851	\$1,111	Transit Sales International
Bus #1852	\$2,111	Transit Sales International
Bus #1681	None	
Bus #1749	None	

Only one bid was received for each of the nine buses (8 – 1991 model year and 1 – 1987 model year) noted above, with two buses receiving no bids. Staff recommends that the Aviation and Transit Department proceed with selling the buses to the parties providing bids. The bid amounts are in the range that staff anticipated, given the low demand for used buses throughout the country. The two buses that did not receive any bids are 1979 models and staff will consider other alternatives for the disposal of these buses.

**FINANCIAL IMPACT:** The City of Billings Aviation and Transit Department will receive \$17,214.00 from the sale of the nine used buses.

**RECOMMENDATION**

Staff recommends that Council approve the bids submitted by the vendors noted above, and grant permission to proceed with the sale of the used buses that received bids.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

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



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA  
Monday, November 28, 2005

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**TITLE:** Bid Award to Purchase Seven 40 Yard Roll Off Boxes for the Solid Waste Division

**DEPARTMENT:** Public Works/Solid Waste Division

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

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**PROBLEM/ISSUE STATEMENT:** The current Solid Waste Division FY06 Budget includes funds to replace seven 40 cubic yard roll-off boxes at the landfill. These boxes are used at the container site for customers to dump into. Landfill employees then haul them to the active working area of the landfill for dumping. Ten bid packets were mailed out and the bid advertisement was published in the Billings Times November 10<sup>th</sup> and 17<sup>th</sup> for bids opened November 23<sup>rd</sup>.

**FINANCIAL IMPACT:** The Solid Waste Division budget includes \$42,000 to replace seven 40 cubic yard roll-off boxes at the landfill.

**RECOMMENDATION:**

Staff recommends that Council delay awarding a contract to purchase seven 40 cubic yard roll-off boxes until December 12, 2005.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

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

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, November 28, 2005

TITLE: City Vehicles  
DEPARTMENT: Administration  
PRESENTED BY: Christine Varnai, Purchasing Agent  
Larry Deschene, Motor Pool Manager

**PROBLEM/ISSUE STATEMENT:** Nine City Vehicles are scheduled for replacement in the City's Equipment Replacement Program, and approved by City Council during the FY 05/06 budget process.

The bids are for the following types of vehicles: Two ¾ ton pick-ups (1 Solid Waste/ 1 Airport), three 4 door sedans (Police), two ½ mid-size extend cab pick-ups ( 1 Engineering/ 1 Public Works Belknap) , one ½ ton pick-up ( Street Dept.) , one 4 wheel drive SUV (Airport).

The Motor Pool Division advertised for sealed bids for City Vehicles on November 3<sup>rd</sup> & 10<sup>th</sup> with a bid opening on November 15<sup>th</sup>, 2005.

**FINANCIAL IMPACT:** Received three bids on the vehicles.

#### Schedule I 2 - ¾ ton pickups

Vendor	Total Bid	Trade In	Net Bid
Frontier Chevy	<b>*35992</b>	1000	34992
Lithia Dodge	NO BID		
Archie Cochrane Ford	37200	1400	35800

#### Schedule II 3- 4 door sedans

Vendor	Total Bid	Trade In	Net Bid
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Frontier Chevy	44151	3500	40651
Lithia Dodge	46194	3000	43194
Archie Cochrane Ford	45450	4850	<b>*40600</b>

**Schedule III  
2-Mid sized pickups**

Vendor	Total Bid	Trade In	Net Bid
Frontier Chevy	29590	700	28890
Lithia Dodge	41440	1000	40440
Archie Cochrane Ford	28500	1800	<b>*26700</b>

**Schedule IV  
1- ½ ton pickup**

Vendor	Total Bid	Trade In	Net Bid
Frontier Chevy	<b>*14698</b>	500	14198
Lithia Dodge	18278	1000	17278
Archie Cochrane Ford	16170	1500	14670

**Schedule V  
1- 4x4 SUV**

Vendor	Total Bid	Trade In	Net Bid
Frontier Chevy	NO BID		
Lithia Dodge	NO BID		
Archie Cochrane Ford	<b>*27560</b>	2500	25060

**RECOMMENDATION**

Staff recommends: To award Schedules I & IV with no trades to Frontier Chevrolet for the bid amount of \$50,690 and to award Schedules II & III with trades and Schedule V with no trade to Archie Cochrane Ford for the bid amount of \$94,860.

**Approved By:**      **City Administrator** \_\_\_\_      **City Attorney** \_\_\_\_

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



## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 28, 2005

TITLE: 4<sup>th</sup> & Broadway Sealed Bid & RFDPs  
 DEPARTMENT: City Administrator's Office  
 PRESENTED BY: Tina Volek, Interim City Administrator

**PROBLEM/ISSUE STATEMENT:** Sealed bids and Requests for Development Proposals (RFDPs) for 4<sup>th</sup> & Broadway were opened on Nov. 15, 2005. A sealed bid for lots 1-6 of \$900,000 was received from Stockman's Bank, and the Council is required by Montana law to take action on the item at its next business meeting. The RFDPs were to be discussed at a Council work session on Nov. 21, and a decision on how to proceed on those items was anticipated at that time.

#### ALTERNATIVES ANALYZED:

- Accept the Stockman Bank offer for lots 1-6. A Stockman Bank site is included in all the RFDPs.
- Postpone action on the Stockman Bank offer until Dec. 12, 2005, to allow its evaluation in conjunction with the RFDPs. Staff was to recommend on Nov. 21 that the Council ask for presentations from at least two of the three respondents to the RFDPs.
- Reject the Stockman Bank offer.

**FINANCIAL IMPACT:** Lots 1-6 were purchased from the Parking Fund, therefore the \$900,000 would revert to that Fund. The exact impact of the RFDPs needs further evaluation.

#### RECOMMENDATION

Postpone action on the Stockman Bank offer until Dec. 12, 2005, to allow its evaluation in conjunction with the RFDPs.

Approved By: City Administrator \_\_\_\_\_ City Attorney \_\_\_\_\_

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

## AGENDA ITEM:



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

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TITLE: Approval of Final Change Order One for the Airport Paving Project  
DEPARTMENT: Aviation and Transit  
PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

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**PROBLEM/ISSUE STATEMENT:** This project provided new pavement for the parking lot at the Interagency Fire Operations Building and Gate 9 access road in the Airport Business Park, and the expansion of the car rental parking lot west of the Terminal. This is the final balancing change order for this project, which corrects the bid quantities to match the actual installed quantities. The comparison of these two quantities indicates either an addition or reduction to the contract amount. The major changes to this contract are as follows:

- The contractor used less asphalt paving material on this project due to clearly defined paving limits at all sites, which reduced the amount of waste included in the bid.
- Because the asphalt at the Interagency Fire Operations Building had deteriorated into loose gravel, the contractor was able to utilize it as base material and reduce costs.

**FINANCIAL IMPACT:** These changes will result in a deduction of \$19,563.77. The original contract price of \$119,430.72 will be reduced to \$99,866.95

**RECOMMENDATION**

Staff recommends the City Council approve Change Order One to Hardrives Construction, Inc for the Airport Paving Project for the City of Billings Logan International Airport.

**Approved By:**            **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, November 28, 2005

TITLE: Approval of Final Change Order One for the Parking Lot Revenue Control System

DEPARTMENT: Aviation and Transit

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

**PROBLEM/ISSUE STATEMENT:** This project replaced the existing revenue control equipment for the long and short term parking lots. This is the final balancing change order for this project and corrects the bid quantities to match the actual installed quantities. The comparison of these two quantities indicates either an addition or reduction to the contract amount. The major changes to this contract are as follows:

- We were able to reduce the size of the electrical conduit to be used thereby saving costs.
- We changed the landscaping scheme to utilize material on site reducing costs.
- The size of the bollards was increased to protect the new equipment.
- In order to increase the accuracy of the count of vehicles using the parking lots, new traffic counting loops were installed.
- An air conditioner was installed to provide cooling for the new computer system to prevent system failures due to overheating.

**FINANCIAL IMPACT:** These changes will result in a deduction of \$1,553.91. The original contract price will be reduced to \$369,535.23

**RECOMMENDATION**

Staff recommends the City Council approve Change Order One to Yellowstone Electric for the Parking Lot Revenue Control System installed at the City of Billings Logan International Airport.

Approved By: City Administrator \_\_\_\_ City Attorney \_\_\_\_

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

## AGENDA ITEM:



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

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**TITLE:** Approval of Amendment #9 with Morrison-Maierle, Inc. for Engineering Services for Airport Improvement Program (AIP) Projects AIP 30

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** Due to the specialized nature of engineering services required for airfield infrastructure design, including knowledge of the Federal Aviation Administration (FAA) design and grant funding requirements, the City of Billings Logan International Airport has historically entered into five-year term contracts to provide engineering services at the Airport. The current five-year contract is with Morrison-Maierle, Inc. to provide engineering, design, survey, and contract administration services as required for Airport Capital Projects, including Federal Airport Improvement Program (AIP) and Passenger Facility Charge (PFC) projects and the general Departmental engineering services as needed. This base contract is amended as new projects are undertaken. Amendment #9 for \$535,030 includes the required engineering design, preliminary and construction surveys, and contract administration services for next Summer's AIP projects, with an estimated construction cost of \$5,200,000. The scope of work and associated fees have been reviewed and negotiated by Airport staff and have been approved by the FAA. The AIP 30 construction projects will provide new asphalt pavement and lighting on Runway 10R/28L, a new concrete parking apron for aircraft at the Terminal, and new asphalt and drainage repairs on the incursion roads. Including Amendment 9, the total cost of the engineering work under this contract during the first four years has totaled \$3,028,102, and has produced over \$19,700,000 in construction projects and \$830,000 in equipment purchases

**FINANCIAL IMPACT:** The total cost of engineering Amendment #9 with Morrison-Maierle, Inc. is \$535,030, and will be funded with a 95/5 AIP entitlement grant. The FAA portion will be \$508,279 and the City's match is \$26,751. These projects are included in the current budget.

**RECOMMENDATION**

Staff recommends that the City Council approve Amendment #9 in the amount of \$535,030 for the engineering design, survey, and construction administration services for the Terminal Ramp Rehabilitation, Overlay of Runway 10R/28L, and Airport Incursion Road Rehabilitation and

Drainage Upgrade projects for the City of Billings Logan International Airport with Morrison-Maierle, Inc.

**Approved By:**        **City Administrator** \_\_\_\_\_ **City Attorney** \_\_\_\_

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

## AGENDA ITEM:




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


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**TITLE:** W.O. 05-10 – Stewart Park Trail-Billings, Federal Aid No. STPE 1099(40), Contract for Professional Engineering Services

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The purpose of this project is build a multi-use trail in the greater Stewart Park area, in conformance with the Stewart Park Master Plan, adopted by Council in August. Staff requested the services of an engineering firm to provide design and construction administration services for the project, and Engineering, Inc. was selected through the RFP process. A copy of the contract is on file with the City Clerk's office.

**ALTERNATIVES ANALYZED:**

- Award the Contract for Professional Services to Engineering, Inc. (Estimated design completion date of February 2006)
- Do not award the contract and perform the design in-house. (Unknown completion date)

**FINANCIAL IMPACT:** The cost of design and construction administration services is \$51,043.00. Funding is available from the project funds. The total project funding (for design, construction and construction administration) is as follows:

<b><u>Stewart Park Trail</u></b>	<b><u>Amount</u></b>
CTEP Grant	\$237,230
Local Match for CTEP	\$ 36,770
Recreational Trails Program (RTP) Grant	\$ 35,000
Local Match for RTP	\$ 8,750
<b>Total Funds Available</b>	<b><u>\$317,750</u></b>

Local match funding will be provided by General Obligation (GO) Bond funds from the Parks and Trails GO Bond approved in 1999.

## **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute a Contract for Professional Services with Engineering, Inc. for \$51,043 for engineering design and construction administration services, contingent on CTEP Concurrence.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

## **INTRODUCTION**

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. The Stewart Park Trail was approved as a Community Transportation Enhancement Program (CTEP) project in 2002. The Stewart Park Trail will extend from Central Avenue to as far as King Avenue following the corridors in the approved Stewart Park Master Plan.

## **PROCEDURAL HISTORY**

### **Completed Items**

- CTEP Project Specific Agreement signed with MDT authorizing commencement of project – March 10, 2003
- Stewart Park Master Plan adopted by City Council – August 2005
- August 11, August 18 and August 25, 2005 – RFP advertisement dates
- September 9, 2005 – Proposals received by Engineering Division
- October 14, 2005 – Selection committee meeting
- November 28, 2005 – Award of Contract for Professional Services (**this memo**)

### **Future Items**

- December 2005 – Begin preliminary design
- January 2006 – Preliminary design completed and public input meeting
- February 2006 – Final design completed
- February/March 2006 – Construction contract award
- June/July 2006 – Construction complete

## **BACKGROUND**

The purpose of this project is build a multi-use trail in the greater Stewart Park area, in conformance with the Stewart Park Master Plan, adopted by Council in August. This project will start at the north end of Stewart Park near Central Avenue (across from Descro Park), continue southerly through Stewart Park, cross Monad Road, and continue as far as the south end of the Lampmann Park strip where it will connect with the privately funded trail at Famous Dave's restaurant.

The project is to be financed using CTEP Grant funds (\$237,230), Required Local Match for CTEP (\$36,770), Recreational Trails Program (RTP) Grant funds (\$35,000), and Local Match for RTP (\$8,750). It is expected that the consultant will begin work on preliminary tasks immediately upon contract signing and have design tasks completed in order to receive construction bids in February 2006.

## **ALTERNATIVES ANALYSIS**

The consultant selection committee comprised of Cari Martin of Public Works; Mark Jarvis of



Parks, Recreation and Public Lands; Eric Gilsrud of Parks, Recreation and Public Lands; Dean Sjolseth of Parks, Recreation and Public Lands; and Nicholas Bailey of the Engineering Division reviewed the proposals submitted.

Proposals to provide the requested services were received from CTA Architects & Engineers, Engineering, Inc., and Kadmas, Lee & Jackson, Inc. Each of the proposals were reviewed by the selection committee members (five members total) and scored in the following categories: Prior Trails Experience (25 points available), Key Project Personnel (25 points available), Past Project Performance (20 points available), Consultant Work Plan (20 points available), and Grammar, Spelling and Conformance to RFP (10 points available).

Each proposal's scores were summed to determine an overall score for each firm. Based on each firm's score, the committee members ranked the proposing firms from first to third place. Following the reviews, the committee selected Engineering, Inc. as the clear winner.

Engineering Division staff then initiated negotiations with Engineering, Inc. for a Contract for Professional Services for design and construction administration services for this project.

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

### **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute a Contract for Professional Services with Engineering, Inc. for \$51,043 for engineering design and construction administration services, contingent on CTEP Concurrence.

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

## AGENDA ITEM:




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


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TITLE: W.O. 05-12 – Big Ditch Trail-Billings, Federal Aid No. STPE 1099(49),  
Contract for Professional Engineering Services

DEPARTMENT: Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The purpose of this project is build a multi-use trail in park land from the Shiloh Road pedestrian/bicycle underpass to Larchwood Lane. Staff requested the services of an engineering firm to provide design and construction administration services for the project, and Engineering, Inc. was selected through the RFP process. A copy of the contract is on file with the City Clerk's office.

**ALTERNATIVES ANALYZED:**

- Award the Contract for Professional Services to Engineering, Inc. (Estimated design completion date of February 2006)
- Do not award the contract and perform the design in-house. (Unknown completion date)

**FINANCIAL IMPACT:** The cost of design and construction administration services is \$33,356.00. Funding is available from the project funds. The total project funding (for design, construction and construction administration) is as follows:

<b><u>Big Ditch Trail</u></b>	<b><u>Amount</u></b>
CTEP Grant	\$135,167
Local Match for CTEP	\$ 20,950
<b>Total Funds Available</b>	<b><u>\$156,117</u></b>

Local match funding for this project has been pledged by BIKENET.

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute a Contract for Professional Services with Engineering, Inc. for \$33,356 for engineering design and construction administration services, contingent on CTEP Concurrence.

**Approved By:**      **City Administrator** \_\_\_\_      **City Attorney** \_\_\_\_

## **INTRODUCTION**

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. The Big Ditch Trail was approved as a Community Transportation Enhancement Program (CTEP) project in 2004. The Big Ditch Trail will extend from the Shiloh Road pedestrian/bicycle underpass to Larchwood Lane. The trail will be located just north of the Big Ditch in platted park land.

## **PROCEDURAL HISTORY**

### Completed Items

- CTEP Project Specific Agreement signed with MDT authorizing commencement of project – July 25, 2005
- August 11, August 18 and August 25, 2005 – RFP advertisement dates
- September 9, 2005 – Proposals received by Engineering Division
- October 14, 2005 – Selection committee meeting
- November 28, 2005 – Award of Contract for Professional Services (**this memo**)

### Future Items

- December 2005 – Begin preliminary design
- January 2006 – Preliminary design completed and public input meeting
- February 2006 – Final design completed
- February/March 2006 – Construction contract award
- June/July 2006 – Construction complete

## **BACKGROUND**

The purpose of this project is build a multi-use trail in the park land on the north side of the Big Ditch from the existing pedestrian/bicycle underpass at Shiloh Road to Larchwood Lane.

The project is to be financed using CTEP Grant funds (\$135,167), with the Required Local Match for CTEP funds (\$20,950) provided by BIKENET, a local non-profit group. It is expected that the consultant will begin work on preliminary tasks immediately upon contract signing and have design tasks completed in order to receive construction bids in February 2006.

## **ALTERNATIVES ANALYSIS**

The consultant selection committee comprised of Cari Martin of Public Works; Mark Jarvis of Parks, Recreation and Public Lands; Eric Gilsrud of Parks, Recreation and Public Lands; and Nicholas Bailey of the Engineering Division reviewed the proposals submitted.

Proposals to provide the requested services were received from CTA Architects & Engineers, Engineering, Inc., and Kadrmas, Lee & Jackson, Inc. Each of the proposals were reviewed by

the selection committee members (four members total) and scored in the following categories: Prior Trails Experience (25 points available), Key Project Personnel (25 points available), Past Project Performance (20 points available), Consultant Work Plan (20 points available), and Grammar, Spelling and Conformance to RFP (10 points available).

Each proposal's scores were summed to determine an overall score for each firm. Based on each firm's score, the committee members ranked the proposing firms from first to third place. Following the reviews, the committee selected Engineering, Inc. as the clear winner.

Engineering staff then initiated negotiations with Engineering, Inc. for a Contract for Professional Services for design and construction administration services for this project.

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

### **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute a Contract for Professional Services with Engineering, Inc. for \$33,356 for engineering design and construction administration services, contingent on CTEP Concurrence.

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

## AGENDA ITEM:




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


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**TITLE:** Professional Services Contract - WO 05-15 Howard Heights Storm Drain

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** The Howard Heights area is generally located west of the BBWA Canal and north of Hilltop Road. This area of the Heights does not have any storm drain improvements, and approximately 200 acres of residential development drains down Nutter Boulevard to Shamrock Lane. This project will be completed in two phases and will alleviate one of the worst flooding locations within the Heights area. Staff requested the services of an engineering firm to provide design services for the project, and Interstate Engineering, Inc. was selected through the RFP process.

**ALTERNATIVES ANALYZED:**

1. Approve the Professional Services Contract with Interstate Engineering, Inc.
2. Do not approve the Professional Services Contract with Interstate Engineering, Inc.

**FINANCIAL IMPACT:** The total estimated cost for Phase I of the improvements, including the professional services contract to design both Phase I and Phase II, is \$470,000. The improvements for Phase II will be completed in 2009. Both Phase I and Phase II are referenced as ENGD004 in the current CIP. The funding breakdown for Phases I and II is as follows:

Phase I Improvements & Design of Phases I & II

Gas Tax Funds	\$430,000
Storm Drain Funds	<u>\$ 40,000</u>
Total	\$470,000

Phase II Improvements

Gas Tax Funds	\$100,000
Storm Drain Funds	<u>\$275,000</u>
Total	\$375,000

**RECOMMENDATION**

Staff recommends that Council approve the professional services contract for W.O. 05-15 for the design of Phases I & II with Interstate Engineering, Inc. in the amount of \$119,490.00.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

**ATTACHMENT**

A. Professional Services Contract

## **INTRODUCTION**

The Howard Heights area drains approximately 200 acres of developed residential property. Currently there are no storm drains in this area. During storm events, water from this area flows down the streets via curb and gutter. The storm water from these streets then combines at the intersection of Nutter Boulevard and Shamrock Lane, causing flooding above the curb, gutter, and sidewalk. Several houses have been flooded during these events. The City is in the process of approving the West Heights Storm Drainage Master Plan, which is being finalized. The Master Plan identifies this as one of the worst areas for flooding within the Heights area. This project will construct the recommended storm drain appurtenances for this area.

## **PROCEDURAL HISTORY**

### Completed Items

- August 11, August 18 and August 25, 2005 – RFP advertisement dates
- September 9, 2005 – Proposals received by Engineering Division
- September 30, 2005 – Selection committee meeting
- October 25, 2005 – Selection committee interviews
- November 28, 2005 – Award of Contract for Professional Services (**this memo**)

### Future Items

- December 2005 – Begin preliminary design
- February 2006 – Preliminary design completed and public input meeting
- May 2006 – Final design completed
- July 2006 – Construction contract award
- September 2006 – Construction complete

## **BACKGROUND**

The purpose of this project is to provide storm drainage to the Howard Heights area. The project is split into two phases. Phase I of this project will extend storm drain up Hilltop Road from the BBWA Canal to Shamrock Lane and then up Shamrock Lane to the park located within the Howard Heights Subdivision where the existing retention pond will be redesigned into a detention pond. Phase II of the project will extend storm drain from the detention pond up Shamrock Lane to the intersection of Nutter Boulevard. From this intersection, the storm drain will be extended up to Aronson Avenue. This project will alleviate one of the worst flooding locations within the Heights area.

The consultant selection committee comprised of Chris Hertz of the Engineering Division; Bill Kemp of the Street and Traffic Division; Will Robbins of the Engineering Division; Lora Mattox of the Planning Department; and Travis Harris of the Engineering Division reviewed the proposals submitted.



Proposals to provide the requested services were received from Camp Dresser and McKee, Inc.; HDR Engineering, Inc.; Interstate Engineering, Inc.; Kadrmas, Lee & Jackson, Inc.; and Morrison-Maierle, Inc. Each of the proposals were reviewed by the selection committee members (five members total) and scored in the following categories: Qualifications and Prior Experience (25 points available), Key Personnel (20 points available), Project Management and Past Project Performance (25 points available), Consultant Location and Business Organization (10 points available), and Project Schedule (20 points available).

Each proposal score was summed to determine an overall score for each firm. Based on each firm's score, the committee members ranked the proposing firms from first to fifth place. Following the reviews, the committee selected Morrison-Maierle, Inc. and Interstate Engineering, Inc. for interviews. Following the Selection Committee interviews, Interstate Engineering, Inc. was selected. Engineering staff then initiated negotiations with Interstate Engineering, Inc. for a Contract for Professional Services for design services for this project. If approved, it is anticipated that construction of Phase I of the project will be completed by September 2006.

### **RECOMMENDATION**

Staff recommends that Council approve the Professional Services Contract for W.O. 05-15 for the design of Phases I & II with Interstate Engineering, Inc. in the amount of \$119,490.00.

### **ATTACHMENT**

A. Professional Services Contract

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

## AGENDA ITEM:




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


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TITLE: Local Telephone Service Contract

DEPARTMENT: Administrative Services / Information Technology Division

PRESENTED BY: Jim Guy, Information Technology Manager

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**PROBLEM/ISSUE STATEMENT:** About every three years, the City seeks quotes for local telephone service. The current contract with One Eighty Communication has expired. Because this is a contracted service and the amount exceeds the City Administrator's spending authority, the City Council must approve the contract with the selected vendor. Quotes and associated costs from two vendors have been evaluated by Information Technology staff.

**ALTERNATIVES ANALYZED:**

1. Stay with current provider.
2. Select a new provider.

**FINANCIAL IMPACT:** Monthly charges for local telephone service are paid by the Information Technology Division and then charged back to individual departments as part of their individual telephone line charges. Each individual department has budgeted for telephone service.

The prices listed below are based on the total three year cost for local telephone service.

<b>Contractor .....</b>	<b>Bid Price</b>
	<b>3-year Cost</b>
One Eighty Communication	\$66,852.02
Qwest	\$70,599.23

**RECOMMENDATION**

Staff recommends that the City Council award the contract to One Eighty Communication for Local Telephone Service in the amount of \$66,852.02.

**Approved By:**      **City Administrator** \_\_\_\_      **City Attorney** \_\_\_\_

## **INTRODUCTION**

The City utilizes a centralized telephone system (PBX) for most city offices and city employees. Calls within the central system are routed from desk phone to desk phone. Calls placed to telephones located outside of the city telephone system must be routed through one of two connections to the “outside world”. Long distance calls are routed through the County telephone system where we share a common long distance service. Local calls are routed through a high-volume connection called an ISDN PRI T-1 line. This T-1 line carries calls from external customers calling into city offices as well as internal city employees making local calls. The contract for this ISDN PRI service has expired.

## **PROCEDURAL HISTORY**

- August, 2005 – Began seeking quotes from local telecom companies
- September, 2005 – Quotes received by Information Technology Division
- October, 2005 – Evaluate quotes and seek additional cost information.
- November 28<sup>th</sup>, 2005 – Contract awarded.

## **BACKGROUND**

The City of Billings currently pays about \$2,100 per month for local telephone service from One Eighty Communications. About three years ago, the city switched from Qwest to One Eighty and saved about \$32,000 over three years. The cost of this service has come down in the past three years as both companies are now quoting less than \$1,900 per month for a three year contract. In addition, we currently have capacity for 32 simultaneous calls and the new prices include capacity of 48 simultaneous calls.

## **ALTERNATIVES ANALYSIS**

The first alternative we considered is to stay with our current local telephone service provider, One Eighty Communications. During the past three years, we have had no outages as a result of an equipment failure from One Eighty Communications. In addition, the company’s service technicians have an extremely fast response time compared to Qwest. For instance, when we had a major telephone outage at the Airport, One Eighty Communications was able to forward important phone numbers to cell phones at the Airport in less than 15 minutes. The cost of staying with One Eighty Communications is also lower than Qwest. One Eighty Communications is a relatively small company compared to Qwest. The company is growing as they recently expanded into the Bozeman market and have plans to expand into other Montana markets. One Eighty has a smaller number of staff and service technicians but one could argue that the ratio of technicians to customers is larger with One Eighty than Qwest because Qwest technicians must service many more customers than One Eighty.

The second alternative we considered is to switch back to Qwest for local telephone service. Qwest is a large, relatively stable company with large resources of staff and equipment. Emergency repair of Qwest service has been relatively quick, usually only taking a few hours.

However, requests for non-emergency changes in service typically take days or weeks. The cost of local telephone service from Qwest would be approximately \$3,750 higher over three years.

### **RECOMMENDATION**

Staff recommends that the City Council award the contract to One Eighty Communication for Local Telephone Service in the amount of \$66,852.02.

### **ATTACHMENTS**

1. Cost estimate spreadsheet

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

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, November 28, 2005**

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**TITLE:** Compensation Agreement for Private Contract No. 540--  
Riverfront Pointe Subdivision, Phase I

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** In order to obtain city water and sanitary sewer service for his property, the Developer, Daniel Wells, is extending local water (16-inch) and sewer (24-inch) mains and interior water and sewer (12-inch and 8-inch) mains to and within the development. Since the City does not currently have funds budgeted to construct the local mains and water and sewer service is not desired at the present time by any other property owner with frontage along the proposed project, the Developer is paying the entire cost. At such time that the City budgets the necessary funds into the Capital Improvements Plan (CIP), the Developer desires to be compensated for a portion of his utility construction costs. The Public Works Department (PWD) proposes that such compensation be accomplished through the attached Agreement.

**FINANCIAL IMPACT:** Based on the Engineer's estimate of probable cost for P-540, the PWD has determined that the cost attributable to the utilities portion of the contract and eligible to be recovered by the Developer is \$399,069.39 including a 10 percent construction contingency. The extent and timing of the City's participation in the project costs is determined in conformance with the CIP approved by City Council.

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute the attached Agreement. Compensation shall be based on actual water and sewer utility construction costs and shall be paid in accordance with the Council-approved CIP.

**Approved By:**      **City Administrator** \_\_\_\_      **City Attorney** \_\_\_\_

**ATTACHMENT**

Attachment A--Compensation Agreement (7 pp.)

## **BACKGROUND**

A 16-inch water main and 24-inch sewer main are in South 12<sup>th</sup> Street West almost as far south as their intersection with proposed Sacagawea Drive. Since extensions of these local mains have not been scheduled into the approved City CIP, the Developer is extending them west through Riverfront Pointe Subdivision in order to serve the properties. Approximately 2,573 feet of 16-inch water main will be installed in the full length of Sacagawea Dr. to its intersection with Mullowney Lane, and approximately 1,559 feet of 24-inch sanitary sewer main will be installed in Sacagawea Dr. to its intersection with the 30-foot wide Heritage Trail right-of-way.

The City pays all local (greater than 12 inches) water and sewer main construction costs; however, under Utilities Fees Practice (A.O. 84), the extent and timing of City-funded construction is determined in conformance with the approved CIP. Developers desiring unscheduled local main extensions must pay for them up-front. Compensation funds must then be budgeted in the CIP, whereby the City schedules future compensation to the Developer.

A 12-inch water main exists in Mullowney Lane approximately as far south the intersection with Holiday Avenue. As a condition of obtaining service to Riverfront Pointe Subdivision, the Developer is required to extend this main south across the entire subdivision frontage along Mullowney Ln.; similarly, the Developer must extend 12-inch water and sewer main south in S. 12<sup>th</sup> St. W. from the Sacagawea Dr. intersection to the southern subdivision boundary.

Developers desiring interior (12 inches and smaller) main extensions are responsible for the cost of their fair share portion of improvements that front the development. In the case of the subject project, the City will participate in one-half the interior main costs in Mullowney Ln. and S. 12<sup>th</sup> St. W. since no one on the opposite side of either street desires service at the present time.

Under Item 4 in the attached Compensation Agreement, the City agrees that it will develop a plan under its current operating policies that will recommend that compensation be made for eligible water and wastewater facilities extended at the Developer's expense.

Based on the Engineer's cost estimate for P-540, the PWD has determined that the cost attributable to the utilities portion of the contract and eligible for compensation is \$399,069.39 including a 10 percent construction contingency. Actual final project costs will determine the exact compensation amount.

## **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute the attached Agreement. Compensation shall be based on actual water and sewer utility construction costs and shall be paid in accordance with the Council-approved CIP.



**ATTACHMENT**

Attachment A--Compensation Agreement (7 pp.)

## **COMPENSATION AGREEMENT**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
between THE CITY OF BILLINGS, Billings, Montana, hereinafter referred to as the “CITY”,  
and \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_, hereinafter referred to as “DEVELOPER”.

### W I T N E S S E T H

WHEREAS, the CITY’S Water/Wastewater Extension Policy outlines the procedure and criteria the CITY uses in approving extensions of the public water and wastewater systems; and

WHEREAS, the CITY’S Utilities Fees Practice outlines how the CITY participates in construction of various water and wastewater facilities and applies water and wastewater construction fees and system development fees to developments; and

WHEREAS, no person, developer, customer or applicant shall acquire any vested rights under the terms and provisions of this agreement; and

WHEREAS, DEVELOPER has agreed to extend or replace water and/or wastewater facilities for the purpose of providing service through plans and specifications approved by the City on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Said plans and specifications generally provide for the construction of water and/or wastewater facilities which are specifically described in Exhibit 1, attached hereto; and

WHEREAS, DEVELOPER is desirous of obtaining compensation for a portion of the water and/or wastewater facilities hereafter described; and

WHEREAS, the CITY is desirous of compensating the DEVELOPER for a portion of such water and/or wastewater facilities.

NOW, THEREFORE, CITY and DEVELOPER, in consideration of their mutual promises to each other hereinafter stated, agree as follows:

1. The water and/or wastewater facilities which are eligible for compensation to the extent set forth in this Agreement are specifically described in Exhibit 1, attached hereto, and by this reference incorporated herein as if fully set out.

2. With respect to DEVELOPER'S entitlement to compensation, the CITY and DEVELOPER agree that the conditions set forth hereinafter, must be met before DEVELOPER is entitled to or will receive any compensation. Said conditions are:

- (a) The extent, timing, and manner of the CITY'S participation in a water and/or wastewater facilities extension or replacement is determined in conformance with the CITY'S Water/Wastewater Extension Policy and the CITY'S Utilities Fees Practice. Extensions or replacements not eligible for compensation according to these CITY policies and practices must be constructed by the DEVELOPER at his expense.
- (b) DEVELOPER shall provide to the CITY sufficient verifiable cost data to determine the appropriate amount of compensation within thirty (30) days of final inspection of the water and/or wastewater facilities and approval and acceptance by the CITY that all construction was completed according to the approved plans and specifications.
- (c) DEVELOPER shall enter into a compensation agreement with the CITY at the time the CITY approves the DEVELOPER'S application for extension of water and/or wastewater facilities or, in the case of a replacement project, prior to submittal of preliminary plans and specifications by the DEVELOPER.
- (d) Upon completion of the extension or replacement of the water and/or wastewater facilities, the DEVELOPER must convey all right, title and interest in the facilities to the CITY.
- (e) DEVELOPER shall, at all times, provide to the CITY a current address for purposes of mailing compensation to DEVELOPER.
- (f) Extension or replacement of water and/or wastewater facilities must be done in compliance with all rules, regulations, resolutions and ordinances of the CITY, including but not limited to standards for design and construction of the facilities.

DEVELOPER agrees that it will not be entitled to any compensation whatsoever until the above conditions have been completely satisfied. DEVELOPER'S violation of any of the conditions set forth herein may, at the option of the CITY, result in denial of any and all compensation to the DEVELOPER.

3. In addition, it is expressly agreed that any compensation is conditioned upon the

following:

- (a) Compensation is limited to costs attributable to water and/or wastewater facilities described in Exhibit 1, less all administrative costs incurred by the CITY. In no event will compensation exceed the actual cost to the DEVELOPER of extending or replacing the water and/or wastewater facilities.
- (b) Compensation shall not include any interest charges.

Acceptance of the water and/or wastewater facilities for purposes of compensation as set forth in this agreement shall be evidenced by written notice of a letter from the Public Works Department of the CITY and directed to the DEVELOPER at the address set forth in the first paragraph of this agreement.

4. The CITY, by this agreement, is not guaranteeing that full compensation by the CITY to the DEVELOPER will be made. The CITY is only agreeing that it will develop a plan under its Water/Wastewater Extension Policy and Utilities Fees Practice that will recommend that compensation for water and/or wastewater facilities which have been extended or replaced at the DEVELOPER'S expense will be made as set forth herein. Compensation does not apply to additional extensions or replacements of the water and/or wastewater facilities. Compensation shall be based upon the final total project costs.

5. The address for mailing compensation to the DEVELOPER shall be that address specified in the first paragraph of this agreement. Any change in address of the DEVELOPER shall be sent to the Public Works Director of the City of Billings at P.O. Box 1178, Billings, MT 59103. The designation of a new address shall be accompanied by a copy of this agreement.

6. This agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

DEVELOPER

By:\_\_\_\_\_

CITY OF BILLINGS

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

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

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, November 28, 2005**

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**TITLE:** City-County Special Investigations Unit (CCSIU) Agreement

**DEPARTMENT:** Police Department

**PRESENTED BY:** Rich St. John, Interim Chief of Police

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**PROBLEM/ISSUE STATEMENT:** Each calendar year the CCSIU Agreement with Yellowstone County needs to be approved. The current agreement will expire on December 31, 2005. It is now time to approve the agreement for the year 2006. This agreement has been reviewed with the Undersheriff of Yellowstone County. When the Council approves this agreement, it will then be sent over to Yellowstone County for the Commissioners' approval.

**FINANCIAL IMPACT:** There will be no additional financial impact to the City since the officers involved are currently included in the Police Department budget and Fund 718 is where all expenditures are budgeted for CCSIU.

**RECOMMENDATION**

Staff recommends that Council approve and authorize the Mayor to sign the CCSIU agreement with Yellowstone County.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENT**

A-CCSIU Agreement w/Yellowstone County – 4 pages

# ***AGREEMENT***

## ***CITY-COUNTY SPECIAL INVESTIGATIONS UNIT (CCSIU)***

This Agreement establishes and governs the operation of the ***CITY-COUNTY SPECIAL INVESTIGATIONS UNIT (CCSIU)***:

The undersigned public agencies are charged with enforcing the law and protecting their citizens from illegal activity. Recognizing that resources are limited and that such limitations are detrimental to combating crime within Yellowstone County and the City of Billings, and recognizing that the problem can be most effectively resolved by pooling of resources and the joint exercise of respective authorities, a joint CCSIU is established.

***PARTIES:*** This Agreement is between:

- (1) Billings Police Department
- (2) Yellowstone County Sheriff's Office

***DURATION:*** This Agreement is in effect from January 1, 2006 through December 31, 2006.

### **PROJECT DESCRIPTION:**

It is proposed that a joint City-County Special Investigations Unit be established. This Unit will be comprised of personnel assigned from the Yellowstone County Sheriff's Office and the Billings Police Department. It is agreed that full-time investigative personnel will be assigned to the Unit. The CCSIU will be a component of the Rocky Mountain High Intensity Drug Traffic Area (RMHIDTA). Either agency may withdraw from the Unit at any time with 30 days notice.

### **STRUCTURE AND ORGANIZATION:**

The Unit Supervisor and Unit members will be determined by mutual agreement between both agencies. The Unit Supervisor shall be responsible to keep both agencies informed on all matters relating to the operations, including expenditures, accomplishments, problems and all other issues involving the CCSIU.

All persons assigned to the Unit shall work under the immediate supervision and direction of the Unit Supervisor. City Detectives will be indirectly supervised and evaluated by the Lieutenant of Investigations. All persons assigned to the Unit shall adhere to the rules and regulations as set forth in the Unit's Policy and Procedures Manual, as well as their individual departmental rules, policies and procedures.

For the purpose of indemnification of participating jurisdictions against losses, damages, or liabilities arising out of the services and activities of the Unit, the personnel so assigned by any jurisdiction shall be deemed to be continuing under the employment of that jurisdiction and its police department.

Each agency contributing personnel to the Unit will continue that employee as an employee of the contributing agency and will be solely responsible for that employee, including wages and benefits.

Any duly sworn peace officer, while assigned to duty with the Unit as herein provided and working at the direction of the Unit Supervisor, shall have the same powers, duties, privileges, protections and immunities as are conferred upon him/her as a peace officer in his/her own jurisdiction. Billings Police Officers will be deputized as Yellowstone County Sheriff's Deputies while assigned, even on a temporary basis, to the CCSIU.

### **CONTEMPLATED UNIT TASKS:**

At the direction of the Unit Supervisor, the CCSIU will concentrate efforts on local cases. Investigations will center around narcotics trafficking and organized criminal activities. In circumstances where a determination of specific priorities of these investigations must be made, the Unit Supervisor will make the determination in consultation with the Sheriff and Police Chief, or their designees.

### **UNIT OBJECTIVES:**

This section identifies specific targeted objectives to be attained by the CCSIU during the program year. Objectives will be reviewed and revised as necessary by December 1, 2006.

- 1) Disrupt drug, drug/gang and organized criminal activities within the City, County and State.
- 2) Gather and report intelligence data relating to illegal drug, drug/gang and organized criminal activities within the City, County and State.
- 3) Make arrests that will impact all levels of drug and organized criminal activities.
- 4) Effectively prosecute drug traffickers and organized criminal activity participants.
- 5) Promote law enforcement cooperation through joint investigations and close coordination with other police agencies and task forces.

### **IMPREST AND FORFEITURE FUND:**

Agencies involved in the City-County Special Investigations Unit will each place SIX *THOUSAND DOLLARS* (\$6,000.00) into the Imprest Fund. The monies will be utilized by the



Unit for buys and informants. As financial transactions take place, an equal amount of monies will be deducted from each agency's monies. The Supervisor of the Unit will be responsible for administering the monies as needed and keeping a running log of all expenditures, to include incident numbers and reason for purchase(s). The money log will be audited by the Yellowstone County Auditor or his/her representative, on a quarterly basis. A copy of the audit will be submitted to the Deputy Chief in charge of Investigations.

Replacement of the Imprest Fund will be accomplished by the following procedures:

***CITY OF BILLINGS:***

The Unit Supervisor will make a written request through the Deputy Chief in charge of Investigations or his designee, who, in turn, will approve the request and submit it to the City Finance & Administrative Services Department. The City Finance & Administrative Services Director will direct monies to the Unit Supervisor, who will deposit the reimbursement back to the Imprest Fund.

***YELLOWSTONE COUNTY:***

The Unit Supervisor will make a written request to the Yellowstone County purchasing department to replenish their portion of the fund.

Forfeiture vehicles that are to be sold at auction will be sold at either the Yellowstone County Sheriff's Sale or at auction by the Billings Police Department. Any forfeiture monies acquired by the Unit from any source will be split equally between the agencies. All forfeiture procedures will be handled by the Unit Supervisor and the Yellowstone County Attorney's Office, at no cost to the City.

**INDEMNITY CLAUSE:**

The City shall have the duty to defend Yellowstone County and shall indemnify and hold harmless Yellowstone County and its agents and employees from and against all claims, damages, losses, judgments and expenses, including attorney's fees, arising out of or resulting from this contract provided that any such claims, damage, loss, judgment or expense is caused in whole or in part, by a negligent act, error or omission of the City, its employees or agents.

Yellowstone County shall have the duty to defend the City and shall indemnify and hold harmless the City and its agents and employees from and against all claims, damages, losses, judgments and expenses, including attorney's fees, arising out of or resulting from this contract provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act, error, or omission of Yellowstone County, its employees, officials or agents.

**RESOURCES:**

All available resources that are currently available in the City of Billings Investigations Division and in the Yellowstone County Investigations Division will be made available to the CCSIU.

Any specialized equipment that is not being kept at the location of the CCSIU location will need to be borrowed by an assigned CCSIU detective from that agency.

THIS AGREEMENT IS EXECUTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2005.

SIGNED:

\_\_\_\_\_  
*MAYOR, CITY OF BILLINGS*

DATE\_\_\_\_\_

\_\_\_\_\_  
*COUNTY COMMISSIONER*

DATE\_\_\_\_\_

\_\_\_\_\_  
*COUNTY COMMISSIONER*

DATE\_\_\_\_\_

\_\_\_\_\_  
*COUNTY COMMISSIONER*

DATE\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
MARITA HEROLD, CITY CLERK  
CITY OF BILLINGS

\_\_\_\_\_  
TONY NAVE  
CLERK AND RECORDER  
YELLOWSTONE COUNTY

APPROVED AS TO FORM:

\_\_\_\_\_  
BRENT BROOKS, CITY ATTORNEY  
CITY OF BILLINGS

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

AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 28, 2005

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TITLE: WO 00-15 Grand Avenue Right-of-Way Agreement with Reifschneider Investments, Inc.

DEPARTMENT: Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** Work Order 00-15 Grand Avenue will widen Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners for the last year. The Right-of-Way needed was originally identified with Work Order 92-11 but was further defined on the design plans for the project and must be acquired prior to construction. Reifschneider Investments, Inc. owns the property at 1105 Grand Avenue. Reifschneider Investments, Inc. has agreed to donate the necessary right-of-way as shown on the attachment. The City Engineer's Office is working on a subdivision plat which will dedicate the right-of-way.

**ALTERNATIVES ANALYZED:**

3. Approve the Right-of-Way Agreement with Reifschneider Investments, Inc. and authorize the mayor to sign the subdivision plat once completed.
4. Do not approve the Right-of-Way Agreement with Reifschneider Investments, Inc. or authorize the mayor to sign the subdivision plat once completed.

**FINANCIAL IMPACT:** Reifschneider Investments, Inc. has agreed to donate right-of-way for a handicap ramp at Colorado Street and Grand Avenue and 11<sup>th</sup> Street West and Grand Avenue.

**RECOMMENDATION**

Staff requests that Council approve the Right-of-Way Agreement with Reifschneider Investments, Inc. and authorize the mayor to sign the subdivision plat, dedicating the right-of-way once completed.

Approved By: City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENT**

A. Right-of-Way Agreement with Reifschneider Investments, Inc.

## **INTRODUCTION**

Work Order 00-15 Grand Avenue will widen Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners for the last year. The Right-of-Way needed was identified on the design plans for the project and must be acquired prior to construction.

## **PROCEDURAL HISTORY**

The City Engineer's Office obtained appraisals for all the necessary right-of-way on Grand Avenue and started negotiations with the property owners. The City Engineer's Office then requested and got approved in a Council Work Session to offer land value plus full value for any signs within the requested right-of-way. Once all of the right-of-way properties have been acquired, the City Engineer's Office will begin the construction process, which is anticipated to start in the spring of 2006.

## **BACKGROUND**

The City Engineer's Office has been negotiating with property owners on Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West for the necessary right-of-way to widen Grand Avenue to a 5-lane section for the last year. There are a number of driveways on Grand Avenue and to accommodate frequent left-turns and traffic volumes, it is necessary to widen Grand Avenue to include a two-way left-turn lane. The design for this project has been completed by Kadrmas, Lee, & Jackson. Once all of the right-of-way has been acquired, construction will begin and is anticipated to take six months to complete.

## **ALTERNATIVES ANALYSIS**

Approve the Right-of-Way Agreement with Reifschneider Investments, Inc. and authorize the mayor to sign the subdivision plat once completed. Under this option, the City Engineer's Office will complete the subdivision plat dedicating the right-of-way and the right-of-way agreement and the plat will be recorded with the Clerk and Recorder's Office.

Do not approve the Right-of-Way Agreement with Reifschneider Investments, Inc. or authorize the mayor to sign the subdivision plat once completed. Under this option, negotiations might fail and further negotiations with other property owners could be in jeopardy.

## **RECOMMENDATION**

Staff requests that Council approve the Right-of-Way Agreement with Reifschneider Investments, Inc. and authorize the mayor to sign the subdivision plat, dedicating the right-of-way once completed.

## **ATTACHMENTS**

A. Right-of-Way Agreement with Reifschneider Investments, Inc.

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

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 28, 2005

TITLE: WO 00-15 Grand Avenue Right-of-Way Agreement with KRV Partnership, LLP

DEPARTMENT: Public Works/Engineering

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

**PROBLEM/ISSUE STATEMENT:** Work Order 00-15 Grand Avenue will widen Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners for the last year. The Right-of-Way needed was originally identified with Work Order 92-11 but was further defined on the design plans for the project and must be acquired prior to construction. KRV Partnership, LLP owns the property at 1005 Grand Avenue. KRV Partnership, LLP have agreed to donate the necessary right-of-way as shown on the attachment. The City Engineer's Office is working on a subdivision plat which will dedicate the right-of-way.

#### **ALTERNATIVES ANALYZED:**

5. Approve the Right-of-Way Agreement with KRV Partnership, LLP and authorize the mayor to sign the subdivision plat once completed.
6. Do not approve the Right-of-Way Agreement with KRV Partnership, LLP or authorize the mayor to sign the subdivision plat once completed.

**FINANCIAL IMPACT:** KRV Partnership, LLP have agreed to donate right-of-way for a handicap ramp at 10<sup>th</sup> Street West and Grand Avenue.

#### **RECOMMENDATION**

Staff requests that Council approve the Right-of-Way Agreement with KRV Partnership, LLP and authorize the mayor to sign the subdivision plat, dedicating the right-of-way once completed.

Approved By: City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENT**

B. Right-of-Way Agreement with KRV Partnership, LLP

## **INTRODUCTION**

Work Order 00-15 Grand Avenue will widen Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners for the last year. The Right-of-Way needed was identified on the design plans for the project and must be acquired prior to construction.

## **PROCEDURAL HISTORY**

The City Engineer's Office obtained appraisals for all the necessary right-of-way on Grand Avenue and started negotiations with the property owners. The City Engineer's Office then requested and got approved in a Council Work Session to offer land value plus full value for any signs within the requested right-of-way. Once all of the right-of-way properties have been acquired, the City Engineer's Office will begin the construction process, which is anticipated to start in the spring of 2006.

## **BACKGROUND**

The City Engineer's Office has been negotiating with property owners on Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West for the necessary right-of-way to widen Grand Avenue to a 5-lane section for the last year. There are a number of driveways on Grand Avenue and to accommodate frequent left-turns and traffic volumes, it is necessary to widen Grand Avenue to include a two-way left-turn lane. The design for this project has been completed by Kadrmas, Lee, & Jackson. Once all of the right-of-way has been acquired, construction will begin and is anticipated to take six months to complete.

## **ALTERNATIVES ANALYSIS**

Approve the Right-of-Way Agreement with KRV Partnership, LLP and authorize the mayor to sign the subdivision plat once completed. Under this option, the City Engineer's Office will complete the subdivision plat dedicating the right-of-way and the right-of-way agreement and the plat will be recorded with the Clerk and Recorder's Office.

Do not approve the Right-of-Way Agreement with KRV Partnership, LLP or authorize the mayor to sign the subdivision plat once completed. Under this option, negotiations might fail and further negotiations with other property owners could be in jeopardy.

## **RECOMMENDATION**

Staff requests that Council approve the Right-of-Way Agreement with KRV Partnership, LLP and authorize the mayor to sign the subdivision plat, dedicating the right-of-way once completed.

## **ATTACHMENTS**

B. Right-of-Way Agreement with KRV Partnership, LLP

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



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**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, November 28, 2005**

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**TITLE:** Approval and Acceptance of Montana Dept of Transportation, State Highway Traffic Safety Contract 2006-09-02-03 & 2006-11-03-03 in the amount of \$ 47,250.00

**DEPARTMENT:** Police Department

**PRESENTED BY:** Rich St. John, Interim Chief of Police

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**PROBLEM/ISSUE STATEMENT:** The State of Montana, State Highway Traffic Safety Division has awarded the City a \$47,250 grant for deterrence of violations such as drinking and driving, speeding, lack or misuse of safety restraints, and others. The grant will pay for overtime for the officers involved in these traffic details, incentives for submitting reports on time, and fuel reimbursement. Council is being asked for the approval and acceptance of this grant and authorize the Mayor to sign the attached Standard Agreement.

**FINANCIAL IMPACT:** None. There is no City match required.

**RECOMMENDATION**

Staff recommends that Council approve and accept the Billings STEP OT grant from the Highway Traffic Safety Division of the State of Montana in the amount of \$ 47,250 for the period of October 1, 2005 through September 30, 2006, and authorize the Mayor to sign the attached Standard Agreement.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENT**

A - Billings Enforcement Grant #2006-09-02-03 & 2006-11-03-03 Standard Agreement

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

## AGENDA ITEM:



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

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**TITLE:** Approval of Architectural Fees from CTA Architects for the Passenger Loading Bridge Replacement Project

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** Due to the unique design requirements associated with airport facilities and equipment, including knowledge of the Federal Aviation Administration's (FAA) Passenger Facility Charge (PFC) program, the City of Billings Aviation and Transit Department has historically entered into a five-year term contract for architectural services at the Airport. The current five-year contract is with CTA Architects and Engineers to provide design, planning, and contract administration for Airport Capital projects, including Federal Airport Improvement Program (AIP) and PFC projects, and the general Departmental engineering services as needed. The base contract is adjusted each time a new project is undertaken. The Passenger Loading Bridge PFC project with an estimated construction cost of \$3,100,000 includes the architectural design, planning and contract administration required to provide and install new passenger loading bridges at each of the existing airline gates. The new loading bridges are capable of accommodating several different sizes of aircraft. This project also includes a covered walkway at the regional airline gate. This project will require a coordinated construction phasing plan that will relocate each airline to another gate while its loading bridge is being installed. The scope of work and fees associated with this project have been reviewed and negotiated by Airport staff. Including these proposed current fees of \$258,421.61, the total cost of the architectural work under this contract during the first four years totals \$682,618.66 and has produced \$5,291,665 in construction projects.

**FINANCIAL IMPACT:** The total cost of the architectural fees with CTA Architects and Engineers for the Passenger Loading Bridge Replacement project is \$258,421.61, and will be funded by the Airport's PFC program.

**RECOMMENDATION**

Staff recommends that the City Council approve the architectural fees to CTA Architects and Engineers' term contract in the amount of \$258,421.61 to cover the architectural services needed for the Passenger Loading Bridge Replacement Project.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

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

## AGENDA ITEM:




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


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**TITLE:** Sale of Surplus Property – Sidney’s Restaurant – Rimrock Mall

**DEPARTMENT:** Police Department

**PRESENTED BY:** Rich St. John, Interim Chief of Police

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**PROBLEM/ISSUE STATEMENT:** On September 26, 2005, City Council approved the lease with Macerich Corporation for the Billings Police Department’s new Crime Prevention Center space in Rimrock Mall. The space was formerly occupied by Sidney’s Restaurant. The lease stated the property would be presented to us “as is”. This property contains all the kitchen equipment, including ovens, the refrigeration system, HVAC vents, commercial copper hood, stainless steel counters and sinks, etc. which need to be removed in order for renovations to begin. Preliminary information states that this equipment can be a saleable commodity in the restaurant industry. We have been in contact with the City Purchasing Agent as to the best way to handle the sale of this equipment. Therefore, we are asking City Council to declare this property as surplus property and sold for the highest possible dollar amount.

**FINANCIAL IMPACT:** The revenue produced from the sale of this equipment will be placed in a revenue account. As the renovations progress, we may need to come back to Council and ask its approval for spending authority of those revenues. If the revenues are not needed, they will revert to the General Fund at fiscal year end.

**RECOMMENDATION**

Staff recommends that Council declare the kitchen equipment in the new Crime Prevention Center as surplus and that this equipment be sold for the highest possible dollar amount.

**Approved By:** City Administrator \_\_\_\_\_ City Attorney \_\_\_\_\_

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

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 28, 2005

TITLE: Assignment and Transfer of West End Hangar Ground Lease from Martin Elshire to Moore, Scott and Tostenrud, LLC

DEPARTMENT: Aviation and Transit

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

**PROBLEM/ISSUE STATEMENT:** On April 22, 1996, Martin Elshire entered into a West End Hangar Ground Lease with the City of Billings for a parcel of land (Lot 5) in the General Aviation Hangar area and subsequently built a 3,600 square foot hangar on the leased parcel. Mr. Elshire has opted to sell this hangar to Moore, Scott and Tostenrud, LLC. This limited liability corporation consists of Terrill Moore, John Scott, and Steve Tostenrud. This Assignment and Transfer will formally transfer the Lease Agreement from Martin Elshire to Moore, Scott and Tostenrud, LLC. This is basically a housekeeping item that is needed to finalize the sale of the hangar between the two parties.

**FINANCIAL IMPACT:** There is no financial impact from this action. Just the name of the Lessee is all that changes.

#### RECOMMENDATION

Staff recommends that Council approve the Assignment and Transfer of the West End Hangar Ground Lease from Martin Elshire to Moore, Scott and Tostenrud, LLC.

Approved By: City Administrator \_\_\_\_ City Attorney \_\_\_\_

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

AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 28, 2005

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TITLE: Assignment and Transfer of West End Hangar Ground Lease from Martin Elshire to Julia Holdings, LLC

DEPARTMENT: Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** On October 13, 1998, Martin Elshire entered into a West End Hangar Ground Lease with the City of Billings for a parcel of land (Lot 7) in the General Aviation Hangar area and subsequently built a 3,600 square foot hangar on the leased parcel. Mr. Elshire has opted to sell this hangar to Julia Holdings, LLC. This limited liability corporation consists of David and Julia Standish of Billings. This Assignment and Transfer will formally transfer the Lease Agreement from Martin Elshire to Julia Holdings, LLC. This is basically a housekeeping item that is needed to finalize the sale of the hangar between the two parties.

**FINANCIAL IMPACT:** There is no financial impact from this action. Just the name of the Lessee is all that changes.

### RECOMMENDATION

Staff recommends that Council approve the Assignment and Transfer of the West End Hangar Ground Lease from Martin Elshire to Julia Holdings, LLC.

Approved By: City Administrator \_\_\_\_ City Attorney \_\_\_\_

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

## AGENDA ITEM:




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


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TITLE: Amendment of Agreement for Northwestern Energy Lighting District #97  
 DEPARTMENT: City Administrator's Office  
 PRESENTED BY: Tina Volek, Interim City Administrator

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**PROBLEM/ISSUE STATEMENT:** In April 2004, the City Council approved an 18-month extension to an agreement with Northwestern Energy (NWE) for Special Improvement Lighting Maintenance District (SILMD) No. 97. That agreement expires in November 2005 unless the City Council takes action to extend it. Billings' Downtown Property Owners Association has filed the paperwork to create a replacement Special Improvement Lighting Maintenance District in which it will acquire the lighting fixtures and the City will operate the system. Northwestern Energy has agreed to extend the agreement to allow the replacement SILMD process to be completed.

**ALTERNATIVES ANALYZED:**

- Extend the agreement, allowing the SILMD investigation process to take place.
- Direct staff to negotiate a new agreement with NWE that does not allow the Downtown Property Owners' Association to investigate the SILMD costs.
- Take no action, allowing the current agreement to expire.

**FINANCIAL IMPACT:** None anticipated at this time.

**RECOMMENDATION**

Staff recommends that the City Council extend the SILMD No. 97 agreement with NWE for six months to allow the property owners to explore creation of a new district with equipment to be owned by the property owners.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

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

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**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, November 28, 2005**

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**TITLE:** Falcon Ridge Estates Subdivision Preliminary Plat

**DEPARTMENT:** Planning and Community Services, through Ramona Mattix, AICP,  
Planning Director

**PRESENTED BY:** Wyeth Friday, Planner II

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**PROBLEM/ISSUE STATEMENT:** On September 1, 2005, property owner AVIARA, Inc. applied for preliminary plat approval for the Falcon Ridge Estates Subdivision. The property is located northwest of the intersection of Molt Road and Rimrock Road near the western edge of the City of Billings. The proposed subdivision contains 78 residential lots on 28 acres of land. The property is zoned Residential-9600. The property for this subdivision is currently the filed plat of Falcon Ridge Subdivision, 1<sup>st</sup> Filing, recorded on September 20<sup>th</sup>, 2005. Most of Falcon Ridge Subdivision, 1<sup>st</sup> Filing will be platted over with this subdivision, although a few portions of the original subdivision will remain (See Attached Plat). The Yellowstone County Board of Planning conducted a public hearing for this application on October 25, 2005.

**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. The City Council is required to:

1. Approve;
2. Conditionally Approve; or
3. Deny the Preliminary Plat

**FINANCIAL IMPACT:** When the property is developed, the new residents will need City services and will pay City taxes. It is not known if the developed property will generate enough taxes/fees to pay for all of the required services of this subdivision.

**RECOMMENDATION**

The Yellowstone County Board of Planning on a 7-0 vote recommends that the City Council conditionally approve the Preliminary Plat of Falcon Ridge Estates Subdivision and adopt the Findings of Fact as presented in Attachment D.



**Approved by:**        **City Administrator** \_\_\_\_\_ **City Attorney** \_\_\_\_\_

**ATTACHMENTS**

A: Plat        B: Site Photographs        C: Mayor's Approval Letter        D: Findings of Fact

## **INTRODUCTION**

On September 1, 2005, the Planning Department received a preliminary plat application for the Falcon Ridge Estates Subdivision. The property is located north of Rimrock Road and west of Molt Road. The plat includes 28 total acres with a net acreage of 18 acres. This includes a total of 78 residential lots. The property is currently zoned R-9600.

## **PROCEDURAL HISTORY**

- The preliminary plat application was submitted to the Planning Department on September 1, 2005
- Staff reviewed the application with the subdivider on September 22, 2005
- The Yellowstone County Board of Planning reviewed the plat on October 13, 2005
- The Planning Board conducted a public hearing on October 25, 2005 and made its recommendation to the Billings City Council
- The City Council will consider the application at its meeting on November 28, 2005

## **BACKGROUND**

General location:	North of Rimrock Road and west of Molt Road in West Billings
Legal Description:	Being lots 1-9, Block 1; Lots 1-12, Block 2; Lots 1-24, Block 3; Lots 17 and 18, Block 4; lots 4-10, Block 5; Lot 1, Block 6 of Falcon Ridge Subdivision, 1 <sup>st</sup> Filing
Subdivider:	AVIARA, Inc.
Owner:	AVIARA, Inc.
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	Residential-9600
Surrounding zoning:	R-9600, R-7000, R-8000, RMFR, R-15000
Existing land use:	Vacant
Proposed land use:	Single family homes
Gross area:	28.05 acres
Net area:	18.14 acres.
Proposed number of lots:	78 residential lots

Lot size: Max.: 15,085 sq. ft.  
Min.: 9,600 sq. ft.

Park land requirements: 2.78 acres required  
3.11 acres provided

### **ALTERNATIVES ANALYSIS**

One of the purposes of the subdivision review process is to identify potentially negative impacts of a subdivision on adjacent properties and the community. When negative impacts are identified, it is the subdivider's responsibility to mitigate those impacts. Various City departments, utility companies and other agencies have reviewed this application and provided input on potential impacts and mitigation. The Findings of Fact, which are presented as Attachment D, discuss the potential negative impacts that have been identified by reviewers and the following conditions are recommended as measures that will mitigate them.

### **RECOMMENDED CONDITIONS**

1. To minimize the effects on local services, prior to final plat approval the subdivider shall complete the road vacations for the Falcon Ridge Subdivision, 1<sup>st</sup> Filing as specified in the Road Vacation Exhibit included with this subdivision application.
2. To minimize the effects on local services and public health and safety, prior to final plat approval, the subdivider shall provide permit information updates to the City Building Department for the lots that have already had building permits issued for them on Falcon Ridge Subdivision, 1<sup>st</sup> Filing, and are being replatted by Falcon Ridge Estates Subdivision.
3. To minimize the effects on local services, prior to final plat approval the subdivider shall execute a park maintenance district for the parks in this subdivision or have the park land in this subdivision covered by the existing park maintenance district for the existing Falcon Ridge Subdivision, 1<sup>st</sup> Filing.
4. To minimize the effects on local services, prior to final plat approval the subdivider shall dedicate as park land the proposed stormwater drainage areas shown on the plat between Western Bluffs Boulevard and Golden Eagle Way, Golden Eagle Way and Gray Hawk Way, and Gray Hawk Way and Masters Boulevard. The subdivider shall pipe the stormwater drainage in these park corridors and shall construct a walkway of either asphalt or concrete that creates pedestrian connections between Western Bluffs Boulevard and Golden Eagle Way, Golden Eagle Way and Gray Hawk Way, and Gray Hawk Way and Masters Boulevard. The walkway design will be to City Engineering specifications.
5. To minimize the effects on local services and public health and safety, the subdivider shall show the centralized mail delivery locations on the plat and identify any additional road right-of-way needed for mail delivery vehicles and residents to avoid blocking the roads in the subdivision while accessing the central delivery facilities.

6. Minor changes may be made to the Subdivision Improvements Agreement and final documents upon request of Planning and Community Services or Public Works Departments to clarify the documents and bring them into standard acceptable formats.
7. The final subdivision plat shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal Code, and rules, regulations, policies and ordinances of the City of Billings and the laws and administrative rules of the State of Montana.

### **VARIANCES REQUESTED**

- The subdivider is requesting a variance from 23-601 (K) of the Billings Municipal Code to allow 50-foot right-of-ways for Golden Eagle Way, Golden Eagle Court, Gray Hawk Way and Gray Hawk Court. The standard residential street right-of-way width is 60 feet. The roads within these 50 foot right-of-ways will be 34 feet wide. The City Engineering Department is supportive of this variance request.
- The subdivider is requesting a variance from Section 23-605 (d) prohibiting double frontage lots except where essential to provide separation from railroad or major street rights-of-way, or where necessary due to topography. Several lots front interior streets and Molt Road, a Principal Arterial. To mitigate the potential problems with double frontage lots, the subdivider shall plat a 1' no-access easement along the subdivision's border with Molt Road except for the two access roads for the subdivision. The City Engineering Department and the Planning Department are supportive of this variance request.

### **STAKEHOLDERS**

A public hearing is not scheduled for the City Council meeting; however nearby property/business owners may attend the City Council meeting. There were no public comments received by the Planning Board at the public hearing for this subdivision on October 25, 2005. The Planning Department has received no public comments regarding the proposed subdivision.

### **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

The subdivision is consistent with the 2003 Yellowstone County/City of Billings Growth Policy, the Billings Urban Area Transportation Plan Update, the Heritage Trail Plan, the West Billings Plan and the Northwest Shiloh Area Plan. Specific conformance is discussed within the Findings of Fact in Attachment D.

**RECOMMENDATION**

The Yellowstone County Board of Planning on a 7-0 vote recommends that the City Council conditionally approve the Preliminary Plat of Falcon Ridge Estates Subdivision and adopt the Findings of Fact as presented in Attachment D.

**ATTACHMENTS**

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

## ATTACHMENT A

### Preliminary plat of Falcon Ridge Estates Subdivision

PRELIMINARY PLAT OF  
**FALCON RIDGE ESTATES SUBDIVISION**  
BEING LOTS 1 THROUGH 9, INCLUSIVE, BLOCK 1 & LOTS 1 THROUGH 12, INCLUSIVE, BLOCK 2 & LOTS 1 THROUGH 24, INCLUSIVE, BLOCK 3, OF FALCON RIDGE SUBDIVISION, FIRST FILING, SITUATED IN THE SE 1/4 OF SECTION 25, T. 1 N., R. 24 E., P.M.M.  
IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : AVIARA, INC.  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1" = 80'



Remaining Portions of Falcon Ridge  
Subdivision, 1<sup>st</sup> Filing



**ATTACHMENT B**  
Site Photographs



**Figure 1.** Looking northwest across Molt Road at the property near the proposed entrance for Masters Boulevard into the subdivision.



**Figure 2.** Looking northwest across the subject property where construction has already started for the infrastructure improvements.



**Figure 3.** Looking south down Molt Road. The subject property is on the right side of the photo. A home at the entrance to the August Ranch Subdivision is on the left side of the photo.

**ATTACHMENT C**  
Mayor's approval letter  
Falcon Ridge Estates Subdivision

November 28, 2005

AVIARA, INC.  
c/o Dennis Buscher  
3671 Spalding Avenue  
Billings, Montana 59102

Dear Property Owner:

On November 28, 2005, the Billings City Council approved the preliminary plat of Falcon Ridge Estates Subdivision, subject to the following conditions of approval:

**CONDITIONS OF APPROVAL**

1. To minimize the effects on local services, prior to final plat approval the subdivider shall complete the road vacations for the Falcon Ridge Subdivision, 1<sup>st</sup> Filing as specified in the Road Vacation Exhibit included with this subdivision application.
2. To minimize the effects on local services and public health and safety, prior to final plat approval, the subdivider shall provide permit information updates to the City Building Department for the lots that have already had building permits issued for them on Falcon Ridge Subdivision, 1<sup>st</sup> Filing, and are being replatted by Falcon Ridge Estates Subdivision.
3. To minimize the effects on local services, prior to final plat approval the subdivider shall execute a park maintenance district for the parks in this subdivision or have the park land in this subdivision covered by the existing park maintenance district for the existing Falcon Ridge Subdivision, 1<sup>st</sup> Filing.
4. To minimize the effects on local services, prior to final plat approval the subdivider shall dedicate as park land the proposed stormwater drainage areas shown on the plat between Western Bluffs Boulevard and Golden Eagle Way, Golden Eagle Way and Gray Hawk Way, and Gray Hawk Way and Masters Boulevard. The subdivider shall pipe the stormwater drainage in these park corridors and shall construct a walkway of either asphalt or concrete that creates pedestrian connections between Western Bluffs Boulevard and Golden Eagle Way, Golden Eagle Way and Gray Hawk Way, and Gray Hawk Way and Masters Boulevard. The walkway design will be to City Engineering specifications.



5. To minimize the effects on local services and public health and safety, the subdivider shall show the centralized mail delivery locations on the plat and identify any additional road right-of-way needed for mail delivery vehicles and residents to avoid blocking the roads in the subdivision while accessing the central delivery facilities.
6. Minor changes may be made to the Subdivision Improvements Agreement and final documents upon request of Planning and Community Services or Public Works Departments to clarify the documents and bring them into standard acceptable formats.
7. The final subdivision plat shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal Code, and rules, regulations, policies and ordinances of the City of Billings and the laws and administrative rules of the State of Montana.

Should you have questions regarding the conditions of approval, please contact Wyeth Friday with the Planning and Community Services Department at 247-8660 or by email at [fridayw@ci.billings.mt.us](mailto:fridayw@ci.billings.mt.us).

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

Sincerely,

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Charles F. Tooley, Mayor

pc: Matt Waite, Engineering, Inc.

**ATTACHMENT D**  
Findings of Fact  
Falcon Ridge Estates Subdivision

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

**1. Effect on agriculture**

There should be little or no effect on agriculture or agricultural water user facilities on this subdivision. The proposed site is within the City limits and has already been platted as a subdivision for residential uses. The property is not irrigated and there is no active crop production.

**2. Effect on local services**

- a. **Utilities** – Water and sanitary sewer facilities will be extended by the developer to serve this subdivision. Storm drainage and surface flow will be routed to natural existing drainages by a combination of surface drainage, curbs and gutters, valley gutters, inlets and storm drain lines. Flows will be directed as they have historically run, with overland and two-year flows retained on site through berming, ponding and boulder pit discharge within the dedicated parks.

**Stormwater Drainage Areas** – The subdivider proposed a series of dedicated storm drainage right-of-ways that run north to south across the subdivision and between the major east-west streets that are proposed. The maintenance of these right-of-ways was proposed to be handled by the park maintenance district created for the parks in the subdivision. However, the Parks Department is not supportive of including maintenance of non-park land in a park maintenance district. City Engineering Department staff stated that maintenance of the stormwater right-of-way would be done either by the adjacent property owners or through the park maintenance district. However, City Engineering Staff understood the concerns from the Parks Department regarding maintenance of land that is not park land.

Planning staff discussed several possible options for the maintenance of the dedicated stormwater right-of-ways with the Parks Department. One option that the Parks Department agreed could be considered is to dedicate the stormwater drainage areas as park land and use them for connectivity between different streets and areas of the subdivision for pedestrian access. This would then provide maintenance of the property through the park maintenance districts since it would be park land and also provide a place for the stormwater drainage. Under the park dedication scenario, City Engineering suggested that the stormwater be piped instead of left as open-ditch flow and a walkway be built by the subdivider to provide pedestrian access. These two scenarios were forwarded to the subdivider's engineer for review and discussion with the subdivider. The subdivider at the public hearing on October 25<sup>th</sup> stated that dedicating the

stormwater drainage areas as park land would be the best solution. The subdivider also agreed to pipe the stormwater and construct a pedestrian walkway through the park corridors. To clarify this issue prior to final plat approval, staff recommended Condition 4. This condition states that the subdivider shall dedicate as park land the proposed stormwater drainage areas shown on the plat between Western Bluffs Boulevard and Golden Eagle Way, Golden Eagle Way and Gray Hawk Way, and Gray Hawk Way and Masters Boulevard. The subdivider shall pipe the stormwater drainage in these park corridors and shall construct a walkway of either asphalt or concrete that creates pedestrian connections between Western Bluffs Boulevard and Golden Eagle Way, Golden Eagle Way and Gray Hawk Way, and Gray Hawk Way and Masters Boulevard. The walkway design will be to City Engineering specifications (**See Condition 4**).

A stormwater design report shall be submitted to the City Engineer's Office prior to final plat approval and the design of the stormwater systems will comply with the City of Billings Stormwater Management Manual.

Private utilities will be extended to this property under the companies' operating rules. Montana Dakota Utilities has specified 8'-wide utility easements it requires to serve the subdivision. These utility easements are provided on the preliminary plat. Language has been added to Section 3 (D) of the Subdivision Improvement Agreement notifying future property owners that lots within this subdivision shall be advised that water distribution system pressure may fall below the generally accepted minimum pressure at home fixtures on some lots. Assessment and mitigation, if required by pressure conditions, including potential installation of booster pumps on individual homes, shall be the responsibility of the lot owner.

- 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 within the subdivision with the standard design of 37-foot wide paved streets from back of curb to back of curb for Masters Boulevard, Falcon Ridge Drive and Western Bluffs Boulevard. The streets for Golden Eagle Way, Golden Eagle Court and Gray Hawk Way will be 34-foot wide streets from back of curb to back of curb (See Variance request above). The cul-de-sacs will have a 43.5-foot wide radius to back of curb. All sidewalks shall be 4-foot wide boulevard style.

Traffic from this subdivision will use Masters Boulevard and Western Bluffs Boulevard to access onto Molt Road. Molt Road is a state highway. The subdivider obtained approach permits when Falcon Ridge Subdivision, 1<sup>st</sup> Filing was being platted. No additional improvements to Molt Road are required at this time.

A Traffic Accessibility Study was completed for this property when Falcon Ridge Subdivision, 1<sup>st</sup> Filing was platted in 2004. The subdivider is providing an update to the TAS for this subdivision and is calculating additional contributions to traffic signalization

at 62<sup>nd</sup> Street West and Rimrock Road. Falcon Ridge Subdivision, 1<sup>st</sup> Filing, provided some cash contribution to future traffic signal improvements at 62<sup>nd</sup> Street West and Rimrock Road. City Traffic Engineer Terry Smith is reviewing the updated TAS and the proposed contributions.

### **Street Vacations**

Since this subdivision is platting over a large portion of the Falcon Ridge Subdivision, 1<sup>st</sup> Filing, many of the road right-of-ways must be adjusted to accommodate the new subdivision layout. This means that there are a series of road right-of-way vacations and new road right-of-way dedications that must occur. To make this process work most smoothly, the subdivider shall complete the process of road vacation prior to the filing of this new plat so the new dedicated roads are the only road right-of-ways on the property (**See Condition 1**). Please refer to the road vacation exhibit provided with this staff report packet for a review of the road right-of-way vacations and dedications that must occur. The City Engineer's Department is handling the road right-of-way vacation process through the City Council.

- 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 17<sup>th</sup>, which is approximately 5.5 miles from this property. The City Fire Department did not have any concerns with this proposed subdivision and its street layout. 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 25<sup>th</sup> Street West. AMR stated that it continues to face the challenge of meeting the required 8-minute response time as the City grows further and further to the 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 administration did not reply to a request for comments so it is assumed that the district has sufficient facilities to accommodate students from this subdivision. However, planning staff has been told by District 2 staff in the past that West High School is presently about 400 students above the recommended student capacity of the school and any more students would be a significant increase toward overcrowded building.

While state statute does not allow a subdivision to be denied based only on the impact it has on education, the overcrowding issue and ability for the schools to serve additional students is a serious issue. While no definite plans have been approved by the District 2 Board of Trustees, the District is in the process of considering several scenarios to address overcrowding in all three of its high school facilities. It is hoped that by the time this subdivision is ready to be occupied, some sort of plan will be adopted by District 2 and in place to accommodate increases in the number of students.

- f. **Mail Delivery Facilities** – Mail delivery by the United States Postal Service will be via centralized delivery locations throughout the subdivision. The subdivider states that there will be multiple centralized delivery facilities on the subdivision with between eight and 16 mailboxes per centralized delivery location. The City Engineer’s Office is requiring the centralized delivery locations be shown on the preliminary plat and that the subdivider determine if more road right-of-way is needed for mail vehicles and residents to deliver and pick up the mail without blocking the roads (**Condition 5**).
- g. **Parks and Recreation** – Because this is a major plat the subdivider must dedicate park land or cash in lieu of park land. The subdivider is proposing to provide 3.11 acres of park land. The property will be included in a park maintenance district that will include all of the park land and bikeways to be developed and maintained in this subdivision and the current Falcon Ridge Subdivision (**See Condition 3**).

### **3. Effect on the natural environment**

There should be a limited effect on the natural environment since this property has already been platted to be a major residential subdivision prior to the submission of this application. 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. The subdivision is served by municipal water and sewer systems and should not have a significant effect on the groundwater in the area.

### **4. Effect on wildlife and wildlife habitat**

There are no known threatened or endangered species on the property. Montana Fish, Wildlife and Parks officials stated that the subdivision is in close proximity to deer habitat and property owners should be aware that deer can cause damage to gardens and landscaping. Language has been added to Section 3. (C) of the SIA that warns future property owners of possible damage to property from wildlife.

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

This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties. A geotechnical study conducted for the subdivider by Terracon Consultants, Inc. found that potentially expansive soils may exist within the subdivision. Language has been added to Section 3(B) of the SIA that further geotechnical investigation may be required by the City and may need to be considered by the lot owners.

Two accesses are being provided to the subdivision from Molt Road, and future connectivity from the subdivision to future development to the west and north also is being design into this development. The two accesses to be provided with this subdivision to Molt Road also will provide access for emergency services to serve this subdivision.

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

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

**C. Does the subdivision conform to the 2003 Growth Policy, Urban Area Transportation Plan Update, Heritage Trail Plan, West Billings Plan, and the Northwest Shiloh Area Plan? (23-304 (c) (3) BMC)**

**1. 2003 Growth Policy:**

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

- The subdivision will be consistent with the neighborhood character and land use patterns in this area of the City given the new development that is occurring (Land Use Element Goal, Page 5).
- The subdivision's use of existing public roads for access and the proposal to build streets with connectivity to adjacent property will help maintain circulation and connections for traffic in the area (Transportation Goal, Page 10).

The subdivision conflicts with the following goals/policies of the growth policy:

- The subdivision provides infill development in an existing residential area, reducing sprawl and making the delivery of public services more efficient. (Land Use Element Goal, Page 6).

**2. Billings Urban Area Transportation Plan Update**

The subdivision is in the jurisdictional area of the Billings Urban Area Transportation Plan Update. Molt Road is designated as a principal arterial street and should be able to handle the additional traffic generated by this subdivision. The proposal to have two connections to Molt Road and future connections to the property to the north of this development and to the west of this development, eventually connecting with Rimrock Road, provides helps meet the transportation plan goal of connectivity between neighborhoods.

**3. Heritage Trail Plan**

The subdivision is also within the jurisdictional area of the Heritage Trail Plan. An easement for a multi-use trail is already in place south of this subdivision along the Cove Ditch in the Falcon Ridge Subdivision, 1<sup>st</sup> Filing. The subdivision also is proposing several trails through the parks that are being provided in Falcon Ridge Estates Subdivision and Falcon Ridge Subdivision, 1<sup>st</sup> Filing.

**4. West Billings Plan**

This land is identified in the West Billings Plan as within the urban expansion area. Specific policies identified in the plan that this subdivision meets include:

- Development in the West End planning area shall provide for a variety of residential types and densities.
- Condition approval of new development in the West Billings Plan area on the ability to provide infrastructure and public services, including streets, sidewalks, curb, gutter or alternative standards, police, fire, public water and sewer services.
- Development of non-irrigated farmland (generally lands located north of the Big Ditch) within the appropriate zoning designation is considered a priority.

#### **5. Northwest Shiloh Area Plan**

This land is identified as being within the boundary of the Northwest Shiloh Area Plan. The subdivision meets the following goals and policies of the Northwest Shiloh Area Plan:

- Require public/community water and sewer for all development on parcels one acre or smaller.
- Provide for effective non-vehicular transportation within the Northwest Shiloh area
- Promote connectivity among subdivisions with multiple points of access
- Create neighborhood parks designed to meet the needs of the neighborhood and, to the extent possible, the overall community park and linear open space system.
- Create park areas that link neighborhoods through a linear open-space network.

The subdivision does not meet the following goals and policies of the Northwest Shiloh Area Plan:

- Reduce commuting and the number and length of daily vehicle trips.
- Reduce sprawl and development pressure on agricultural lands.

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

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. The proposed conditions of approval will help to bring this subdivision into compliance with local and state requirements.

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

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 local and state authorities.

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

The property is zoned R-9600. The minimum lot size in this subdivision is 9,600-square-feet, which conforms to the zoning regulations for lot size. This subdivision is being platted over portion of the recently platted Falcon Ridge Subdivision, 1<sup>st</sup> Filing. This situation causes some confusion over the building of homes and other structures on the lots in the existing subdivision since this new subdivision, if recorded, will change lots, block and legal descriptions of several lots on the property that may already have homes constructed on them at that time. To reduce the effect on local services and public health and safety, staff is requiring that prior to final plat approval, the subdivider shall provide updates to the lots that have already had building permits issued for them on Falcon Ridge Subdivision, 1<sup>st</sup> Filing, and are being replatted by Falcon Ridge Estates Subdivision, be provided to the Building Department so that they can update the legal and permit records correctly (**See Condition 2**).

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

The subdivision will contain public street rights of way and dedicated 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? (76-3-608 (3) (d) MCA) (23-304 (C) (8) BMC)**

All lots will have access to public streets within the subdivision.

**CONCLUSIONS OF FINDING OF FACT**

The proposed Falcon Ridge Estates 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 conflicts with at least one Growth Policy goal. The subdivision appears to conform to the goals of the West Billing Plan and does not 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. The proposed conditions of approval help to bring the subdivision into compliance with state and local regulations.

**Approved by the Billings City Council on November 28, 2005**

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Charles F. Tooley, Mayor

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



R

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, November 28, 2005**

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**TITLE:** An Amendment to the Subdivision Improvements Agreement for Cottonwood Grove Subdivision, First and Second Filings

**DEPARTMENT:** Planning and Community Services through Ramona Mattix, AICP, Planning Director

**PRESENTED BY:** Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** On September 13, 2005, the subdivider, Jim Kisling, of Cottonwood Grove Subdivision, First and Second Filings, requested an amendment to the approved Subdivision Improvements Agreement (SIA). The subject property is located between Grand Avenue and Rimrock Road on the west side of 54<sup>th</sup> Street West. The SIA for the First Filing was entered between the subdivider and the City of Billings on March 4, 2005, and the Second Filing on July 25, 2005. The requested amendment would affect Section 3.B. Sidewalks, of the SIA, which was originally approved stating 4-foot wide boulevard walks with a minimum of 3-feet of boulevard shall be installed within the subdivision. The subdivider is requesting to install 5-foot wide curb walks instead.

**ALTERNATIVES ANALYZED:** Approval or denial of the requested amendment.

**FINANCIAL IMPACT:** There will be no financial impact as a result of this request.

**RECOMMENDATION**

The Yellowstone County Board of Planning recommends that the City Council deny the request for an amendment to Section 3.B. Sidewalks in the Subdivision Improvements Agreement for Cottonwood Grove Subdivision, First and Second Filings.

**Approved by:**            **City Administrator** \_\_\_\_\_            **City Attorney** \_\_\_\_\_

**ATTACHMENTS**

- A. Final Plat for Cottonwood Grove Subdivision, First and Second Filings
- B. Site photographs

## **INTRODUCTION**

On September 13, 2005, the subdivider, Jim Kisling, of Cottonwood Grove Subdivision, First and Second Filings, requested an amendment to the approved Subdivision Improvements Agreement (SIA). The subject property is located between Grand Avenue and Rimrock Road on the west side of 54<sup>th</sup> Street West. The SIA for the First Filing was entered between the subdivider and the City of Billings on March 4, 2005, and the Second Filing on July 25, 2005. The requested amendment would affect Section 3.B. Sidewalks, of the SIA, which was originally approved stating 4-foot wide boulevard walks with a minimum of 3-feet of boulevard shall be installed within the subdivision. The subdivider is requesting to install 5-foot wide curb walks instead.

## **PROCEDURAL HISTORY**

- On February 28, 2004, the City Council approved the final plat for Cottonwood Grove Subdivision, First Filing. The final plat was recorded on March 4, 2005.
- On July 11, 2005, the City Council approved the final plat for Cottonwood Grove Subdivision, Second Filing. The final plat was recorded on July 25, 2005.
- On September 13, 2005, the request for an amendment to the Subdivision Improvements Agreement (SIA) for both filings was submitted to the Planning Department.
- On October 25, 2005, the Planning Board conducted a public hearing regarding the proposed SIA amendment and forwarded a recommendation of denial to the City Council by a 6-1 vote.
- On November 28, 2005, the City Council will vote to approve or deny the subdivider's request to amend the SIA.

## **BACKGROUND**

Cottonwood Grove Subdivision, 1<sup>st</sup> Filing is a 52-lot residential subdivision located at the southeast corner of the intersection of Colton Boulevard and 54<sup>th</sup> Street West and Cottonwood Grove Subdivision, Second Filing is a 104-residential lot subdivision located directly adjacent to the south of the First Filing. The subject properties are zoned Residential 7000 (R-7000) with lots ranging in size from 7,050 to 11,149 square feet. The First Filing is under construction and the Second Filing is vacant.

As originally approved by the City Council on February 28, 2005, and July 11, 2005, the SIA specified that 4-foot wide boulevard walks would be installed within the subdivision with a minimum of 3-feet of boulevard. Upon construction of several of the lots within the First Filing, the subdivider discovered that with the size of the residences being placed on these lots and the required setbacks, the driveways are generally only 20 to 21 feet long. With the proposed boulevard sidewalks, vehicles in excess of 20-feet protrude onto the sidewalks by up to 3-feet, which could create a safety hazard for pedestrians along the sidewalk. Therefore, the subdivider is proposing to amend Section 3.B. Sidewalks within the SIA to provide for 5-foot wide curb walks adjacent to the street.

A variance to permit 50-feet of right-of-way for the interior streets, where Section 23-601(k), BMCC, requires 60-feet of right-of-way for local residential streets was granted by the City Council for both filings. Engineering staff was supportive of this variance, as 5-foot easements for sidewalks, street lights, and fire hydrants were to be provided on both sides of the right-of-way. The applicant is requesting that the sidewalks be relocated within a portion of the right-of-way, which is in conflict with the variance approval.

Engineering staff has reviewed the proposed amendment and finds that the request for curb walks is unjustified, as boulevard walks have already been constructed within the First Filing of the subdivision and have not caused safety hazards to those living in the residential units. The Planning Board, as well as staff, has been requesting that boulevard walks be constructed within all proposed subdivisions, as the 2 to 3 feet of boulevard along streets provides adequate space for street lights and fire hydrants without the need to encroach onto the lots. Furthermore, boulevard walks provide a separation of street to residences and promote a more inviting street presence within subdivisions.

### **STAKEHOLDERS**

On October 25, 2005, a public hearing was conducted by the Planning Board. There was no public comment received at the meeting. A letter from the property owner at 2245 54<sup>th</sup> Street West was received by planning staff on October 24, 2005, and was presented to the Planning Board at the public hearing. The letter expressed opposition to the proposed SIA amendment stating that the lots are too small and the residences under construction are very close to the street, as a majority of the structures maintain the minimum front yard setback of 20-feet, required for the Residential 7000 (R-7000) zoning district.

### **RECOMMENDATION**

The Yellowstone County Board of Planning recommends that the City Council deny the request for an amendment to Section 3.B. Sidewalks in the Subdivision Improvements Agreement for Cottonwood Grove Subdivision, First and Second Filings.

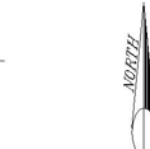
### **ATTACHMENTS**

- A. Final Plat for Cottonwood Grove Subdivision, First and Second Filings
- B. Site photographs

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

SCALE : 1"=60'

BILLINGS, MONTANA

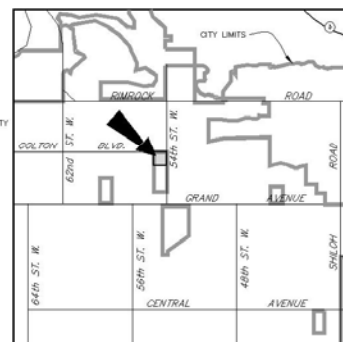


BASIS OF BEARING: PLAT OF AMENDED LOTS 65-68, 93-100 & 125-128 OF SUNNY COVE FRUIT FARMS.

○ - FOUND REBAR WITH CAP MARKED "ENGINEERING INC"  
OR OTHER MONUMENT AS NOTED

1 = SET 5/8" x 18" REBAR AND CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR AND "ENGINEERING INC BILLINGS MT"

UNPLATTED



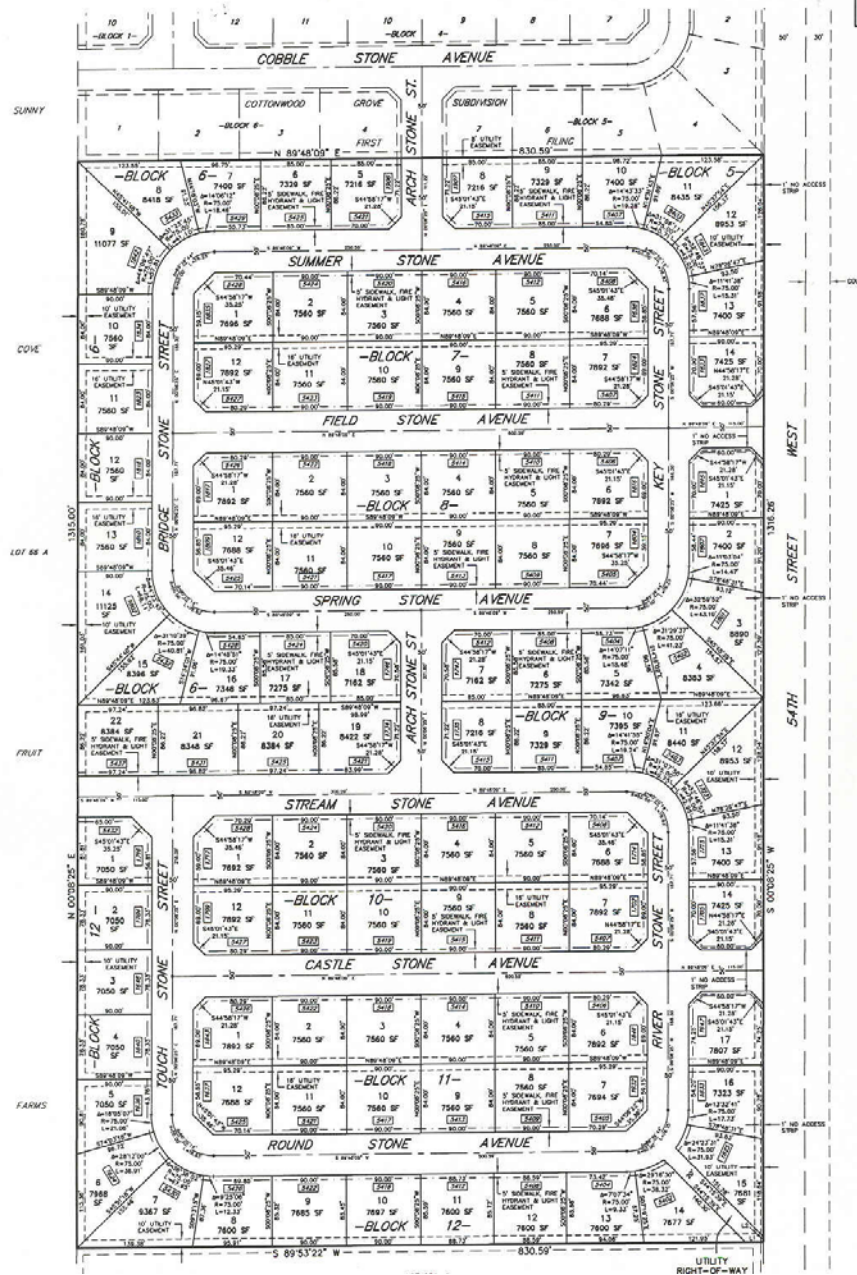
VICINITY MAP

NOT TO SCALE

PLAT OF  
**COTTONWOOD GROVE SUBDIVISION, SECOND FILING**  
 BEING LOTS 65A-2 & 65A-3 OF THE AMENDED PLAT OF LOT 65A OF THE PLAT OF  
 AMENDED LOTS 65-68, 93-100, AND 125-128 OF SUNNY COVE FRUIT FARMS  
 SITUATED IN THE SE1/4 OF SECTION 31, T. 1 N., R. 25 E., P.M.M.  
 IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : VIC DONOVAN & JIM KISLING  
 PREPARED BY : ENGINEERING, INC.  
 SCALE : 1"=60'

APRIL, 2005  
 BILLINGS, MONTANA



**ATTACHMENT B**  
**Site Photographs**



Figure 1: View west along Quarry Stone Avenue within the 1st Filing, please note the already installed boulevard walks.





Figure 2: View east along Quarry Stone Avenue toward a boulevard sidewalk nearing completion.



Figure 3: View southwest toward Lot 4, Block 6, at boulevard sidewalks near the intersection of Arch Stone Street and Cobble Stone Avenue within the 1<sup>st</sup> Filing.



Figure 4: View north east at the intersection of Country Stone Street and Quarry Stone Avenue within the 1<sup>st</sup> Filing.

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



# S

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 28, 2005

TITLE: Final Plat of Amended Lot 3A of Amended Lot 1, Block 1, Goodman Subdivision, Second Filing

DEPARTMENT: Planning and Community Services, Ramona Mattix, AICP, Planning Director

PRESENTED BY: Aura Lindstrand, Planner II

**PROBLEM/ISSUE STATEMENT:** The final plat of Amended Lot 3A of Amended Lot 1, Block 1 of Goodman Subdivision, Second Filing is being presented to the City Council for approval. On May 9, 2005, the City Council conditionally approved the two (2) lot preliminary minor plat; one (1) containing approximately 29,458 square feet (0.68 acres) and one (1) containing approximately 37,481 square feet (0.86 acres) for commercial development. Proposed Lot 3A-2 contains an automotive repair building (currently under construction) and proposed lot 3A-1 is vacant. The subject property is located on the southeast corner of the intersection of Avenue B and 41<sup>st</sup> Street West. The property owner is Mike Wentzell with Aztech Properties, LLC and Engineering, Inc. is the agent. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

**FINANCIAL IMPACT:** Should the City Council approve the final plat, the subject property will further develop, resulting in additional tax revenues for the City.

### RECOMMENDATION

Staff recommends that the City Council approve the final plat of Amended Lot 3 of Amended Lot 1, Block 1 of Goodman Subdivision, Second Filing.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

### ATTACHMENT

A: Plat

# ATTACHMENT A

## Plat

### GOODMAN SUBDIVISION, SECOND FILING

SITUATED IN THE SE1/4 OF SECTION 33, T. 1 N., R. 25 E., P.M.M.  
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : MIKE WENTZELL  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1"=60'

MARCH, 2005  
BILLINGS, MONTANA



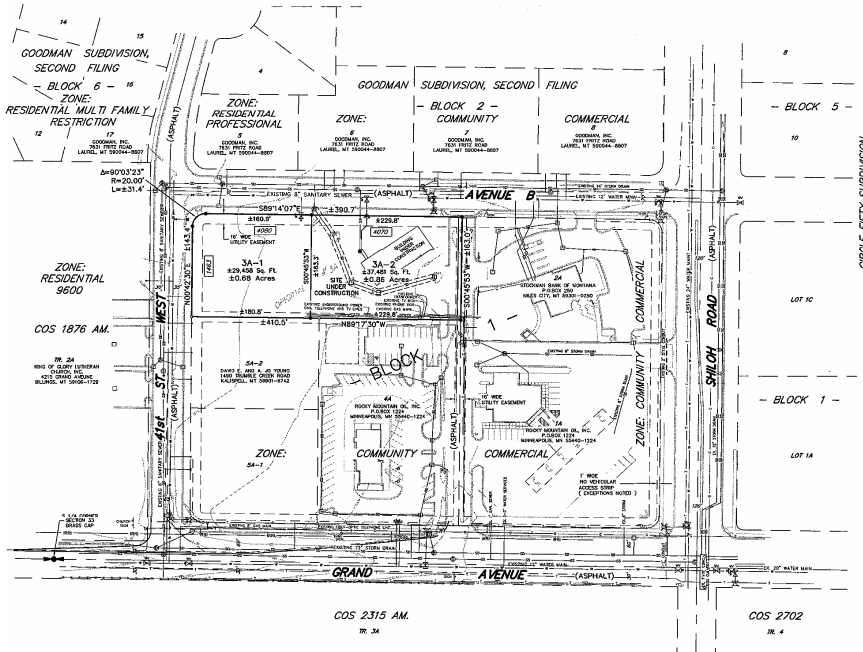
**BASES OF BEARING:** GOODMAN SUBDIVISION, SECOND FILING  
 \* = FOUND SURVEY MONUMENT, AS NOTED  
 \* = SET 5/8" X 18" REBAR WITH CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR AND "ENGINEERING INC. BILLINGS MT"  
 (4007) = TYPICAL STREET ADDRESS

#### PLAT DATA

GROSS AREA = 41.54 ACRES  
 NET AREA = 31.54 ACRES  
 NUMBER OF LOTS = 2  
 MINIMUM LOT SIZE = 30.68 ACRES  
 MAXIMUM LOT SIZE = 30.68 ACRES  
 LINEAL FEET OF STREETS = NONE  
 PARKLAND REQUIREMENT = NONE  
 PARKLAND DEDICATION = NONE  
 EXISTING ZONING = COMMUNITY COMMERCIAL  
 SURROUNDING ZONING:  
 NORTH = RMFR/PP/CC  
 SOUTH = COMMUNITY COMMERCIAL  
 EAST = COMMUNITY COMMERCIAL  
 WEST = RESIDENTIAL 9600  
 EXISTING LAND USE = VACANT  
 PROPOSED LAND USE = COMMUNITY COMMERCIAL

#### LEGEND

— FENCE  
 — CABLE TELEVISION  
 — POWER LINE  
 — STORM DRAIN  
 — SANITARY SEWER  
 — WATER MAIN  
 — GAS MAIN  
 — TELEPHONE LINE  
 — POWER POLE  
 — DRAINAGE MANHOLE  
 — DROP INLET  
 — FIRE HYDRANT  
 — WATER VALVE  
 — WATER SHUT OFF VALVE  
 — SEWER MANHOLE  
 — POWER BOX  
 — SIGN  
 — TREE



T

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, November 28, 2005**

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**TITLE:** Final Plat of Greenfield Subdivision

**DEPARTMENT:** Planning and Community Services, Ramona Mattix, AICP, Planning Director

**PRESENTED BY:** Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** The final plat of Greenfield Subdivision is being presented to the City Council for approval. On October 9, 2001, the City Council conditionally approved the 39 lot preliminary major plat on a property containing approximately 7.70 acres. The subject property is zoned Residential 6000 (R-6000) and is proposed for single-family residences. On October 25, 2004, the City Council granted a one (1) year extension for the preliminary plat approval to October 25, 2005; the final plat was received by the Planning Division on October 21, 2005. The property owner is LAIS Development, Inc. and Engineering, Inc. is the representing agent. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

**FINANCIAL IMPACT:** Should the City Council approve the final plat, the subject property will further develop, resulting in additional tax revenues for the City.

**RECOMMENDATION**

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

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENT**

A: Plat

# ATTACHMENT A

## Final Plat

### GREENFIELD SUBDIVISION

BEING TRACT A, CERTIFICATE OF SURVEY No.2159  
SITUATED IN THE S.E.1/4 SEC.2, T.1S., R.25E., P.M.M.  
YELLOWSTONE COUNTY, MONTANA

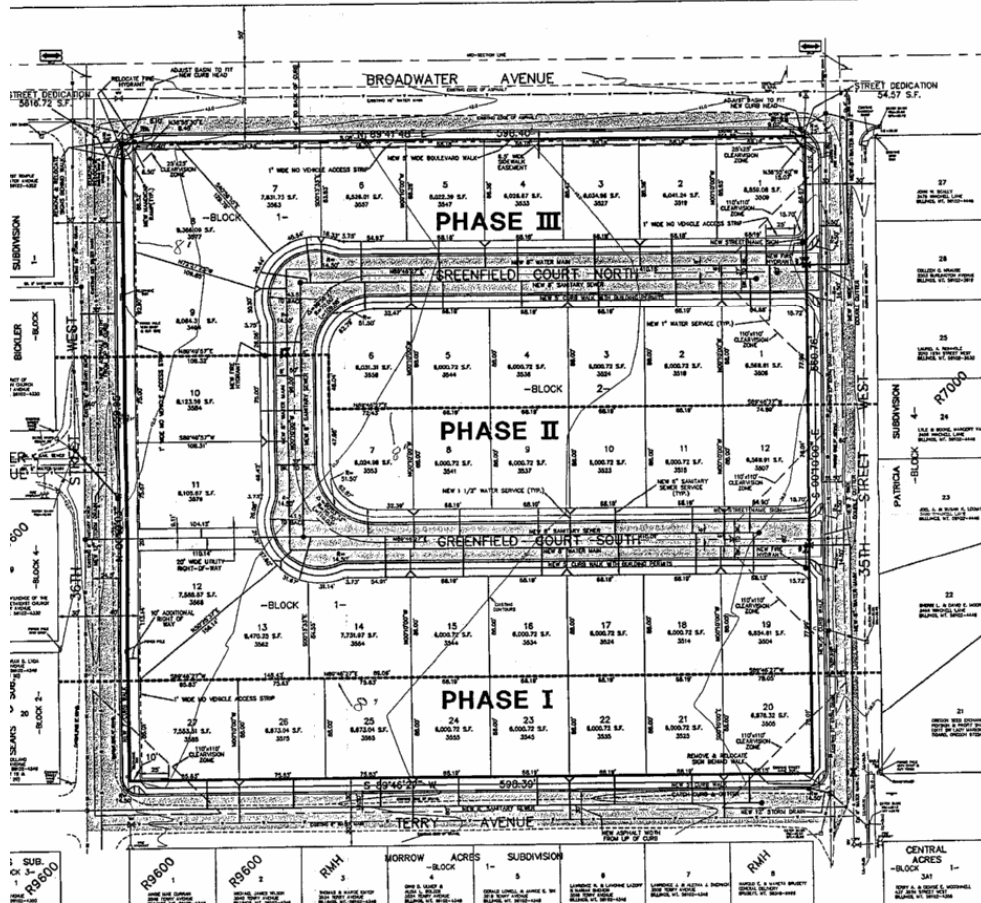
PREPARED FOR: LAIS DEVELOPMENT  
PREPARED BY: ENGINEERING, INC.  
SCALE: 1"=40'

JULY, 2001  
BILLINGS, MONTANA

BASIS OF BEARINGS - CERTIFICATE OF SURVEY No.2159  
O = FOUND CAPPED REBAR CORNER MONUMENT.  
● = SET 5/8" X 18" REBAR WITH CAP MARKED "END INC BLOS MT".

AGRICULTURAL  
OPEN

CERTIFICATE  
OF SURVEY No. 2702  
LIST 6



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

U

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, November 28, 2005**

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**TITLE:** Final Plat of Amended Lot 18B of McKay Acres Subdivision

**DEPARTMENT:** Planning and Community Services, Ramona Mattix, AICP, Planning Director

**PRESENTED BY:** Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** The final plat of Amended Lot 18B of McKay Acres Subdivision is being presented to the City Council for approval. On June 13, 2005, the City Council conditionally approved the three (3) lot preliminary minor plat for residential uses. The subject property is located on the north side of Pryor Lane where it intersects by Orchard Drive. The owner is Larry Larsen and the agent is Engineering, Inc. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

**FINANCIAL IMPACT:** Should the City Council approve the final plat, the subject property will further develop, resulting in additional tax revenues for the City.

**RECOMMENDATION**

Staff recommends that the City Council approve the final plat of Final Plat of Amended Lot 18B of McKay Acres Subdivision.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENT**

A: Plat

# ATTACHMENT A

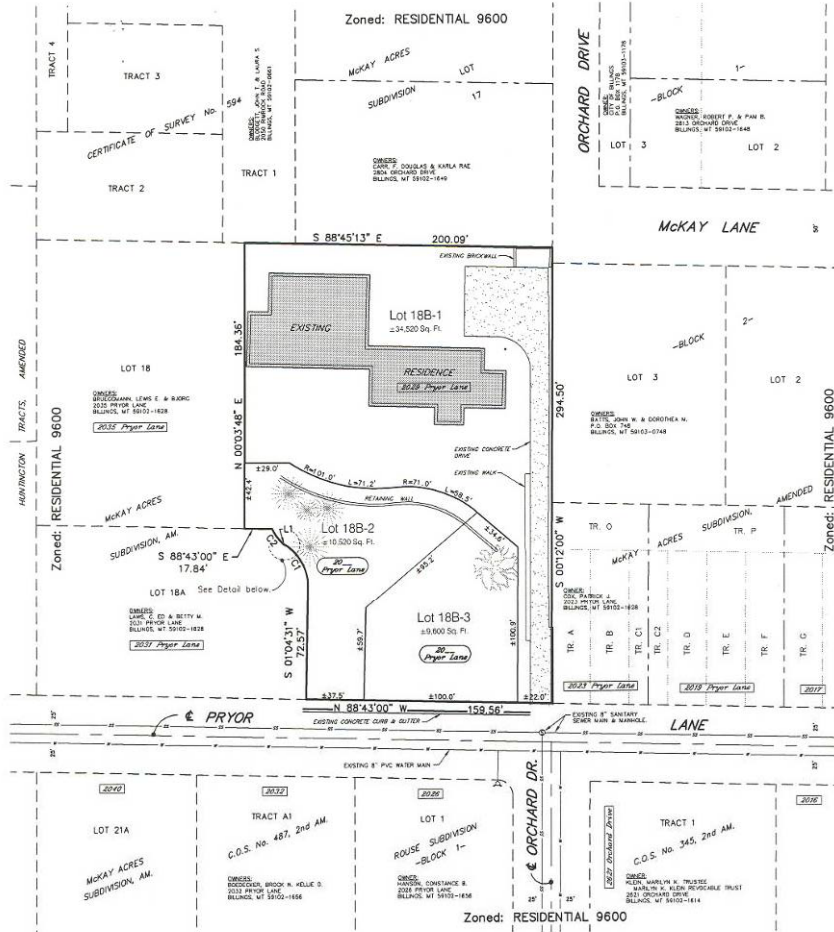
## Final Plat

### McKAY ACRES SUBDIVISION AMENDED

SITUATED IN NW 1/4, SECTION 36, T. 1 N., R. 25 E., P.M.M.  
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : LARRY LARSEN  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1" = 30'

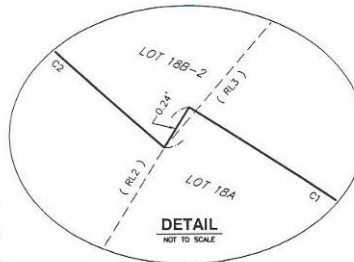
FEBRUARY, 2005  
BILLINGS, MONTANA



BASIS OF BEARING: SOUTHERLY LINE OF LOT 18B AT  
N 88°43'00" W



VICINITY MAP  
NOT TO SCALE



#### LEGEND:

Existing	Proposed	Item Description
SS	SS	SANITARY SEMI MAIN
SM	SM	SANITARY SEMI MANHOLE
W	W	WATER LINE
1234	1234	STREET ADDRESS

#### LINE & RADIAL DATA:

LINE	BEARING	DISTANCE
L1	N 31°44'22" E	0.24'
RL1	S 88°53'20" E	33.12'
RL2	S 31°44'22" W	32.12'
RL3	S 40°43'18" W	31.90'
RL4	N 64°08'17" E	31.90'

#### CURVE DATA:

CURVE	DELTA	RADIUS	LENGTH
C1	59°29'08"	32.12'	33.28'
C2	27°23'00"	31.90'	13.02'

#### PLAT DATA:

GROSS AREA	854,640 Sq. Ft.
NET AREA	854,640 Sq. Ft.
NUMBER OF LOTS	THREE
MINIMUM LOT SIZE	29,600 Sq. Ft.
MAXIMUM LOT SIZE	29,600 Sq. Ft.
LINEAL FEET OF STREETS	0
PRESENT ZONING	RESIDENTIAL 9600
SURROUNDING ZONING:	
NORTH	RESIDENTIAL 9600
EAST	RESIDENTIAL 9600
SOUTH	RESIDENTIAL 9600
WEST	RESIDENTIAL 9600
EXISTING USE	RESIDENTIAL
PROPOSED USE	RESIDENTIAL

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



V

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, November 14, 2005**

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TITLE: Final Plat of Reiter-Beswick Subdivision  
DEPARTMENT: Ramona Mattix, AICP, Planning & Community Services Director  
PRESENTED BY: Lora Mattox, Neighborhood Planner, Planner II

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**PROBLEM/ISSUE STATEMENT:** The final plat for Reiter-Beswick Subdivision is being presented to the City Council for approval. On September 26, 2005, the City Council conditionally approved the two (2) lot preliminary minor plat for the existing residential property; Lot 1-A is approximately 8,317.195 square feet in size and will be a residential lot. Lot 1-B is approximately 9,685.859 square feet and contains the original residential dwelling. The owners, Timothy and Teresa Lehman, were granted a variance from the minimum lot size requirement on April 5, 2005 for Lot 1-B. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

**FINANCIAL IMPACT:** Should the City Council approve the final plat, the subject property may further develop, resulting in additional tax revenues for the City.

**RECOMMENDATION**

Staff recommends that the City Council approve the final plat of Reiter-Beswick Subdivision.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

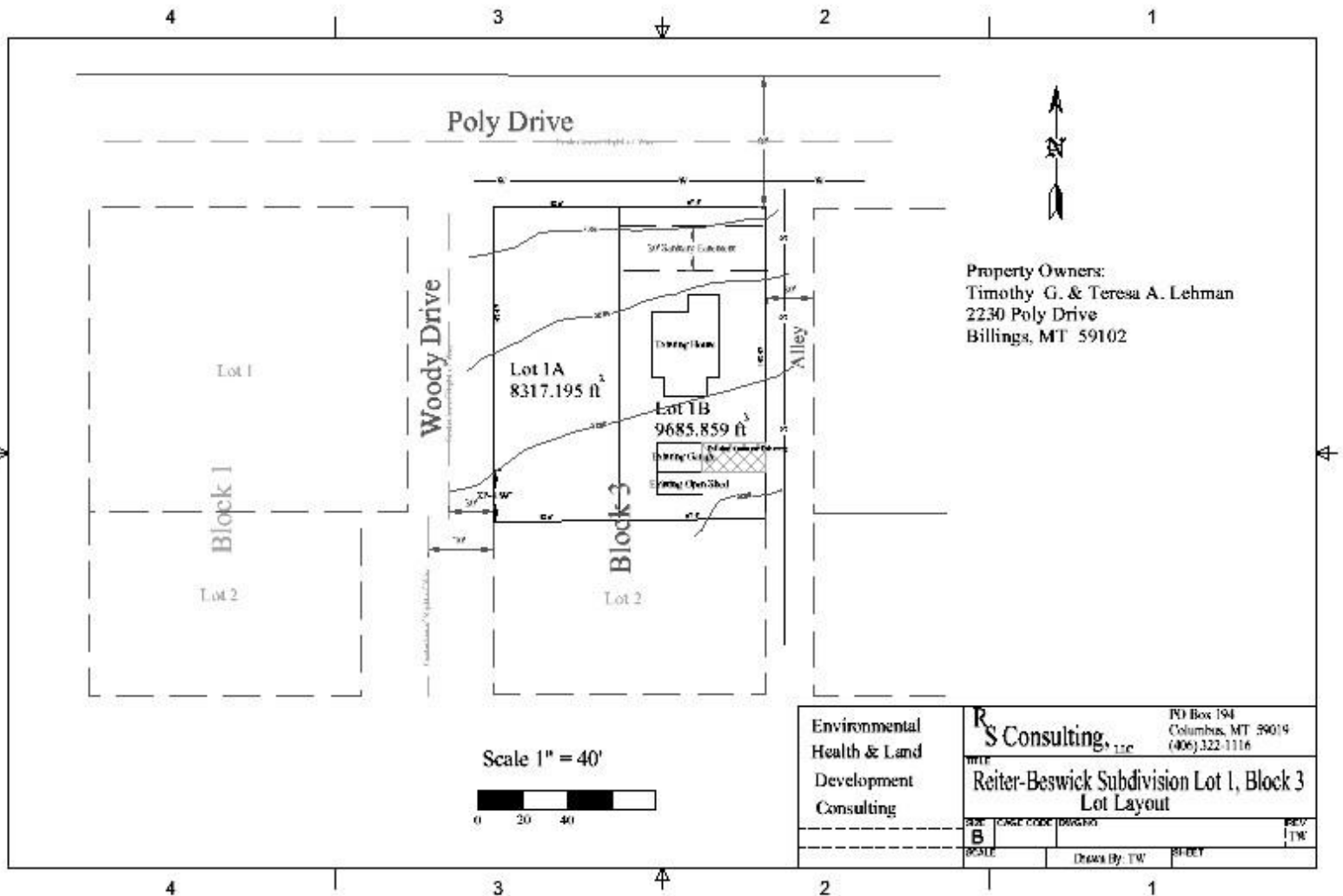
**ATTACHMENT**

A: Plat

# ATTACHMENT A

## Final Plat

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





# W1



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## **CITY COUNCIL AGENDA ITEM**

### **CITY OF BILLINGS, MONTANA**

### **Monday, November 28, 2005**

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**SUBJECT:** Payment of Claims  
**DEPARTMENT:** Municipal Court  
**PRESENTED BY:** Nikki R. Schaubel, Municipal Court Administrator

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$130,443.11 have been audited and are presented for your approval for payment. A complete listing of the claims dated October 1, 2005 to October 31, 2005 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims

**Approved By:** City Administrator \_\_\_\_\_ City Attorney \_\_\_\_\_

### **ATTACHMENTS**

A – Check register 10/01/05 to 10/31/05

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

# W2

**AGENDA ITEM:**



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

---

**TITLE:** Payment of Claims  
**DEPARTMENT:** Administration – Finance Division  
**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,687,315.65 have been audited and are presented for your approval for payment. A complete listing of the claims dated October 28, 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

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

# W3

**AGENDA ITEM:**



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

---

**TITLE:** Payment of Claims  
**DEPARTMENT:** Administration – Finance Division  
**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$2,294,538.89 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 4, 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

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




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

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**TITLE:** Public Hearing and First Reading of Proposed Animal Control Ordinance  
**DEPARTMENT:** Police Department (Animal Control Division)  
**PRESENTED BY:** Richard St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** A review of the existing Animal Ordinance by the staff and Animal Control Board has resulted in the submittal of these recommended changes to the Animal Ordinance of the City of Billings, Montana. The last changes made to the Animal Ordinance were approved by City Council on October 27, 2003. Council is being asked to approve the proposed Animal Control Ordinance as amended on first reading. If this Ordinance is approved tonight, staff will come back and prepare a memo for the December 12, 2005 Council meeting asking for approval on second reading.

**ALTERNATIVES ANALYZED:**

- Approval of the Ordinance as presented.
- No action.

**FINANCIAL IMPACT:** The financial impact would be minimal with a slight revenue increase to Municipal Court from fines to violators.

**RECOMMENDATION**

Staff recommends City Council approval of the changes to the Animal Ordinance as presented on this date.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**Attachment**

A – Proposed Animal Control Ordinance

## **INTRODUCTION**

Increasingly each year, the Billings Animal Shelter receives complaints from citizens about the small animals allowed to run loose, causing property damage, and leaving animal waste on citizens' property. Irresponsible pet owners that allow their pets to roam expose them to dangers and health issues. As the numbers of dogs presented to the Billings Animal Shelter continue to decrease each year, the numbers of other small animals presented continue to rise.

The proposed Ordinance changes would:

- Clean up wording and provide clear definitions for the terms animal, at large, bite, owner, service animal, small animal, potentially dangerous behavior, and dangerous behavior.
- Exempt military and law enforcement animals performing their duties from the potentially dangerous and dangerous category.
- Provide procedures for the confinement of animals that have possibly exposed a person to rabies.
- Establish deadline for requirements of registration of convicted dangerous animals.
- Require that all small animals not be allowed to run at large.
- Change required rabies vaccination age from six (6) months of age to three (3) months of age.
- Establish a mandatory spay/neuter penalty for habitual at large offenders.
- Change required registration age from six (6) months of age to three (3) months of age.
- Establish deadline for requirements of providing proof of current rabies vaccination.

## **BACKGROUND**

The current ordinance requires that all dogs not be allowed to run at large within the City limits of Billings. These portions of the ordinance have assisted in reducing the number of dogs received each year at the Animal Shelter. Other small animals are not currently required by the ordinance to be contained on their property or under the owner's control when off of the owner's property. This results in unplanned and uncontrolled breeding, numerous lost, stray, and feral small animals within the City. The City ordinance currently defines small animal as any dog or cat, both male and female. Current policy allows citizens with recurring problems with small animals on their property to rent live traps from the City to contain the animal for removal by Animal Control. This program creates undue cost to the citizen with the problem. Health issues from urine and feces left behind by these free roaming small animals are a major concern of the Animal Control Board and staff.

The current ordinance provides for the length of time an animal is placed under quarantine when a person has possibly been exposed to rabies but did not establish procedure. Changes will define quarantine procedures when an exposure has occurred.

The current ordinance requires registration of dogs/cats prior to seven (7) months of age. The proposed change would require registration prior to four (4) months of age. Veterinarians currently recommend animals receive their rabies vaccination at three (3) months of age. The rabies vaccination is required prior to registration. By requiring registration at (3) three months of age the dog/cat will be provided with identification and rabies protection at an earlier age.

The current ordinance requires registration of dangerous animals, and requires registration of stray impounded dogs and cats prior to release to owner. However, the current ordinance does not establish a deadline for registration for dangerous animals, or for providing current rabies vaccination information for impounded dogs and cats. The proposed ordinance establishes deadlines for these requirements.

We now come before Council for approval of these ordinance changes, placing the responsibility on the small animal owners to contain their small animals, and not allowing their animals to become a problem and/or expense to the citizens of the City of Billings.

## **ALTERNATIVES ANALYSIS**

### **Non-passage**

- Ambiguous language remains in the ordinance.
- No exemptions for military or law enforcement animals performing their duties.
- No established procedures for confinement of animals exposed to rabies.
- No established deadlines for registrations of convicted dangerous animals or for providing rabies vaccination history to the Animal Shelter after a pet registration has been purchased.
- Not all small animals are regulated from running at large.
- No mandatory penalty for spay/neuter violations.

## **RECOMMENDATION**

The Animal Control Board and Staff recommend and request that City Council approve the Ordinance changes as presented. Council is being asked to approve this proposed Animal Control Ordinance on first reading.

## **ATTACHMENT**

A – Proposed Animal Control Ordinance for the City of Billings, Montana.

ORDINANCE NO. 05-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA, CITY CODE BE AMENDED BY REVISING SECTIONS 4-401, 4-402, 4-404, 4-405, 4-405.7, 4-406, 4-407, 4-409, 4-411, 4-431, 4-433, 4-434 AND 4-447 OF SAID CODE AND ADDING A NEW SECTION TO BE NUMBERED 4-405.1; UPDATING LANGUAGE FOR DEFINITIONS, SMALL ANIMAL PERMITS, NOISY ANIMALS, POTENTIALLY DANGEROUS ANIMALS, QUARANTINE PROCEDURES, DANGEROUS ANIMAL REGISTRATION FEE, VACCINATION OF SMALL ANIMALS FOR RABIES, REGISTRATIONS, PROHIBITING SMALL ANIMALS AT LARGE, AND PENALTY.

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

Section 1. That Section 4-401 of the Billings, Montana, City Code be amended so that the following definitions in such section shall read as follows:

**Sec. 4-401. Definitions.**

Terms and words, as used in this article, shall have the following meanings unless the context otherwise indicates:

. . .

***At large*** means off the premises of the owner and not under the control of the owner or any other person either by leash, cord, chain, or other physical means of control; ~~this excludes~~ obedience trained dogs under complete verbal control of the owner or trainer shall not be allowed to separate from their owner by more than six (6) feet except on private property with owner permission or on public property as referenced in section 4-407.

. . .

***Bite*** means any abrasion, scratch, puncture, laceration, bruise, tear, or piercing of the skin inflicted by the teeth of an animal.

. . .

~~***Commercial kennels*** means any lot, building, structure or premises where more than two (2) sexually unaltered dogs and/or cats over the age of six (6) months are kept or maintained for boarding, training, breeding or selling, exclusive of medical or surgical care, or for quarantine purposes.~~

. . .

***Dangerous animal*** means any animal that in the absence of intentional provocation:

- (1) Inflicts serious bodily injury to a person on public or private property; or
- (2) Is involved in a continuous sustained attack upon a person, not allowing the victim any means of escape, regardless of the extent of injury or defensive action required; or
- (3) Is previously found to be potentially dangerous and while on or off the owner's property chases or approaches a person in a menacing fashion or apparent attitude of attack or inflicts bodily injury to a person or small animal;
- (4) Inflicts injury to a person on public or private property, which injury results in the death of the person.
- (5) These definitions do not apply to animals used in military or law enforcement work while they are actually performing in that capacity.

...

***Owner*** means any person owning, keeping, feeding or harboring an animal over thirty (30) days.

...

***Potentially dangerous animal*** means any animal that in the absence of intentional provocation:

- (1) While off the owner's property, chases or approaches a person in a menacing fashion or apparent attitude of attack or inflicts bodily injury to a person or small animal; or
- (2) While on the owner's property causes bodily injury to a person; or
- (3) While off the owner's property kills a domestic animal, excluding birds, rodents and reptiles.
- (4) These definitions do not apply to animals used in military or law enforcement work while they are actually performing in that capacity.

...

***Service Animal*** means in addition to a guide dog, police dog, as defined in MCA Sec. 45-8-209, law enforcement or military canine all other animals that are "individually trained to provide assistance to an individual with a disability" in a public setting.

...

***Small animal*** includes any dog, ~~or~~ cat, rabbit, or domesticated small animal, both male and female.

*Section 2.* That Section 4-402 of the Billings, Montana, City Code be amended so that such section shall read as follow:

**Sec. 4-402. Small animal permits.**



(a) A small animal permit is required of every owner of four (4) or more dogs and/or cats as defined in section 4-401. A small animal permit is required in addition to individual registrations as referenced in 4-431.

(b) Every person, firm or corporation granted a permit under this section shall be subject to regulation and inspection by the animal control officer or the health department. Any small animal permit granted hereunder may be revoked and cancelled by the city upon giving notice as provided in notice and appeal procedure as set forth in subsection 4-402(d).

(c) Exclusions:

(1) No registration fees or small animal permits shall be required of any veterinary hospital, government animal shelter, or zoological park.

(2) A recognized tax exempt humane society, organization, or animal welfare society must comply with all requirements of the holder of a small animal permit, but the small animal permit fee shall be waived. No registration fees shall be required of dogs/cats waiting for adoption, but rabies vaccinations shall be required of ~~adult~~ animals over three (3) months of age held over thirty (30) days.

(d) The city administrator shall revoke a small animal permit as follows:

(1) A small animal permit shall be revoked upon refusal to allow inspection, or for three (3) convicted violations of animal ordinances in a twenty-four (24) month period; or for use of shelter facilities to dispose of, or to find homes for surplus puppies and breeding stock; or any other violation of the provisions of this article.

(2) The city administrator shall give notice to the licensee of any revocation. The notice shall be in writing, shall specify the deficiencies or violations, advise the violator of the right to appeal, and shall be mailed by certified mail, return receipt requested or personally served. The violation shall have ten (10) days to appeal the revocation to the city council. The appeal shall be filed in writing with the city clerk. The city administrator shall cause the matter to be placed on the first available agenda. The appellant shall be notified by certified mail or personally served with notice of the date of the council meeting at least three (3) days prior to the hearing. The matter shall be considered by the council after the appellant has had an opportunity to be heard in person or by council at the regular council meeting in which the matter appears on the agenda.

*Section 3.* That Section 4-404 of the Billings, Montana, City Code be amended so that such section shall read as follows:

#### **Sec. 4-404. Noisy animals.**

Every person who keeps, feeds, harbors or allows to stay about any premises occupied or controlled by such person, any animal which unreasonably annoys or disturbs any person by continuous and habitual barking, howling, yelping,

whining or other noise is guilty of maintaining a public nuisance and is therefore guilty of a misdemeanor. This section does not apply to an ~~dog~~ animal that is owned, kept, or harbored as part of the business of a licensed veterinarian, animal boarding facility, or agricultural or livestock operation.

The complainant must identify himself or herself by name, address and telephone number.

To constitute a violation for prosecution under this section, a written complaint must be received by the animal shelter which shall include but not be limited to a summary of the nature and duration of the animal noise and any other information as may be required by the animal shelter to establish a violation of this section.

Upon conviction in Municipal Court of a Noisy Animal, the penalty shall be in accordance with Section 4-411.

*Section 4.* That Section 4-405 of the Billings, Montana, City Code be amended so that such section shall read as follow:

**Sec. 4-405. Potentially dangerous behavior.**

(a) Any person who keeps, feeds, harbors or allows to stay about the premises occupied or controlled by him within the city any animals exhibiting potentially dangerous behavior is guilty of maintaining a public nuisance and is guilty of misdemeanor. An animal is presumed to have exhibited potentially dangerous behavior if it demonstrated any of the behavior set forth in section 4-401. Such presumption is rebuttable.

~~(b) Upon the discretion and advice of the animal control officer, any animal which bites a person shall be isolated in strict confinement at the animal shelter or licensed Veterinarian Clinic to be observed for at least ten (10) days from the day of infliction of the bite. The owner will be responsible and must pay the confinement fees. If the owner fails to pay such fees, the animal control officer shall dispose of the animal.~~

~~The owner will be responsible and must pay the confinement fees. If the owner fails to pay such fees, the animal control officer shall dispose of the animal.~~

~~(c) A dog or cat (or other animal) manifesting characteristics of rabies (hydrophobia) may be put to death at the discretion of the animal control officer so that the head may be examined to make a confirmatory search for Negri bodies. All animals definitely known to have been bitten by the infected animal~~

~~should be destroyed. If, however, the animal is only suspected of having the disease he should not be put to death, but quarantined for observation, for a negative laboratory examination at this time would only leave the diagnosis in doubt. Any dog or cat owner who fails to cooperate with the animal control officer in satisfactory quarantine of his dog or cat (or any other animal, if pertinent) who has bitten a person is guilty of a misdemeanor.~~

~~(d) When dogs are used for guarding premises, such premises shall be noticed.~~

*Section 5.* That the Billings, Montana City Code be amended by adding a section to be numbered 4.405.1, to read as follows:

**Sec. 4-405.1. Quarantine - Rabies**

- (a) Any animal not currently vaccinated for rabies which bites a person shall be isolated in strict confinement at the animal shelter or a licensed Veterinarian Clinic to be observed for at least ten (10) days from the day of infliction of the bite. The owner will be responsible and must pay the confinement fees. If the owner fails to pay such fees, the animal control officer shall dispose of the animal.
- (b) Upon the discretion and advice of the animal control or law enforcement officer any animal currently vaccinated for rabies which bites a person may be isolated in strict confinement at the owner's home provided the following conditions are available and met:
  - 1) Animal must be kept away from all animals and people except the immediate household.
  - 2) Animal must be kept inside an enclosed structure such as a house, garage or if outside, the animal must be in a covered pen from which it cannot escape or come into contact with another animal or person. If confinement is authorized under this condition, the person responsible for the animal shall further assure that the animal shall only be allowed outside the above-described pen or other suitable place approved by the animal control or law enforcement officer if the animal is on a leash which is held by a person that is capable of and is in fact controlling the animal in question.
  - 3) Animal cannot be sold, given away, destroyed or moved from the premises until notified by an animal control or law enforcement officer that the quarantine period is over.
  - 4) Animal under quarantine is not to receive any vaccinations without the authorization of a Veterinarian and the Animal Control Officer.

- 5) If the animal becomes lost, sick, acts strangely in any way, or dies during quarantine it must be reported immediately to the Billings Animal Shelter.
  - 6) Animal control and/or law enforcement officers must be allowed reasonable access to the place of quarantine between the hours of 7:00am – 10:00pm for inspections.
  - 7) The owner will be responsible and must pay all confinement fees. If the owner fails to pay such fees, the animal control officer shall dispose of the animal.
- (c) Any animal owner who fails to cooperate with the animal control officer in satisfactory quarantine of his dog or cat (or any other warm-blooded animal, if pertinent) who has bitten a person is guilty of a misdemeanor.
- (d) A dog or cat (or other warm-blooded animal) manifesting characteristics of rabies (hydrophobia) may be put to death at the discretion of the animal control or law enforcement officer so that the head may be examined to make a confirmatory search for Negri bodies. All animals definitely known to have been bitten by the infected animal should be destroyed. If, however, the animal is only suspected of having the disease he should not be put to death but quarantined for observation, for a negative laboratory examination at this time would only leave the diagnosis in doubt.
- (e) Quarantine procedures do not apply to animals used in military or law enforcement work and service animals for the disabled. These animals will be required to be under current Veterinarian care and subject to inspections by an animal control or law enforcement officer.

*Section 6.* That Section 4-405.7 of the Billings, Montana, City Code be amended so that such section shall read as follow:

**Sec. 4-405.7. Fee for registration of dangerous animal.**

Any person required to register a dangerous animal as set forth in section 4-405.5 shall pay a registration fee in an amount set by council resolution. Said dangerous animal registration fee is in addition to all other fees. Registration shall be required within seven (7) days following conviction.

*Section 7.* That Section 4-406 of the Billings, Montana, City Code be amended so that such section shall read as follow:

**Sec. 4-406. ~~Dogs~~ Small animals at large.**

No ~~dog~~ small animal shall be allowed to run at large in the city. No owner shall allow or permit any ~~dog~~ small animal to be at large off the owner's property unless restrained by leash, cord, chain, fence or other physical means of control; provided, that an obedience trained dog shall be allowed to participate in obedience training, field trials, dog shows or competition. In all individual obedience training within the city, the ~~dog~~ small animal shall not be allowed to be separated from its owner or trainer by more than ~~fifty (50)~~ six (6) feet except on private property with owner permission or on public property as referenced in section 4-407. Any ~~dog~~ small animal found to be running at large in the city or on private property in violation of this section is a public nuisance and shall be impounded in the animal shelter. In addition, the ~~dog's~~ small animal's owner upon conviction shall be fined as provided in section 4-411.

*Section 8.* That Section 4-407 of the Billings, Montana, City Code be amended so that such section shall read as follow:

**Sec. 4-407. Small animals in city parks.**

No small animals, whether restrained or unrestrained, shall be permitted in the city parks except for service animals when being used for that purpose and service animals being used in police work. This prohibition does not prohibit small animals in posted areas of parks or public lands that are specifically designated by council resolution for use by small animals in accordance with posted regulations. Small animal in the city parks are deemed a nuisance and may be impounded; provided, that a permit for organized obedience training or shows may be granted for use in designated areas of designated parks on designated days. The permit shall be obtained from the animal shelter at the discretion of the Animal Control Supervisor for that particular event. The permit shall be in writing and shall designate the park, area within the park, the dates and duration. A fee as prescribed by council resolution shall be collected for each permit for each event.

*Section 9.* That Section 4-409 of the Billings, Montana, City Code be amended so that such section shall read as follow:

**Sec. 4-409. Vaccination of ~~small animals~~ dogs/cats for rabies.**

The owner of every ~~small animal~~ dog/cat kept, harbored or maintained within the city which is ~~six (6)~~ three (3) months old or older shall, at the owner's expense, cause the ~~small animal~~ dog/cat to be vaccinated for rabies by a licensed veterinarian, and the owner of any such ~~small animal~~ dog/cat who for thirty (30) days willfully fails to have such ~~small animal~~ dog/cat vaccinated is guilty of a misdemeanor. The veterinarian shall retain a copy of the vaccination receipt for

such period as the health officer of the city shall prescribe. The owner of such ~~small animal~~ dog/cat when applying for ~~the license~~ registration required by section 4-431 shall present the vaccination receipt as proof of current and valid vaccination.

*Section 10.* That Section 4-411 of the Billings, Montana, City Code be amended so that such section shall read as follow:

**Sec. 4-411. Minimum penalty.**

The following fines are hereby imposed:

- 1) Small animal running at large (Sec. 4-406)
  - First Offense – minimum fine of twenty dollars (\$20.00).
  - Second Offense – minimum fine of one hundred dollars (\$100.00) and mandatory spaying or neutering if the animal has not been spayed or neutered prior.
- 2) Noisy animal (Sec. 4-404)
  - First Offense – minimum fine of fifty dollars (\$50.00).
  - Second Offense – minimum fine of one hundred dollars (\$100.00)

Subsequent offenses within a twelve (12) month period will result in a minimum doubling of fines from the previous offense onward.

A person convicted of a violation of this Article shall be fined not to exceed \$500 or be imprisoned not to exceed 6 months or both.

~~There is hereby imposed a minimum fine for the first offense for a dog running at large (Sec. 4-406) of twenty dollars (\$20.00) and a minimum fine for a second offense of one hundred dollars (\$100.00) and a minimum fine for the first offense of a noisy animal (Sec. 4-404) of fifty dollars (\$50.00) and a minimum fine for a second offense of one hundred dollars (\$100.00). Subsequent offenses within a 12-month period will result in a minimum doubling of fines from the previous offense onward. Maximum penalty for all misdemeanor violations of five hundred dollars (\$500.00) fine and/or six (6) months in jail.~~

*Section 11.* That Section 4-431 of the Billings, Montana, City Code be amended so that such section shall read as follow:

**Sec. 4-431. Required.**

The owner of every dog/cat kept, harbored or maintained within the city shall register the dog/cat within thirty (30) days after the dog/cat becomes ~~six (6)~~

three (3) months old, or within thirty (30) days in the case of a dog/cat ~~six (6)~~  
three (3) months or older newly brought into the city or acquired by new owner.

*Section 12.* That Section 4-433 of the Billings, Montana, City Code be amended so that such section shall read as follow:

**Sec. 4-433. Proof of vaccination prerequisite.**

No dog/cat registration shall be issued unless the applicant therefore produces satisfactory proof that the dog/cat has been vaccinated with a rabies vaccine currently effective. Such proof may be made by presenting the vaccination receipt referred to in section 4-409; provided that when a dog/cat has been reclaimed from the animal shelter, registration fees and all impound fees shall be paid and all bonds shall be posted prior to release of the dog/cat. If satisfactory proof of rabies vaccination cannot be produced, the registration tag shall be retained by the city until the dog/cat has been vaccinated or proof of vaccination is produced. Proof of vaccination must be provided to the Animal Shelter within thirty (30) days after the dog/cat becomes three (3) months old, or within thirty (30) days in the case of a dog/cat three (3) months or older. Failure to provide proof of vaccination will result in the registration being void.

*Section 13.* That Section 4-434 of the Billings, Montana, City Code be amended so that such section shall read as follow:

**Sec. 4-434. Issuance.**

(a) Registrations shall be issued by the animal control officer or duly appointed registration agents, ~~and are not in addition to any small animal permit for personal owners, or those who harbor small animals over six (6) months of age for more than thirty (30) days.~~

(b) Registration agents. The registration authority shall appoint additional registration agents as may be deemed necessary or expedient. The city will provide an allowance of one dollar (\$1.00) from the registration fee to reimburse additional registration agents for costs incurred in performing registration duties for the city. Additional registration agents will settle accounts with the city monthly, the timing and manner of which will be determined by the registration authority.

*Section 14.* That Section 4-447 of the Billings, Montana, City Code be amended so that such section shall read as follow:

**Sec. 4-447. Impoundment of ~~dogs~~ small animals at large.**

Every ~~dog~~ small animal, licensed or unlicensed, found running at large in the streets, avenues, alleys or other public places within the city, or on private property, except as provided in section 4-406, is a public nuisance and may be taken and impounded in the city animal shelter by an animal control officer, police officer or other employee designated by the city administrator or persons with whom the city has contracted. Such persons are specifically authorized to pursue ~~dogs~~ small animals running at large onto private property and apprehend such ~~dogs~~ small animals. ~~Dogs~~ Small animals are running at large unless they are restrained pursuant to section 4-406.

*Section 15. Severability.* If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

*Section 16. Repealer.* All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

*Section 17. Effective Date.* This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

APPROVED on first reading this \_\_\_\_ day of \_\_\_\_\_, 2005.

ADOPTED and APPROVED on second reading this \_\_\_\_ day of \_\_\_\_\_, 2005.

CITY OF BILLINGS

By \_\_\_\_\_  
Charles F. Tooley, Mayor

ATTEST:

By \_\_\_\_\_  
Marita Herold, CMC/AE City Clerk

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



## AGENDA ITEM:




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


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**TITLE:** Zone Change #769 – Public Hearing and 1<sup>st</sup> reading of ordinance

**DEPARTMENT:** Planning & Community Services

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

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**PROBLEM/ISSUE STATEMENT:** This is a zone change request from Residential Manufactured Home to Community Commercial on an 11.87 acre portion of Tract 2 Certificate of Survey 1163 located on the eastern portion of Casa Village Manufactured Home Park at 422 S 24<sup>th</sup> Street West. The property owner is MHC Casa Village, LLC and Terry Seiffert is the agent. The Zoning Commission held a public hearing November 2, 2005, and is recommending denial on a 5-0 vote.

**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:** There should be no financial impact to the city from this zone change.

**RECOMMENDATION**

The Zoning Commission recommends that the City Council deny Zone Change #769 on 1<sup>st</sup> reading and adopt the determinations of the discussed 12 criteria.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENTS**

- A: Proposed zoning
- B: Pictures of site and adjacent property
- C: Site Plan
- D: Ordinance

## **INTRODUCTION**

This is a zone change from Residential Manufactured Home to Community Commercial on a portion of Tract 2 C/S 1163, the Casa Village Manufactured Home Park. The application and a concurrent special review application were initiated in response to a code enforcement case concerning the parking of recreational vehicles within the existing Casa Village Manufactured Home Park. In the interest of resolving the issue, the park owner submitted these applications.

## **PROCEDURAL HISTORY**

- Application submitted on September 30, 2005.
- Zoning Commission held a public hearing on November 2, 2005, and voted 5-0 to recommend denial.
- The City Council will hold a public hearing on November 28, 2005, and make a decision on the zone change application.
- If the ordinance is approved on first reading, the City Council will consider it for second reading on December 12, 2005.

## **BACKGROUND**

This is a zone change from Residential Manufactured Home to Community Commercial on a portion of Tract 2 C/S 1163, the Casa Village Manufactured Home Park. In March 1987, the City Council granted Casa Village a special review to use a portion of the property it owned at that time for recreational vehicle parking. That property, at the intersection of South 24<sup>th</sup> Street West and Monad Road, was zoned Community Commercial but has subsequently been subdivided from the manufactured home park and sold to other businesses. Casa Village then started renting spaces within the area zoned Residential Manufactured Home for recreational vehicle parking. This is not an allowed uses in a Residential Manufactured Home zoning district. The applicant has indicated 11.87 acres of the total 64.97 acre manufactured home park for re-zoning to Community Commercial. The area is generally on the north east corner of the park including the private streets Prospect Drive, Goldust Drive, Silverlode Drive, Nuggett Drive and the east side of Cache Drive. This area includes many of the older manufactured homes in the park and spaces that Casa Village now rents to recreational vehicles.

The Planning Department reviewed the application and recommended approval based on the attached twelve (12) criteria for zone changes. The City Zoning Commission reviewed the staff recommendation and held a public hearing on the proposal on November 2, 2005. The Zoning Commission voted 5-0 to recommend denial based on the testimony received at the public hearing and concern about the integrity of the remaining Casa Village Manufactured Home Park. The Zoning Commission believes the request to re-zone 11.87 acres is too large an area of the park to accommodate only 18 recreational vehicle parking spaces. In addition, the Zoning Commission was concerned about future conversion of the 11.87 acres to an intensive commercial use that would diminish the quality of life and property value for the remaining park residents.

## **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.

The City Zoning Commission, prior to any recommendation, shall consider the following:

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

The proposed zone change is not in compliance with the following goals of the Growth Policy:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- Affordable housing for all income levels dispersed throughout the City and County.

The new zoning would allow potentially incompatible uses to intrude into an existing neighborhood. Casa Village has the required state license to accommodate up to 18 recreational vehicles within its existing manufactured home park. Casa Village has offered this RV parking services for over 18 years. Although the intent is to allow an establish practice to continue, the re-zone could result in the subdivision and sale of the property for another commercial use.

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

The new zoning will not generate an increase in traffic. The normal traffic of the manufactured home park will continue. If the property were to be sold and re-developed for another commercial purpose, the new development will increase the volume of traffic onto 24<sup>th</sup> Street West. City Engineering would determine if any modifications to traffic were necessary or warranted at that time.

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

The property has adequate access to public streets and provides internal roads for circulation and access to all structures, manufactured homes and recreational vehicles.

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. However, the conversion to a commercial use would not promote the health and general welfare of the manufactured home park residents.

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. Any re-development of the property would require screening and buffering of the adjacent residential uses.

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

The new zoning districts, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. The Community Commercial zone allows up to 50 percent lot coverage.

7. *Will the new zoning avoid undue concentration of population?*  
The Community Commercial zone allows residential development densities at the Residential Multi-family Restricted rate up to 26 dwelling units per acre in a single apartment structure.
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 generate an increase in traffic over existing conditions unless the property were re-developed for more intense commercial uses. If re-development occurred, traffic mitigation would be reviewed at that time.  
*Water and Sewerage:* The City of Billings provides water and sanitary sewer service using the water and sewer mains inside the manufactured home park.  
*Schools and Parks:* The proposed zone change should have no effect on schools or parks.  
*Fire and Police:* The subject property is currently served by the City of Billings fire and police departments. The only concern is to maintain access for emergency vehicles at all times. Recreational vehicles should not be parked for any period of time on the internal private roads.
9. *Does the new zoning give reasonable consideration to the character of the district?*  
The proposed re-zoning gives some consideration to the character of the district. There is a distinct concern with the extent of the re-zoned area to allow recreational vehicle parking. Residents of Casa Village have expressed a legitimate concern that the property might be sold and re-developed for a use that would reduce the value of their property or be inappropriate to the remaining Casa Village manufactured home park.
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 districts. The property is better suited for the existing zoning of Residential Manufactured Home.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*  
The new zoning may negatively affect the value of the surrounding manufactured homes.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*  
The new zoning does not encourage the most appropriate use of the land in this area. The current zoning is appropriate for the existing use.

## **STAKEHOLDERS**

The Zoning Commission held a public hearing on November 2, 2005, and Terry Seiffert spoke on behalf of the owner, MHC Casa Village, LLC. Mr. Maguire, Mrs. Fishburn and Mr. Carlson, residents of Casa Village, spoke against the proposal. Mr. Maguire was concerned with the continued maintenance and integrity of the manufactured home park. Mr. Maguire was concerned the 12-acre area to be re-zoned would turn into a “skid row” housing area of the park. Mr. Carlson was concerned the zoning proposal was the corporation’s answer to a zoning violation and the park management should just comply with the existing zoning restrictions. Mrs. Fishburn was concerned with having short-term residents who had no interest in maintaining their property and with the potential for security problems with recreational vehicle campers. No letters protesting the zone change were received by the Planning Department or the Zoning Commission.

## **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Consistency with the 2003 Growth Policy is discussed in the Alternatives Analysis section of this report.

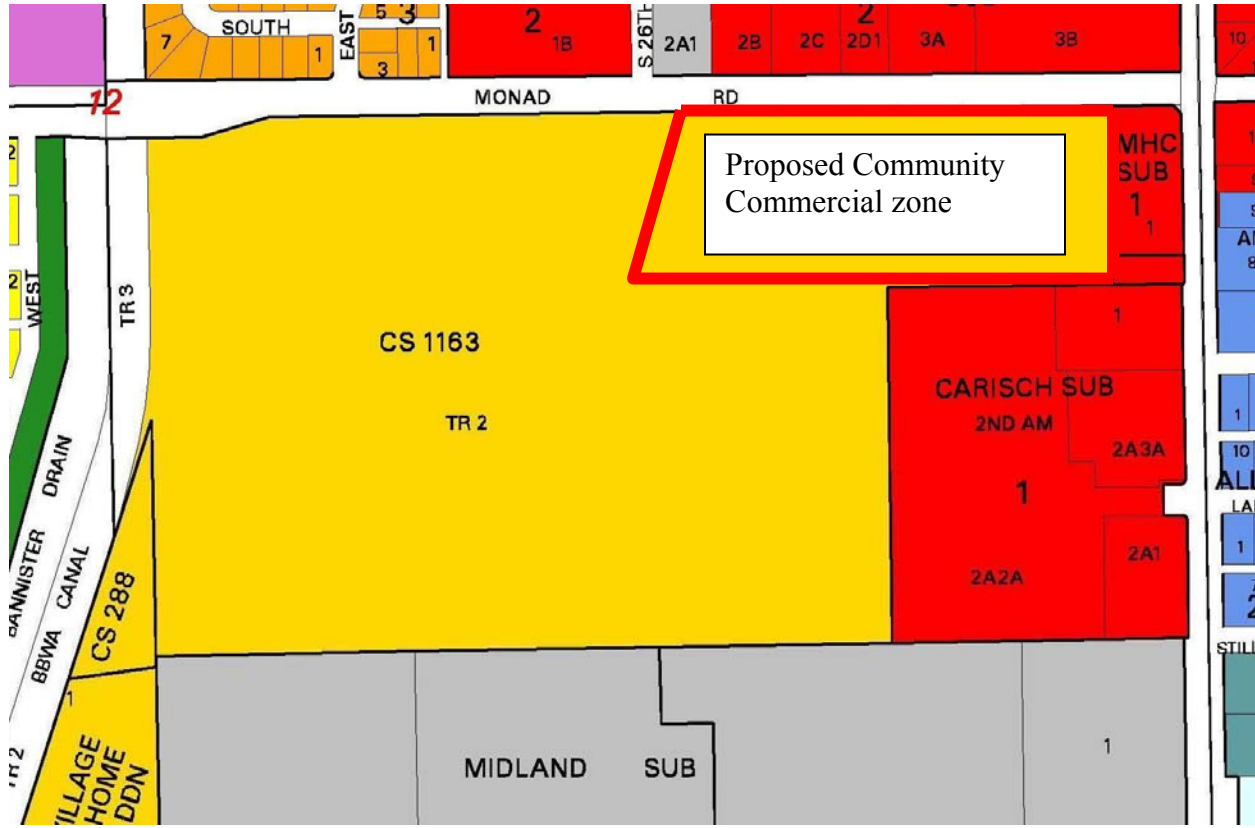
## **RECOMMENDATION**

The Zoning Commission recommends that the City Council deny Zone Change #769 on 1<sup>st</sup> reading and adopt the determinations of the discussed 12 criteria.

## **ATTACHMENTS**

- A: Proposed zoning
- B: Pictures of site and adjacent property
- C: Site Plan
- D: Ordinance

**Attachment A**  
Proposed Zoning



**Attachment B**

Site photographs Zone Change #769



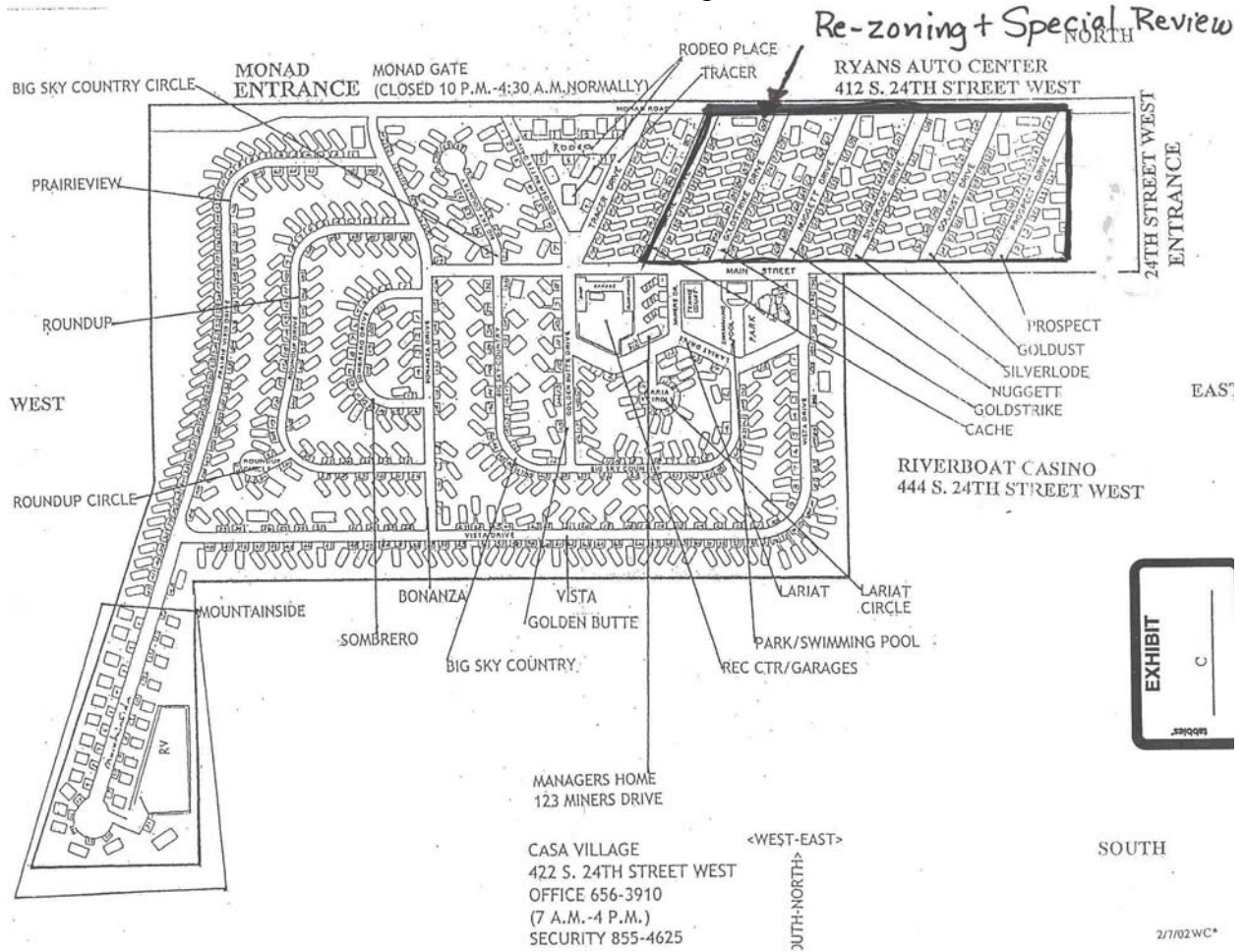
View north from intersection of Main Street & Goldust Drive





View east along Main Street from Goldust Drive towards entrance at 24<sup>th</sup> Street West

**Attachment C**  
**Site Plan Zone Change #769**



**Attachment D**  
ORDINANCE NO. 05-\_\_\_\_\_

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION ON **AN 11.87 ACRE PORTION OF TRACT 2 OF CERTIFICATE OF SURVEY 1163**. THE SUBJECT PROPERTY IS LOCATED AT 422 SOUTH 24<sup>TH</sup> 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 Section 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 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 described as an **11.87 acre portion of TRACT 2 OF CERTIFICATE OF SURVEY 1163** is presently zoned Residential Manufactured Home and is shown on the official zoning maps within these zones.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential Manufactured Home** to **Community Commercial (See Exhibit A)** and from the effective date of this ordinance shall be subject to all the rules and regulations pertaining to **Community Commercial** 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 as provided by law.

PASSED by the City Council on first reading November 28, 2005.

PASSED, ADOPTED AND APPROVED on second reading December 12, 2005.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Charles F Tooley, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC #769

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

## AGENDA ITEM:




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


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TITLE: Public Hearing for Special Review #794  
 DEPARTMENT: Planning & Community Services  
 PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a Special Review to permit parking for camping purposes in a proposed Community Commercial zone on an 11.87 acre portion of Tract 2, Certificate of Survey 1163, Casa Village Manufactured Home Park at 422 S 24<sup>th</sup> Street West. The subject property is a portion of the existing manufactured home park north of the primary access drive and includes the private streets Prospect Drive, Goldust Drive, Silverlode Drive, Nuggett Drive and the east side of Cache Drive. MHC Casa Village is the owner and Terry Seiffert is the agent. The Zoning Commission conducted a public hearing on November 2, 2005, and is forwarding a recommendation of denial 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 deny Special Review #794.

Approved By: City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENTS**

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

## **INTRODUCTION**

This is a special review request to allow parking of recreational vehicles in an 11.87 acre portion of the existing Casa Village Manufactured Home Park located west of S 24<sup>th</sup> Street West. This application was made concurrently with a zone change application for the same area of Tract 2 Certificate of Survey 1163. The applications were initiated in response to a code enforcement case concerning the parking of recreational vehicles within the existing Casa Village Manufactured Home Park. In the interest of resolving the issue, the park owner has submitted these applications. The Zoning Commission voted 5-0 to recommend denial of the special review request.

## **PROCEDURAL HISTORY**

- A special review application to allow parking for camping purposes was received on September 30, 2005.
- The City Zoning Commission voted 5-0 at its public hearing on November 2, 2005, to deny the special review.
- The City Council will conduct a public hearing and consider this application on November 28, 2005.

## **BACKGROUND**

In March 1987, the City Council granted Casa Village a special review to use a portion of the property it owned at that time for recreational vehicle parking. That property, at the intersection of South 24<sup>th</sup> Street West and Monad Road, was zoned Community Commercial but has subsequently been subdivided from the manufactured home park and sold to other businesses. Casa Village then started renting spaces within the area zone Residential Manufactured Home for recreational vehicle parking. This is not an allowed uses in a Residential Manufactured Home zoning district. The area is generally on the north east corner of the park including the private streets Prospect Drive, Goldust Drive, Silverlode Drive, Nuggett Drive and the east side of Cache Drive. This area includes many of the older manufactured homes in the park and spaces that Casa Village now rents to recreational vehicles.

The Planning staff considered the application and recommended conditional approval to the Zoning Commission. The City Zoning Commission has considered the application and is recommending denial of the special review request based on its concern for the continued integrity of the Casa Village Manufactured Home Park.

## **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 does not comply 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 not consistent with the purposes of Chapter 27 or the 2003

Growth Policy.

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 not compatible with the adjoining land uses and no conditions could be imposed that would ensure compatibility.*

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 denial of the special review request.

### **STAKEHOLDERS**

The public hearing held on November 2, 2005 before the City Zoning Commission was attended by Mr. Terry Seiffert on behalf of MHC Casa Village, LLC. Mr. Seiffert offered testimony in support of this application in addition to the concurrent zone change (#769) to the Zoning Commission. The Zoning Commission also heard testimony in opposition to this application from Mrs. Fishburn, Mr. Maguire and Mr. Carlson, all residents of Casa Village Manufactured Home Park. All three residents testified that allowing up to 18 recreational vehicles in the existing manufactured home park would eventually result in the entire twelve acre area being converted to a campground in the central city area. This would be an undesirable use within the existing park.

### **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

In addition to the above discussion in the Alternatives Analysis section, this application does not conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- Affordable housing for all income levels dispersed throughout the City and County.

### **RECOMMENDATION**

The Zoning Commission is recommending that the City Council deny Special Review #794.

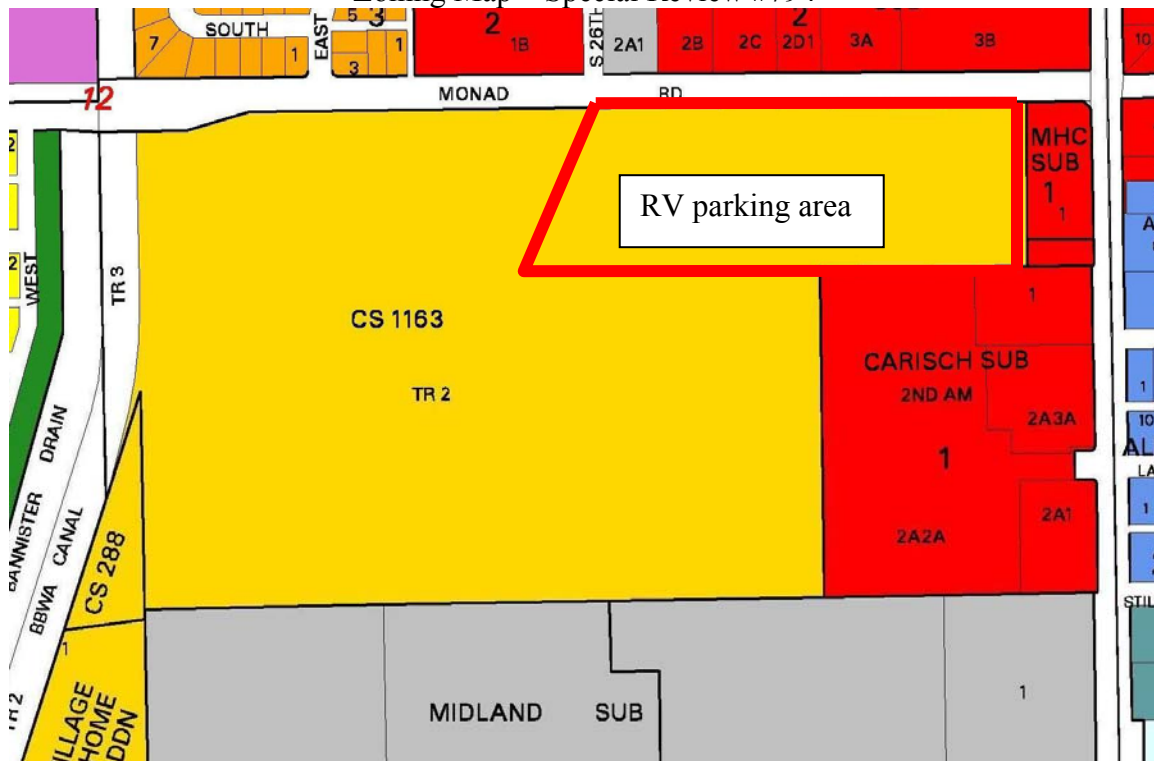


**ATTACHMENTS**

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

## ATTACHMENT A

### Zoning Map – Special Review #794



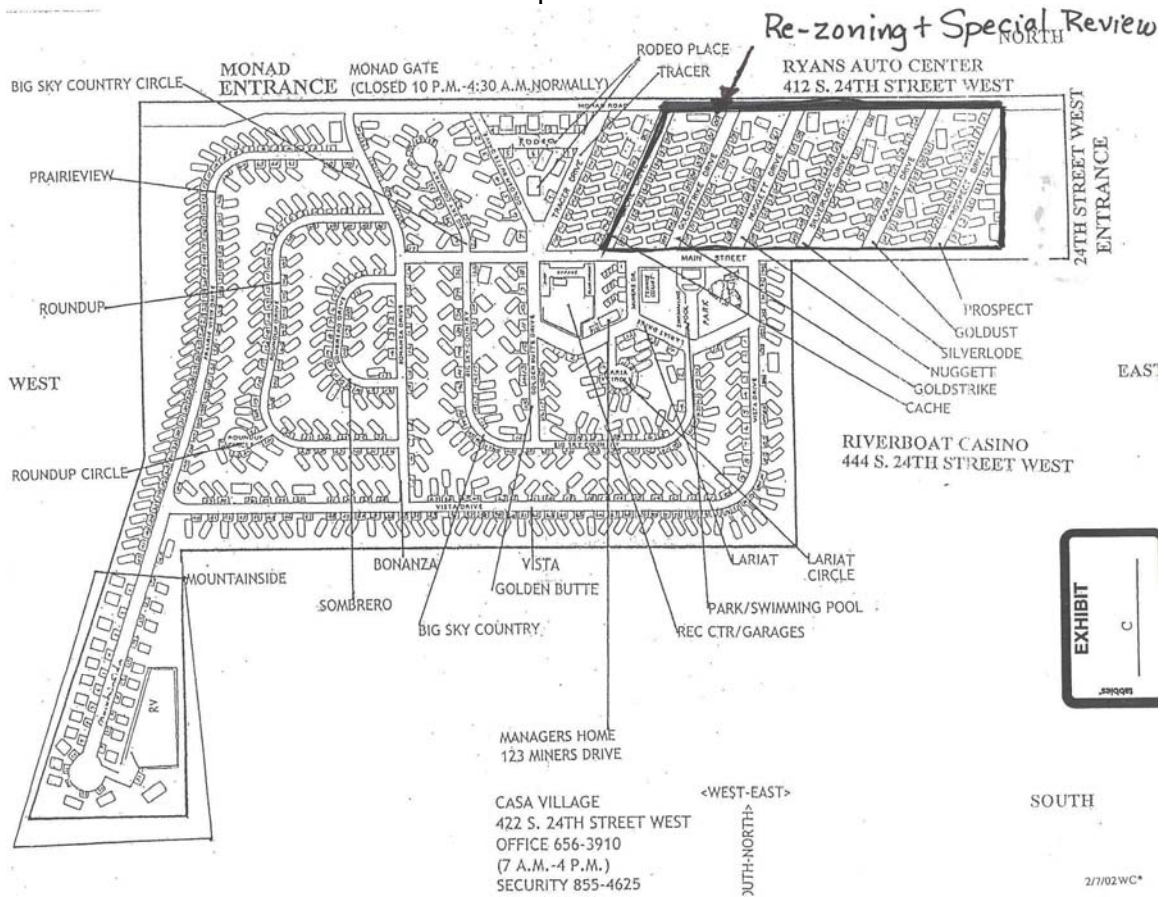
Subject Property at 422 South 24<sup>th</sup> Street West

**ATTACHMENT B**  
Site Photographs for Special Review #794



View west on Main Street in Casa Village Manufactured Home Park

**ATTACHMENT C**  
**Site Plan – Special Review #794**



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

## AGENDA ITEM:




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


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TITLE: Public Hearing for Special Review #795  
 DEPARTMENT: Planning & Community Services  
 PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a Special Review to permit a beer and wine license with gaming on a portion of Tract 3 Certificate of Survey 2631 at 3213 Grand Avenue in a Community Commercial zone. The subject property is within an existing structure at the A+ RV & Mini Storage property. Calmont, LLC is the owner and Ken Kunkel is the agent. The Zoning Commission conducted a public hearing on November 2, 2005, and is forwarding a recommendation of denial 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 deny Special Review #795.

**Approved By:**            **City Administrator** \_\_\_\_            **City Attorney** \_\_\_\_

**ATTACHMENTS**

- D. Zoning Map
- E. Site Photographs
- F. Site Plan

## **INTRODUCTION**

The applicant is requesting a Special Review to permit for an all beverage liquor license with gaming in a Community Commercial zone in an existing 1,800 square foot area of a building at 3213 Grand Avenue. The subject property is generally located east of the intersection of Golden Boulevard and Grand Avenue and north of pasture land and the Peter Yegen Golf Course. The Zoning Commission voted 5-0 to recommend denial of the special review request.

## **PROCEDURAL HISTORY**

- A special review application to allow a beer & wine License with gaming was received on October 3, 2005.
- The City Zoning Commission voted 5-0 at its public hearing on November 2, 2005, to deny the special review.
- The City Council will conduct a public hearing and consider this application on November 28, 2005.

## **BACKGROUND**

The western side of the existing building is now vacant and the owner is submitting this application on behalf of a potential tenant. The 1,800 square foot proposed casino will go in this vacant office space. Renovations of the interior will be required. The RV & mini-storage business will remain in place. There are no schools, churches or public parks with playground equipment within 600 feet of this proposed location.

Grand Avenue is designated as a principal arterial and has the capacity to handle additional traffic. Traffic patterns and speeds have been recently affected by the new Arlene Street connector that runs north to Rimrock Road from Grand Avenue. The Arlene Street connector will eventually continue south from Grand and will be a traffic light controlled intersection with Grand Avenue. Traffic entering and exiting from Golden Boulevard and this property now contends with high traffic speed and volume. The installation of traffic control at the Arlene Street intersection should help these other intersections.

The Planning staff considered the application and recommended conditional approval to the Zoning Commission. 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 believed the proposed use could be made compatible with the surrounding land uses. The primary concern with this proposal is the patio home and townhome developments directly north and west of this location. The closest residential home is about 100 feet from the property line of this site, however the landscaping on the west property line does not adequately buffer these townhomes from the parking area and commercial activity.

The City Zoning Commission has considered the application and is recommending denial of the special review request based on its concern for the close residential neighbors to the west and north specifically the intrusion of an after-hours commercial business in an area currently dominated by normal business hour (9 am to 5 pm) activities.

## **ALTERNATIVES ANALYSIS**

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

4. Complies with all requirements of this Article (27-1500).

*This application does not comply with the requirements of the zoning regulations.*

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

This application is generally not consistent with the purposes of Chapter 27 or the 2003

Growth Policy.

6. 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 not compatible with the adjoining land uses and no conditions could be imposed that would ensure compatibility.*

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

9. Street and road capacity;
10. Ingress and egress to adjoining streets;
11. Off-street parking;
12. Fencing, screening and landscaping;
13. Building bulk and location;
14. Usable open space;
15. Signs and lighting; and/or
16. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is recommending denial of the special review request.

## **STAKEHOLDERS**

The public hearing held on November 2, 2005 before the City Zoning Commission was attended by Mr. Ken Kunkel on behalf of Calmont, LLC. Mr. Kunkel offered testimony in support of this application. Mr. Blaine Poppler also attended and offered support for the application. Mr. Kunkel and Mr. Poppler testified that the intended use would be a small change to the existing mini-storage business and the neighboring property owners should hardly notice a change. Jean Thompson, Ed Janka, Lou Morris and Bill Harbrecht, Myron Reese, Brent Parks, Bunny Morrision, Valerie Kay, Bryce Williams, Marilyn Cummins, all residents or property owners of the area adjacent to the subject property, all testified against the proposal. In addition, a petition was presented to the Zoning Commission with 140 signatures of residents and property owners adjacent to the subject property. The primary concern was the introduction of an after hours business that might result in noise, vandalism, impaired drivers, trash and additional light



pollution. An additional concern was the level of service of the intersection of Grand Avenue and Golden Boulevard. An existing drive approach into the property at 3213 Grand Avenue is close to the intersection and additional traffic would make the existing intersection much worse.

Mr. Kunkel rebutted the concerns by testifying that his attempts to meet with the neighborhood groups were turned down. He believed the type and style of the proposed casino would cause little or no disruption to the area but he was not given the opportunity to discuss the proposal before the Zoning Commission hearing. .

### **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

In addition to the above discussion in the Alternatives Analysis section, this application does not conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- Affordable housing for all income levels dispersed throughout the City and County.

### **RECOMMENDATION**

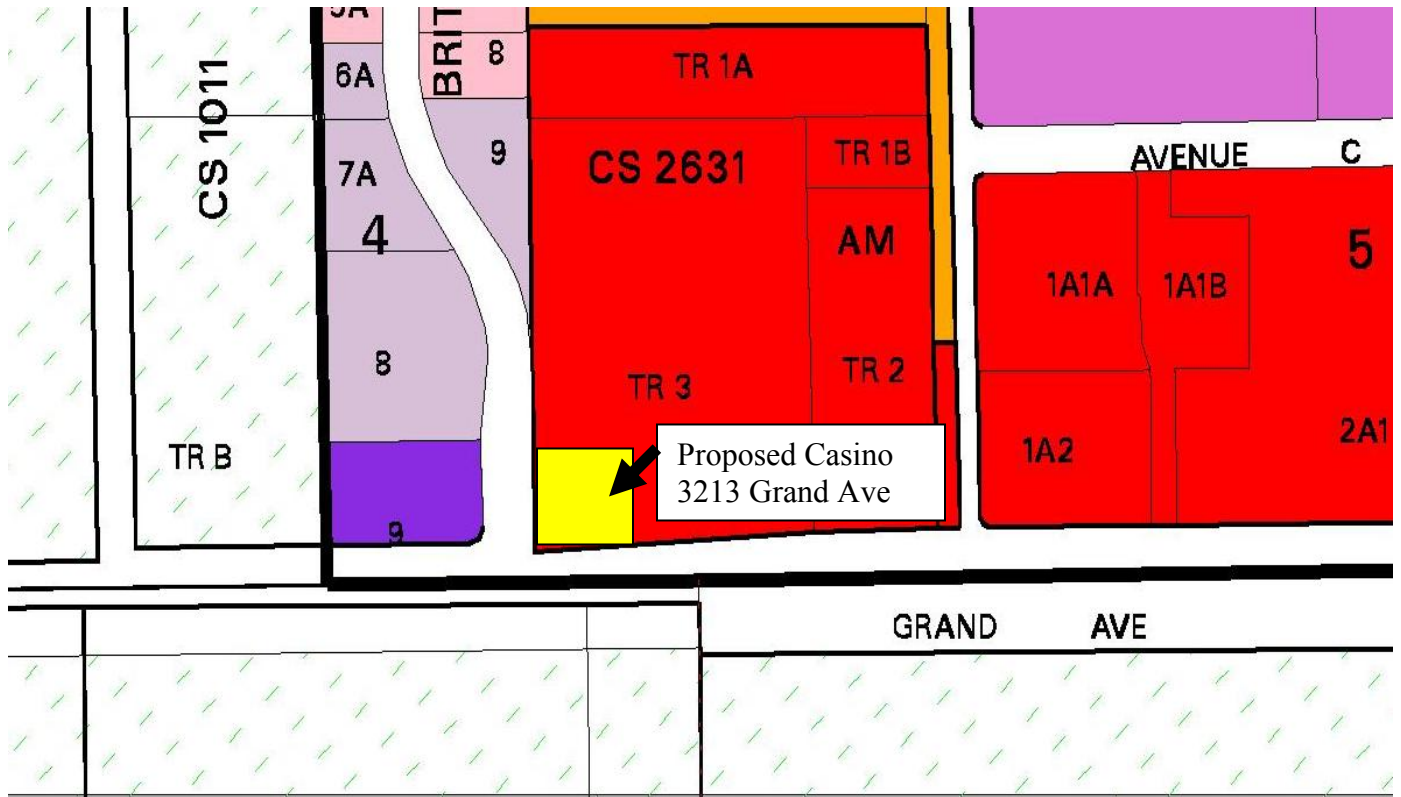
The Zoning Commission is recommending that the City Council deny Special Review #795.

### **ATTACHMENTS**

- D. Zoning Map
- E. Site Photographs
- F. Site Plan

**ATTACHMENT A**

Zoning Map – Special Review #795



Subject Property at 3213 Grand Avenue

**ATTACHMENT B**

Site Photographs for Special Review #795



Existing building at 3213 Grand Avenue



View west across intersection of Grand Avenue and Golden Boulevard

## Golden Blvd



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

## AGENDA ITEM:



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

TITLE: Public Hearing for Special Review #796  
 DEPARTMENT: Planning & Community Services  
 PRESENTED BY: Cynthia Wilson, Planner I

**PROBLEM/ISSUE STATEMENT:** On October 4, 2005, the Applicant, John Soelter, applied for this Special Review, #796. This request for a Special Review is to allow the change from one nonconforming use, a muffler repair shop (owned by Michael and Colleen Mannion), to another nonconforming use, a general automobile repair shop (to be owned by the Applicant, John Soelter). The subject property is legally described as Lot 1, Block 4, 2<sup>nd</sup> Filing, of the Central Avenue Addition Subdivision, and is located at 640 St. Johns Avenue.

**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 conditionally approve Special Review #796.

**Approved by:** City Administrator \_\_\_\_\_ City Attorney \_\_\_\_\_

**ATTACHMENTS**

- A. Site Plan
- B. Surrounding Zoning Figure
- C. Dutton, letter of reference, October 3, 2005
- D. Site Photographs

## **INTRODUCTION**

The subject property is legally described as Lot 1, Block 4, 2<sup>nd</sup> Filing, of the Central Avenue Addition Subdivision, and is located at 640 St. Johns Avenue. The 27,100 square foot parcel is located in an R-6000 zoning district. The property was the subject of a special review request in 1996. Special Review #571 was conditionally approved permitting the conversion from one non-conforming use (paint shop) to another non-conforming use (muffler repair shop). The applicant is requesting a Special Review to convert one non-conforming use, M&M Muffler, currently owned by Michael and Colleen Mannion, to another non-conforming use, automobile repair, services, and associated parking under the new ownership of John Soelter. On November 1, 2005, the City Zoning Commission voted 5-0 to recommend conditional approval of this Special Review, #796.

## **PROCEDURAL HISTORY**

- Special Review #571 was conditionally approved permitting the conversion from one non-conforming use, a paint shop, to another non-conforming use, a muffler repair shop, on January 8, 1996.
- Special Review #796, requesting the conversion from one non-conforming use; a muffler repair shop, to another non-conforming use; automobile repair, services, and associated parking, was submitted to the Planning Division on October 4, 2005.
- The City Zoning Commission considered Special Review #796 on November 1, 2005, and voted 5-0 to recommended conditional approval to the Billings City Council.
- The Billings City Council will consider Special Review #796 at its meeting on November 28, 2005.

## **Surrounding property**

- Special Review #528, requesting a non-conforming use (car wash) in a Neighborhood Commercial (Lots 26A, 26B and Lots 27-31, Block 4 of the Yellowstone Addition Subdivision) zoning district, was conditionally approved on July 27, 1994.
- Special Review #730, requesting a non-conforming use (automobile station) in a Planned Development (Lots 26A, 26B and Lots 27-31, Block 4 of the Yellowstone Addition Subdivision) was conditionally approved on November 25, 2002.

## **BACKGROUND**

General Location:	640 St. Johns Avenue
Legal Description:	Lot 1, Block 4, 2 <sup>nd</sup> Filing, of the Central Avenue Addition Subdivision
Owner:	Michael and Colleen Mannion
Applicant:	John Soelter
Existing Zoning:	R-6000



Surrounding Zoning: NC/R-60 (to the north); RMF/R-70 (to the south); RMF/R-60 (to the east); and, R-60 (to the west).

Existing Land Use: Muffler repair shop

Proposed Land Use: Automobile repair shop; storage and cleaning of automobiles

Size of Parcel: 27,100 square feet

### **ALTERNATIVES ANALYSIS**

The zoning district, R-6000, does not allow car repair services, nor public parking. Additionally, the subject property is in close proximity to existing residential neighborhoods. Section 27-405, *Nonconforming Uses of Structures*, allows the conversion to another nonconforming use through a special review process. Subsection c., states,

“If no structural alterations are made, any nonconforming use of a structure, or structures and premises, may be changed to another nonconforming use provided that the governing body with jurisdiction on the property shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the governing body with jurisdiction on the property may require appropriate conditions and safeguards in accordance with the provisions of this chapter.

Any proposed change from one nonconforming use to another nonconforming use shall be processed and reviewed under the Special Review provisions of BMCC Section 27-1501, et seq., and the following criteria shall be considered:

- (1) The nature and purpose of the existing nonconforming use;
- (2) The difference in quality and character of the proposed use;
- (3) The difference in the degree of use of the proposed use, including but not limited to hours of operation and parking requirements;
- (4) The reasons for the proposed change; and
- (5) The overall impact of the proposed use on the surrounding property.”

The muffler repair shop at this location is an automobile-oriented service establishment and operated daily. The proposed use, an automobile repair, services, and associated parking, is also an automobile related service facility. The overall impact should be lower on the existing residential neighborhoods. Hours of operation will be the same, if not less, as the primary use of the property is to store “personal vehicles and excess inventory” (Dutton, letter of reference, October 3, 2005 and Soelter, testimony, November 1, 2005). Additionally, it is proposed that the use “should have less traffic and noise than the existing approved use” (Dutton, letter of reference, October 3, 2005; testimony, November 1, 2005).

Based on the above criteria, and the findings researched and presented by Planning staff, the City Zoning Commission is recommending conditional approval of the Special Review request.

### **RECOMMENDED CONDITIONS**

1. The special review approval shall be limited to Lot 1, Block 4, 2nd Filing, of the Central Avenue Addition Subdivision.
2. The special review is for automobile repair, service, and associated parking. No other use is allowed or intended by this special review approval.
3. 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).
4. There shall be no public address system designed to broadcast outside the building.
5. All vehicles stored onsite shall be salvageable and shall not be stored across sidewalks or on the street right-of-way; but inside and behind screened fencing.
6. A change to any other use shall be in conformance with the uses and restrictions for R-6000 zone.
7. As presented in agent Ernie Dutton's letter of October 3, 2005, screening will be installed on the existing fence.

**\*\*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 City Zoning Commission 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 November 1, 2005 before the City Zoning Commission was attended by Mr. John Soelter, the applicant, and Mr. Ernie Dutton, agent for the applicant. Both Messrs. Soelter and Dutton offered testimony in support of this application.
- Mr. Soelter offered as his testimony that although the intended use for this property is to perform automobile repairs, there would be 25 at the maximum onsite at a time. Additionally, five to six of these automobiles would be his “toy box” automobiles, ones that are limited in number and are very expensive. The other automobiles onsite would be from his automobile dealership and would be coming to the site for repairs and detailing, before being sold.
- Mr. Dutton offered as his testimony a personal account on his view of Mr. Soelter’s workmanship. He proffered the intended business would have less noise and light impacts on the surrounding neighborhood than the current business due to the less intensive nature of the business, and the intended use would be a such a change from the existing muffler repair that the neighboring property owners should hardly notice a change, except that there would be less noise and less traffic.
- No other public comments or questions about the Special Review were received.

- One condition of approval was removed by the City Zoning Commission:
  - Building alarms and security devices for vehicles shall be silent alarms.
- One condition of approval was added by the City Zoning Commission:
  - As presented in agent Ernie Dutton's letter of October 3, 2005, screening will be installed on the existing fence.
- Two conditions of approval were modified by the City Zoning Commission:
  - The special review is for automobile repair, service, and associated parking. No other use is allowed or intended by this special review approval.
  - All vehicles stored onsite shall be salvageable and shall not be stored across sidewalks or on the street right-of-way; but inside and behind screened fencing.

### **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

In addition to the above discussion in the Alternatives Analysis section, this application does conform 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 City Zoning Commission is recommending conditional approval for Special Review #796.

**CITY SPECIAL REVIEW #796**  
**640 ST. JOHNS AVENUE**  
**ATTACHMENT C**  
**LETTER OF REFERENCE**



October 3, 2005

Planning & Community Services Department  
City of Billings  
510 North Broadway  
Billings, Montana 59101



RE: Special Review request for 640 Saint Johns

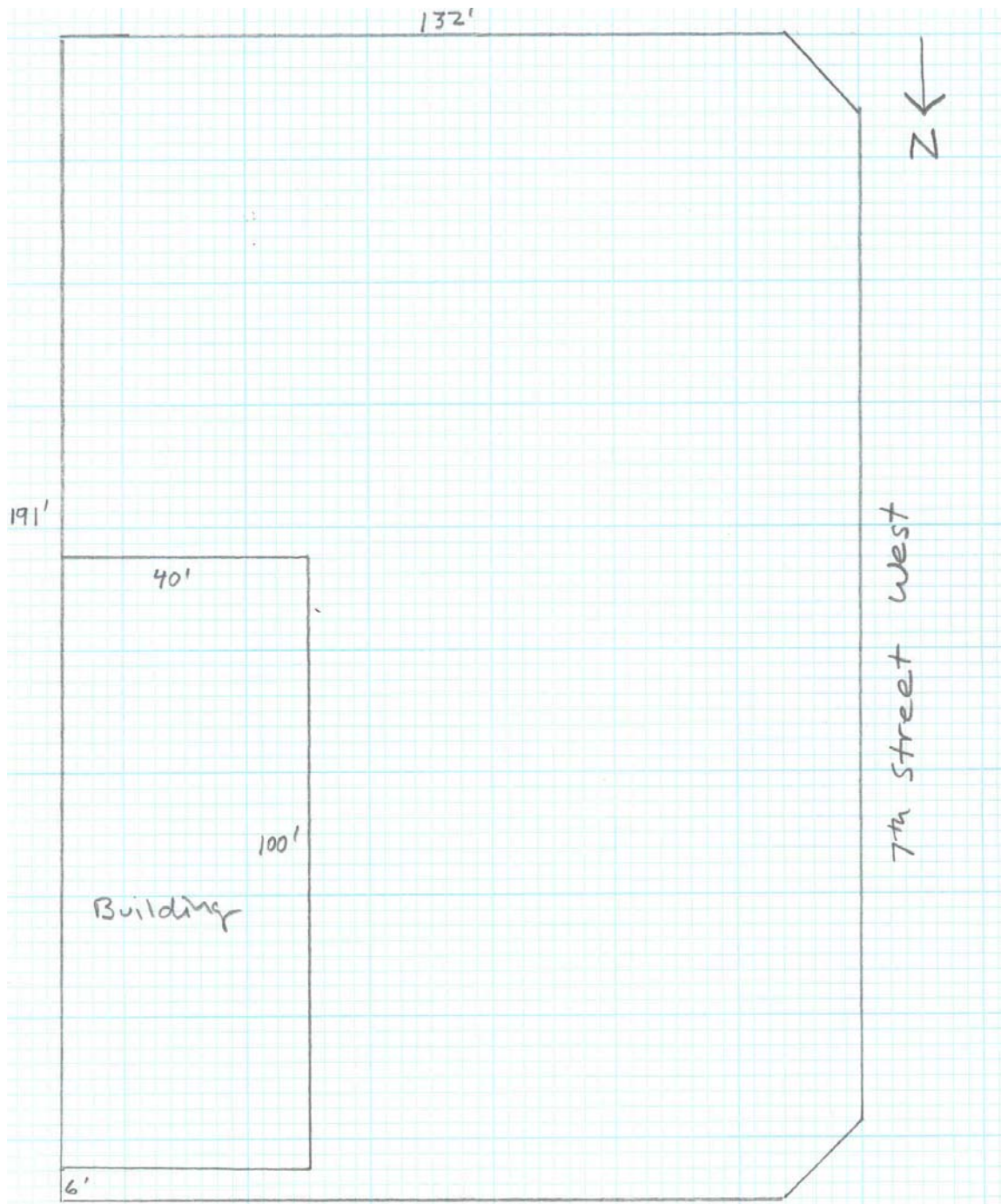
This Special Review is being submitted, because the property has previously been approved for a muffler shop. The property is being sold to John Soelter, who operates a used car lot at the corner of Division Street and Broadwater Avenue. John will use this property, primarily to store his personal vehicles and the business' excess inventory. He will occasionally perform some auto repairs and cleaning on the property. He does not intend to use this property as a used car lot.

John is very meticulous about all of the property that he currently owns, and intends to be a good neighbor. He would like to install screening on the existing fence. The attached pictures show how the buyer has already cleaned up the weeds on the property in the 10 days that he has had access to the property. The building was built in 1946, before zoning existed. The intended use is almost identical to the existing use, and thus should not have any new adverse impacts on the neighborhood. In fact, compared to a retail muffler shop at the location, the proposed use should have less traffic and noise than the existing approved use.

Sincerely,

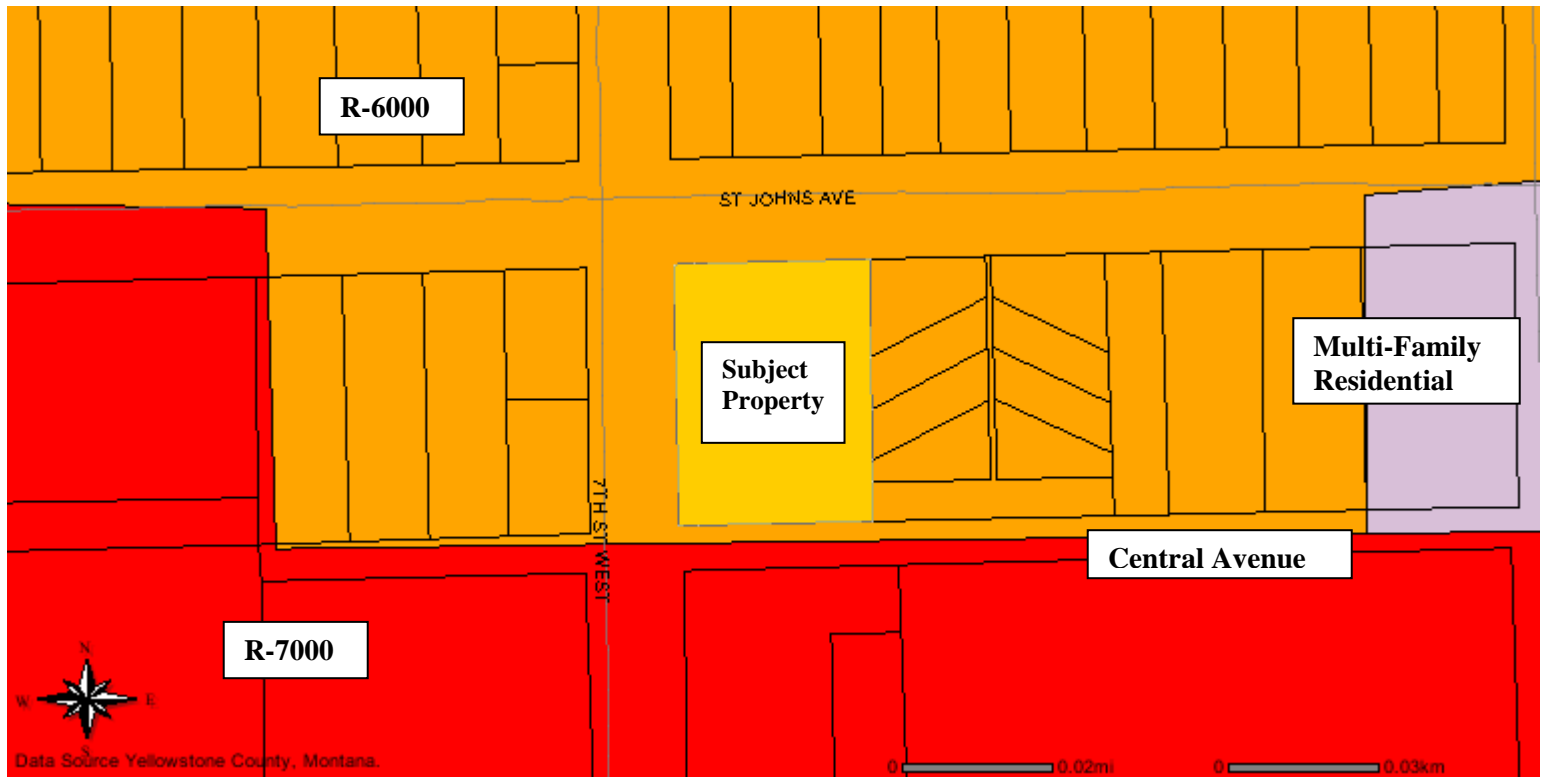
Ernie Dutton

**CITY SPECIAL REVIEW #796**  
**640 ST. JOHNS AVENUE**  
**ATTACHMENT A**  
**SITE PLAN**



1 inch = 20 Feet  
Saint Johns

**CITY SPECIAL REVIEW #796**  
**640 ST. JOHNS AVENUE**  
**ATTACHMENT B**  
**SURROUNDING ZONING**



Community Commercial to the south and to the southeast, and east.



**CITY SPECIAL REVIEW #796**  
**640 ST. JOHNS AVENUE**  
**ATTACHMENT D**  
**SITE PHOTOGRAPHS**



Photo 1. Facing southeast from St. Johns, looking at subject non-conforming property; showing residential and Community Commercial to the east.



Inset: Facing south from St. Johns.



Photo 2 and Inset. Facing northwest and west on St. Johns, respectively; showing R-6000 single-family homes.



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

[Regular](#)



Photo 3. Facing directly south from north side of St. Johns looking at western side of subject non-conforming property and parking area; showing multi-family residences further to the south.



Photo 4. Facing southeast from intersection of St. Johns and 7<sup>th</sup> Avenue looking at western side of subject non-conforming property and parking area; showing multi-family residences to the south.



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

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**TITLE:** Public Hearing for Special Review #797

**DEPARTMENT:** Planning & Community Services through Ramona Mattix, AICP,  
Planning Director

**PRESENTED BY:** Aura Lindstrand, Planner II

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**REQUEST:** A Special Review to permit an all beverage license with gaming on a property legally described as Lot 5A-1 of Block 2, Descro-Central Subdivision Amended, located at 2545 Central Avenue, Suites G and H, and zoned Community Commercial (CC). The property owner is Qayum Investment Properties, LLC and the representing agent is Ernie Dutton, Metro Realtors, PC. The Zoning Commission conducted a public hearing on November 1, 2005, and is forwarding a recommendation of **denial** to the City Council by a 3-2 vote.

**ALTERNATIVES ANALYZED:**

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

**FINANCIAL IMPACT:** The special review, if approved, would increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission is recommending that the City Council **deny** Special Review #797.

**Approved By:** City Administrator \_\_\_\_

City Attorney \_\_\_\_

**ATTACHMENTS**

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

## **INTRODUCTION**

The applicant is requesting a Special Review to permit an all beverage license with gaming on a property legally described as Lot 5A-1 of Block 2, Descro-Central Subdivision Amended, located at 2545 Central Avenue, Suites G and H, and zoned Community Commercial (CC). The proposed location of the restaurant and casino will be within a vacant space in the western portion of Rimrock Plaza containing approximately 3,500 square feet.

Pursuant to Section 27-612(a)(1), of the Billings Municipal City Code (BMCC) bars, taverns and lounges shall be located a minimum distance of 600-feet from churches, schools, and public parks that contains a children's playground or playfield. In this case, the subject property is within 600-feet of Stewart Park. St. Andrew Presbyterian Church, located at 100 24<sup>th</sup> Street West, is the closest church to the subject property and is approximately 800 feet to the northeast. There are several commercial structures, including a proposed bar and casino (CJ's), that separate the subject property from the church, which is located on 24<sup>th</sup> Street West. These commercial uses provide a substantial barrier between the church use and the proposed bar and casino. Stewart Park is located approximately 150 feet to the south of the subject property and is separated by Central Avenue; there is no direct access between the two (2) properties. A waiver request has been included with this application.

A Special Review has been approved for an all beverage license with gaming for a property located within the immediate vicinity of the proposed use (CJ's to the east), which is within 600-feet of the Presbyterian Church and Stewart Park.

There have been two (2) previous Special Review requests for an all beverage license without gaming in Suite D, adjacent to the north of the proposed Suites, however they were both denied based on inadequate separation between the existing church and public park. There were concerns expressed at the public hearing for these Special Reviews by the owner of the Splash Page located adjacent to the north of this suite, whose major clientele are teenagers and younger children. Since that time, the owner of this business has submitted a letter of approval for the proposed use, provided that the front door of the restaurant is located at least 75-feet from the front door of the Splash Page. Suites G and H are located approximately 100-feet from the front door of the Splash Page.

The Zoning Commission conducted a public hearing on November 1, 2005, and has forwarded a recommendation of denial to the City Council. Commission discussion focused on inadequate separation between Stewart Park and the proposed use and parking constraints within Rimrock Plaza.

## **APPLICABLE ZONING HISTORY**

### **Subject Property:**

**Special Review #660** – A special review to allow an all beverage license without gaming located at 2545 Central Avenue, Suite D, was denied by the City Council on June 28, 1999.

**Special Review #665** – A special review to allow all beverage license without gaming located at 2545 Central Avenue, Suite D, was denied by the City Council on August 23, 1999. The Special

Review was denied due to public comment and the lack of a 600-foot separation between St. Andrews Presbyterian Church and Stewart Park.

### **Surrounding Properties:**

**Special Review #143** - A special review to permit an all beverage liquor license on Lot 1A, Block 2, Descro-Central Subdivision was granted on October 1, 1982.

**Special Review #244** - A special review to permit an all beverage liquor license on Lot 1A, Block 2, Descro-Central Subdivision was granted on September 9, 1985.

**Special Review #284** - A special review to permit an all beverage liquor license with gaming on Lot 1, Block 2, Descro-Central Subdivision was granted in July of 1986.

**Special Review #288** - A special review to permit a drive through window on Lot 2-A, Block 2, Descro-Central Subdivision was granted on June 23, 1986.

**Special Review #378** - A special review to permit an all beverage liquor license on Lot 1-B, Block 2, Descro-Central Subdivision was granted on March 27, 1989.

**Special Review #436** - A special review to expand the Lamplighter Lounge on Lot 1-B, Block 2, Descro-Central Subdivision was granted on June 10, 1991.

**Special Review #761** - A special review to permit an all beverage liquor license on Lot 1E, Block 29, and Descro Subdivision was granted on July 26, 2004.

### **PROCEDURAL HISTORY**

- The request for a Special Review was received on October 1, 2005.
- On November 1, 2005, the City Zoning Commission conducted a public hearing on the Special Review and voted 3-2 to deny the request.
- The City Council will conduct a public hearing for consideration of this application on February 28, 2005.

### **ALTERNATIVES ANALYSIS**

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

7. Complies with all requirements of this chapter.  
*This application complies with the requirements of the zoning regulations.*
8. 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.
9. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

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

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

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

Based on the above criteria, the Zoning Commission has recommended **denial** of this Special Review. However, if the Council decides to approve this application, the following conditions of approval are recommended by the Planning Division:

8. The special review approval shall be limited to 2545 Central Avenue, Suites G and H, a property legally described as Lot 5A-1, Block 2, Descro-Central Subdivision.
9. No outdoor seating, outdoor music or outdoor public announcement systems will be allowed with this application.

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

## **STAKEHOLDERS**

There was no public comment on the Special Review. Agent Ernie Dutton provided testimony and answered questions from the Zoning Commission. No departmental comments were received regarding this application.

## **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 **deny** Special Review #797.

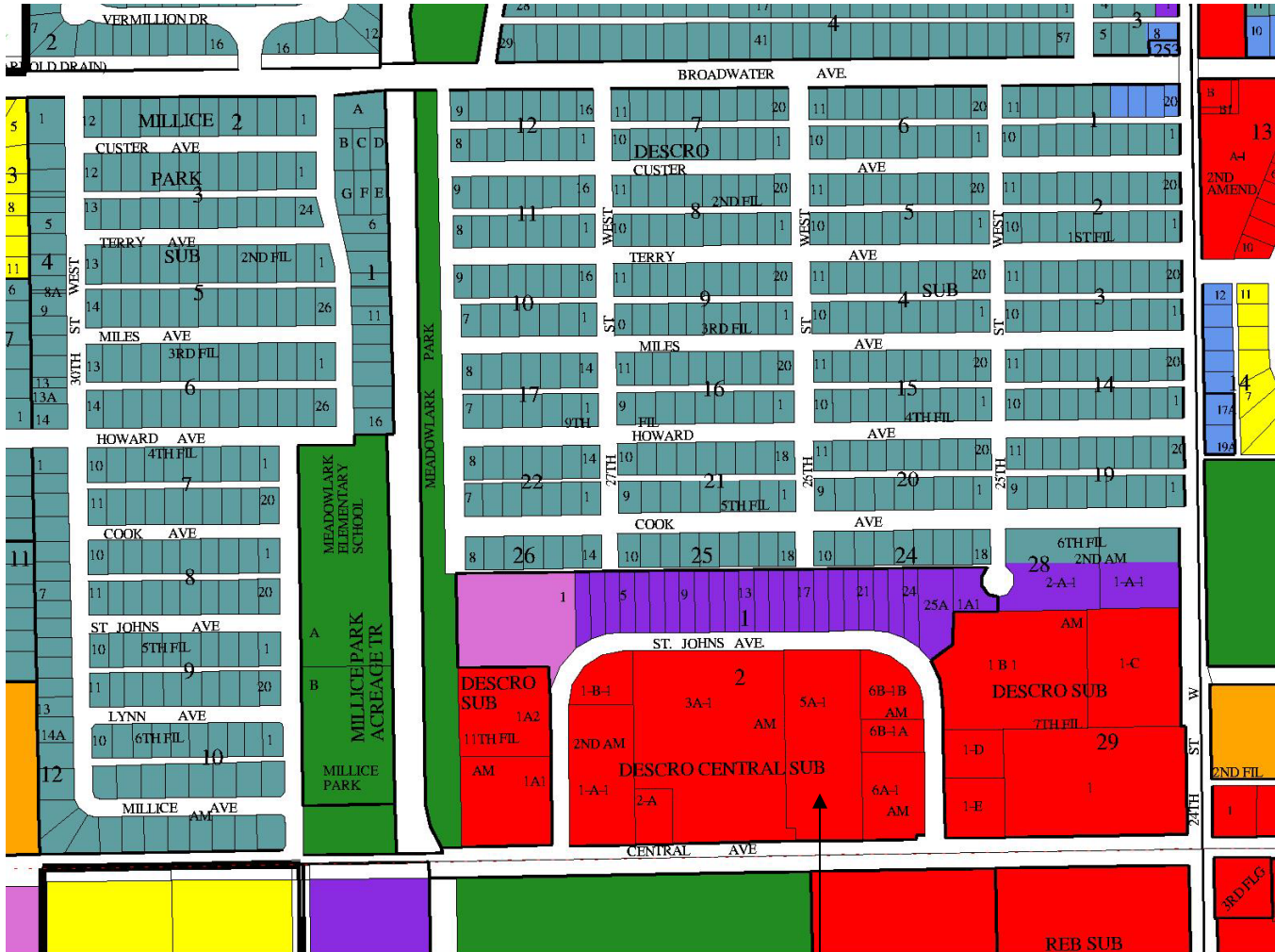
**ATTACHMENTS**

A: Zoning Map

B: Site Plan

C: Site Photographs

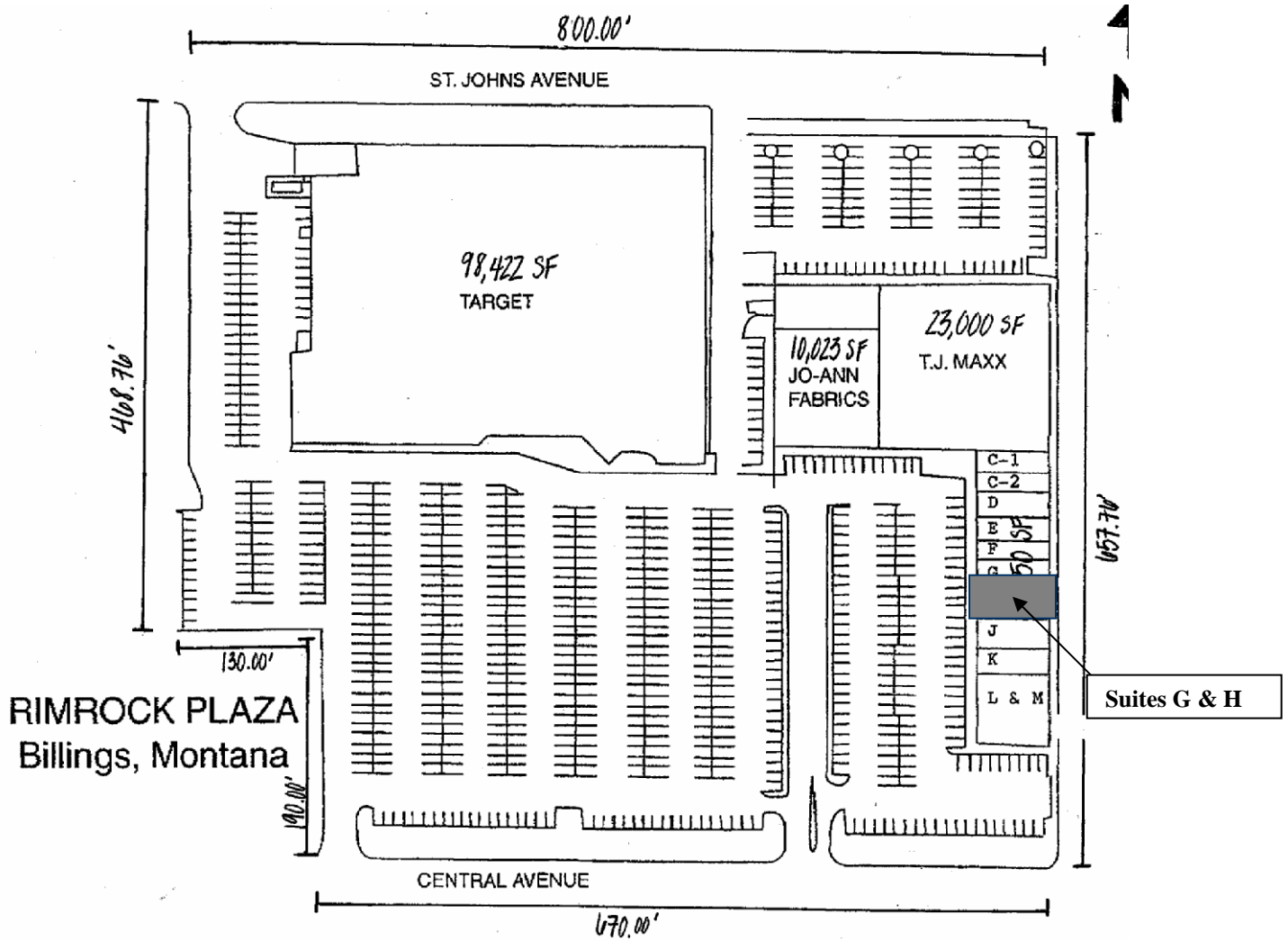
**ATTACHMENT A**  
**Surrounding Zoning**



**Subject Property**

**ATTACHMENT B**

**Site Plan**





## **ATTACHMENT C**

### **Site Photographs for Special Review #797**



Figure 1: View northeast toward the Rimrock Plaza.



Figure 2: View north toward existing businesses within Rimrock Plaza.



Figure 3: View east toward First Interstate Bank.



Figure 4: View south across Central Avenue toward Stewart Park.

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

## AGENDA ITEM:




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


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TITLE: Zone Change #770 – Public Hearing and 1<sup>st</sup> reading of ordinance  
 DEPARTMENT: Ramona Mattix, AICP, Planning & Community Services Director  
 PRESENTED BY: Lora Mattox, Neighborhood Planner, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a zone change request from Residential Manufactured Home to Residential 6000 on property located at 2303 Lake Elmo Drive described as Lots 21A and 22A of Pemberton Subdivision. The property owners are Don and Diane McLennaghan and Tom Mulford is the agent. The Zoning Commission held a public hearing on November 1, 2005, and is recommending approval on a 5-0 vote.

**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:

5. Approve the zone change request
6. Deny the zone change request
7. Allow withdrawal of the application
8. Delay action for up to thirty (30) days

**FINANCIAL IMPACT:** This zone change will increase the city's tax base when the property is developed for multi-family residential purposes.

**RECOMMENDATION**

The Zoning Commission recommends that the City Council approve Zone Change #770 on 1<sup>st</sup> reading and adopt the determinations of the discussed 12 criteria.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

## **ATTACHMENTS**

- A: Site photographs
- B: Zoning Map
- C: Concept site plan
- D: Ordinance

## **INTRODUCTION**

This is a zone change request from Residential Manufactured Home to Residential 6000 on Lots 21A and 22A of Pemberton Subdivision. The subject property is located at 2303 Lake Elmo Drive.

## **PROCEDURAL HISTORY**

- Application submitted on October 3, 2005.
- Zoning Commission held a public hearing on November 1, 2005, and voted 5-0 to recommend approval.
- The City Council will hold a public hearing on November 28, 2005, and make a decision on the zone change application.
- If the ordinance is approved on first reading, the City Council will consider it for second reading on December 12, 2005.

## **BACKGROUND**

The subject property is currently vacant with a total area of 1.858 acres or 80,925 square feet. The owner of this property is Don McLennaghan; the agent/developer is Tom Mulford. The developer is proposing to construct a series of duplex condominium units using U.B.C. rated modular units to reduce construction cost. Residential Manufactured Home zoning does not allow for duplex residential units, single-family only. The developers' plan is to maximize green space including landscaping and neighborhood access to Lake Elmo. A homeowner's association will be established to maintain the units and grounds.

The Heights Neighborhood Plan through community meetings and surveys has developed a draft plan that identifies the type of residential and commercial development desired in Heights neighborhoods. The Heights Plan states that mixed-use developments should be located between Lake Elmo Drive and Bench Boulevard. This mixed-use development is defined as high density residential and light commercial retail. There is currently a mix of housing types within this area including single family residential and commercial development towards Pemberton and Main Street. The residential units in this area include conventional stick built, modular and manufactured housing.

The City Zoning Commission reviewed this application and held a public hearing on the proposal on November 1, 2005. The Zoning Commission voted 5-0 to recommend approval based on the attached twelve (12) criteria for zone changes. The proposed zoning would allow the duplex (condominium) development. The proposal is supported by the 2003 Growth Policy and the draft Billings Heights Neighborhood Plan.

## **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.

The City Zoning Commission, prior to any recommendation, shall consider the following:

1. *Is the new zoning designed in accordance with the Growth Policy?*  
The new zoning will address urban sprawl by utilizing existing city services. The 2003 Growth Policy supports contiguous development in and around existing population centers.
2. *Is the new zoning designed to lessen congestion in the streets?*  
The new zoning could allow up to eleven duplex units. This density could impact North Lakeview Drive. Additional right-of-way for the construction of North Lakeview Drive, curb, gutter and sidewalk may be required by the developer at the time of building permit review.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
This lot has public street frontage on Lake Elmo Drive 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, have limits on the maximum percentage of lot that can be covered with structures. The Residential 6,000 zone allows for maximum lot coverage of 40 percent, or 2,400 square feet on a 6,000 square foot lot. Duplex development requires a minimum of 7,000 square feet per unit. This lot is 80,925 square feet, which could mean up to eleven duplex units or approximately 32,370 square feet lot in coverage. These features should prevent overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*  
The new zoning of Residential 6,000 allows single-family detached dwellings up to ten multi-family units. With the minimum lot requirement of 19,000 square feet for a 10-unit building, the lot could support 4 multi-family units. 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 could have an 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 Manufactured Home and Residential 6000 to the south of South Lakeview Drive. The existing neighborhood consists of single family residential with conventional stick built, modular and manufactured housing. The new zoning allows for duplex and multi-family development and should not impact the character of the 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. Single-family and two-family units are allowed in Residential 6000, multi-family or townhome development requires a Special Review in Residential 6000.

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.

### **STAKEHOLDERS**

The Zoning Commission held a public hearing on November 1, 2005, and Tom Mulford; agent/developer spoke on behalf of the owner, Don and Diane McLennaghan. No one spoke in opposition to the application and no letters protesting the zone change were received by the Planning Department or the Zoning Commission.

### **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Consistencies with the 2003 Growth Policy are discussed in the Alternatives Analysis section of this report.

### **RECOMMENDATION**

The Zoning Commission recommends that the City Council approve Zone Change #770 on 1<sup>st</sup> reading and adopt the determinations of the discussed 12 criteria.

### **ATTACHMENTS**

- A: Site photographs
- B: Zoning Map
- C: Plat of Site
- D: Ordinance



ATTACHMENT A  
Site photographs



**Looking east at subject property**



**Looking southeast of subject property at adjacent property**



ATTACHMENT A CONTINUED  
Site photographs

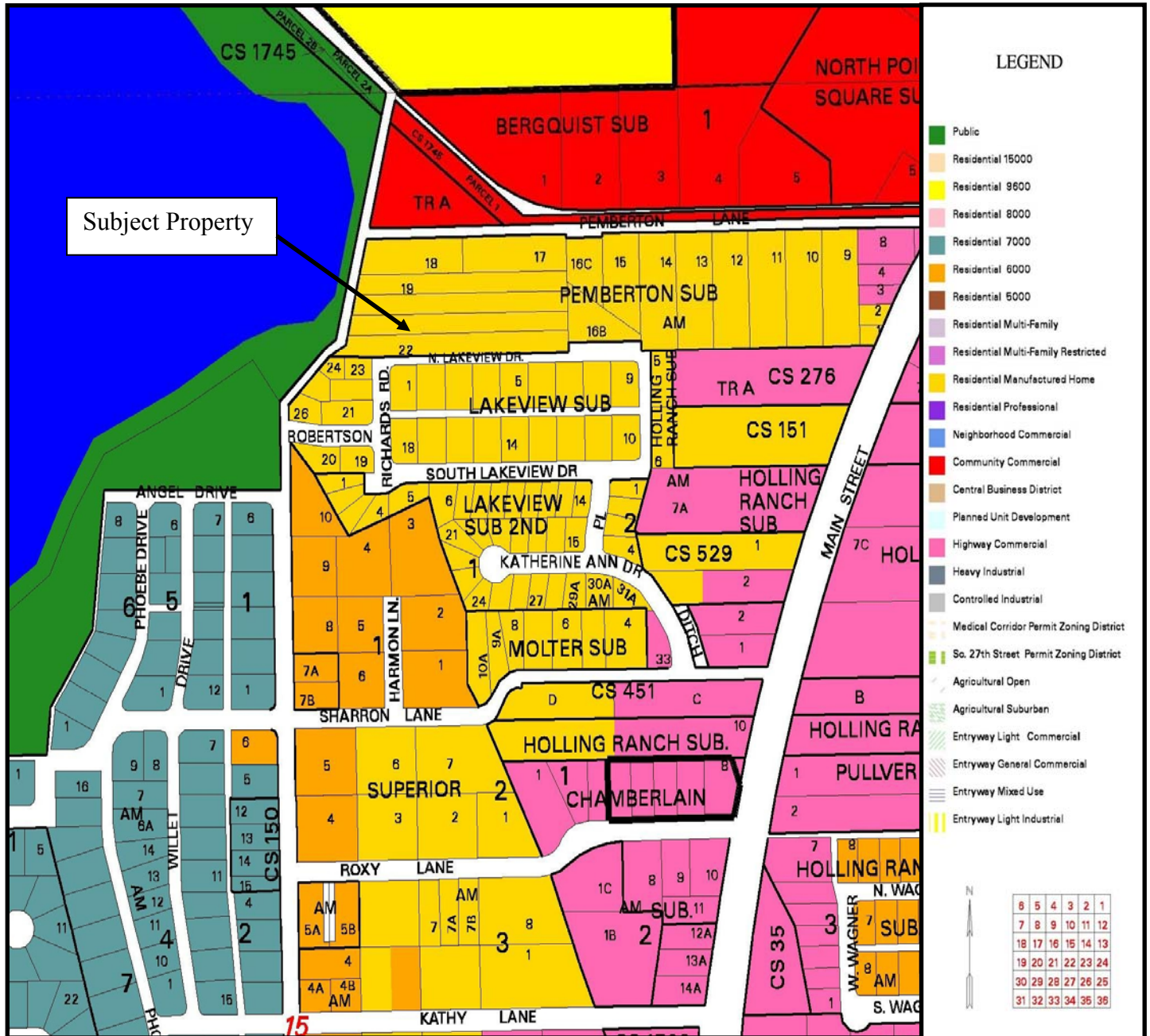


**Looking northeast from subject property at adjacent property**



**Looking west across Lake Elmo Drive towards Lake Elmo**

# ATTACHMENT B Zoning Map







ATTACHMENT D  
ORDINANCE NO. 05-\_\_\_\_\_

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION ON  
**LOT 21A AND 22a, PEMBERTON SUBDIVISION.** THE SUBJECT  
PROPERTY IS LOCATED AT 2303 LAKE ELMO DRIVE.

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

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Section 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 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 described as **LOT 21A AND 22A, PEMBERTON SUBDIVISION** is presently zoned Residential Manufacture Home and is shown on the official zoning maps within these zones.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential Manufactured Home** to **Residential 6000** and from the effective date of this ordinance shall be subject to all the rules and regulations pertaining to **Residential 6000** 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 as provided by law.

PASSED by the City Council on first reading November 28, 2005.

PASSED, ADOPTED AND APPROVED on second reading December 12, 2005.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Charles F Tooley, Mayor

ATTEST:

BY:

Marita Herold, CMC/AEE, City Clerk

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

## AGENDA ITEM:




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


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**TITLE:** Zone Change #771 Public Hearing and 1<sup>st</sup> Reading of Ordinance –Text Amendment to allow Neighborhood Watch Signs

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** The Billing Police Department has operated a Neighborhood Watch program through the Crime Prevention Bureau. The City Sign Code does not provide specifically for the posting of Neighborhood Watch signage in residential zones of the city. In July 2005, the Police Department asked the City Attorney to provide a legal opinion on the status of existing Neighborhood Watch signs that are posted in areas without an active neighborhood program. It was discovered at that time the City Sign Code had no provision for such signs. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on November 2, 2005, and voted 5-0 to recommend approval to the City Council.

**ALTERNATIVES ANALYZED:** The City Zoning Commission held a public hearing on the proposed text amendment on November 2, 2005. The Commission heard testimony before recommending approval of these changes. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendments.

**FINANCIAL IMPACT:** There should be no direct financial impact to the City as a result of the interim zoning regulation.

**RECOMMENDATION**

The Zoning Commission recommends that the City Council approve Zone Change #771.

**Approved by:** \_\_\_\_\_ City Administrator \_\_\_\_\_ City Attorney

**ATTACHMENTS:**

A: Ordinance

## **INTRODUCTION**

Officer Dave Punt is the new public relations Officer for the Billings Police Department who is involved with the organization and revitalization of the Neighborhood Watch program within the city. Since the mid-1980s property owners could purchase Neighborhood Watch signs and post them on their property although the City Sign Code has never allowed these types of signs in residential zones. Some signs have not been posted properly – for example on street trees in the boulevard – and others have been removed by the Police Department because the neighborhood is no longer active.

Officer Dave Punt requested the City Zoning Commission to initiate a text amendment to allow these types of sign in residential districts. On October 4, 2005, the City Zoning Commission initiated the amendment.

## **PROCEDURAL HISTORY**

- On October 4, 2005, the City Zoning Commission initiated the process to amend the City Sign Code to allow Neighborhood Watch Signs.
- On October 16 and October 23, 2005, the legal advertisement of the public hearing for the City Zoning Commission was published in the Billings Gazette.
- On November 13, 2005, the legal advertisement of the Zoning Commission recommendation was published in the Billings Gazette.
- On Tuesday November 2, 2005, the City Zoning Commission conducted the public hearing for the change to the City Sign Code. The Commission voted 5-0 to forward a recommendation of approval to the City Council
- The City Council will hold a public hearing and 1<sup>st</sup> reading of the ordinance on November 28, 2005, and make a decision on the change to the City Sign Code.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on December 12, 2005.

## **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, or delay the adoption of the changes to the City Sign Code. If the changes are not adopted, the city may require Neighborhood Watch signs to be removed where they have been placed in residential zones. New Neighborhood Watch signs would not be allowed. Denial of the amendment would obstruct crime prevention efforts of the Billings Police Department. If the changes are approved, the Police Department can continue its effort to revitalize the local Neighborhood Watch program.

## **STAKEHOLDERS**

The Zoning Commission held a public hearing on November 2, 2005 on the proposed changes to the City Sign Code. No one testified for or against the proposed zone change. Two minor corrections to the proposed draft were suggested by Deputy City Attorney Bonnie Sutherland prior to the public hearing. Those corrections to the draft were approved by the City Zoning Commission.



**RECOMMENDATION**

The Zoning Commission recommends that the City Council approve Zone Change #771.

A: Ordinance

**ATTACHMENT A**  
**ORDINANCE NO. 05-**

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-703, 27 -705(a), 27-705(b) and 27-707(b); CITY SIGN CODE DEFINITIONS, SIGNS PERMITTED AND EXEMPT SIGNS, ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

**Section 1. RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC, provide for amendment to the City Zoning Regulations from time to time. The Board of Planning initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. 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 proposed amendments to the City Zoning Regulations.*

**Section 2. DESCRIPTION.** The interim zoning regulation shall apply to all land within the City Of Billings.

**Section 3.** That the Billings, Montana City Code be amended by revising Section 27-703 to add a new definition to read as follows:  
SEC. 27-703. DEFINITIONS.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Neighborhood Watch sign: Neighborhood Watch is a national program based upon the idea that community members can prevent or help deter crimes in their neighborhoods. The Neighborhood Watch program is administered by local law enforcement. A Neighborhood Watch sign is a sign obtained through the local law enforcement agency that is posted on property within a residential or public zoning district.

**Section 4.** That the Billings, Montana City Code be amended by revising Section 27-705(a) and 27-705(b) to add language to read as follows:  
SEC. 27-705. SIGNS PERMITTED IN ZONING DISTRICTS OF CITY.

(a) *Residential zones.* Within any residential zone, signs or residential nameplates are permitted as follows:

- (1) For each single-family home or duplex house, one (1) residential nameplate not exceeding a combined sign area of two (2) square feet for each occupancy. The nameplate shall not be subject to the permit requirements of this article. Commercial nameplates shall not be permitted in residential zones;
  - (2) For multiple-family uses, rooming and boarding houses, one (1) identification sign for each developed parcel, not exceeding twelve (12) square feet in sign area;
  - (3) Identification signs, bulletin boards, and other similar structures for governmental agencies which may be regulated by the city are subject to approval thereof by the sign administrator;
  - (4) All signs, except for neighborhood identification signs provided in subsection (6) and (7) below, shall be placed flat against a building or designed as part of an architectural feature thereof;
  - (5) No sign shall block any means of egress or any window;
  - (6) For a neighborhood or tract, two (2) identification signs per tract entrance. A sign, masonry wall, landscaping and other similar materials or features may be combined to form a display for neighborhood or tract identification, provided that the legend of such sign or display shall consist only of the neighborhood, tract, or developer's name and logo. No sign or structure shall exceed thirty-two (32) square feet in size nor be over eight (8) feet in height as established from the street grade and must be located a minimum of five (5) feet behind all property lines.
  - (7) For each developed parcel within a residential zone, one (1) Neighborhood Watch sign may be posted for each street frontage. The total area of all Neighborhood Watch signs on a developed parcel will not exceed sixteen (16) square feet in sign area.
- (b) *Residential professional and public zones.* Within these zones, signs are permitted as follows:
- (1) One (1) identification sign or commercial nameplate for each developed parcel not to exceed a total of thirty-two (32) square feet in sign area for all displays;
  - (2) Signs shall be placed flat against a building or designed as part of an architectural feature thereof. Signs may also be detached if they do not exceed a height of eight (8) feet. Detached signs must be located a minimum of five (5) feet behind all property lines;
  - (3) No height limit is specified for signs placed flat against the wall of a building or for other attached signs provided all other provisions of this article are complied with;

- (4) Each occupancy within the developed parcel may have an individual nameplate not exceeding four (4) square feet;
- (5) When a developed parcel fronts on more than one (1) public right-of-way or street, excluding alleys and serviceways, the above provisions of subsection (b) shall apply to each frontage.
- (6) For each developed parcel within a residential professional or public zone, one (1) Neighborhood Watch sign may be posted for each street frontage. The total area of all Neighborhood Watch signs on a developed parcel will not exceed sixteen (16) square feet in sign area.

**Section 5.** That the Billings, Montana City Code be amended by revising Section 27-707 to add language to read as follows:

SEC. 27-707(b). EXCEPTIONS AND EXEMPTIONS.

(b) *Exempt signs:*

(14) *Neighborhood Watch signs.* Neighborhood Watch signs may be posted on property within residential, residential professional and public zoning districts provided that the total area of all Neighborhood Watch signs on a developed parcel do not exceed sixteen (16) square feet in sign area. Neighborhood Watch signs shall be posted on private property and may be placed flat against the wall of a building or detached if they do not exceed 8 feet in height and are placed one (1) foot behind all property lines. A detached Neighborhood Watch sign must not exceed thirty-six (36) inches in height if it is placed within a clear vision area at the intersection of streets, streets and alleys or streets and driveways. Please see Section 27-615 and 27-618 of the Unified Zoning Regulations for the definition and illustration of clear vision areas at intersections.

**Section 6.** REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 7.** SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

**Section 8.** 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 November 28, 2005.

PASSED, ADOPTED AND APPROVED on second reading December 12, 2005.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Charles F. Tooley, Mayor

ATTEST:

BY:  
Marita Herold, CMC/AAE, City Clerk

ZC#771 – Amending City Sign Code

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

## AGENDA ITEM:



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

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**TITLE:** Public Hearing and Resolution Transferring Zimmerman Trail Ownership to the City of Billings

**DEPARTMENT:** Public Works Department

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

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**PROBLEM/ISSUE STATEMENT:** Zimmerman Trail from Highway 3 south to the Billings city limits is currently a county road maintained by Yellowstone County. Annexations over the years have created a situation where this street is surrounded by city. As a result, it has become a burden on Yellowstone County to maintain it as it is some distance from other roads the County maintains. Yellowstone County Commissioners approached the City and requested that the City of Billings take control of Zimmerman Trail. The City Council has also expressed interest in taking over ownership of Zimmerman Trail in the past.

Yellowstone County Commissioners advertised for and will hold a public hearing on a Resolution of Intent to Transfer Zimmerman Trail to the City of Billings at their November 15, 2005 meeting. If this resolution is passed, they will execute a quitclaim deed transferring all its interest in Zimmerman Trail to the City of Billings.

**ALTERNATIVES ANALYZED:**

- Accept ownership of Zimmerman Trail
- Do not accept ownership of Zimmerman Trail

**FINANCIAL IMPACT:** Taking over Zimmerman Trail will result in minimal cost to the City of Billings because the City will maintain the roadway in the summer and, under an agreement with the Montana Department of Transportation (MDT), MDT will maintain the roadway during the winter months.

**RECOMMENDATION**

Staff recommends that the City Council approve the transfer of Zimmerman Trail ownership through a quitclaim deed.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

**ATTACHMENTS:**

Attachment A – Quitclaim Deed (2 page)

Attachment B – Draft Resolution (2 page)

City of Billings  
P.O. Box 1178  
Billings, Montana 59103

## Quit Claim Deed

For valuable consider, Yellowstone County, a political subdivision of the State of Montana, through its Board of County Commissioners, conveys and quit claims to the City of Billings, a government entity, all its interest in the property described below that is located in Yellowstone County, Montana:

Zimmerman Trail, legally described as a strip of land 100 feet in width in Section 27, Township 1 North, Range 25 East, M.P.M., the center line of which strip of land is more particularly described as follows: beginning at a point on the South line of Section 27, Township 1 North, Range 25 East M.P.M. which point is 2904.9 feet west of the Southeast corner of said section; thence due North, 1105 feet; thence Northeast 382.6 feet on a 17° 28' curve right ( $\Delta = 67^\circ 28'$ ); thence Easterly 165.9 feet on a 25° 43' curve right ( $\Delta = 42^\circ 40'$ ); thence South 69° 52' East, 96.5 feet; thence South 69° 0' East, 202.4 feet; thence Easterly 351.2 feet on an 8° 18' curve left ( $\Delta = 29^\circ 09'$ ); thence North 81° 51' East, 66.0 feet; thence North 85° 18' East, 110.3 feet; thence Northeasterly 376.1 feet on a 6° 0' curve left, ( $\Delta = 22^\circ 34'$ ); thence North 62° 44' East, 90.3 feet; thence Northeasterly, 183.9 feet on a 41° 0' curve left ( $\Delta = 75^\circ 25'$ ); thence North 12° 41' West, 219.8 feet; thence North 19° 01' West, 388.0 feet; thence Northwesterly 392 feet on a 24° 0' curve left ( $\Delta = 92^\circ 21'$ ); thence South 68° 38' West, 232 feet; thence Northwesterly 450 feet on a 19° 0' curve right ( $\Delta = 85^\circ 30'$ ); thence Northeasterly 371.7 feet on a 15° 0' curve right ( $\Delta = 55^\circ 45'$ ); thence North 29° 53' East, 93.3 feet, more or less to intersection with the center line of the new Billings-Broadview road.

The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2003) at its November 15, 2005 meeting.

Dated this 15<sup>th</sup> day of November 2005.

\_\_\_\_\_  
John Ostlund, Chairman  
Yellowstone County Commissioner

\_\_\_\_\_  
"Bill" Kennedy, Member  
Yellowstone County Commissioner

\_\_\_\_\_  
James E. Reno, Member  
Yellowstone County Commissioner

Attest:

\_\_\_\_\_  
Tony Nave  
Yellowstone County Clerk and Recorder



State of Montana            }  
                                      ss.  
County of Yellowstone    }

I acknowledge that on November 15, 2005, before me, personally appeared John Ostlund, "Bill" Kennedy and James E. Reno, members of the Board of County Commissioner of Yellowstone County, and Tony Nave, the Yellowstone County Clerk and Recorder, and executed the attached quit claim deed on behalf of Yellowstone County in their official capacity as Board Members and the Clerk and Recorder.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public For the State of Montana  
Residing at Billings, Montana.  
My commission expires \_\_\_\_\_

(Notarial Seal)

Acknowledgment and Acceptance of Conveyance

The Mayor and City Council of the City of Billings acknowledge receipt of this deed and accepts the property interest conveyed through this instrument.

\_\_\_\_\_  
Mayor, City of Billings

\_\_\_\_\_  
Date

Attest: \_\_\_\_\_  
Deputy City Clerk

State of Montana            }  
                                      ss.  
County of Yellowstone    }

On this \_\_\_\_ day of November 2005, before me, a notary public in and for the State of Montana, personally appeared \_\_\_\_\_ as Mayor and \_\_\_\_\_ Deputy City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledged to me that they executed the foregoing instrument. Witness, Whereof, I have hereunto set my hand and my seal the day and year herein above written.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public For the State of Montana  
Residing at Billings, Montana.  
My commission expires \_\_\_\_\_

(Notarial Seal)

## **RESOLUTION NO. 05-\_\_\_\_\_**

### **A RESOLUTION PURSUANT TO SECTION 7-8-101(1) OF THE MONTANA CODE ANNOTATED TRANSFERRING PROPERTY TO ANOTHER GOVERNMENT ENTITY**

**WHEREAS**, Zimmerman Trail is currently a county road maintained by Yellowstone County; and

**WHEREAS**, Zimmerman Trail was initially some distance outside the city limits. Annexations over time; however, have created a situation where Zimmerman Trail is now surrounded by the City; and

**WHEREAS**, Zimmerman Trail maintenance has become a burden on Yellowstone County as it is some distance from other roads the County maintains.

**WHEREAS**, the Yellowstone County Board of County Commissioners believes that it would be in the best interest of the public to transfer Zimmerman Trail to the City of Billings because it would be more economical for the City to maintain. The Yellowstone County Board of County Commissioners has requested that the City of Billings take control of the road and the City is receptive to taking control of the road; and

**WHEREAS**, the City of Billings maintains the streets surrounding Zimmerman Trail and it would be less burdensome for the City to maintain Zimmerman Trail.

**WHEREAS**, Section 7-8-101(1) of the Montana Code Annotated states that if it would be in the best interests of the public, a board of county commissioners may transfer real property to another government entity. To transfer property to another government entity, a board must pass a resolution of intent to transfer the property, publish notice of intent to transfer the property and pass a resolution to transfer the property; and

**WHEREAS**, Yellowstone County Commissioners published a notice of intent to transfer the property; and

**WHEREAS**, Yellowstone County Commissioners passed on first reading a resolution of intent to transfer the property on November 1, 2005. The Yellowstone County Board of County Commissioners intends to transfer Zimmerman Trail to the City of the Billings for the promise that the City will maintain the road.

**WHEREAS**, Yellowstone County Commissioners will hold a public hearing on the proposed transfer on November 15, 2005. At the hearing, the Board will receive comments on the proposed transfer. After the hearing, if the Board still believes that it would be in the best interest of the public to transfer the road, it will pass a resolution to transfer the road and execute a quitclaim deed for the road.

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

That the City of Billings accept the transfer of Zimmerman Trail from Highway 3 south to the Billings city limits from Yellowstone County and will take over maintenance.

PASSED by the City Council and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2005.

**THE CITY OF BILLINGS:**

BY: \_\_\_\_\_  
Charles F. Tooley, Mayor

**ATTEST:**

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE

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

## AGENDA ITEM:




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


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**TITLE:** Public Hearing and Ordinance Clarifying the Procedure for Appointing the Deputy Mayor and Deputy Mayor Pro Tempore

**DEPARTMENT:** City Attorney's Office

**PRESENTED BY:** Brent Brooks, City Attorney

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**PROBLEM/ISSUE STATEMENT:** The city ordinance setting the time for electing a deputy mayor is not consistent with Charter provisions. Section 3.05 of the Charter states that the City Council shall elect a Deputy Mayor "at its first meeting following each general election." Section 2-202 of the Billings, Montana City Code states that the election of Deputy Mayor and Deputy Mayor Pro Tempore shall take place at the first regular meeting "of the new year following each city general election." Charter provisions are superior to conflicting local ordinances and prevail, so our Deputy Mayor ordinance should be changed to copy the Charter language. The Charter does not address the appointment of a Deputy Mayor Pro Tempore, so our local ordinance controls. If approved, the Ordinance will be subject to a second reading on December 12, 2005.

**ALTERNATIVES ANALYZED:** The election of a Deputy Mayor must take place at the time set by Charter, which is at the "first meeting following each general election". The time for electing a Deputy Mayor Pro Tempore is set by the Council, so alternatives considered are:

- (1) Continue to have the Deputy Mayor Pro Tempore elected at the City Council's first regular meeting of the new year following each city general election.
- (2) Change the election of the Deputy Mayor Pro Tempore to the City Council's "first meeting following each general election" to coincide with the election of the Deputy Mayor.

**FINANCIAL IMPACT:** There is no financial impact.

**RECOMMENDATION**

Staff recommends that the City Council hold a public hearing and then adopt the attached Ordinance. The Ordinance changes the election of the Deputy Mayor to the "first meeting following each general election" as stated in the Charter. It also changes the time for electing the

Deputy Mayor Pro Tempore to coincide with the election of the Deputy Mayor.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 2-204; PROVIDING THAT THE DEPUTY MAYOR BE ELECTED AT THE CITY COUNCIL'S FIRST REGULAR MEETING FOLLOWING THE CITY GENERAL ELECTION

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

*Section 1.* That Section 2-204 of the Billings, Montana City Code be amended so that such section shall read as follows:

**“Sec. 2-204. Election and duties of deputy mayor and deputy mayor pro tempore.**

“The city council shall elect by voice vote at its first regular meeting ~~of the new year~~ following each city general election from the councilmembers a deputy mayor and a deputy mayor pro tempore, both of ~~which~~ whom shall serve two-year terms. In the absence of the mayor, or the mayor's inability from any cause to discharge the duties of his or her office, the deputy mayor shall preside over meetings and exercise all the power and discharge all the duties of the mayor. In case of the absence or inability of both the mayor and the deputy mayor, the deputy mayor pro tempore; shall preside and discharge all of the duties of the deputy mayor. The deputy mayor or the deputy mayor pro tempore, while performing the duties of the mayor, shall serve as the acting mayor, and acts performed by such person while acting as mayor shall have the same force and validity as if performed by the mayor.

*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 provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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

CITY OF BILLINGS

By \_\_\_\_\_  
Mayor

ATTEST:

By \_\_\_\_\_  
City Clerk

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

## AGENDA ITEM:



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

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TITLE: Fair Housing Action Plan FY 05 - 06

DEPARTMENT: Planning and Community Services

PRESENTED BY: Ramona Mattix and Brenda Beckett

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**PROBLEM/ISSUE STATEMENT:** The Fair Housing Action Plan provides the City of Billings with a mechanism to address the impediments identified in the 2002 Analysis of Impediments to Fair Housing Choice. The City Council was presented and approved a five year Fair Housing Work Plan in October 2002, which details strategies designed to address the impediments identified in the analysis. This plan is available upon request. As a recipient of CDBG and HOME funds, the City of Billings is required to affirmatively further fair housing in our community.

Action is needed on the Fair Housing Action Plan for the current year (Attachment A). Also included for review is the Fair Housing Annual Performance Report (Attachment B) for FY 2004 - 2005. This report details progress this past year in addressing the goals and objectives included in the Fair Housing Work Plan.

**FINANCIAL IMPACT:** The City of Billings has made CDBG funding available through the annual allocation process for fair housing activities to meet the objectives outlined in the Fair Housing Action Plan. The amount of funding allocated was \$15,000 awarded to the Community Housing Resource Board.

**RECOMMENDATION**

The Community Housing Resource Board, Community Development Board, and Staff recommend Council approve the FY 05 - 06 Fair Housing Action Plan.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_



**ATTACHMENTS**

A - Fair Housing Action Plan FY 05-06

B - Fair Housing Annual Performance Report 04-05

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

## AGENDA ITEM:



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

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**SUBJECT:** Resolution to Adopt the Cobb Field Repair or Replacement Report**DEPARTMENT:** Department of Parks, Recreation & Public Lands**PRESENTED BY:** Gene Blackwell, Interim Director

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**PROBLEM/ISSUE STATEMENT:** The final draft of the Cobb Field Repair or Replacement Report was presented to the Cobb Field Steering Committee and Billings Parks, Recreation and Cemetery (PRC) Board for review at the November 9, 2005, regular meeting. After review and consideration, the Board and Steering Committee moved to recommend the City Council to accept the Report for study and review of the recommendations and alternatives it contains. The recommendations in the report were then presented to the full City Council at the Council Work Session at 5:30 p.m., Monday, November 21<sup>st</sup>, 2005, in summary.

**FINANCIAL IMPACT:** The FY budget approved \$60,000 for a preliminary plan and feasibility study to repair or replace Cobb Field Stadium. The Study Report provides preliminary planning recommendations with options and cost estimates for evaluation and consideration by the City Council in making a final proposal to be presented for a vote in the Spring of 2006.

**RECOMMENDATION:**

Staff recommends that the Billings City Council accept the Cobb Field Stadium repair or replacement report and its recommendations to provide the basis for developing the funding proposal to be presented to voters for approval in 2006.

**Approved By:**            **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_\_

**ATTACHMENTS**

- A. Resolution to accept Cobb Field Stadium Preliminary Planning and Feasibility Study;
- B. Cobb Field Stadium Preliminary Planning and Feasibility Study Report on file at the Office of the City Clerk.

## **INTRODUCTION**

This is for adoption of the final draft of the Cobb Field Stadium Preliminary Design Feasibility Study report developed by the Cobb Field Steering Committee, consultant HNTB Montana, Inc., and PRPL staff that identifies and explains alternatives for the repair or replacement of the stadium. It also makes alternatives recommendations for the basic parameters of a stadium that would provide for current and projected uses and needs appropriate for the stadium given Billings' financial position, its location, and the community context in which it is operated. The Study includes a discussion of the future location of Athletic Pool in conjunction with the various alternatives.

## **PROCEDURAL HISTORY**

- Since 1981 over \$1 million in repairs have been made to Cobb Field Stadium.
- In 1996 a Concept plan and revision of the Athletic Park Master Plan was prepared by Fischer and Assoc. and A&E Architects. They proposed closing Athletic Pool and constructing a smaller neighborhood pool – spraypark pool in the area near 10<sup>th</sup> Avenue North and North 27<sup>th</sup> Street. Cobb Field Stadium was to be renovated at an estimated cost of \$3.7 Million. It proposed conversion of the existing pool into an amphitheater – skating rink or other facility utilizing the existing shell. The basic structure of Cobb Field was to be retained with upgrades to meet codes.
- In 1998 a conceptual plan with cost estimates was prepared for replacing Cobb Field with a steel and concrete structure to eliminate the wood timber frame entirely. The estimated cost was \$7.5 million, and \$9.5 million with an added parking structure.
- In 2001 a structural assessment was conducted by CTA Architects and Engineers to determine the stadium's structural condition, safety, and estimate the costs to repair defective components. The assessment identified over \$700,000 in immediate repairs that were needed. It did not include estimates for the cost of upgrading the stadium to meet current building codes and Professional Baseball standards.
- In January of 2003 a Blue Ribbon Committee was appointed by the Mayor to develop a proposal for an aquatic facility for Billings Heights and for the repair or the replacement of the stadium to be submitted to voters for approval of funding. A proposal for a \$12.5 million GO Bond for the replacement of Cobb Field was voted on in June of 2004 and narrowly defeated.
- The City Council appropriated \$60,000 to perform a feasibility study and provide reconstruction alternatives and preliminary planning for a stadium repair or replacement proposal to be presented to Billings' voters in the Spring of 2006. A Cobb Field Stadium Steering Committee was appointed by the Mayor consisting of 3 City Council Members, 3 at-large members, and City Staff to contract with a consulting firm to perform this study.
- The consultants have collected and reviewed the past history of the stadium, including repair and remodeling projects, renovation plans, neighborhood and community plans, and conducted extensive individual interviews with community leaders to determine the most viable alternatives for the stadium.

- A report has been prepared by HNTB Montana, Inc. to provide the information and recommendations from that in depth study of the stadium needs and the community wishes and willingness to finance its replacement.
- The report was presented to the Cobb Field Steering Committee and the Parks, Recreation, and Cemetery Board at a joint meeting at 11:30 a.m., on Wednesday, November 9, 2005, at the Billings Community Center. The PRC Board recommends the City Council accept the report for review and further action to develop the funding proposal to be voted on this spring.

## **BACKGROUND**

The existing Cobb Field stadium was constructed in the late 1940's. Its timber and beam structure has remained the framework for all subsequent renovations and repairs to the present. Because of its wood structure, the seating areas and stairways have regularly deteriorated to hazardous levels requiring extensive repairs and replacement 4 times. The stadium currently consists of the original timber and beam structure with dimension lumber framing to form the stands, covered with exterior plywood sheeting, and coated with a urethane roofing material to form the waterproof protective membrane for the wood underneath. Due to nails, cleats, chair legs, general wear from foot traffic, and structural flexing at seams, the membrane has never been able to remain waterproof for very long, and the tears and punctures have quickly recurred following each resurfacing effort, allowing water to continue to penetrate and rot away the wood layers and structure underlying the stands. The Cobb Field Stadium Report is the result of a thorough review of historical information, past studies, repair and renovation projects, surveys, and replacement efforts, input obtained from 80 interviews with community leaders, 2 public meetings, and preliminary design to reflect that information, done under the direction of the Cobb Field Steering Committee. The feasibility and preliminary plan and report was prepared by HNTB Montana, Inc., consultant team made up of CTA Architects and Engineers of Billings, Gateway Consulting, Inc. of Cleveland, Ohio, and HNTB Architecture, Inc. of Kansas City, Missouri. The study was done to ensure that the stadium repair or replacement proposal that is presented to Billings' voters for approval will reflect the viewpoint and wishes of the majority of them.

## **ALTERNATIVE ANALYSIS**

1. Accept the report as presented, with discussion and adoption of any specific alternatives to be take place later. This is the staff recommendation.
2. Do not accept the report.

## **CONSISTENT WITH ADOPTED POLICIES AND PLANS**

The report presents 4 main options that all take into consideration the recommendations of all relevant neighborhood and community plans including the Neighborhood Park Planning Policy of 1980; and the Billings Parks 20/20 Plan adopted in 1996.

**RECOMMENDATION:**

Staff recommends that the Billings City Council accept the Cobb Field Stadium repair or replacement report and its recommendations to provide the basis for developing the funding proposal to be presented to voters for approval in 2006.

**ATTACHMENTS**

- A. Resolution to accept Cobb Field Stadium Preliminary Planning and Feasibility Study;
- B. Cobb Field Stadium Preliminary Planning and Feasibility Study Report on file at the Office of the City Clerk

**RESOLUTION NUMBER 05-**  
**A RESOLUTION ADOPTING THE COBB FIELD**  
**FEASIBILITY STUDY REPORT AND PRELIMINARY**  
**PLANNING RECOMMENDATIONS FOR THE REPAIR OR**  
**REPLACEMENT OF COBB FIELD STADIUM IN**  
**ATHLETIC PARK, BILLINGS, MONTANA**

**WHEREAS**, the public interest requires the repair or replacement of Cobb Field Stadium located at 9<sup>th</sup> Avenue North and North 27th Street in the City of Billings, Montana;

**WHEREAS**, a vote of the public will be necessary for approve a financing proposal for the repair or replacement of the stadium;

**WHEREAS**, a consultant has been contracted with by the City of Billings to develop a feasibility study and preliminary plans for a stadium proposal that will meet federal, state, and local regulations, and conform to adopted plans including the Billings Parks 20/20 Plan, adopted in 1997; and the Billings Growth Policy, adopted in 2003; and

**WHEREAS**, between September 19<sup>th</sup> and November 9<sup>th</sup>, 2005, extensive information was reviewed and input obtained from interviews, public meetings, and Cobb Field Steering Committee meetings conducted to obtain verbal and written comments to determine the feasibility and to provide preliminary plans for a Cobb Field Stadium project;

**WHEREAS**, the final draft of the Feasibility Study and Preliminary Planning and recommendations for the Stadium is presented for review and approval by the City:

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

1. *Feasibility Study Report and Preliminary Planning Recommendations.* The feasibility study and preliminary planning recommendations for Cobb Field Stadium, on file at the Office of the City Clerk, is hereby accepted and approved as the basis for developing the most acceptable proposal to be presented to the voters of the City of Billings.
2. *General Character of Improvements Provided for by the Plan.* The general character of the recommendations approved are Options 1 and 2, with Alternatives to Repair or to replace the stadium in Athletic Park, including such added features and enhancements as would be cost effective and in keeping with the uses and programs located there.

**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

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

## AGENDA ITEM:




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


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TITLE: Library expansion/GSA lease  
 DEPARTMENT: Administration  
 PRESENTED BY: Bruce McCandless, Deputy City Administrator

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**PROBLEM/ISSUE STATEMENT:** The City Council will consider whether to authorize additional design services for a Library expansion and whether to continue negotiations with the Government Services Administration (GSA) to lease the building for 3-5 years. On October 24, 2005 the City Council approved a contract with CTA Architects to prepare preliminary designs and cost estimates for the proposed building addition. Those estimates were produced by November 8 and based on them, Administration submitted a conditional lease offer to GSA on November 9<sup>th</sup>. The Council will review the proposed lease conditions and costs and determine if the City should complete the building design and negotiate a lease with the GSA.

**ALTERNATIVES ANALYZED:** The alternatives are:

- Proceed with building design and GSA lease negotiations
- Terminate the project
- Incorporate the building project with a broader 4<sup>th</sup> and Broadway development proposal

**FINANCIAL IMPACT:** The building's estimated cost is \$10,618,000 as of 11-05. This includes about \$6.7 million for shell costs and \$3.9 million for tenant, or interior improvements. The estimated debt service for a 20 year loan at 5.2% - 5.5% is \$862,000 per year. The GSA's lease would include paying for 15% of the shell costs (3 yrs. / 20 yrs. = 15%) and about 74% of the tenant improvement cost. The City would be responsible for the balance of the costs over the remaining 17 year loan term. Additional, but at this time unestimated, capital costs would be incurred at the end of the GSA lease term in order to convert the 1<sup>st</sup> and 2<sup>nd</sup> floor space to Library use. The Library presently has \$1 million available for capital improvements and the 2005-2006 Capital Improvement Plan sets 2009 for a Library bond election. Minor costs would be incurred to remodel the 3<sup>rd</sup> floor for Municipal Court use. The building construction cost was initially estimated to be \$5.5 million and debt service costs varied depending on the selected financing method and terms. The estimated building cost has nearly doubled and building material costs are expected to continue rising for the foreseeable future due to transportation cost increases and



material shortages. Debt costs are increasing but at a moderate rate. At this time, the City does not have adequate General Fund or Library Fund revenues to support the estimated long term capital financing costs of this building addition.

### **RECOMMENDATION**

Staff recommends that Council terminate further negotiations with the GSA for interim US District Court space.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

### **ATTACHMENTS**

- A:     Building Option C sketch and cost estimates
- B:     GSA conditional preliminary lease proposal

## **INTRODUCTION**

The City proposed to construct a Library addition and lease it to the GSA for interim U.S. District Court space. CTA Architects was hired by the City to prepare preliminary designs and cost estimates. Administration submitted a conditional lease proposal to the GSA on November 9 based on the cost estimates prepared by CTA. The Council will review the estimated costs and the lease terms and determine whether to authorize additional design work and lease negotiations.

## **PROCEDURAL HISTORY**

- June 20, 2005: City Administrator introduces Library expansion / GSA lease proposal to Council
- September 6, 2005: Council work session discussion with GSA officials
- September 13, 2005: Council authorizes building project development
- October 24, 2005: Council approves preliminary design contract with CTA Architects
- November 9, 2005: City submits conditional lease proposal to GSA

## **BACKGROUND**

Earlier this year, the GSA announced that it was seeking interim office and courtroom space for relocating the U.S. District Court and related functions. The relocation is necessary so that the Battin Federal Courthouse can have asbestos removed from it and be remodeled. The GSA received no satisfactory responses to that solicitation. In May, 2005 the former City Administrator contacted the GSA to discuss a cooperative project with the City. Since the City needs more space for the Library and has a court that needs more space, he suggested that the City build an expansion on the Library, outfit it and lease it for interim US District Court use and occupy it for City use after GSA vacates the building. He discussed the concept with the Council in June, 2005. After several more discussions, including with GSA officials, the Council authorized staff to develop a project that would expand the Parmly Billings Library and to lease that building to GSA for 3-5 years, after which it would be converted for permanent City Library and Municipal Court use.

CTA Architects was hired on October 24<sup>th</sup> to prepare a preliminary design and cost estimates for the building. Five options were presented to staff and Option C was selected. Option C is a three story building separated from the Library by approximately 25' with an atrium and bridges connecting the two structures. CTA presented an option that joined the two buildings and it is slightly cheaper but it has problems with the entry and separating Library traffic from the court traffic. Option C, with the atrium, allows easier separation between Library and court customers, it is more attractive and will provide a better and more attractive long term entrance for the Library. The total cost estimate for the building addition is \$10,618,000. GSA will pay its proportionate share of the building shell cost and its proportionate share of interior improvements that can be re-used by the City. GSA will pay 100% of the costs of interior improvements for which the City has no long-term need. Most of the 1<sup>st</sup> floor improvements and up to 75% of the 2<sup>nd</sup> floor improvements will be removed when GSA vacates the building. Most of the 3<sup>rd</sup> floor improvements can be reused by the City for its Municipal Court operation.

The GSA issued a Solicitation for Offers (SFO) in October and asked for a preliminary response by November 9. Based on the cost information developed by CTA, Administration submitted the preliminary response by the deadline. The proposed lease rate, subject to further review by the City and GSA, is \$52.26/rentable square foot. That includes shell cost of \$15.61/sq. ft., \$5/sq. ft. for operation and maintenance and \$31.65/sq. ft. for tenant improvements. The total cost paid over the three (3) year firm term is about 28% of the estimated building cost, including the financing cost. If the GSA extends the lease term beyond three years, the lease rate decreases substantially because most of the tenant improvement costs are amortized within the initial three year term.

The annual debt service cost is estimated to be \$862,000 based on a 20 year, 5.2%-5.5% lease/purchase loan. During the three year firm lease term, the GSA will pay a total of \$4.8 million. The debt service during that time is \$2.6 million, meaning that the GSA will pay \$2.2 million more than the debt service during its three year lease term. Those funds may be used to subsidize the City's future debt service payments or for remodeling costs, particularly for the 1<sup>st</sup> and 2<sup>nd</sup> floors to be used by the Library. It may be possible to apply the GSA payments to the original loan and refinance the remaining debt at the end of the GSA term, thereby reducing the City's annual debt service payments. If that occurred, the outstanding debt might be reduced to as little as \$6.8 million. Refinancing that principle for 20 years at 6% interest would require \$590,000/year debt service payments. Neither the General Fund nor the Library Fund has the resources at this time to make these payments. Library remodeling and retrofitting the new building space cannot occur until the Council authorizes the project and an election occurs that increases the Library's revenues. That election is programmed in the CIP for 2009.

### **RECOMMENDATION**

Staff recommends that Council terminate further negotiations with the GSA for interim US District Court space.

### **ATTACHMENTS**

- A: Building Option C sketch and cost estimates
- B: GSA conditional preliminary lease proposal

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

## AGENDA ITEM:




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

---

TITLE: Preliminary Plat of Twin Oaks Subdivision

DEPARTMENT: Planning and Community Services, Ramona Mattix, AICP, Planning Director

PRESENTED BY: Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** On September 1, 2005, the subdivider applied for preliminary major plat approval for Twin Oaks Subdivision, which contains 91 lots on approximately 33.71 acres of land for duplex development. The subject property is addressed as 120 Wicks Lane and is located directly adjacent to the north of Uinta Park Subdivision, south of Wicks Lane. The north half of the subject property is located within the Residential 5000 (R-5000) zoning district and the southern half is located within the Residential 6000 (R-6000) zoning district. The owner is Twin Oaks Development, 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 Twin Oaks 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 September 1, 2005, the Planning Department received a preliminary plat application for Twin Oaks Subdivision. The subject property would contain 91 lots on approximately 33.71 acres of land for duplex development. The subdivider is proposing three (3) phases for improvements and construction within the subdivision. The north half of the subject property is located within the Residential 5000 (R-5000) zoning district and the southern half is located within the Residential 6000 (R-6000) zoning district.

## **PROCEDURAL HISTORY**

- The preliminary plat application was submitted to the Planning Division on September 1, 2005.
- On September 12, 2005, the City Council approved a Zone Change from R-7000 to R-5000 on the northern portion of the property.
- A departmental review meeting was conducted with the subdivider and their representative on September 22, 2005.
- The preliminary plat was resubmitted with revisions based on department reviews on September 29, 2005.
- On October 11, 2005, the City Council approved the second reading of an ordinance annexing the subject property into the City.
- The Planning Board conducted the plat review on October 13, 2005.
- The Planning Board conducted a public hearing on October 25, 2005, and forwarded a positive recommendation to the City Council.
- The City Council will consider the preliminary plat on November 28, 2005.

## **BACKGROUND**

General location:	Directly adjacent to the north of Uinta Park Subdivision, south of Wicks Lane
Legal Description:	Tracts 1 and 2, Certificate of Survey Number 3190 located in the NW¼, Section 22, T1N, R26E
Subdivider:	Twin Oaks Development, LLC
Owner:	Same
Engineer and Surveyor:	Engineering Inc.
Existing Zoning:	R-5000 and R-6000
Existing land use:	Vacant Land
Proposed land use:	Duplexes
Gross area:	33.71

Net area:	21.94 acres
Proposed number of lots:	91
Lot size:	Max: 18,685 square feet Min.: 7883 square feet
Parkland requirements:	Subdivider is proposing to provide onsite parkland dedication.

The subject property is bordered on the north by single-family residences adjacent to Wicks Lane and on the south by single-family residences within Uinta Park Subdivision; on the east by a church and multi-family residential units; and on the west by medical offices within the Neighborhood Commercial (NC) zoning district and single-family residences within Golden View Subdivision.

### **ALTERNATIVES ANALYSIS**

One of the purposes of the City's subdivision review process is to identify potential negative effects of property subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments have 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 user facilities, local services, the natural environment, wildlife and wildlife habitat and protect public health and safety, planning staff recommends the following conditions of approval (76-3-608 (3), MCA):

1. To minimize the effects on local services, the small section of Broadview Drive to its intersection with Twin Oaks Drive at the southeast corner of the property shall be renamed in order to provide a contiguous street. The City Council shall approve a Resolution renaming the street prior to final plat approval. *(Recommended by City Engineering)*
2. To minimize effects on local services, the subdivider shall provide easements on the plat in accordance with the plat review received from Northwestern Energy. *(Recommended by Northwestern Energy)*
3. To minimize effects on local services, the subdivider shall provide easements on the plat in accordance with the highlighted easements indicated on the plat review received from Montana-Dakota Utilities Company. *(Recommended by Montana-Dakota Utilities)*

4. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts 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)*
5. To minimize effects on local services, the Park Maintenance District (PMD) for Uinta Park Subdivision shall be expanded to include the parks within Twin Oaks Subdivision. *(Recommended by the City Parks and Recreation Department)*
6. To minimize effects on local services, the subject property shall be annexed into the Heights Water District prior to final plat approval. *(Recommended by the County Water District of Billings Heights)*
7. 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.
8. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

#### **VARIANCES REQUESTED**

A variance to permit 50-feet of right-of-way for Twin Oaks Drive, Shaw Circle, and Watson Peak Road, 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. These easements have been 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 23-601(m), BMCC, which specifies that dead-end residential streets shall not be longer than 600 feet in length. As proposed, the subdivider is requesting a cul-de-sac length of 645 feet for Shaw Circle. The Billings Fire Department has reviewed the requested cul-de-sac length and finds it acceptable due to additional accesses provided via Watson Peak Road and Uinta Park Drive through Uinta Park Subdivision to the south. The proposed variances will not be detrimental to the public and will not cause an increase in public costs.

#### **STAKEHOLDERS**

On October 13, 2005, a plat review was conducted by the Planning Board. Discussion at the plat review focused on access to Lots 12 and 13, Block 1, Golden View Subdivision, adjacent to the west of the subject property and platted in 1973. The lots are bordered on the east by the proposed Twin Oaks development and on the west by the Billings Bench Water Association (BBWA) canal. At this time, there is no legal and physical access to these lots as Squaw Place, the street originally proposed to service the lots, was never constructed. The owner of these



landlocked lots is requesting that access be provided to his lots from the proposed subdivision or by the City. The City Attorney has researched this access issue and finds that it is not the responsibility of the owner of the proposed Twin Oaks Subdivision to provide legal and physical access to the landlocked parcels. Similarly, the City does not have responsibility for the lack of access to these two (2) parcels, as the lots were platted in 1973, prior to the necessity of legal and physical access, which was added to the Montana Subdivision and Platting Act in 1993. Furthermore, the lots were purchased for tax deed by the current owner with the knowledge that there is no access.

A public hearing was conducted by the Planning Board on October 25, 2005. There was public comment received at that meeting from the adjacent property owner to the west regarding Lots 12 and 13 of Golden View Subdivision. He stated that while it is not incumbent on the subdivider of Twin Oaks Subdivision to provide access to the landlocked parcel, the City should remedy this situation and provide access in order to regain tax revenues for these lots.

#### **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Consistency with the Growth Policy, the 2005 Transportation Plan Update, 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 Twin Oaks Subdivision, approval of the variances, and adoption of the Findings of Fact as presented in the staff report, to the City Council.

#### **ATTACHMENTS**

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

# Preliminary Plat of Twin Oaks Subdivision

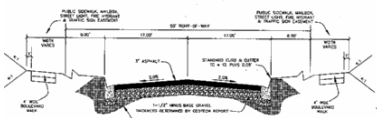
# PRELIMINARY PLAT TWIN OAKS SUBDIVISION

BEING TRACT 1 & 2 OF CERTIFICATE OF SURVEY NO. 319  
 LIES IN THE NW 1/4 OF SECTION 22, T. 1 N., R. 23 E., S. 22 E.

BEING TRACT 1 & 2 OF CERTIFICATE OF SURVEY NO. 3190  
SITUATED IN THE NW 1/4 OF SECTION 22, T. 1 N., R. 26 E., P.M.M.  
BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : TWIN OAKS DEVELOPMENT, LLC  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1" = 60'

SEPTEMBER, 2005  
BILLINGS, MONTANA

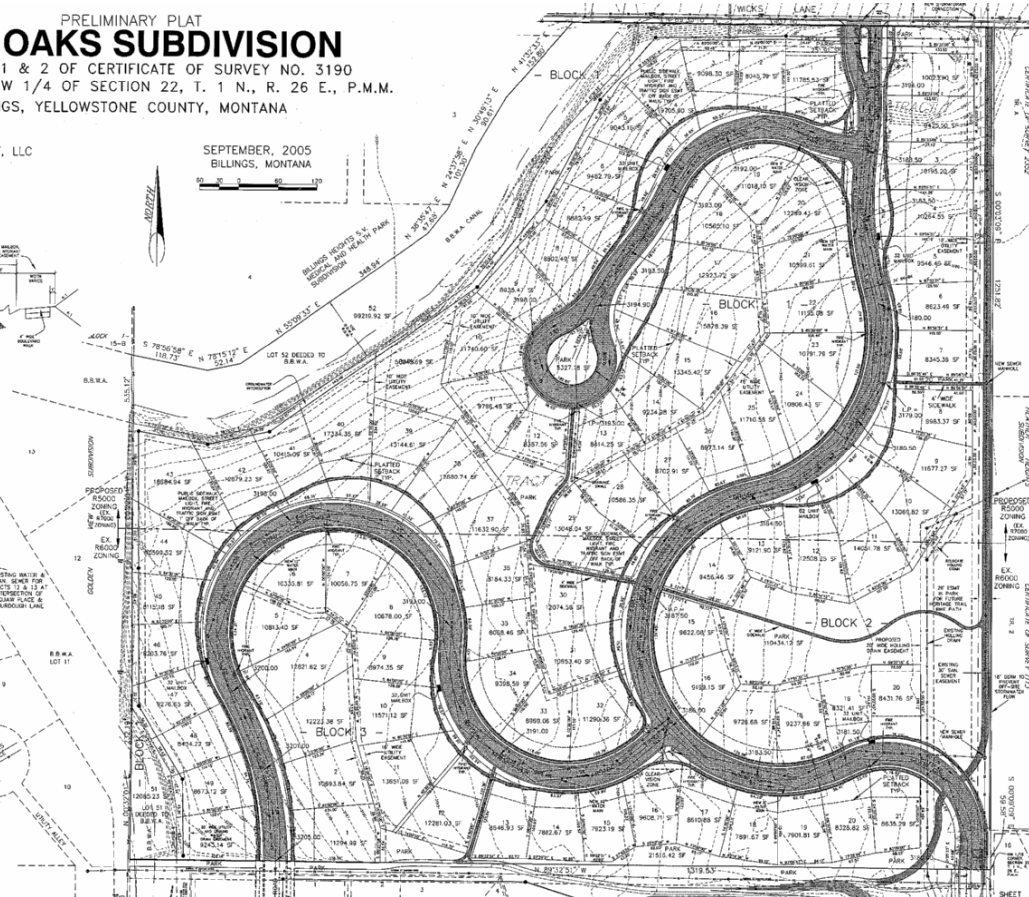


### SITE DATA

- CROSS AREA = 33.71 ACRES  
PARK AREA = 4.32 ACRES  
STREET AREA = 7.45 ACRES  
NET AREA = 21.94 ACRES  
MEASURES OF LOTS  
MAXIMUM LOT SIZE = 18,685 SF RESIDENTIAL; 91,292 SF OFFICE TO DEBRA  
MINIMUM LOT SIZE = 7083 SF IN R-6000 ZONE PORTION  
PERCENT USE FIELD  
PROPOSED USE = RESIDENTIAL DUPLEXES  
PARK REQUIREMENT = 2.4 ACRES (4.3 ACRES DEDICATED)  
CURRENT ZONING = R-6000 AND R-7000; PROPOSED CHANGE TO R-5000  
ON NORTHERN PORTION OF PROPERTY  
NORTH = R-7000  
SOUTH = R-7000  
EAST = RMF & R-7000  
WEST = R-6000 & NC

Project Notes

Park improvements shall include irrigation, tree plantings, and grass seeding.



**ATTACHMENT B**  
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 C**

### **Findings of Fact**

The Planning Board is forwarding the recommended Findings of Fact for Twin Oaks 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 has historically been utilized for pasture land and crop production due to the close proximity of the Billings Bench Water Association (BBWA) canal that courses along the northwest and southwest portion of the property. By virtue of the subdivision being annexed into the City, the conversion of this agricultural land to residential development is appropriate. The subject property is wholly surrounded on all sides by developed properties within the City Limits.

The BBWA is located along the northwest border of the property and a small portion along the southwest corner of the property. As depicted on the plat, the subdivider is proposing to deed Lots 51 and 52, containing a total of approximately 2.56 acres to the BBWA for the canal for maintenance purposes. This is consistent with property that was deeded within Uinta Park Subdivision for the BBWA.

There is a portion of the Holling Drain located along the southeast corner of the property, which is to be relocated into the proposed park as part of this subdivision. As specified within the Subdivision Improvements Agreement (SIA), a 20-foot wide easement will be created with this plat for the drain and its relocation, which shall be approved by the Holling Drain District Board.

##### **2. Effect on local services**

- h. **Utilities** – Water to the subject property will be extended through a 12-inch diameter main line within Twin Oaks Drive and Watson Peak Road from the water main located within Wicks Lane. The subject property is located within the County Water District of Billings Heights and will be subject to their review and approval during the time of construction. As proposed, the Heights Water District finds that the water mains are acceptable, however as required by Condition #6, the property will need to be annexed into the district prior to connecting to the services.

Sanitary sewer will be extended from the existing 12-inch diameter main within the 30-foot easement (proposed parkland dedication) along the eastern border of the subject property. Additional 12-inch main lines will be installed within the interior streets and 8-inch lateral lines will be extended to the proposed lots.

- i. **Stormwater** – As specified in the submitted SIA, stormwater discharge will be provided through a combination of surface drainage, curb and gutters and storm drain piping to the trunk storm drain within Wicks Lane. All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- j. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- k. **Streets** - Access to the proposed subdivision will be via internal roads from Wicks Lane, a principal arterial bordering the northern boundary of the property, and Watson Peak Road and Broadview Drive within Uinta Park Subdivision to the south. The small section of Broadview Drive that connects from Uinta Park Subdivision to the southeast is required to be renamed through a City Council Resolution prior to final plat approval, as required by Condition #1.

The subdivider is proposing three (3) internal streets as part of this subdivision, including Shaw Circle, which is a 645 foot long cul-de-sac off of Twin Oaks Drive and Watson Peak Road. A variance has been requested for the length of the cul-de-sac and the Fire Department finds the proposed length acceptable, as there are two (2) alternative routes into the subdivision via existing City streets. The proposed streets will include a 50-foot right-of-way with a 34-foot wide paved surface from the back of curb to back of curb. 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. Engineering staff is supportive of this variance, as 5-foot easements have been depicted on each side of the street to accommodate sidewalks, street lights, and fire hydrants.

The subject property is to be developed in three (3) phases. The first phase includes lots located on the eastern portion of the property and will include street improvements for Twin Oaks Drive from Wicks Lane to Broadview Drive (street name to be changed). Phase 2 will include the lots located on the northwestern portion of the property and the construction of Shaw Circle. Phase 3 will include the construction of Watson Peak Road with a connection to Uinta Park Subdivision. At this time Watson Peak Road has not been constructed within Uinta Park Subdivision. Therefore, as stated within the SIA, if at the time of Phase 3 development, the road has not been constructed, a 20-foot wide gravel emergency access shall be provided through Lots 1 and 12, Block 3 and the park along the southern portion of the property until such time that the improvements are completed for Uinta Park's portion of Watson Peak Road. This emergency access road shall be reviewed and approved by the Billings Fire Department.

A Traffic Accessibility Study (TAS) was submitted to the Engineering Department for review and approval. The TAS determined that a stop sign is required at the intersection of Wicks Lane and Twin Oaks Drive. All internal streets will be uncontrolled. The

design section for the proposed streets will be reviewed and approved by the Engineering Department.

- l. Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews Drive (Station #6). 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.
- m. Schools** - The subdivision is located within School District #2. No comments have been received from School District #2.
- n. Parks and Recreation** - As part of this major plat, the subdivider is required to provide 2.41 acres of dedicated parkland. The subdivider is proposing to dedicate 4.32 acres of parkland, which is interspersed throughout the subdivision.

As stated within the SIA, a Park Master Plan will be developed and approved by the City Parks and Recreation Department prior to final plat approval. Furthermore, Condition #5 requires that the Park Maintenance District previously created for Uinta Park Subdivision be expanded to include the parks within Twin Oaks 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 #4. 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 that basements are not recommended within this subdivision and that the assessment and mitigation of any soil conditions shall be the responsibility of the lot owner.

The Billings Bench Water User's Association (BBWA) expressed concerns within their review regarding the seepage of the main canal onto the subject property. As stated within the SIA, in order to mitigate groundwater seepage along the canal, the subdivider is proposing an interceptor drain to relocate the water to the storm drain located within Wicks Lane. The design of this drain shall be reviewed and approved by the Engineering Department. A preliminary geotechnical report has been submitted to the Engineering Department for review.



#### **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 within a wildlife migratory route and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner.

#### **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: the BBWA canal, 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: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (p. 6).**

*The subject property is within an urbanized portion of the City and is surrounded by residential and commercial uses.*

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

*The subject property is an infill development within the City and was a county island recently annexed for the purpose of subdividing.*

**d. 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.*

- e. **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 eastern portion of the property.*

## **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 BBWA canal is depicted as a multi-use trail area. Due to the grade where the path would intersect with Wicks Lane, the subdivider is instead proposing a 20-foot easement along the southern boundary of the property to Twin Oaks Drive and north to Wicks Lane within the linear park along the eastern border of the property. In addition, with each phase of development, 4-foot wide boulevard sidewalks will be constructed within the park areas as connections to the future trail. The Alternative Modes Coordinator, as well as the Parks and Recreation Department find that the easement location is acceptable.

### **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 Heights 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 6000 (R-6000) and Residential 5000 (R-5000) zoning districts and shall comply with the standards set forth in Section 27-308, BMCC. The proposed density of the plat complies with the minimum lot size for duplexes, which is 8,000 square feet for the R-5000 zoning district and 7,000 square feet for the R-6000 zoning district.

**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 9 (c) (7)]**

As required by Conditions #2 and #3, the applicant shall provide utility easements, where indicated on the plat review submitted by the Montana-Dakota Utilities Company and Northwestern Energy.

**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 9 (c) (8)]**

Legal and physical access to the proposed subdivision will be provided through internal dedicated right-of-ways from Wicks Lane to the north and Broadview Drive and Watson Peak Road to the South. Internal access is provided by three (3) streets to be dedicated to the public.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Twin Oaks 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, November 28, 2005.

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Charles F. Tooley, Mayor

**ATTACHMENT D**  
Mayor's Approval Letter

November 28, 2005

Twin Oaks Development, LLC  
Wells Fargo Center  
175 North 27<sup>th</sup> Street, Suite 940  
Billings, Montana 59101

Dear Applicant:

On November 28, 2005, the Billings City Council conditionally approved the preliminary plat of Twin Oaks Subdivision. The conditions of approval are as follows:

1. To minimize the effects on local services, the small section of Broadview Drive to its intersection with Twin Oaks Drive at the southeast corner of the property shall be renamed in order to provide a contiguous street. The City Council shall approve a Resolution renaming the street prior to final plat approval. *(Recommended by City Engineering)*
2. To minimize effects on local services, the subdivider shall provide easements on the plat in accordance with the plat review received from Northwestern Energy. *(Recommended by Northwestern Energy)*
3. To minimize effects on local services, the subdivider shall provide easements on the plat in accordance with the highlighted easements indicated on the plat review received from Montana-Dakota Utilities Company. *(Recommended by Montana-Dakota Utilities)*
4. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts 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)*
5. To minimize effects on local services, the Park Maintenance District (PMD) for Uinta Park Subdivision shall be expanded to include the parks within Twin Oaks Subdivision. *(Recommended by the City Parks and Recreation Department)*
6. To minimize effects on local services, the subject property shall be annexed into the Heights Water District prior to final plat approval. *(Recommended by the County Water District of Billings Heights)*
7. 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.

8. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, 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 23-601(m), BMCC, which specifies that dead-end residential streets shall not be longer than 600 feet in length.

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

Sincerely,

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Charles F. Tooley, Mayor

Pc: Mac Fogelsong, Engineering, Inc.

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

## AGENDA ITEM:




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

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TITLE: Preliminary Plat of Bellville Subdivision

DEPARTMENT: Planning and Community Services, Ramona Mattix, AICP, Planning Director

PRESENTED BY: Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** On September 1, 2005, the subdivider applied for preliminary major plat approval for Bellville Subdivision, which contains 22 lots on approximately 7.19 acres of land. The subject property is located north of Wicks Lane, west off of Brewington Lane at the terminus of Kyhl Lane. The subject property is zoned Residential 7000 (R-7000) and is proposed for duplexes. The owners are Steve and Sok Sun Kerns and the representing agent is EEC, 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**

There is no recommendation being forwarded from the Yellowstone County Board of Planning, as the motion resulted in a tie vote. Staff recommended conditional approval of the plat, adoption of the findings of fact, and approval of the requested variances to the Planning Board.

Approved by: City Administrator \_\_\_\_\_ City Attorney \_\_\_\_\_

**ATTACHMENTS**

- E. Preliminary Plat
- F. Site Photographs
- G. Findings of Fact
- H. Mayor's Approval Letter

## **INTRODUCTION**

On September 1, 2005, the Planning Department received a preliminary plat application for Bellville Subdivision. The subject property would contain 22 lots on approximately 7.19 acres of land. The property is zoned R-7000 and is proposed for duplex development. The subject property is bordered on the north by agricultural land, on the south and west by single-family residences, and on the east by single-family residences and duplexes.

On November 8, 2005, a public hearing was conducted by the Planning Board. Discussion at this hearing focused on access to the proposed subdivision, which is via Kyhl Lane from Brewington Drive, accessed from Wicks Lane to the south. Brewington Drive is currently a deteriorating street with potholes and stormwater drainage issues. At its intersection with Kyhl Lane, Brewington Drive is a gravel surface that retains water after storm events and must be manually pumped by the City to drain the water. The Board had concerns with increased traffic on a street where substantial improvements are necessary. They requested that the subdivider pave Kyhl Lane from the subdivision east to Hawthorne Lane, which is a collector status street bordering Brewington Subdivision. The subdivider's representative stated that this would be cost prohibitive, as there is a grade differential and ditch at the intersection of Kyhl Lane and Hawthorne Lane. He also stated that the neighbors expressed concerns regarding continuing Kyhl Lane to the east.

There was further Board discussion that a Special Improvement District (SID) could be potentially be created in the future for Brewington Drive and the expansion of Kyhl Lane and that the subdivider could bond for the improvements until all lot owners along these streets could participate in the cost. There are no immediate plans to improve or extend these streets, therefore it cannot be determined when a Special Improvement District (SID) might be created or whether the creation might be protested by the surrounding lot owners. While the subdivider is not responsible for offsite improvements unless determined necessary based upon data received by a Traffic Accessibility Study (TAS), a subdivider can be required to provide their proportionate share for improvements necessary for infrastructure as a result of the subdivision. In this case, several Board members determined that the subdivider should improve Kyhl Lane east to its intersection with Hawthorne Lane to relieve traffic congestion on Brewington Drive and to mitigate the impacts on public health and safety.

Based on the discussion, the Planning Board was unable to reach a consensus on the required improvements for this subdivision and the motion to conditionally approve the subdivision was a 5-5 tie vote. As such, the Planning Board is forwarding no recommendation. The conditions of approval and Findings of Fact contained within this report are based on the staff recommendation of conditional approval forwarded to the Planning Board for the November 8, 2005, public hearing.

## **PROCEDURAL HISTORY**

- A concept meeting was conducted with the subdivider and their representative on May 26, 2005.

- The preliminary plat application was submitted to the Planning Division on September 1, 2005.
- A departmental review meeting was conducted with the subdivider and their representative on September 22, 2005.
- The preliminary plat was resubmitted with revisions based on the departmental review meeting on October 3, 2005.
- On October 6, 2005, the subdivider submitted a letter requesting that the plat review be delayed to the October 25, 2005, meeting. The Planning Board acknowledged this delay at the October 13, 2005, meeting.
- The Planning Board reviewed the plat on October 25, 2005.
- The Planning Board conducted a public hearing on November 8, 2005, and forwarded no recommendation to the City Council.
- The City Council will consider the preliminary plat on November 28, 2005.

### **BACKGROUND**

General location:	North of Wicks Lane, west off of Brewington Lane at the terminus of Kyhl Lane
Legal Description:	Tract A of Certificate of Survey 485, SE¼ SW¼, Section 14, Township 1N, Range 26E
Subdivider:	Steve and Sok Sun Kerns
Owner:	Same
Engineer and Surveyor:	EEC, Inc.
Existing Zoning:	R-7000
Existing land use:	Single-Family Residence
Proposed land use:	Duplexes
Gross area:	7.14 acres
Net area:	5.20 acres
Proposed number of lots:	22
Lot size:	Max: 9,754 square feet Min.: 9,600 square feet
Parkland requirements:	Subdivider is proposing to provide a cash-in-lieu of parkland dedication.



## **ALTERNATIVES ANALYSIS**

One of the purposes of the City's subdivision review process is to identify potential negative effects of property subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments have reviewed this application and provided input on effects and mitigation. 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 user facilities, local services, the natural environment, wildlife and wildlife habitat and protect public health, safety, the planning staff recommends the following conditions of approval (76-3-608 (3), MCA):

9. To minimize effects on local services, the 30-foot wide portion of Kyhl Lane located along the northern border of proposed Lot 1, Block 3 shall be vacated by the City Council prior to final plat approval. *(Recommended by the City Engineering Department and City-County Planning)*
10. To ensure the provision of easements for the location and installation of utilities, the subdivider shall provide easements on the plat in accordance with the plat reviews received from Northwestern Energy and the Montana-Dakota Utilities Company. *(Recommended by Northwestern Energy and the Montana-Dakota Utilities Company)*
11. To minimize effects on local services, the location of the centralized mailbox delivery shall be reviewed and approved by the post office prior to final plat approval. *(Recommended by the United States Postal Service)*
12. To minimize effects on local services, the subdivider shall provide a cash-in-lieu for the required parkland dedication. *(Recommended by the Parks and Recreation Department)*
13. In order to minimize effects on public health and safety, the 90-degree corner for the proposed emergency access along the southwest portion of the site shall be revised to 40-degrees on the outside of the curve and 20-degrees on the inside to provide an adequate turning radius for emergency vehicles. *(Recommended by the Fire Department)*
14. To minimize effects on local services, an easement document to permit the emergency access and sidewalk across the southern portion of Brewington Park shall be reviewed and approved by the Parks and Recreation Department. The easement shall be depicted on the final plat and the corresponding easement document shall be recorded with the final plat. *(Recommended by the Parks and Recreation 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 City of Billings 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 56-feet of right-of-way for Hesperia Street, Claremore Lane, and Savona Street, 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 there is sufficient room on each side of the paved portion of the street (approximately 11-feet on each side) to accommodate the proposed 5-foot wide boulevard walks, street lights and fire hydrants. 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 to permit 50-feet of right-of-way along the eastern frontage of Lot 1, Block 1, where Section 23-601(k), BMCC requires 60-feet of right-of-way. This variance is to permit Hesperia Street to narrow to 50-feet in width from the adjacent 56-foot width for 145 feet along the eastern border of the lot. The subdivider is requesting this variance, as the existing structure is located approximately 14 feet from the proposed property line and is required to be setback 20-feet from the front property line. By narrowing the right-of-way at this location and providing an easement on the lot for the proposed boulevard sidewalks, an additional 6-feet can be added to the front setback bringing it into compliance with the Unified Zoning Regulations. Planning staff, as well as the Engineering Department, find that the proposed variance is acceptable, as the pavement width of 34-feet for the streets will be maintained and boulevard sidewalks will be provided within the 5-foot easement along the eastern border of the lot. 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**

The Planning Board conducted a public hearing on this item on November 8, 2005. There were two (2) neighboring property owners at the meeting who were concerned with increased traffic on Brewington Lane that would result from the subdivision and whether a Traffic Accessibility Study (TAS) was submitted for the development. The subdivider's representative was present and clarified that a TAS was not required as part of this subdivision application, as there are less than 50 lots. As part of this subdivision, the developer will be paving Kyhl Lane along the northern boundary of the subject property to its intersection with Brewington Drive and installing curb, gutter, and sidewalk on the portion adjacent to the subdivision. These improvements will aid in stormwater drainage at this location.

As discussed within this report, the Planning Board was unable to reach a consensus on the required improvements for this subdivision and the motion to conditionally approve the subdivision was a 5-5 tie vote. As such, the Planning Board is forwarding no recommendation.

The conditions of approval and Findings of Fact contained within this report are based on the staff recommendation of conditional approval forwarded to the Planning Board for the November 8, 2005, public hearing.

#### **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Consistency with the Growth Policy, the 2005 Transportation Plan Update, and Heritage Trail Plan are discussed within the Findings of Fact.

#### **RECOMMENDATION**

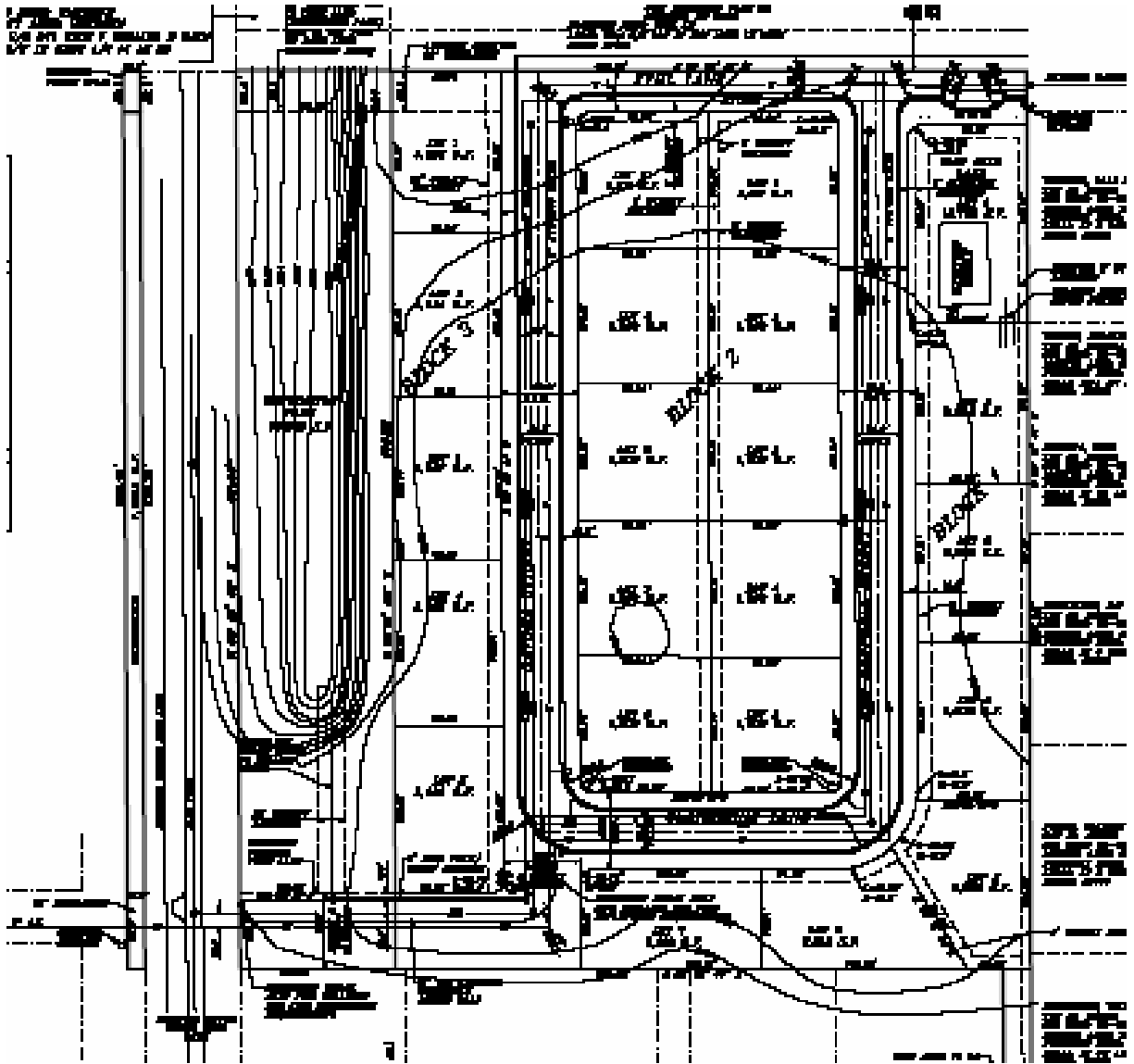
There is no recommendation being forwarded from the Yellowstone County Board of Planning, as the motion resulted in a tie vote. Staff recommended conditional approval of the plat, adoption of the findings of fact, and approval of the requested variances to the Planning Board.

#### **ATTACHMENTS**

- G. Preliminary Plat
- H. Site Photographs
- I. Findings of Fact
- J. Mayor's approval letter

ATTACHMENT A

Preliminary Plat of Bellville Subdivision



**ATTACHMENT B**  
Site Photographs



Figure 1: View along the terminus of Kyhl Lane east toward the single-family residences within Brewington Subdivision.



Figure 2: View southwest across the subject property. The existing outbuilding is located on proposed Lot 1, Block 2 and will be removed upon development.



Figure 3: View south across the property toward adjacent single-family residences within Brewington Subdivision.



Figure 4: View across the southern boundary of the property east toward Brewington Subdivision.





Figure 5: View east from the existing multi-use trail across the subject property. The pictured access from Lynch Lane will serve as a portion of the emergency vehicle access.



Figure 6: View north along Brewington Park. The Holling Drain where Kyhl Lane would intersect is pictured.

## **ATTACHMENT C**

### **Findings of Fact**

The following are recommended Findings of Fact for Bellville Subdivision. 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 and agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and public health and safety? (76-3-608 (3)(a), MCA) (23-304 (c)(1), BMCC)**

**1. Effect on agriculture and agricultural water user facilities**

The land to be subdivided has historically been utilized for pasture land. The subject property contains an existing residence located on the northeast corner of the property. There are no water user facilities apparent onsite.

**2. Effect on local services**

o. **Utilities** – Water to the subject property will be extended from the existing 6-inch diameter main lines within Kyhl Lane to the north and Lynch Lane to the west. The subject property is located within the County Water District of Billings Heights and will be subject to their review and approval during the time of construction. As proposed, the Heights Water District finds that the proposed extensions are acceptable. An 8-inch sanitary sewer main will be connected to the existing sewer main located under the multi-use trail to the west of the subject property. As stated within the Subdivision Improvements Agreement (SIA), the sewer lines will maintain a maximum depth to allow for future development of properties to the north of this subdivision.

p. **Stormwater** – As specified in the submitted SIA, stormwater discharge will be provided through a combination of surface drainage, curb and gutters and storm drain piping to Holling Drain located to the west of this subdivision within Brewington Park. Stormwater inlets will be installed at the street intersections within the subdivision and at the intersection of Kyhl Lane and Brewington Drive. Laterals within the subdivision will connect these inlets to a stormwater main to be installed at the southwest corner of the property and discharged into the Holling Drain. All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.

q. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

r. **Streets** - Access to the proposed subdivision will be via an internal looped road system off of Kyhl Lane via Brewington Drive to the east. The internal streets, Hespera Street, Claremore Lane, and Savona Street, will be 56-feet wide with a 34-



foot back of curb to back of curb paved surface. Though the proposed pavement widths satisfy the standards necessary for emergency vehicle access and traffic circulation, the subdivider has requested a variance to permit 56-feet of right-of-way where 60-feet is required. Engineering staff is supportive of this variance, as there is sufficient room on each side of the paved portion of the street (approximately 11-feet on each side) to accommodate the proposed 5-foot wide boulevard walks, street lights and fire hydrants. Kyhl Lane along the northern boundary of the property will be paved to a 30-foot half-width and boulevard walks will be constructed along the portion of the subdivision bordering the street on the south.

There is a small 30-foot by 80-foot section of Kyhl Lane dedicated right-of-way located along the northern portion of proposed Lot 1, Block 3. As required by Condition #1, this portion of the street shall be vacated by the City Council prior to final plat approval. During the concept meeting there was discussion regarding the possibility of constructing Kyhl Lane across the northern portion of the site to connect with the existing western portion of Kyhl Lane. However, the Holling Drain within Brewington Park at this location is very deep and wide and is not conducive to construction.

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews Drive (Station #6). 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.

The Billings Fire Department reviewed this application and requested that the subdivider provide a secondary access to the subdivision from Lynch Drive to the west. As such, the subdivider is proposing a 55-foot wide emergency vehicle access along the southwest corner of the site from Claremore Lane. The travel way will be 20-feet in width, with 15-feet constructed to an all weather gravel standard that can adequately support a 40-ton vehicle. The additional 5-feet will be a concrete path capable of supporting a 40-ton vehicle located on the outer edge of the road to connect with the existing multi-use trail located adjacent to the west of Brewington Park. As specified within the SIA, a cross-sectional design of this emergency vehicular access shall be provided for review and approval by the Fire and Engineering Departments prior to construction. As proposed, the emergency access is depicted as a 90-degree angle from Savona Street where it connects with the property to the west. In order to provide an adequate turning radius for emergency vehicles, Condition #5 requires that the 90-degree angle on the proposed access road be revised to a 40-degree angle on the outside of the road and 20-degree angle on the inside.

The emergency vehicle road and path will continue across the park to connect with the existing bike path and gravel access point from Lynch Drive. As required by Condition #6, an easement document to construct the path and emergency vehicle

access across Brewington Park shall be reviewed and approved by the Parks and Recreation Department and recorded with the final plat. As stated within the SIA, breakaway pipe bollards and a sign stating “EMERGENCY ACCESS ONLY” will be provided at each end of the emergency access road to prevent vehicular traffic. The proposed concrete path will remain unobstructed for pedestrian and bicycle traffic.

- f. **Schools** – The subdivision is located within School District #2. No comments have been received from School District #2.
- g. **Parks and Recreation** – As part of this major plat, the subdivider is required to provide 0.57 acres (24,829 square feet) of dedicated parkland. The subdivider is proposing to provide cash-in-lieu for the parkland dedication.
- i. **Mail Delivery** - As depicted on the plat, the subdivider has provided a centralized mail delivery location with a pullout as requested in the United States Postal Service preliminary review of this application. Condition #3 requires the proposed location for the centralized mailbox be reviewed and approved by the postal service prior to final plat approval.

### **3. Effect on the natural environment**

The Soil Survey of Yellowstone County indicates that the soils in this area consist of predominately clay soils overlying gravels, which will provide a sufficient base for construction. As indicated in the SIA, a geotechnical study will be submitted for review and approval by the Engineering Department prior to the submission of the final plat. Furthermore, a standard condition has been added to the SIA regarding the soil conditions within the area and that a geotechnical report may be required prior to construction on the lots.

### **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 located near prime deer and antelope habitat and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner.

### **5. Effect on the public health and safety**

There are no known health or safety hazards on the property. This property is not within a mapped floodway or flood zone.

## **B. Was an Environmental Assessment required? (76-3-603, MCA) (23-304 (c)(1), BMCC)**

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 2005 Transportation Plan Update, and the Heritage Trail Plan? (23-304 (c)(3), BMCC)**

**1. Yellowstone County-City of Billings 2003 Growth Policy**

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

- b. **Goal: More housing and business choices within each neighborhood (Land Use Element Goal, Page 6).**

*The proposed subdivision would provide for more housing choices within this portion of the city.*

- f. **Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (Land Use Element Goal, Page 6).**

*The subject property is within an urbanized portion of the City and is surrounded by residential uses alike in character to the proposed duplex development.*

- g. **Goal: Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, Page 6).**

*The subject property is an infill development within the City.*

- h. **Goal: Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 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.*

- i. **Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness (Open Space and Recreation Goal, Page 9).**

*The subdivider is proposing a sidewalk connection to the existing trail located adjacent to the west of the subject property.*

**2. The 2005 Transportation Plan Update**

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update 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. There is a multi-use trail located adjacent to Brewington Park to the west of the subdivision. As part of this plat, the subdivider is proposing a 5-foot wide sidewalk along the emergency vehicle access along the southwest portion of the site to connect to the existing trail. The proposed sidewalk will continue across Brewington Park along with the emergency vehicle access.

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

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? (23-304 (c)(5), BMCC)**

The subdivision will utilize Heights Water, City sanitary sewer, and City solid waste collection and disposal services. All services are approved and regulated by state and federal authorities.

#### **G. Does the proposed subdivision conform to all requirements of the zoning in effect? (23-304 (c)(6), BMCC)**

The subject property is located within the Residential 7000 (R-7000) zoning district and shall comply with the standards set forth in Section 27-308, BMCC. The proposed density of the plat complies with the minimum lot size for duplexes, which is 9,600 square feet for the R-7000 zoning district.

#### **H. Does the proposed plat provide easements for the location and installation of any utilities? (76-3-608 (3)(c), MCA) (23-304 9 (c) (7), BMCC)**

As required by Condition #2, the applicant shall provide utility easements, where indicated on the plat review submitted by the Montana-Dakota Utilities Company and Northwestern Energy.

**I. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? (76-3-608 (3)(d), MCA) (23-304 9 (c) (8), BMCC)**

Legal and physical access to the proposed subdivision will be provided through a looped road system from Kyhl Lane via Brewington Drive.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Bellville 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, November 28, 2005.

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Charles F. Tooley, Mayor

**ATTACHMENT D**  
Mayor's Approval Letter

November 28, 2005

Steve and Sok Sun Kerns  
1052 Kyhl Lane  
Billings, Montana 59105

Dear Applicant:

On November 28, 2005, the Billings City Council conditionally approved the preliminary plat of Bellville Subdivision, subject to the following eight (8) conditions of approval:

1. To minimize effects on local services, the 30-foot wide portion of Kyhl Lane located along the northern border of proposed Lot 1, Block 3 shall be vacated by the City Council prior to final plat approval. *(Recommended by the City Engineering Department and City-County Planning)*
2. To ensure the provision of easements for the location and installation of utilities, the subdivider shall provide easements on the plat in accordance with the plat reviews received from Northwestern Energy and the Montana-Dakota Utilities Company. *(Recommended by Northwestern Energy and the Montana-Dakota Utilities Company)*
3. To minimize effects on local services, the location of the centralized mailbox delivery shall be reviewed and approved by the post office prior to final plat approval. *(Recommended by the United States Postal Service)*
4. To minimize effects on local services, the subdivider shall provide a cash-in-lieu for the required parkland dedication. *(Recommended by the Parks and Recreation Department)*
5. In order to minimize effects on public health and safety, the 90-degree corner for the proposed emergency access along the southwest portion of the site shall be revised to 40-degrees on the outside of the curve and 20-degrees on the inside to provide an adequate turning radius for emergency vehicles. *(Recommended by the Fire Department)*
6. To minimize effects on local services, an easement document to permit the emergency access and sidewalk across the southern portion of Brewington Park shall be reviewed and approved by the Parks and Recreation Department. The easement shall be depicted on the final plat and the corresponding easement document shall be recorded with the final plat. *(Recommended by the Parks and Recreation Department and City-County Planning)*

7. 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.
8. The final plat shall comply with all requirements of the City of Billings 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 56-feet of right-of-way, where Section 23-601(k), BMCC, requires 60-feet of right-of-way for local residential streets.
- 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.

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

Sincerely,

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Charles F. Tooley, Mayor

Pc: Quentin Eggart, EEC, Inc.

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



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

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**SUBJECT:** Municipal Judge Salary  
**DEPARTMENT:** Municipal Court  
**PRESENTED BY:** Tina Volek, Interim City Administrator

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**PROBLEM/ISSUE STATEMENT:** The base salary for the municipal judge has not been adjusted since July 1, 1999.

**RECOMMENDATION**

Staff recommends that Council approve adjustment of the base salary for the position of municipal judge to \$91,250.00, and to provide longevity pay for years of service.

**Approved By:**        **City Administrator** \_\_\_\_        **City Attorney** \_\_\_\_

**ATTACHMENTS**

- A – Memo to City Administrator
- B – Resolution No. 02-17861
- C – Department head salary matrix
- D – Salary survey of state judges in courts of limited jurisdiction
- E – Proposed resolution for adjustment of base salary



## **MEMORANDUM**

**Date:** November 10, 2005  
**To:** Tina Volek, City Administrator  
**From:** Mary Jane Knisely, Municipal Court Judge  
**Re:** Salary  
**Cc:** File

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### **Municipal Court Judge Salary History**

I was sworn in as Municipal Court Judge in January 1998. At that time, a significant case backlog existed. By statute, a misdemeanor case must be dismissed if not tried within 180 days of arraignment. Many cases were set five days prior to the 180-day speedy trial deadline. The backlog presented administrative problems to the attorneys and the Court. It was also extremely costly to the City and to the victims of crimes, as those going unadjudicated were not paying fines or restitution.

To alleviate the backlog, I held numerous weeks of double court and trials to reduce the pending caseload and established a 60/90-day expedited trial disposition track in accordance with the American Bar Association Trial Court Performance Standards. Revenue increased significantly, as did the quality of justice. Six months into my term, City Administration gave me a 3% cost of living allowance plus a 1% salary increase, which was the first merit acknowledgement ever for this position.

The following year, Administration, Human Resources and the Finance Department approached me about assuming the supervision duties for the Clerk of Court Division. I accepted supervision responsibilities for this Division and agreed to serve as a department head. The Human Resource Director surveyed other cities and increased my salary 4.5% plus 3% COLA as of July 1, 1999. This is the last time the base salary for the municipal judge has been adjusted.

In July of 2000, the COLA increase was overlooked. In July of 2001, I was given a 6.9% increase; 3% to make up for the 2000 COLA that was skipped and the allotted 3.9% COLA determined for the 2001 budget year. The 3% COLA from 2000 was not adjusted retroactively. In July 2002, the City Administrator drafted a resolution to ensure that COLA adjustments would be made to the municipal judge salary each year. That resolution is attached for your reference. Since that time, I have received COLA adjustments at the rate designated for non-union management employees in July of 2002, 2003, 2004 and 2005.

## **Jurisdiction, Duties and Goals**

The Billings Municipal Court's jurisdiction and responsibilities continue to expand. As the largest court of record in the state, we handle nearly 30,000 cases annually. These include criminal misdemeanors occurring within the city limits, city ordinance violations, and civil cases with up to \$7,500 in damages.

In addition, the Supreme Court has held that the five Municipal Courts in the state can now adjudicate mental health cases and commitment to the state mental hospital, as well as establish drug courts. As a result, in 2004 I applied for and received an implementation grant from the Bureau of Justice Assistance and now preside over the state's first misdemeanor drug court. The number of cases filed in Municipal Court with mental health issues is growing at a rapid rate due to the numerous cuts in statewide mental health services. I was recently invited to and attended a training to establish a mental health court during the next year, pending available Federal funding.

In 2002, I was appointed by the Montana Supreme Court to serve as the large city jurisdiction representative to the Commission on Courts of Limited Jurisdiction. This Commission is responsible for training and setting policy and ethical standards for the 120 courts of limited jurisdiction across the state.

In 2003, I was appointed by the Montana Supreme Court to the Equal Justice Task Force whose mission, together with the State Bar, is to provide equal access to courts and legal representation for litigants regardless of income, disability, language or geographic location.

I have departmental duties, including supervisory, administrative and budgetary expectations that equal other City department heads. In 2004, I was able to secure \$250,000 in funding through the Supreme Court for a new court case management software system and all new hardware for the clerk's office. The conversion was completed in April of 2005. The new case management software, Full Court, offers better tracking of individual cases, increased ability to create a variety of reports and better financial accounting.

During my term in office, I have implemented a night court schedule to accommodate citizens who work or attend school during business hours. I have conducted warrant roundups annually to reduce the accounts receivable, increase revenue and reduce the number of outstanding warrants in the Police Department. I have implemented a program in which overdue fine accounts are sent to a collection agency. As a result of these efforts, revenue for the last fiscal year was \$1,426,384.00. This is double the amount realized by the Municipal Court when I took office eight years ago.

My annual salary is now \$71,468.80. This is computed at \$34.36 per hour. This rate is just \$.04 shy of step one of the department head matrix, which begins at \$34.40 per hour and ends at step seven with an hourly rate of \$46.10. In addition, department heads receive annual longevity pay, sick and vacation leave, and PERS deferred compensation programs proportionately.

I have been the Municipal Judge for eight years, making the length of my association with the City a total fifteen years. I have just been elected to a third four-year term to this office with an 89.25% retention vote. I would like you to consider my performance, dedication, community involvements and commitment to the Municipal Court. Also, for your reference, I have attached the only self-evaluation I have ever been asked to do in my fifteen years with the City.

At this time, I am asking for a salary base increase in addition to the annual COLA I am given each year. This request is commiserate with other department heads in Billings, the largest city in the state. In surveying other courts of limited jurisdiction throughout the state, I find that the majority handle a caseload significantly smaller than that of Billings Municipal Court, and many have no additional departmental administrative duties. I also learned that judges' base salaries are reviewed and adjusted annually, in addition to COLA. The chart attached provides a snapshot of this information.

This office of municipal judge heads the arm of one of the three branches of government within the City. The salary established for this position should reflect the honor and respect for the judiciary in the eyes of the litigants and attorneys who appear before the Court and the citizens that it serves.

In light of the volume of cases filed in Billings Municipal Court, the management and departmental duties involved with my position and the contributions that I have made to the department, I believe that my position merits a base annual salary equivalent to that of other department heads who have served the City for the same number of years.

After reviewing the department head matrix and comparing the salaries of other judges in courts of limited jurisdiction in Montana, I believe a fair salary is approximately \$91,250.00. This is comparable to the hourly rate of either step seven (\$43.86) of the lower tier of department heads or step six (\$43.91) of the upper tier.

The upper tier includes all City Public Safety department heads, such as Police, Fire, and the City Attorney. As I am charged with supervision of the judicial branch of the City government, and required to be an attorney, my duties are comparable to those department heads listed in the upper tier of the matrix. In addition, the Court handles revenue associated with City services, comparable to Public Works/Utilities and Aviation/Transit.

Further, the municipal court judge should receive longevity pay for years of service, similar to the City system or the system provided by Yellowstone County to the Justices of the Peace.

Thank you for your consideration in this matter. It is agreed that his position has been long under-funded. I look forward to working with you to resolve this problem.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL, AUTHORIZING A CHANGE  
IN THE ANNUAL SALARY OF THE POSITION OF MUNICIPAL JUDGE

WHEREAS, Municipal Judge Mary Jane Knisely has been duly elected by the citizens of the City of Billings as the Municipal Judge in 1997, 2001 and 2005; and

WHEREAS, Municipal Judge Mary Jane Knisely has performed commendably for the City of Billings;

and

WHEREAS, the position of Municipal Judge is crucial to the success of City law enforcement efforts,

and

WHEREAS, it is in the best interest of the citizens of Billings that the position of Municipal Judge continue to attract quality candidates willing to serve in this fundamental position,

and

WHEREAS, the City Council has the authority pursuant to MCA Section 3-6-203(2001) and Billings Montana City Code Section 10-205 to establish the salary of the Municipal Judge,

NOW, THEREFORE, WE THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, do hereby resolve as follows:

1. That the base salary for the Municipal Judge, Mary Jane Knisely, shall be set at \$91,250.00.
2. That the base salary for Municipal Judge, Mary Jane Knisely, shall continue to be reviewed annually for adjustment.
3. That the base salary for Municipal Judge, Mary Jane Knisely, shall continue to be adjusted annually with the same COLA authorized by the City Council for non-union management employees of the City through the budget adoption process.
4. That the Municipal Judge, Mary Jane Knisely, shall receive the longevity benefits authorized for City employees.

PASSED AND APPROVED this \_\_\_\_ day of November, 2005.

The City of Billings

By: \_\_\_\_\_  
Charles F. Tooley, Mayor

ATTEST:

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

<b>City</b>	<b>Type of Court City/Municipal</b>	<b># Judges</b>	<b>Attorney Y/N</b>	<b>Total Court Caseload</b>	<b>Judge Salary</b>	<b>Annual Base Salary Adjustment Y/N</b>	<b>Ad B</b>
<b>Bozeman</b>	Municipal	1	Yes	15,147	<b>\$71,014</b>	Yes	Deferr 457 pl salary City
<b>Butte</b>	City	1	No	6,726	<b>\$39,956</b>	Yes	
<b>Flathead County</b>	Justice	1.5	Yes	14,502	<b>\$78,898</b>	Yes	
<b>Gallatin County</b>	Justice	2	No	13,110	<b>\$59,493</b>	Yes	
<b>Great Falls</b>	Municipal	1	Yes	14,307	<b>\$67,064</b>	Yes	
<b>Helena</b>	City	1	No	9,365	<b>\$39,073</b>	Yes	
<b>Kalispell</b>	Municipal	1	Yes	4,608	<b>\$63,900</b>	Yes	
<b>Missoula</b>	Municipal	1.5	Yes	28,791	<b>\$72,508</b>	Yes	
<b>Yellowstone County</b>	Justice	2	1 Yes 1 No	17,383	<b>\$53,112</b>	Yes	Longe equal t base s each y service

***Contact information:***

*Bozeman* 582-2336  
*Kalispell* 785-7757  
*Butte* 497-6430  
*Missoula* 258-4703  
*Flathead County* 758-5523  
*Yellowstone County* 256-2705

*Gallatin County* 582-3045  
*Great Falls* 455-8466  
*Helena* 447-8404

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