

# 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

December 12, 2005

6:30 P.M.

CALL TO ORDER – Mayor Tooley

PLEDGE OF ALLEGIANCE – Mayor Tooley

INVOCATION – Councilmember Peggy Gaghen

ROLL CALL

MINUTES – November 28, 2005

COURTESIES

PROCLAMATIONS

BOARD & COMMISSION REPORTS

ADMINISTRATOR REPORTS – Tina Volek

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, and #4 through #9**

**ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

**CONSENT AGENDA:**

**1. A. Mayor’s Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.	<b>Recommendations to be made at meeting</b>	Board of Adjustment	01/01/06	12/31/09
2.		Board of Adjustment	01/01/06	12/31/09
3.		Board of Adjustment	01/01/06	12/31/09
4.		Board of Appeals	01/01/06	12/31/09
5.		Board of Appeals	01/01/06	12/31/09
6.		Board of Ethics	01/01/06	12/31/09
7.		Board of Health	01/01/06	12/31/08
8.		City/County Planning Board	01/01/06	12/31/07

9.	Community Development Board	01/01/06	12/31/09
10.	Community Development Board	01/01/06	12/31/09
11.	Community Development Board	01/01/06	12/31/07
12.	EMS Advisory Commission	01/01/06	12/31/09
13.	EMS Advisory Commission	01/01/06	12/31/09
14.	Housing Authority	01/01/06	12/31/10
15.	Housing Authority	01/01/06	12/31/07
16.	Human Relations Commission	01/01/06	12/31/09
17.	Parking Advisory Board	01/01/06	12/31/09
18.	Parking Advisory Board	01/01/06	12/31/09
19.	Parking Advisory Board	01/01/06	12/31/09
20.	Parks/Rec/Cemetery Board	01/01/06	12/31/09
21.	Parks/Rec/Cemetery Board	01/01/06	12/31/09
22.	Police Commission	01/01/06	12/31/08
23.	Public Utilities Board	01/01/06	12/31/09
24.	Public Utilities Board	01/01/06	12/31/09
25.	Traffic Control Board	01/01/06	12/31/09
26.	Traffic Control Board	01/01/06	12/31/09
27.	Yellowstone Historic Preservation Board	01/01/06	12/31/07

11\* - Unexpired term of Dorothy Nelson (At Large)

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

**B. Awards:**

**(1) Seven (7) new 40-Cubic yard Capacity Roll-Off Containers.** (Opened 11/22/05). (Delayed from 11/28/05). Recommend Rule Steel, \$48,580.00.  
[\(Corresponding Staff Memo B1\)](#)

**(2) Parking Enforcement Handheld Computers and Management Software.** (Opened 11/29/05). Recommend Cardinal Tracking, Inc., \$58,192.00.  
[\(Corresponding Staff Memo B2\)](#)

**C. Amendment #4, Professional Services Contract, W.O. 00-15: Grand Avenue Widening from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West, Kademas, Lee & Jackson, \$93,946.77.**  
[\(Corresponding Staff Memo C\)](#)

**D. Amendment #1, Cobb Field Stadium Design and Feasibility Study Consultant Contract, HNTB Montana Inc., \$20,000.00.**  
[\(Corresponding Staff Memo D\)](#)

**E. Amendment #1, Non-Commercial Aviation Ground Lease**, Agri-Systems Inc., increase leasehold size, \$895.00/year.

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

**F. Amendment #1, Non-Commercial Aviation Ground Lease**, Sarpy Creek Land Company, LLC, change the leasehold legal description and location by moving the leasehold twenty feet to the north, \$0.00.

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

**G. Contract for Professional Services**, Wastewater Plant Air Quality Permit, Brown and Caldwell, \$32,751.00.

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

**H. Grazing Lease** with Aaron Meyer, 205 acres adjacent to the Landfill, \$615.00/year, term: 5 years with option to renew for one additional 5-year term.

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

**I. W.O. 05-10: Stewart Park Trail – Billings**, Federal Aid No. STPE 1099(40), Contract for Professional Engineering Services, Engineering, Inc., \$51,043.00. (Delayed from 11/28/05)

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

**J. W.O. 05-12: Big Ditch Trail – Billings**, Federal Aid No. STPE 1099(49), Contract for Professional Engineering Services, Engineering, Inc., \$33,356.00. (Delayed from 11/28/05)

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

**K. Resolution** authorizing construction bids for SID 1372: Summerhill Subdivision for construction of curb and gutter, sanitary sewer mains, sanitary sewer services, water mains, water services, and necessary street improvements fronting lots on Winter Green Drive, West Antelope Trail, and Antelope Place.

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

**L. Second/final 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.

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

**M. Second 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 and Diane McLennaghan, applicants and Tom Mulford, agent. Approval of the zone change and adoption of the determinations of the 12 criteria.

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

**N. Second reading ordinance for 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.

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

**O. Second reading ordinance** amending Section 2-204 of the BMCC, providing that the Deputy Mayor and Deputy Mayor Pro Tempore be elected at the City Council's first regular meeting following each City general election.

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

**P. Preliminary Plat** of Copper-Falcon Subdivision generally located west of Molt Road, south of Phipps Park, fronting the north side of Rimrock Road, between 6<sup>th</sup> and 66<sup>th</sup> Streets West, Golden Acres Partners, owners, conditional approval of the plat and adoption of the findings of fact and conditions of approval.

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

**Q. Preliminary Plat** of Copper Ridge Subdivision, 2<sup>nd</sup> Filing, generally located north of Rimrock Road and about ¼ mile west of the intersection of Molt Road and Rimrock Road, Gary E. Oakland, owner, conditional approval of the plat, approval of the variance and adoption of the findings of fact.

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

**R. Preliminary Plat** of Kingston Place Subdivision, generally located south of the intersection of Wicks Lane and Bench Boulevard, directly north of Anchor Avenue, Kings Heights LLC, owners, conditional approval of the plat, approval of the variances and adoption of the findings of fact.

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

**S. Bills and Payroll.**

(1) November 14, 2005

[\(Corresponding Staff Memo S1\)](#)

(2) November 18, 2005

[\(Corresponding Staff Memo S2\)](#)

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

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION** annexing a 0.91-acre parcel of property located on the east side of Blue Creek Road at the intersection of Santiago Blvd, described as Tract 1C, C/S 566, Tract 1 2<sup>nd</sup> Amended (and all adjacent right-of-way of Montana Highway #416 (Blue Creek Road)), Jeffrey V. Essmann, petitioner, Annex #05-10. (Delayed from 11/14/05 at request of petitioner.) Staff recommends approval of the public services report and resolution. **(Action:** approval or disapproval of Staff recommendation.)

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

**3. PUBLIC HEARING AND RESOLUTION** renaming 34<sup>th</sup> Street West between Colton Boulevard and Grand Avenue to Zimmerman Trail. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

4. **COMMITTEE RECOMMENDATION** for amending BMCC Sections 18-302 and 27-601 by adding definitions, providing for the allowance of restoration project vehicles and providing for a procedure whereby property owners may store such vehicles for limited periods of time, establishing an effective date and providing a severability clause. Citizen's Committee on Antique and Classic Car Restoration recommends approval. (**Action:** approval or disapproval of Committee recommendation.)  
[\(Corresponding Staff Memo 4\)](#)
5. **INNER BELT LOOP PLANNING STUDY.** Staff recommends supporting the study. (**Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 5\)](#)
6. **REVISED DRAFT INTERLOCAL LIBRARY AGREEMENT.** Ad Hoc Library Interlocal Agreement Committee recommends approval of the revised draft agreement and submitting the approved agreement to the Board of County Commissioners. (**Action:** approval or disapproval of Ad Hoc Library Interlocal Agreement Committee recommendation.)  
[\(Corresponding Staff Memo 6\)](#)
7. **2005-06 CTEP PROJECT APPLICATIONS.** Staff recommends the Council formulate a recommendation so the Mayor can take it to the Policy Coordinating Committee (PCC) meeting. (**Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 7\)](#)
8. **RESOLUTIONS** adopting three (3) property tax incentive programs and operating guidelines:
  - (A) Resolution creating a Tax Incentive Program for New and Expanding Industry.
  - (B) Resolution creating a Tax Incentive Program for Remodeling, Reconstructing or Expanding Buildings or Structures and repealing Resolution 89-16126.
  - (C) Resolution creating a Tax Incentive Program for Remodeling, Reconstructing or Expanding Certain Commercial Property.Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 8\)](#)
9. **LEGAL SERVICES** to review the Tussing Settlement Agreement. Recommendation to be made at meeting.  
[\(Corresponding Staff Memo 9\)](#)
10. **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**

## **EXECUTIVE SESSION: EVALUATION of Interim City Administrator**

A



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, DECEMBER 12, 2005**

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**SUBJECT:** **Boards & Commissions –Appointments and Reappointments**

**DEPARTMENT:** **City Administrator's Office**

**PRESENTED BY:** **wynnette Maddox, Administration**

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**PROBLEM/ISSUE STATEMENT:** Confirmation of appointments for Boards and Commission positions that are either vacant or up for re-appointment. Term expiration dates on these vacancies are December 31, 2005 and the positions must be filled.

**FINANCIAL IMPACT:** No financial impact involved.

**RECOMMENDATION**

Recommendation to be made at meeting.

	Name	Board/Commission	Term	
			Begins	Ends
1.		Board of Adjustment	01/01/06	12/31/09
2.		Board of Adjustment	01/01/06	12/31/09
3.		Board of Adjustment	01/01/06	12/31/09
4.		Board of Appeals	01/01/06	12/31/09
5.		Board of Appeals	01/01/06	12/31/09
6.		Board of Ethics	01/01/06	12/31/09
7.		Board of Health	01/01/06	12/31/08
8.		City/County Planning Board	01/01/06	12/31/07
9.		Community Development Board	01/01/06	12/31/09
10.		Community Development Board	01/01/06	12/31/09
11.		Community Development Board	01/01/06	12/31/07
12.		EMS Advisory Commission	01/01/06	12/31/09
13.		EMS Advisory Commission	01/01/06	12/31/09
14.		Housing Authority	01/01/06	12/31/10
15.		Housing Authority	01/01/06	12/31/07

16.	Human Relations Commission	01/01/06	12/31/09
17.	Parking Advisory Board	01/01/06	12/31/09
18.	Parking Advisory Board	01/01/06	12/31/09
19.	Parking Advisory Board	01/01/06	12/31/09
20.	Parks/Rec/Cemetery Board	01/01/06	12/31/09
21.	Parks/Rec/Cemetery Board	01/01/06	12/31/09
22.	Police Commission	01/01/06	12/31/08
23.	Public Utilities Board	01/01/06	12/31/09
24.	Public Utilities Board	01/01/06	12/31/09
25.	Traffic Control Board	01/01/06	12/31/09
26.	Traffic Control Board	01/01/06	12/31/09
27.	Yellowstone Historic Preservation Board	01/01/06	12/31/07

11\* - Unexpired term of Dorothy Nelson (At Large)

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

Attachment

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



## CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**  
**Monday, December 12, 2005**

**TITLE:** Approval of 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

**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>. The five bids received are summarized as follows:

<b><u>BIDDER</u></b>	<b><u>AMOUNT</u></b>
Rule Steel	\$48,580
Solid Waste Systems, Inc.	\$54,243
WasteCo Supply	\$59,150
Capital Industries, Inc.	\$63,000
WasteQuip/May Mfng	\$66,801

**FINANCIAL IMPACT:** The Solid Waste Division budget includes adequate funds to purchase seven replacement roll-off boxes.

### **RECOMMENDATION**

Staff recommends that Council award the contract to purchase seven 40 cubic yard roll-off boxes to Rule Steel for \$48,580.

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

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**  
**Monday, December 12, 2005**

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**TITLE:** Replacement of Parking Enforcement Handheld Computers and Management Software

**DEPARTMENT:** Administrative Services – Parking Division

**PRESENTED BY:** Liz Kampa-Weatherwax, Parking Division Director

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**PROBLEM/ISSUE STATEMENT:** Replacement has been slated for the parking enforcement handheld computers and management software. Replacement is needed due to the equipment's age and inoperability. As required by law, this contract was advertised for competitive bidding on November 10 and 17, 2005. The mandatory pre-bid meeting was held on November 22, 2005, and four companies were represented. The bid opening was held on Tuesday, November 29, 2005, and the following bids were received for this contract:

- 1) T2 Systems, Inc. - \$67,808.67
- 2) Cardinal Tracking, Inc. - \$58,192.00

Staff included a request for an optional price for a permit processing system in the bid packet. Because the project is over budget, the permit system, if needed, will be addressed at a later date.

#### **ALTERNATIVES ANALYZED:**

- Approve a contract to complete the replacement of the parking enforcement handheld computers and management software.
- Re-advertise for bids for this project.
- Continue to use the existing equipment. This would mean replacing equipment on a piece by piece basis as needed, which would be costly and time-consuming.

**FINANCIAL IMPACT:** \$50,000 has been budgeted for this project for FY06 through the Technology Replacement Plan. The difference will be made up in savings from other areas of the budget.

**RECOMMENDATION**

Staff recommends that Council award the contract to replace the parking enforcement handhelds and management software to Cardinal Tracking, Inc. in the total amount of \$58,192.00.

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

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C

**AGENDA ITEM:**



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 12, 2005**

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**TITLE:** Amendment #4 to Professional Services Contract for W.O. 00-15 Grand Avenue Widening from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** The City of Billings entered into a contract with Kadrmas, Lee & Jackson for design services for W.O. 00-15 Grand Avenue on April 9, 2001, totaling \$415,802.47. Three previous contract amendments for additional design details and right-of-way negotiations have been approved for a total of \$42,937.00. Right-of-Way negotiations have reached an impasse with 5 property owners. To avoid further delay of this project, Kadrmas, Lee & Jackson was asked to provide the city with a contract amendment to redesign the Grand Avenue project to widen to five lanes in areas that the right-of-way has been acquired and reconstruct Grand Avenue with the existing four-lane section in the other areas. The City has acquired the necessary right-of-way from 8<sup>th</sup> Street West to the Taco Bell site located at 1026 Grand Avenue. Contract Amendment #4 will provide the necessary design services to complete this project. The total cost of this amendment will be \$93,946.77.

**ALTERNATIVES ANALYZED:**

1. Approve Amendment #4 to the professional services contract for W.O. 00-15 Grand Avenue with Kadrmas, Lee & Jackson in the amount \$93,946.77.
2. Do not approve Amendment #4 to the professional services contract for W.O. 00-15 Grand Avenue with Kadrmas, Lee & Jackson.

**FINANCIAL IMPACT:** The total cost of this contract amendment is \$93,946.77 and will be paid for with Gas Tax Dollars allocated for this project.

**RECOMMENDATION**

Staff recommends that Council approve Amendment #4 to the professional services contract for W.O. 00-15 Grand Avenue with Kadrmas, Lee & Jackson in the amount \$93,946.77.

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

**ATTACHMENTS**

A. W.O. 00-15 Grand Avenue Contract Amendment #4

## **INTRODUCTION**

Work Order 00-15 Grand Avenue was designed to 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 two years. The Right-of-Way needed was identified on the design plans for the project and must be acquired prior to construction.

## **PROCEDURAL HISTORY**

If the proposed contract amendment is approved, Kadrmas, Lee, and Jackson will proceed with the redesign of Grand Avenue. The project will bid in February 2006 with construction starting in March 2006. The construction is anticipated to be completed by August 2006.

## **BACKGROUND**

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. Unfortunately, Right-of-Way negotiations have reached an impasse with 5 property owners. Continuing with negotiations or condemning the properties needed would further delay the Grand Avenue Project indefinitely. This section of Grand Avenue has deteriorated to a point of making it non-maintainable, and it can't sustain many more seasons without being reconstructed. The proposed contract amendment would redesign Grand Avenue project to widen to five lanes in areas that the right-of-way has been acquired and reconstruct Grand Avenue with the existing four-lane section in the other areas. This will allow for construction to begin early spring 2006 with completion around August 2006.

## **ALTERNATIVES ANALYSIS**

Approve Amendment #4 to the professional services contract for W.O. 00-15 Grand Avenue with Kadrmas, Lee & Jackson in the amount \$93,946.77. Under this option, Kadrmas, Lee, and Jackson will proceed with the redesign of Grand Avenue to be bid February 2006.

Do not approve Amendment #4 to the professional services contract for W.O. 00-15 Grand Avenue with Kadrmas, Lee & Jackson. Under this option, further negotiations or condemnation will be necessary to obtain the necessary right-of-way to complete the project. This will delay the project indefinitely.

## **RECOMMENDATION**

Staff recommends that Council approve Amendment #4 to the professional services contract for W.O. 00-15 Grand Avenue with Kadrmas, Lee & Jackson in the amount \$93,946.77.

## **ATTACHMENTS**

A. W.O. 00-15 Grand Avenue Contract Amendment #4

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D

**AGENDA ITEM:**



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 12, 2005**

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**TITLE:** Cobb Field Stadium Design and Feasibility Study Consultant Contract – Amendment No. 1

**DEPARTMENT:** Parks, Recreation, and Public Lands Department

**PRESENTED BY:** Gene Blackwell, Interim Director, PRPL Department

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**PROBLEM/ISSUE STATEMENT:** The City Of Billings is recommending an amendment to the Cobb Field Stadium Design and Feasibility Study Consultant Contract with HNTB Montana Inc. The original contract was for a feasibility study and preliminary design for the reconstruction or replacement of Cobb Field. The first phase of this project retained the services of HNTB Montana Inc. to perform a stadium feasibility study, prepare a stadium conceptual plan and cost estimate and submit findings and recommendation to the City Council which has been completed. The amendment (see Attachment A) to the original contract will extend the contract an additional seventy-five (75) days to develop and conduct a program to elicit feedback from the residents of Billings as to their willingness to support a new ballpark project and to determine what type of ballpark they would want to support. The consultant will provide to the City a report that summarizes and analyzes the feedback received from a series of community meetings, discuss the efforts at developing a campaign strategy and provide insight as to the type of ballpark the community will be willing to support and the bond levy that will achieve that goal. This report would be delivered the last week of February 2006.

**FINANCIAL IMPACT:** Amendment No. 1 increases the amount of the professional services contract by \$20,000.00. Funding for the additional services is available by budget adjustment from the Park Acquisition and Development Fund, 769-5182.

**Original Professional Services Contract:** \$60,000  
**Amendment No. 1:** \$20,000

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**Total:** \$80,000

**ALTERNATIVES ANALIZED:**

- Award contract amendment No. 1 to HNTB Montana Inc., or
- Reject the proposal.

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute Amendment No. 1 to the Cobb Field Stadium Design and Feasibility Study Consultant Contract with HNTB Montana Inc. for the amount of **\$ 20,000.00**.

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

Attachment A: Proposal Document

**Attachment: A**  
**DRAFT**

**HNTB, MONTANA, INC. CONTRACT FOR PROFESSIONAL SERVICES, COBB FIELD FEASIBILITY STUDY AND PRELIMINARY PLANNING**

**AMENDMENT NO. 1**

**I. Scope of Services**

In this scope of service, we propose a seventy-five (75) day contract extension to develop and conduct a program to elicit feedback from the residents of Billings as to their willingness to support a new ballpark project and to determine what type of ballpark they would want to support. Please note that the primary consultant conducting this work will be Patrick M. Zohn from Gateway. During this timeframe he, as well as other members of the HNTB Design team, will work to:

- Develop a PowerPoint Presentation that explains the work done thus far and to set forth the options available in the planning of a new ballpark;
- Conduct a series of public meetings or forums throughout the City of Billings to gather a cross section of opinion and feedback from the community regarding what options people would like to have in their new ballpark;
- Work with various community leaders to develop the strategies necessary for pursuing a bond levy to provide funding for the new ballpark;

We also must note that in projects such as this, we need to have a point person from the client with whom we can work with who will schedule appointments and make arrangements for meetings. This is important in order for us to be able to maximize the use of our time on behalf of the client. In the recently concluded Billings Ballpark Study, this role was served by Mark Jarvis of the PRPL. We would hope that Mark will continue in this role during the period of time contemplated by this extension. Our preliminary plan would be to have two forums in each of the five wards of the city and one forum on a Sunday afternoon in downtown Billings for a total of eleven (11) forums. The most likely timeframe would be the period from January 23, 2006 to February 1, 2006.

**II. Work Product**

At the end of this scope of service, we will provide to the City of Billings a report that summarizes and analyzes the feedback received from the community meetings, discusses the efforts at developing campaign strategy and provides insight as to the type of ballpark the community is willing to support and the bond levy that will achieve that goal.

**III. Fees**

For this phase of work we propose a fee of \$20,000. This total will include all expenses we incur in executing the scope of services set forth in this extension.

#### **IV. Acknowledgement and Commencement**

If this proposal is acceptable, we are prepared to commence work on this project as of December 15, 2005 with a completion date of March 1, 2006. You can acknowledge your acceptance by execution of all three (3) copies of this proposal. Please forward to HNTB two (2) copies of this executed proposal and keep one fully executed copy of the proposal for your records. My signature to this letter will act to bind HNTB to this Letter Agreement as of the date of this letter. If you prefer to utilize a standard form of contract, we would be happy to execute same. Thank you for this opportunity to submit this extension proposal to you for your consideration. We look forward to continuing our work with you and for the citizens of Billings.

**HNTB, Montana, Inc.**

**By** \_\_\_\_\_  
**Michael Westerheid**

**ACKNOWLEDGED AND AGREED TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.**

**By** \_\_\_\_\_  
City of Billings

**APPROVED BY:**

\_\_\_\_\_  
City Attorney

**Attest:**

\_\_\_\_\_  
City Clerk

**AMENDMENT NO. 1**  
**TO THE**  
**CONTRACT FOR PROFESSIONAL SERVICES**  
**FOR**

**CONSULTANT CONTRACT FOR A STADIUM FEASIBILITY STUDY, CONCEPTUAL DESIGN AND COST ESTIMATE. SUBJECT TO AVAILABLE FUNDING ADDITIONAL SERVICES WOULD INCLUDE DESIGN, ENGINEERING, PLANNING, PLANS AND SPECIFICATIONS, BID DOCUMENTS, CONTRACT ADMINISTRATION, PROJECT SUPERVISION, CONSTRUCTION OBSERVATION AND PROJECT CLOSE OUT FOR CONSTRUCTION OF A NEW BASEBALL STADIUM**

This Amendment is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2005 by and between the **CITY OF BILLINGS**, a Municipal Corporation, Billings, Montana, 59103, hereinafter designated the **CITY**, and **HNTB MONTANA, INC.**, 715 Kirk Drive, Kansas City Missouri, 64105, hereinafter designated the **CONSULTANT**.

Amendment No.1 contains the following revisions to the Contract for the Cobb Field Feasibility Study and Preliminary Planning Services dated August 8, 2005, are hereby agreed to:

**I. Scope of Services**

The Scope-of-Work is hereby modified to include the following items:

- A seventy-five (75) day extension to develop and conduct a program to elicit feedback from the residents of Billings as to their willingness to support a new ballpark project and to determine what type of ballpark they would want to support.
- **CONSULTANT** shall conduct two forums in each of the five wards of the city and one forum on a Sunday afternoon in downtown Billings for a total of eleven (11) forums. The most likely timeframe would be the period from January 23, 2006 to February 1, 2006.
- **CONSULTANT** shall develop a PowerPoint Presentation that explains the work done thus far and to set forth the options available in the planning of a new ballpark.
- **CONSULTANT** shall work with various community leaders to develop the strategies necessary for pursuing a bond levy to provide funding for the new ballpark.

## **II. Work Product**

At the conclusion of the scope of services **CONSULTANT** shall provide to the **CITY** a report that summarizes and analyzes the feedback received from the community meetings, discuss the efforts at developing campaign strategy and provide insight as to the type of ballpark the community is willing to support and the bond levy that will achieve that goal.

## **III. Fees**

The total fee for the services under Attachment A of the Contract for Consultant Contract for a Stadium Feasibility Study, Conceptual Design and Cost Estimate is hereby increased from \$60,000.00 to \$80,000.00. The additional \$20,000.00 will be paid by the **CITY** as a lump sum upon receipt of the summary and analysis report as described in Section II above.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Amendment on the day and year first written above.

CITY OF BILLINGS

HNTB MONTANA INC.

By: \_\_\_\_\_  
**City Of Billings**

By: \_\_\_\_\_  
**Michael Westerheid**

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
**City Clerk**

APPROVED AS TO FORM:

\_\_\_\_\_  
**City Attorney**

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

E

**AGENDA ITEM:**



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 12, 2005**

---

**TITLE:** Amendment One to Agri-System's Non-Commercial Aviation Ground Lease to Increase Leasehold Size

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** Agri-Systems, Inc. has a twenty-year Non-Commercial Aviation Ground Lease with the City and has constructed an 80 foot by 100 foot hangar at the Billings Logan International Airport. Agri-Systems is currently sub-leasing the hangar to Saint Vincent Hospital. The hospital is using the hangar for its HELP Flight operations to store, maintain, and ready aircraft for the transport of seriously ill patients to and from distant locations. The Amendment to the Lease extends the leasehold boundary twenty (20) feet to the north to accommodate a future addition to the existing hangar structure. The hospital's HELP Flight staff is planning to add space to accommodate the pilots that must be on site and ready to fly the aircraft on a moments notice. The hangar currently houses the hospital's fixed wing aircraft with plans for moving its helicopter into the hangar during Winter weather conditions. The increase to the leasehold will be 4,253.80 square feet.

**FINANCIAL IMPACT:** The additional square footage added to the leasehold will provide increased annual lease revenues of approximately \$895.

**RECOMMENDATION**

Staff recommends that Council approve Amendment One to the Non-Commercial Aviation Ground Lease with Agri-Systems, 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, December 12, 2005**

---

**TITLE:** Amendment One to the Non-Commercial Aviation Ground Lease with Sarpy Creek Land Company, 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 August 8, 2005, Council approved a Non-Commercial Aviation Ground Lease with Ms. Tempe Connell, doing business as Sarpy Creek Land Company, LLC. In the process of beginning to construct an eighty-foot by eighty-foot executive aircraft hangar, in the City's Executive Hangar area located at the west end of the Billings Logan International Airport, the neighboring tenant to the south, Agri-Systems and its sub-lessee, Saint Vincent Hospital, came forth with a plan to add additional hangar space to the existing hangar to accommodate the Saint Vincent Hospital's HELP Flight operation and its planned increased space needs. Since Sarpy Creek had not yet started construction, the company was willing to amend the Lease to accommodate the needs of Agri-Systems and Saint Vincent Hospital. The Lease Amendment only changes the leasehold legal description and location by moving the leasehold twenty (20) feet to the north.

**FINANCIAL IMPACT:** This Amendment will have no additional financial impact for the City.

**RECOMMENDATION**

Staff recommends that Council approve Amendment One to the Non-Commercial Aviation Ground Lease with Sarpy Creek Land Company, 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, December 12, 2005**

---

**TITLE:** Contract for Professional Services - Wastewater Plant Air Quality Permit

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The wastewater plant uses methane gas produced as a by-product of anaerobic digestion to generate electricity which is used at the plant to reduce the amount of electricity supplied by Northwestern Energy. The process of using this gas produces waste emissions which are regulated under the Environmental Protection Agency's Clean Air Act. The proposed contract with Brown and Caldwell will aid staff with preparing and negotiating with the Montana Department of Environmental Quality for an Air Quality Permit at the wastewater plant.

**FINANCIAL IMPACT:** Requests for Proposals for these services were received on September 30, 2005. The Request for Proposals was advertised on August 18 and 25, 2005. Proposals were received from two firms. Brown and Caldwell were selected based on committee review of the evaluation criteria. The agreed upon fee for the service is \$29,774.00. There is sufficient funding in the FY05 Utilities Administration Budget to cover this expense.

**RECOMMENDATION**

Staff recommends that Council approve the Contract for Professional Services with Brown and Caldwell for the Wastewater Plant Air Quality Permit in the amount of \$29,774.00 plus a 10% contingency of \$2,977 for a total of \$32,751.

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

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**AGENDA ITEM:**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 12, 2005**

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**TITLE:** Grazing Lease Adjacent to Landfill – Aaron Meyer

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

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

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**PROBLEM/ISSUE STATEMENT:** The City of Billings has two separate grazing leases with Aaron Meyer for City owned property adjacent to the Billings Regional Landfill. The oldest lease terminates on December 18, 2005, however, it allows for one additional five-year extension under the same terms and conditions. The other lease just runs from year to year. Mr. Meyer has requested the five-year extension and that the two leases be combined into one with the addition of a second five-year extension. The new lease would also include another 25 acre parcel adjacent to the currently leased areas.

**ALTERNATIVES ANALYZED:** The alternatives would be to approve the new lease as proposed or continue with the current leases until the end of the currently allowed five-year extension.

**FINANCIAL IMPACT:** The current leases provide annual revenues of \$540. The proposed combined lease with the addition of 25 acres would provide annual revenue of \$615 for the term of the lease.

**RECOMMENDATION**

Staff recommends that Council approve the grazing lease with Aaron Meyer for 205 acres adjacent to the City of Billings Landfill for a 5-year term with the option to renew for one additional 5-year term.

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

**ATTACHMENTS**

**A:**      Grazing Lease

## **INTRODUCTION**

The City of Billings City Council approved two separate grazing leases with Aaron Meyer for land adjacent to the Billings Landfill. One of the leases will be coming to the end of its 10-year term, but allows for an additional 5-year extension. The lessee has requested the extension and that the two leases be combined into one with the addition of a second 5-year extension. The new lease would also include another 25 acre parcel adjacent to the currently leased areas.

## **BACKGROUND**

On November 27, 1995 the City Council approved purchase of 35 acres of range land from Aaron Meyer. As a contingency to that sale, the City of Billings agreed to lease back the property along with an additional 65 acres that we owned for grazing purposes. On January 8, 1996 the City Council approved the 100 acre grazing lease with Aaron Meyer. The lease was effective December 18, 1995 for a 10-year term with an option to renew for one additional 5-year term under the same conditions. This lease has an annual rental amount of \$300.

On September 14, 1998 the City Council approved leasing an additional 80 acres to Mr. Meyer under the same lease conditions for grazing purposes. This parcel is adjacent to the initial lease and runs from year to year and can be canceled by either party if desired by giving 60 days written notice. This lease has an annual rental amount of \$240.

The original grazing lease was prepared based upon information we received from the County Extension office and the Department of State Lands. It was patterned after leases they use for grazing purposes and was reviewed by the City Attorney's office. The proposed lease is identical except for the description of property to be leased, the rental amount, and the term. The rental rate for smaller pasture areas typically range from \$2.50 to \$3.00 per acre. The new lease is based on \$3.00 per acre which is the same as the original leases and is still consistent with the current market.

## **ALTERNATIVES ANALYSIS**

The alternatives would be to approve the new lease as proposed or continue with the current leases until the end of the currently allowed five-year extension. The new lease would combine the parcels covered under the two current leases, as well as add an additional 25 acre parcel that is contiguous. This would increase the total leased area to 205 acres. The new lease would be for a 5-year term, but would allow for one additional 5-year term. This would allow for Mr. Meyer to plan for his grazing needs on a slightly longer term basis. Mr. Meyer has used excellent range management principles and there has not been any impact to this land. This property functions as a buffer area for the landfill and is not needed for any landfill purposes in the foreseeable future.

## **RECOMMENDATION**

Staff recommends that Council approve the grazing lease with Aaron Meyer for 205 acres adjacent to the City of Billings Landfill for a 5-year term with the option to renew for one additional 5-year term.

**ATTACHMENTS**

A: Grazing Lease

## ATTACHMENT A

### **GRAZING LEASE**

#### **I. GENERAL TERMS**

A. **THIS LEASE** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, between the City of Billings hereinafter referred to as the "Owner", and Aaron Meyer of 2308 Blue Creek Road, Billings, MT hereinafter referred to as the "Lessee".

B. **DESCRIPTION OF PROPERTY:** The owner hereby leases to the lessee to occupy and use for grazing purposes, the following property all located in Section 29, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana, described as follows:

- A portion of the NE1/4 consisting of approximately 100 acres, and specifically that portion located southeast of Hillcrest Road.
- The N1/2 of the SE1/4 consisting of approximately 80 acres.
- A portion of the NE1/4 of the SW1/4 consisting of approximately 25 acres and specifically that portion located southeast of Hillcrest Road.

The total area covered by this grazing lease consists of 205 acres more or less, in good condition, together with all buildings, corrals and improvements thereon and rights thereto. The owner warrants that he owns the land, has the right to give the lessee possession under this lease, and will, so long as this lease remains in effect, warrant and defend the lessee's possession against any and all persons.

C. **RENTAL RATES AND ARRANGEMENTS:** As rent for the rangeland the lessee agrees to pay the owner an annual sum of \$ 615.00 payable in advance of the 1st day of January of each year.

#### **II. LEASE CONDITIONS**

A. **LENGTH OF LEASE:** This lease shall be in effect from January 1, 2006, and shall terminate five years later on December 31, 2010. Lessee shall have an option to renew the lease for one additional five-year term at the expiration of the five year lease under the same terms and conditions, providing he gives owner 60 days notice of his intention to do so.

B. **THIS LEASE SHALL BIND AND BENEFIT** the heirs, successors, and assigns of the owner and the lessee.

C. **NON-FULFILLMENT:** Upon failure of either party to carry out any material provision of this lease, the other shall serve a written notice specifying the default. The offending party shall have a reasonable length of time to correct the default, or to arbitrate if he does not admit the charge. If default is not corrected as charged, or instructions of the arbitration committee not carried out, in proper time to prevent further damage, the injured party may, at his option, either correct the default and collect the cost from offending party, or cancel the lease and collect damages set by the committee.

D. **ARBITRATION:** Any difference between the owner and lessee shall upon request of either party be submitted for settlement to a committee of three disinterested persons who reside in the community and are familiar with the property. One member shall be chosen by the owner, one by lessee, and the third by the other two members. A determination by a majority of the committee shall be binding on both the owner and lessee. One-half the cost of arbitration shall be paid by each party.

### **III. RANGE MANAGEMENT, IMPROVEMENTS & MAINTENANCE**

A. The lessee shall use good range management principles in his operations of this land. He shall balance livestock numbers with available forage to prevent range deterioration. He will use the premises in a good and husband-like manner and will not overgraze the range land. However, it is understood and agreed that lessee may feed hay to livestock on the premises when necessary to supplement the supply of grass.

B. The degree of use to be made of the range annually shall be: For grazing of livestock only. Cultivation of the land shall not be permitted.

C. The lessee shall use diligence to prevent the establishment and spread of poisonous plants and noxious weeds. Treatment of infestations and the cost thereof shall be handled by the lessee: If chemical application or other appropriate weed control measures become necessary, the lessee shall first consult with the owner prior to any measures being taken.

D. Fences, and other improvements now in satisfactory condition shall be maintained by the Lessee.

E. The lessee may not place any improvements upon the land under this lease without the approval of the owner. Should approval be given to place improvements on the land, the lessee shall remove them upon expiration of the lease, unless the owner has given approval to leave such improvements.

F. The owner reserves all rights and interests to the land under this lease other than those specifically granted by this lease. These reservations include but are not limited to the following:

(a) Mineral and Timber Reservation - All coal, oil, gas and other minerals and all deposits of stone, gravel, sand, gems, and other non-minerals valuable for building, mining or other commercial purposes and all timber and trees are exempted from the operation of this lease.

(b) Additional Reservations - The owner reserves the right to grant rights-of-way, licenses and permits on the subject land so long as they do not interfere with the grazing rights granted to the tenant herein.

G. The lessee assumes all responsibility for carrying on at his own expense all fire prevention and suppression work necessary or required to protect the forage, trees, building and structures on the land.

H. The Lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted. If the lands under this lease are used or allowed to be used for any purpose contrary to the laws of this State or the United States, such unlawful use shall

constitute sufficient reason for the cancellation of the lease. The lessee shall not utilize or allow to be utilized any land under this lease for purposes other than the purpose for which it was granted.

#### **IV. LANDLORD SERVICES AND LESSEE AGREEMENT**

##### **A. THE OWNER AGREES:**

- 1) To assume all risk of damage to his property beyond the control of the lessee.
- 2) Lessee may use dead timber or other timber specifically agreed upon for poles or posts to be used on this land.

##### **B. THE LESSEE AGREES:**

- 1) Not to assign this lease or sublet any portion of the property without the approval of the owner.
- 2) Not to permit waste or damage to the property beyond ordinary wear and depreciation.
- 3) To permit owner or his agent to enter premises at any time to inspect the range, count livestock, and make repairs and improvements as necessary.
- 4) To permit owner to lease land for oil and/or gas development and permit entry of a third party in connection with the gas and oil development. The lessee will be compensated for all forage or livestock damages arising from such lease.
- 5) To surrender peaceably possession and occupancy of the premises at the termination of the lease.

In Witness Whereof, we have signed this lease this \_\_\_\_ day of \_\_\_\_ 20\_\_.

##### **LESSEE:**

BY: \_\_\_\_\_ Witness: \_\_\_\_\_

##### **LESSOR:**

City of Billings:

BY: \_\_\_\_\_  
Mayor \_\_\_\_\_  
City Clerk

: ss.  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public for the State of Montana, personally appeared **Aaron Meyer**, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

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(SEAL) Notary Public for the State of Montana;  
Residing at Billings, Montana;  
My commission expires: \_\_\_\_\_

**STATE OF MONTANA** )  
: ss.  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be Mayor of the City of Billings, and acknowledged to me that the City of Billings executed this instrument.

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

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(SEAL) Notary Public for the State of Montana;  
Residing at Billings, Montana;  
My commission expires: \_\_\_\_\_

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AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 12, 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. Council delayed award of this contract at the November 28 meeting. 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. Funding is available from the project funds. The total project funding (for design, construction and construction administration) is as follows:

<b>Stewart Park Trail</b>	<b>Amount</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 – Council delayed contract award to December 12, 2005
- December 12, 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/March 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 Kadrmas, 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.

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**AGENDA ITEM:****CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, December 12, 2005**

**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

**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. Council delayed award of this contract at the November 28 meeting. 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. Funding is available from the project funds. The total project funding (for design, construction and construction administration) is as follows:

<b>Big Ditch Trail</b>	<b>Amount</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 – Council delayed contract award to December 12, 2005
- December 12, 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/March 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.

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## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 12, 2005

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**TITLE:** SID 1372 Summerhill Subdivision Resolution Authorizing Construction Bids

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** As required by statute, the City Council must adopt Resolutions authorizing staff to advertise and receive bids for construction and the sale of SID bonds. SID 1372 Summerhill Subdivision was created at the September 12<sup>th</sup> Council Meeting.

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

**RECOMMENDATION**

Staff requests that Council pass a Resolution Authorizing Construction Bids for SID 1372.

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

**ATTACHMENTS**

- A. Boundary of Proposed Special Improvement District
- B. Resolution Authorizing Construction Bids

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



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 12, 2005

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**TITLE:**

Second Reading and Adoption 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. The public hearing was held November 28<sup>th</sup>, 2005 and the first reading was also approved on that date. Tonight, Council is being asked to approve this proposed Animal Control Ordinance 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 second 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 exempt 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/AAE City Clerk

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# M

## AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 12, 2005

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**TITLE:** Zone Change #770 2<sup>nd</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. City Council approved the first reading of the zone change ordinance on November 28, 2005.

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

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

**FINANCIAL IMPACT:** This zone change should increase the City's tax base when the property is developed and the new zoning takes effect.

### **RECOMMENDATION**

The Zoning Commission recommends that the City Council approve Zone Change #770 on 2<sup>nd</sup> reading and adopt the determinations of the discussed 12 criteria.

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

### **ATTACHMENTS:**

A: Zoning Commission Determination

B: Ordinance

**ATTACHMENT A**  
**Zoning Commission Determinations**

**ALTERNATIVES ANALYSIS**

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated using the 12 criteria that are set out in MCA 76-2-304. The 12 criteria and the Zoning Commission's determinations are listed below.

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

## ATTACHMENT B

### 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/AAE, City Clerk

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# N

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 12, 2005

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**TITLE:** Zone Change #771 2<sup>nd</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 Billings 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. The City Council held a public hearing and approved the first reading of this zone change on November 28, 2005.

**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 on 2<sup>nd</sup> reading.

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

**ATTACHMENTS:**

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

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

O

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 12, 2005**

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**TITLE:** Second Reading, 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 consistent with the Charter language. The Charter does not address the appointment of a Deputy Mayor Pro Tempore, so our local ordinance controls. The City Council approved the Ordinance on first reading at its November 28, 2005, meeting. The Ordinance will be subject to a second reading on December 12, 2005. If approved, it will go into effect thirty (30) days later.

**ALTERNATIVES ANALYZED:** The election of a Deputy Mayor must take place at the time set by the 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 adopt the attached Ordinance on second reading. 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**       

**ATTACHMENT:**

A: Ordinance

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 AND  
DEPUTY MAYOR PRO TEMPORE 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

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

## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 12, 2005

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**TITLE:** Preliminary Plat of Copper-Falcon Subdivision  
**DEPARTMENT:** Planning Division through Ramona Mattix, AICP, Planning Director  
**PRESENTED BY:** Cynthia Wilson, Planner I

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**PROBLEM/ISSUE STATEMENT:** The applicant, Golden Acres Partners, is requesting preliminary plat approval of the Copper-Falcon Subdivision. Golden Acres Partners endeavors to separate ownership of a mutually held purchase agreement, of said subdivision, between the two sole partners, Messrs. Gary Oakland and Dennis Busher. The subject property is legally described as Tract 5A of Certificate of Survey No. 2465, situated in the SE $\frac{1}{4}$  of Section 25, T. 1 N., R. 24 E., P.M.M., Billings, Yellowstone County, Montana. The 63.76-acre property is generally located west of Molt Road, south of Phipps Park, and fronts the north side of Rimrock Road, between 64<sup>th</sup> and 66<sup>th</sup> Streets West. The subdivision will create two lots and is considered a minor subdivision.

The preliminary plat was submitted to the Planning Division on November 1, 2005. Pursuant to Section 23-404(c) of the Billings Municipal City Code (BMCC), the City Council shall act on a preliminary minor plat within 35 working days of the application submittal. The preliminary plat of the Copper-Falcon Subdivision was determined complete and the 35-working day review began November 5, 2005. The City Council will review and act on the preliminary plat on December 12, 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:** Should the City Council approve the preliminary plat, the subject property may further develop, resulting in additional tax revenues for the City of Billings.

## **RECOMMENDATION**

Staff recommends that the City Council conditionally approve the Preliminary Plat of Copper-Falcon Subdivision, and adopt the Findings of Fact and Conditions of Approval, 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 November 1, 2005, the applicant, Golden Acres Partners, applied for preliminary minor plat approval of the Copper-Falcon Subdivision with the purpose of creating two (2) separate lots; both of 31.87 acres, or approximately 1,388,590 square feet, each. The subject property was annexed into the City of Billings in May of 2002 and met the City's requirements for annexation at that time. Although the current land use is vacant, the lots are proposed for residential development as the property is zoned Residential-7000 (R-7000), Residential-9600 (R-9600), and Residential Multi-Family (RMF). The subject property is bordered on the south by Residential-15000 (County); and east by Residential-8000, R-9600, RMF; on the west by R-7000 Restricted; and, on the north by R-9600 and Residential-15000.

## **PROCEDURAL HISTORY**

- The property where the proposed subdivision is located was annexed into the City of Billings in May of 2002.
- The Final Plat for Copper Ridge Subdivision, 1<sup>st</sup> Filing was presented to and approved by City Council on September 12, 2005.
- The Preliminary Plat of Copper-Falcon Subdivision application was submitted to the Planning Division on November 1, 2005.
- Departmental and agency review comments for the Preliminary Plat of Copper-Falcon Subdivision were received by Planning staff on November 17, 2005.
- The Yellowstone County Board of Planning conducted a public hearing for Falcon Ridge Estates Subdivision Preliminary Plat on October 25, 2005 and the City Council heard and approved the plat on November 28, 2005.
- The City Council will consider the Preliminary Plat of Copper-Falcon Subdivision on December 12, 2005.
- Copper Ridge Subdivision, 2<sup>nd</sup> Filing Preliminary Major Plat is being presented to the City Council, concurrently with the Preliminary Plat of Copper-Falcon Subdivision for consideration on December 12, 2005.

## **BACKGROUND**

General location: West of Molt Road, south of Phipps Park, fronting the north side of Rimrock Road, between 64<sup>th</sup> and 66<sup>th</sup> Streets West

Legal Description: Being Tract 5A of Certificate of Survey No. 2465, situated in the SE $\frac{1}{4}$  of Section 25, T. 1 N., R. 24 E., P.M.M., Billings, Yellowstone County, Montana

Subdivider/Owner: Golden Acres Partners

Engineer and Surveyor: Engineering, Inc.

Existing Zoning: R-7000, R-9600, and RMF

Surrounding zoning: Residential-15000 (County) to the south; Residential-8000, R-9600, RMF to the east; R-7000 Restricted on the west; and, R-9600 and Residential-15000 to the north

Existing land use:	Vacant
Proposed land use:	Residential
Gross area:	63.7553
Lots:	Two (2)
Dedications:	None

### **ALTERNATIVES ANALYSIS**

One of the purposes of the subdivision review process is to identify potentially negative impacts of a subdivision on adjacent properties. 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, presented as Attachment D, discuss the potential negative impacts that have been identified by the reviewing agencies. The following conditions are recommended as a measure to mitigate any negative impacts.

### **CONDITIONS**

In order to mitigate the effects on local services and to protect public health and safety, the following conditions are recommended to the Billings City Council:

1. **Utilities.** To provide for the location and installation of power, gas, telephone, and cable television utilities by private utility facilities, a utility easement shall be shown on the final plat in the location and width acceptable to the utility companies providing service to the subdivision, prior to final plat approval. *(Recommended by Planning Staff and Qwest; 76-3-608(3)(c), MCA)*
2. **Parkland.** The SIA dated October 18, 2005 paragraph III. Transportation. F. Heritage Trail Plan, should remove the identification of the Heritage Trail as being within the railroad right-of-way. *(City of Billings, Public Works Department, letter response, November 16, 2005)*
3. **Postal Service Delivery.** To provide for local services, the US Postal Service has stated that mail delivery for this subdivision can be provided via centralized delivery with individual boxes. The area at the central boxes must be sufficient, to allow a postal vehicle to get off of the road away from traffic. Any questions on the requirements for the mail delivery for this subdivision should be directed to Mark Thirud, or Milissa Hugdahl, at the US Postal Service in Billings at (406) 657-5655. *(Recommended by the USPS, Mark Thirud, letter response, November 17, 2005)*
4. **SIA.** The format of the SIA dated October 18, 2005, has been changed. Item "I. Variances" has been deleted and "II. Conditions that Run with the Land" has been

changed to “I. Property Disclosures.” To obtain the standard SIA format, the “I Variances” and “Conditions that Run with the Land” should be placed back in the SIA and since there appears to be no variances, the SIA should state no variances are requested. Additionally, minor changes may be made in the SIA and final documents, to clarify the documents, and bring them into the standard, acceptable format. (*Recommended by the Planning Staff, Public Works Department, and, Billings City Engineer’s Department*)

5. **Compliance.** The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, BMCC Rules, Regulations, Policies, and Resolutions, and the Laws and Administrative Rules of the State of Montana.

### **STAKEHOLDERS**

A public hearing is not scheduled for the City Council meeting; however, nearby property and business owners may attend the City Council meeting. The Planning Division has received no public comments or questions 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 2005 Transportation Plan Update, and the Heritage Trail Plan. Specific conformance is discussed within the Findings of Fact (Attachment D).

### **RECOMMENDATION**

Staff recommends that the City Council conditionally approve the Preliminary Plat of Copper-Falcon Subdivision, and adopt the Findings of Fact and Conditions of Approval, as presented in Attachment D.

### **ATTACHMENTS**

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

## **ATTACHMENT A**

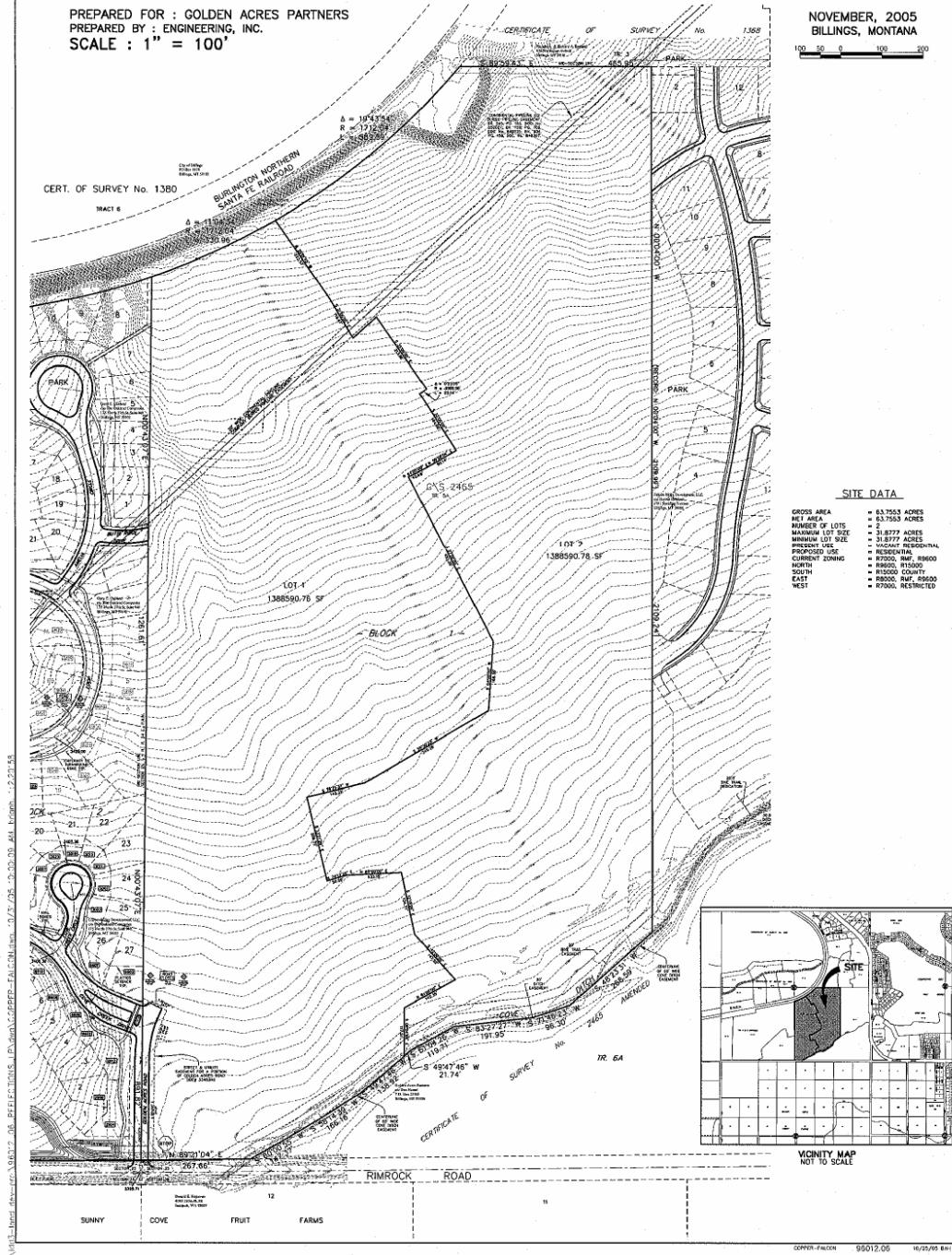
PRELIMINARY PLAT OF  
**COPPER-FALCON  
SUBDIVISION**

BEING TRACT 5A OF CERTIFICATE OF SURVEY NO. 2465  
SITUATED IN THE SE 1/4 OF SECTION 25, T. 1 N., R. 24 E., P.M.M.  
BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : GOLDEN ACRES PARTNERS  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1" = 100'

NORTH

NOVEMBER, 2005  
BILLINGS, MONTANA



**ATTACHMENT B**  
Site Photographs  
Preliminary Plat of Copper-Falcon Subdivision



**Photo 1.** Looking west on Rimrock Road at the intersection of Copper-Falcon Subdivision's Lots 1 and 2.



**Photo 2.** Looking north from the intersection of Copper-Falcon Subdivision's Lots 1 and 2.



**Photo 3.** Looking north from intersection of Rimrock and Molt Roads. R-9600 and R-15000 can be seen on the northeast.



**Photo 4.** Looking south at County R-15000 zoning district.

## **ATTACHMENT C**

### Mayor's Approval Letter Preliminary Plat of Copper-Falcon Subdivision

December 12, 2005

Don Nansel  
Golden Acres Partners  
P.O. Box 23165  
Billings, MT 59104

Dear Property Owner:

On December 12, 2005, the Billings City Council approved the preliminary plat of Copper-Falcon Subdivision, subject to the following conditions of approval:

#### **CONDITIONS OF APPROVAL**

1. **Utilities.** To provide for the location and installation of power, gas, telephone, and cable television utilities by private utility facilities, a utility easement shall be shown on the final plat in the location and width acceptable to the utility companies providing service to the subdivision, prior to final plat approval. (*Recommended by Planning Staff and Qwest; 76-3-608(3)(c), MCA*)
2. **Parkland.** The SIA dated October 18, 2005 paragraph III. Transportation. F. Heritage Trail Plan, should remove the identification of the Heritage Trail as being within the railroad right-of-way (*City of Billings, Public Works Department, letter response, November 16, 2005*)
3. **Postal Service Delivery.** To provide for local services, the US Postal Service has stated that mail delivery for this subdivision can be provided via centralized delivery with individual boxes. The area at the central boxes must be sufficient, to allow a postal vehicle to get off of the road away from traffic. Any questions on the requirements for the mail delivery for this subdivision should be directed to Mark Thirud, or Milissa Hugdahl, at the US Postal Service in Billings at (406) 657-5655. (*Recommended by the USPS, Mark Thirud, letter response, November 17, 2005*)
4. **SIA.** The format of the SIA dated October 18, 2005, has been changed. Item "I. Variances" has been deleted and "II. Conditions that Run with the Land" has been changed to "I. Property Disclosures." To obtain the standard SIA format, the "I Variances" and "Conditions that Run with the Land" should be placed back in the SIA and since there appears to be no variances, the SIA should state no variances are requested. Additionally, minor changes may be made in the SIA and final documents, to clarify the documents, and bring them into the standard, acceptable format. (*Recommended by the Planning Staff, Public Works Department, and, Billings City Engineer's Department*)

5. **Compliance.** The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, BMCC Rules, Regulations, Policies, and Resolutions, and the Laws and Administrative Rules of the State of Montana.

Should you have questions regarding the conditions of approval, please contact Cynthia Wilson with the Planning and Community Services Department at 247-8654 or by email at [wilsonc@ci.billings.mt.us](mailto:wilsonc@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

## **ATTACHMENT D**

### **Findings of Fact**

#### **Preliminary Plat of Copper-Falcon Subdivision**

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

##### **1. Effect on agriculture and agricultural water users' facilities**

- The proposed Copper-Falcon Subdivision land use is currently vacant. As the subject property is not currently used for agriculture and no irrigation facilities are present on the subject property, the proposed subdivision will not remove any land from agricultural production and there should be no effect on agricultural production or agricultural water users' facilities.
- Water rights will not be transferred to the potential property owners. Existing irrigation ditches along the southern perimeter of the proposed subdivision are for the benefit of other properties. Furthermore, perimeter ditches and drains shall remain in place and shall not be altered by the subdivider or subsequent owners. (*SIA, October 18, 2005*)

##### **2. Effect on local services**

###### **Utilities –**

- The individual property owner shall make application for extension and connection of water mains and sanitary sewers to the City of Billings Public Works Department–Distribution and Collection Division. The extension and connection is subject to the approval of the application in addition to the conditions of its approval. (*SIA, October 18, 2005*)
- Applications shall be submitted for processing prior to the start of any construction, and prior to review and approval of any project plans and specifications. The appropriate water and wastewater local and interior construction fees and franchise fees in effect at the time of payment shall be submitted with these applications. Additionally, these fees shall be paid for the lots in each phase as applied for in the extension application. (*SIA, October 18, 2005*)
- The design and installation of sanitary sewers and appurtenances, and water mains and appurtenances shall be in accordance with design standards, specifications, rules, and regulations of and as approved by the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality. (*SIA, October 18, 2005*)

**Storm Drainage –** Any stormwater drainage improvements shall comply with the provisions of *Section 23-706 of the BMCC* and the City of Billings' *Stormwater Management Manual*. Additionally, at the time of application for permits and prior to construction, a stormwater management plan shall be submitted to and approved by the City Engineer's Office.

**Solid Waste** – The subdivider states the City of Billings will provide solid waste collection and disposal. The Billings Landfill has adequate capacity to provide landfill disposal service. (*SIA, October 18, 2005*)

**Streets** – Access to Lots 1 and 2, Block 1 will be provided from Rimrock Road, or Molt Road via Golden Acres Road and Western Bluffs Way. Rimrock Road is a 60-foot wide dedicated right-of-way made of asphalt paving and borrow ditch drainage, previously built to county standards. Both Golden Acres Road and Western Bluffs Way are 60-foot wide dedicated rights-of-way containing asphalt paved streets and curbs and gutters. Neither street lighting or traffic control devices are required for this subdivision, although they are provided for in the *Waiver of Rights to Protest*. Additionally, the subdivider is not required to improve new streets. (*SIA, October 18, 2005*)

**Emergency Services** – The proposed subdivision provides adequate ingress and egress access for all types of emergency vehicles.

- The Billings Fire Department will provide fire protection and reports no concerns or difficulties in serving the proposed subdivision (*Marshal Odermann, e-mail response, November 17, 2005*). 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 American Medical Response (AMR) will provide emergency medical services. Medical care and transport and response would probably come from the AMR west-end station that is located on Grand Avenue at about 25<sup>th</sup> Street West. AMR reports the proposed subdivision has the potential to increase emergency medical response staffing needs (*Garrett Johnson, letter response, November 17, 2005*).
- The City of Billings Police Department will provide police protection. The proposed subdivision has the potential to impact police patrol service and requirements (*Chief St. Johns, letter response, November 4, 2005*).

**Schools** – The subdivision is in School District 2. Elementary students will be assigned to Arrowhead Elementary, Will James Middle School, and West High School. The School District Administration did not reply to a request for comments. Planning staff has been told by District 2 staff in the recent past that West High School is presently above the recommended student capacity.

#### **Parks and Recreation –**

- As a minor subdivision, parkland dedication is not a requirement of this preliminary plat submittal. (*MCA 76-3-621 (3) (a)*)
- Cove Ditch has been identified in the Heritage Trail Plan as a connection link between other greenway corridors. (*Alternate Modes Coordinator, letter response, November 15, 2005*) Although a 20-foot trail easement has been preserved on the preliminary plat, no improvements are required from this minor subdivision. The Heritage Trail shall be incorporated within future park dedication and shall be constructed along Copper-Falcon Subdivision's southern boundary to tie the trail from Falcon Ridge to Copper Ridge Subdivisions. (*SIA, October 18, 2005*)

**MET Transit** – MET Transit’s nearest route extends out Rimrock Road to Shiloh Road, although the public transit service currently does not serve this westernmost section of Billings.

### 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 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 during and after construction. Erosion control during construction is required by state law. Stormwater runoff is regulated by City and state authorities. Additionally, 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

The Montana Department of Fish, Wildlife and Parks (FWP) reported there are no known endangered or threatened species located within the immediate vicinity of the proposed subdivision and the subdivision should not affect wildlife or wildlife habitat (*Montana FWP, letter response, November 9, 2005*). The FWP also indicated this subdivision is being built in close proximity to deer and antelope habitat and wild turkeys may become a nuisance if supplemental feeders are utilized. Additionally, potential property owners should be informed there may be mountain lions in the area. The FWP encourages property owners to visit the Living With Wildlife section in the Montana Fish, Wildlife and Parks internet website at <http://fwp.mt.gov>. A ***Condition That Runs With The Land*** is also included in the Copper-Falcon Subdivision SIA addressing these concerns.

### 5. Effect on the Public Health, Safety and Welfare

- Water distribution system pressures may fall below generally accepted minimum pressure at home fixtures on some locations within the subject subdivision. The SIA (October 18, 2005) requests potential property owners be made aware of this condition, and that assessment, mitigation, and possible installation of booster pumping units on homes, will be the responsibility of the homeowner.
- There is a four (4)-inch high pressure petroleum pipeline located within a 30-foot wide easement that crosses the subject property. The SIA (October 18, 2005) requests potential property owners be made aware of this fully operational petroleum products pipeline located within the proposed subdivision. In addition, periodic inspection, testing, and maintenance of this pipeline may occur, including excavation, repair, as well as, replacement of this pipeline.
- A potential limitation exists to construction on the lots due to the soil characteristics as described in the 1972 Yellowstone County Soil Survey. The SIA (October 18, 2005) informs potential property owners that due to these conditions, the City of Billings may require the owner of each lot to include a geotechnical investigation and a report of its findings, to accompany a building permit application.
- A Burlington Northern Santa Fe (BNSF) railroad line runs adjacent to the northwestern boundary of the subject subdivision. The railroad is grade separated from the level of the subdivision and within a right-of-way that is 150-275 feet wide. The SIA (October 18, 2005) discloses the presence of the railroad line to future property owners, warns the property owners to stay off BNSF property. Additionally,

the SIA states that property owners should be made aware that they are waiving their right to complain about noise created by the normal operation of the railroad.

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

An Environmental Assessment is not required for minor subdivisions (MCA 76-3-210).

**C. Does the subdivision conform to the 2003 Growth Policy and the Urban Area 2005 Transportation Plan? (BMCC 23-304(c) (3))**

**1. Growth Policy**

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

▪ **Land Use Element, Goal 1, Page 5:**

*Goal: Predictable land use decisions that are consistent with neighborhood character and land use patterns.*

*The proposed subdivision is consistent with the surrounding large-lot, residential neighborhoods. Additionally, the subdivision is consistent with neighborhood character and land use patterns. Beyond the subject property to the south is the Sunny Cove Fruit Farms and Residential-15000 zoning; Falcon Ridge Estates Subdivision bounds to the east (Residential-8000, R-9600, and RMR); Copper Ridge Subdivision (R-7000 Restricted) borders to the west; and, on the north follows R-9600 and Residential-15000 zoning districts. These land uses are either developed or currently intended for construction.*

▪ **Land Use Element, Goal 2, Page 6:**

*Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.*

*The proposed subdivision is bordered on three (3) sides by residentially zoned land that are currently vacant, or are under residential construction; to the south lays the Sunny Cove Fruit Farms and Residential-15000 zoning; Falcon Ridge Estates Subdivision bounds to the east (Residential-8000, R-9600, and RMR); Copper Ridge Subdivision (R-7000 Restricted) borders to the west; and, on the north follows R-9600 and Residential-15000 zoning districts.*

▪ **Open Space and Recreation, Goal 4, Page 9:**

*Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness.*

*As a minor subdivision, parkland dedication is not required (MCA 76-3-621 (3)(a)). However, a 20-foot trail easement will be granted on the final plat along Cove Ditch. Cove Ditch has been identified in the Heritage Trail Plan as a connection link between other greenway corridors and the Heritage Trail. According to the SIA (October 18, 2005) the Heritage Trail shall be incorporated within future park dedication and constructed along Copper-Falcon Subdivision's southern boundary to tie the trail from Falcon Ridge to Copper Ridge Subdivisions (SIA, October 18, 2005).*

The proposed subdivision does not conform to the following goals and policies of the County of Yellowstone and City of Billings 2003 Growth Policy:

- Land Use Element Goal, Goal 4, Page 6:

*Goal: Contiguous development focused in and around existing population centers separated by open space.*

*The proposed subdivision does not provide infill development in an existing residential area, reducing sprawl and does not make the delivery of public services more efficient. The subdivision is located beyond water and sewer infrastructure, continues a patch-work of residential development in an area that continues to have agricultural operations, and continues the trend of requiring the improvement and maintenance of road infrastructure in areas with very low densities.*

- Natural Resources, Goal 6, Page 8:

*Goal: Protection of groundwater, surface water, riparian areas, air quality, and productive agricultural land.*

*The proposed subdivision does not provide protection of groundwater, surface water, riparian areas, air quality, nor ensure the continued functionality of natural systems.*

## 2. Billings Urban Area 2005 Transportation Plan Update

The proposed subdivision adheres to the goals and objectives of the Billings Urban Area 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan.

## 3. Heritage Trail Plan

Cove Ditch has been identified in the Heritage Trail Plan as a connection link between other greenway corridors (*Alternate Modes Coordinator, letter response, November 15, 2005*). A 20-foot trail easement will be granted on the final plat, although no improvements are required from this minor subdivision. The Heritage Trail shall be incorporated within future park dedication and shall be constructed along Copper-Falcon Subdivision's southern boundary to tie the trail from Falcon Ridge to Copper Ridge Subdivisions (*SIA, October 18, 2005*).

## **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 the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

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

The subdivision will utilize City of Billings water, sanitary sewer, and City solid waste collection and disposal services (**SIA, October 18, 2005**). 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? (MCC 23-304(c) (6))**

The subject property is located within the R7000, R9600, and RMF zoning districts and conforms to the requirements set forth by Article 27-300: Zoning Districts and Official Map of the Unified Zoning Regulations.

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

There is an existing street and utility easement (Doc #3348340) located along the southeastern boundary of Golden Acres Road and the southwestern boundary of this proposed subdivision's Lot 1. Additionally, this application was circulated to the Montana-Dakota Utilities Company for review although at the time of this staff report, comments have not yet been received. Therefore, to provide for the location and installation of local services, a utility easement shall be shown on the final plat in the location and width acceptable to the utility companies providing service to the subdivision (**Condition #1 and 3**).

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

Legal and physical access to the proposed subdivision will be provided by Rimrock and Molt Roads, in addition to Golden Acres Road and Western Bluffs Way.

**CONCLUSIONS OF FINDING OF FACT**

- The Preliminary Plat of Copper-Falcon Subdivision, Being Tract 5A of Certificate of Survey No. 2465 Situated in the SE $\frac{1}{4}$  of Section 25, T. 1 N., R. 24 E., P.M.M., Billings, Yellowstone County, Montana 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 appears to conform to the goals of the West Billing Plan and several goals of the Northwest Shiloh Area Plan. The proposed subdivision doesn't 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.

**Approved by the Billings City Council on December 12, 2005**

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Charles F. Tooley, Mayor

## **RECOMMENDED CONDITIONS OF APPROVAL**

1. **Utilities.** To provide for the location and installation of power, gas, telephone, and cable television utilities by private utility facilities, a utility easement shall be shown on the final plat in the location and width acceptable to the utility companies providing service to the subdivision, prior to final plat approval. *(Recommended by Planning Staff and Qwest; 76-3-608(3)(c), MCA)*
2. **Parkland.** The SIA dated October 18, 2005 paragraph III. Transportation. F. Heritage Trail Plan, should remove the identification of the Heritage Trail as being within the railroad right-of-way *(City of Billings, Public Works Department, letter response, November 16, 2005)*
3. **Postal Service Delivery.** To provide for local services, the US Postal Service has stated that mail delivery for this subdivision can be provided via centralized delivery with individual boxes. The area at the central boxes must be sufficient, to allow a postal vehicle to get off of the road away from traffic. Any questions on the requirements for the mail delivery for this subdivision should be directed to Mark Thirud, or Milissa Hugdahl, at the US Postal Service in Billings at (406) 657-5655. *(Recommended by the USPS, Mark Thirud, letter response, November 17, 2005)*
4. **SIA.** The format of the SIA dated October 18, 2005, has been changed. Item “I. Variances” has been deleted and “II. Conditions that Run with the Land” has been changed to “I. Property Disclosures.” To obtain the standard SIA format, the “I Variances” and “Conditions that Run with the Land” should be placed back in the SIA and since there appears to be no variances, the SIA should state no variances are requested. Additionally, minor changes may be made in the SIA and final documents, to clarify the documents, and bring them into the standard, acceptable format. *(Recommended by the Planning Staff, Public Works Department, and, Billings City Engineer’s Department)*
5. **Compliance.** The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, BMCC Rules, Regulations, Policies, and Resolutions, and the Laws and Administrative Rules of the State of Montana.

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

Q

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 12, 2005**

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**TITLE:** Copper Ridge Subdivision, 2<sup>nd</sup> Filing Preliminary Major 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 October 3, 2005, property owner Gary E. Oakland applied for preliminary plat approval for the Copper Ridge Subdivision, 2<sup>nd</sup> Filing. The property is located about a quarter of a mile northwest of the intersection of Molt Road and Rimrock Road at the western edge of the City of Billings. The proposed subdivision contains 260 residential lots on 72 acres of land. The property is vacant and is zoned Residential-7000 Restricted. The Yellowstone County Board of Planning conducted a public hearing on November 22, 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:

4. Approve;
5. Conditionally Approve; or
6. Deny the Preliminary Plat

**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 all the required services.

**RECOMMENDATION**

The Yellowstone County Board of Planning on a 6-0 vote recommends that the City Council conditionally approve the Preliminary Plat of Copper Ridge Subdivision, 2<sup>nd</sup> Filing, approve of the variance, 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 October 3, 2005, the Planning Department received a preliminary plat application for the Copper Ridge Subdivision, 2<sup>nd</sup> Filing. The property is located about a quarter of a mile west of the intersection of Rimrock Road and Molt Road, and lies north of Rimrock Road. The property was annexed into the City in May of 2002 and met the City's requirements for annexation at that time. The plat includes 72 total acres with a net acreage of 53.5 acres. There are 260 residential lots proposed. The property is currently zoned R-7000R.

## **PROCEDURAL HISTORY**

- The property where this subdivision is located was annexed into the City in May of 2002.
- The preliminary plat application was submitted to the Planning Department on October 3, 2005
- Staff reviewed the application with the subdivider on October 20, 2005
- The Yellowstone County Board of Planning reviewed the plat on November 8, 2005
- The Planning Board conducted a public hearing on November 22, 2005 and made its recommendation to the Billings City Council.
- The City Council will consider the application at its meeting on December 12, 2005

## **BACKGROUND**

General location:	North of Rimrock Road and about one quarter of a mile west of the intersection of Molt Road and Rimrock Road
Legal Description:	SW1/4, Section 25, T1N, R24 East
Subdivider:	Copper Ridge Development, LLC
Owner:	Gary E. Oakland
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	Residential-7000R
Surrounding zoning:	North: No Zoning; South: R-15000; East: R-9600; West: No Zoning
Existing land use:	Vacant
Proposed land use:	Single family homes
Gross area:	72.74 acres
Net area:	53.57 acres.

Proposed number of lots:	260 residential lots
Lot size:	Max.: 17,834 sq. ft. Min.: 7,001 sq. ft.
Parkland requirements:	6 acres required 6.84 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 have the park land in this subdivision included in the existing park maintenance district for the existing Copper Ridge Subdivision, 1<sup>st</sup> Filing.
2. To minimize the effects on local services and public health and safety, the subdivider shall provide fire hydrants at proper intervals as required by the City of Billings Fire Department. The fire hydrant locations shall be reviewed and approved by the City Fire Department prior to final plat approval.
3. To minimize the effects on local services and public health and safety, prior to final plat approval the subdivider shall fence across the edge of the Burlington Northern Santa Fe Railway right-of-way where the two pedestrian accesses along the northern portion of the subdivision connect to the railroad right-of-way and sign the corridor to indicate that there is no trespassing on the BNSF right-of-way. These park corridors must be included in the park maintenance district for the subdivision.
4. 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.
5. 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 rights-of-ways for all of the streets in the subdivision. The standard residential street right-of-way width is 60 feet. The roads within these 50 foot rights-of-ways will be 34 feet wide. The City Engineering Department is supportive of this variance request.

The Planning Board at the public hearing discussed the variance request and decided to approve it. The Board agreed that since the new subdivision regulations that are expected to be adopted by the City Council this month recommend a reduction in residential street right-of-way width from 60 feet to 56 feet that this variance to 50 feet was acceptable. However, several members of the Board stated that after the subdivision regulations have been updated, it expects developers to stick to the 56 foot right-of-width in almost all situations.

## **STAKEHOLDERS**

A public hearing is not scheduled for the City Council meeting; however nearby property/business owners may attend the City Council meeting. Aside from the developer and the developer engineer, there were no public comments received by the Planning Board at the public hearing for this subdivision on November 22, 2005. The Planning Department did receive written comments from R.E. Hageman regarding the proposed subdivision on November 22. Hageman stated in an email that he had trouble reading the copy of the plat that was sent to him as part of the surrounding property notification process for this application and that he was not clear whether the subdivision had met all of its requirements under the City Subdivision Regulations. Planning staff provided copies to the Planning Board at the public hearing and will contact Hageman to address his concerns prior to the City Council meeting on December 12.

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

The subdivision is generally 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 6-0 vote recommends that the City Council conditionally approve the Preliminary Plat of Copper Ridge Subdivision, 2<sup>nd</sup> Filing, approve of the variance, 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

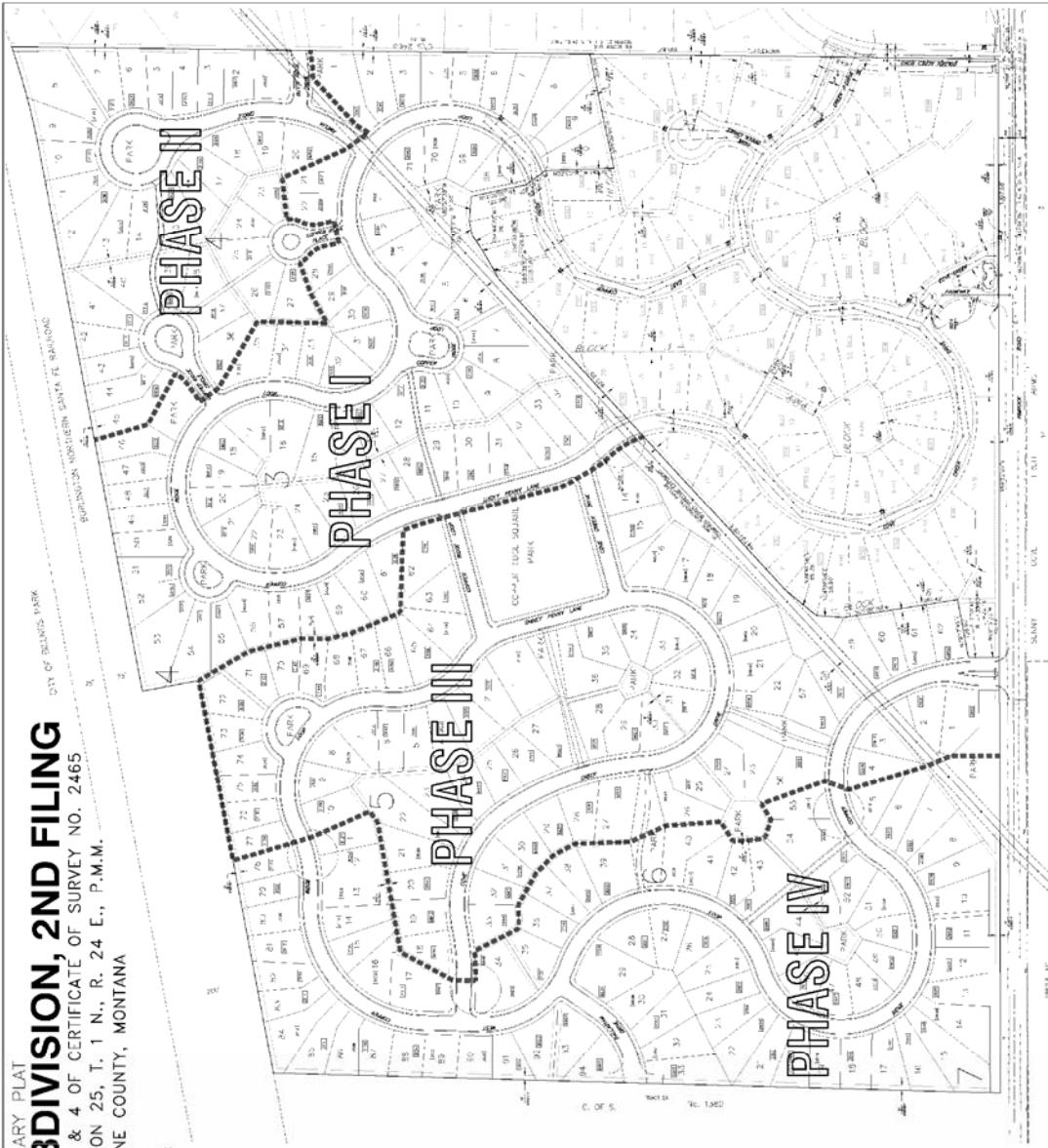
**COPPER RIDGE SUBDIVISION, 2ND FILING**  
PRELIMINARY PLAT  
CITY OF BILLINGS, SANTA FE SUBDIVISION  
BEING TRACT 3A1 OF AMENDED TRACTS 3A & 4 OF CERTIFICATE OF SURVEY NO. 2465  
SITUATED IN THE SE 1/4 OF SECTION 25, T. 1 N., R. 24 E., P.M.M.  
BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : COPPER RIDGE DEVELOPMENT, LLC  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1" = 100'

OCTOBER, 2005  
BILLINGS, MONTANA  
100' - 100' - 100' - 100'

**PHASED  
DEVELOPMENT  
PLAN**

*Copper Ridge*  
AN OAKLAND COMMUNITY



**Attachment A**

## **ATTACHMENT B**



**Figure 1.** Looking north at the property from Rimrock Road. Initial installation of utilities and excavation has started on the property.



**Figure 2.** Looking northeast from in front of the property on Rimrock Road at construction of Copper Ridge Subdivision, 1<sup>st</sup> Filing.



**Figure 3.** Looking at the property south of Rimrock Road across from the subject property. This property is a mix of agricultural and large lot residential uses.



**Figure 4.** Looking east down Rimrock Road in front of Copper Ridge Subdivision, 1<sup>st</sup> Filing where paving is in progress.

**ATTACHMENT C**  
Mayor's approval letter  
Copper Ridge Subdivision, 2<sup>nd</sup> Filing

December 12, 2005

Copper Ridge Development, LLC  
175 North 27<sup>th</sup> Street West  
Suite 940  
Billings, MT 59102

Dear Property Owner:

On December 12, 2005, the Billings City Council approved the preliminary plat of Copper Ridge Subdivision, 2<sup>nd</sup> Filing 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 have the park land in this subdivision included in the existing park maintenance district for the existing Copper Ridge Subdivision, 1<sup>st</sup> Filing.
2. To minimize the effects on local services and public health and safety, the subdivider shall provide fire hydrants at proper intervals as required by the City of Billings Fire Department. The fire hydrant locations shall be reviewed and approved by the City Fire Department prior to final plat approval.
3. To minimize the effects on local services and public health and safety, prior to final plat approval the subdivider shall fence across the edge of the Burlington Northern Santa Fe Railway right-of-way where the two pedestrian accesses along the northern portion of the subdivision connect to the railroad right-of-way and sign the corridor to indicate that there is no trespassing on the BNSF right-of-way. These park corridors must be included in the park maintenance district for the subdivision.
4. 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.
5. 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.

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

- A variance to permit 50-foot 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 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**

#### **Copper Ridge Subdivision, 2<sup>nd</sup> Filing**

Planning staff prepared the Findings of Fact for the Copper Ridge Subdivision, 2<sup>nd</sup> Filing and recommends them to the City Council. The Montana Subdivision and Platting Act requires the local government assess the subdivision's effect on the primary review criteria specified in 76-3-608 Montana Code Annotated (MCA). Likewise, subdivisions must meet the provisions of 23-304 (c) Billings Municipal Code (BMC).

#### **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 limited effect on agriculture and no effect on agricultural water user facilities from this subdivision. The proposed site is within the City limits and the property is not irrigated and there is no active crop production. However, this subdivision, like Copper Ridge, 1<sup>st</sup> Filing and other subdivisions in the area, is taking agricultural lands out of production. This subdivision will take about 70 acres of land out of 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 detention facilities constructed in the Copper Ridge Subdivision, 1<sup>st</sup> Filing adjacent to this subdivision to the southeast. The stormwater detention facilities constructed in the 1<sup>st</sup> Filing are designed to accommodate the flows from the 2<sup>nd</sup> Filing. If additional facilities are determined to be needed, they will be integrated into the park located along Rimrock Road in Block 7 of the 2<sup>nd</sup> Filing and overflow will be handled by piping to the parks along Rimrock Road in Block 1 and Block 6. A stormwater design report for all filings of Copper Ridge Subdivision has been submitted and reviewed by the City Engineering Department as part of the design documents for Copper Ridge Subdivision, 1<sup>st</sup> Filing. 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 utility easements in multiple locations throughout the subdivision that it requires to serve the subdivision. The subdivider has placed the easements as required by MDU on the preliminary plat. Language has been added to Section II (J) of the Subdivision Improvement Agreement notifying future property owners 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 installation of booster pumping units 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 has submitted a variance for this development to construct the internal streets within the subdivision to a design of 34-feet wide paved streets from back of curb to back of curb in a 50-foot-wide right-of-way. The only exception to the 50-foot right-of-way width is at the entry to the subdivision at West Copper Ridge Loop and Rimrock Road to accommodate a split median entry area. The right-of-way provided for Rimrock Road is 60 feet adjacent to this subdivision and was provided previously. Although Rimrock Road is classified in the Urban Area Transportation Plan Update as a Collector street, the City Engineering Department is not requiring any additional right-of-way at this time. Rimrock Road also is still a County Road in this area and is being improved by the developer to a paved 24-foot-wide driving surface adjacent to this subdivision.

All sidewalks shall be constructed to a 4-foot wide boulevard style throughout the subdivision as shown on the preliminary plat.

Traffic from this subdivision will use West Copper Ridge Loop and Cove Creek Parkway to access onto Rimrock Road. A Traffic Accessibility Study was completed for this property when Copper Ridge Subdivision, 1<sup>st</sup> Filing was reviewed and approved earlier this year. The subdivider has calculated additional contributions to traffic signalization at 62<sup>nd</sup> Street West and Rimrock Road for this subdivision based on the TAS information. This subdivision will contribute \$33,384.60 toward the intersection traffic signal improvements at the time of final plat filing. City Traffic Engineer Terry Smith is reviewing the TAS and the proposed contributions.

- 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 has asked that additional fire hydrants be added to meet a hydrant separation of 500 feet between hydrants (**See Condition 2**). 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 additional students would cause a significant increase in overcrowding.

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. Considering District 2's ongoing effort to handle overcrowding at its schools, it is expected 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 has identified multiple centralized delivery facilities on the subdivision that will contain between eight and 16 mailboxes per location. The subdivider is proposing that the centralized delivery locations will be located along the sides of the roadway where parking is allowed. The parking area will provide enough space for the postal vehicles and residents to pull out of the driving lane to access the boxes. The subdivider is proposing to stripe and sign the area in front of the mail boxes for no parking to prevent parked vehicles from blocking the central delivery areas.
- g. **Parks and Recreation** – Because this is a major plat the subdivider must dedicate parkland or cash in lieu of parkland. The subdivider is proposing to provide 6.84 acres of parkland to meet the 6 acres that is required. The park property will be included in a Park Maintenance District that was created for Copper Ridge Subdivision, 1<sup>st</sup> Filing and includes all of the parkland and bikeways to be developed and maintained in both filings of this subdivision (**See Condition 1**).

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

There should be a limited effect on the natural environment since this property is adjacent to Copper Ridge Subdivision, 1<sup>st</sup> Filing and was included in the master plan for the Copper Ridge Subdivision, 1<sup>st</sup> Filing. 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 and wild turkey habitat and property owners should be aware that deer and turkey can cause

damage to gardens and landscaping. Language has been added to Section II (F) 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. for the entire property when Copper Ridge Subdivision, 1<sup>st</sup> Filing was reviewed found that potentially expansive soils may exist within the subdivision. Language has been added to Section II (G) 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 Rimrock Road, and future connectivity from the subdivision to future development to the west and east also is being designed into this development. The two accesses provided to Rimrock Road for this subdivision utilize an access in this subdivision and an access in Copper Ridge Subdivision, 1<sup>st</sup> Filing. These accesses, as well as several emergency accesses between roads in this subdivision will provide access for emergency services to the 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 to the east of this subdivision. (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 (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. Rimrock Road is designated as a Collector street and should

be able to handle the additional traffic generated by this subdivision. While a Collector road right-of-way is required to have 80 feet of right-of-way, Rimrock Road in this area is a 60-foot- right-of-way. The City Engineering Department has reviewed the access for this subdivision and is not requiring any further right-of-way at this time. Rimrock Road is being paved and brought to a County Road Standard for a paved driving surface adjacent to this subdivision and from this subdivision back to the intersection of Rimrock Road with Molt Road and 62<sup>nd</sup> Street West. The proposal to have two connections to Rimrock Road and future connections to the property to the west and east of this development 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 east 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 this filing and park corridors through the subdivision that provide pedestrian connectivity to different roads, parks and lots in the subdivision.

The subdivision also is proposing two pedestrian connections from the subdivision to the Burlington Northern Santa Fe Railway property to the north. These connections appear to be designed to allow future access to a trail corridor within the railroad right-of-way. However, the City Alternative Modes Coordinator Darlene Tussing explained to the developer's engineer that it is not likely that the railroad will provide access to its right-of-way for a trail easement in the near future. Tussing suggested that the developer consider providing some sort of access along the northern boundary of the subdivision next to the railroad right-of-way. This access could be an easement that would provide future connection to development to the east and west. It also could provide a future route for pedestrians to access Phipps Ranch Park via an at-grade crossing at 70<sup>th</sup> Street West. This access would allow people from the subdivision to access the park without driving up Molt Road to the Phipps Ranch Park access near the railroad crossing of Molt Road.

The subdivider has indicated that he does not wish to provide an east-west access along the northern boundary of the subdivision for pedestrians and has proposed eliminating the two access points to the railroad right-of-way. This action would coincide with the language the subdivider has included in Section II (I) of the SIA that warns future property owners not to enter the railroad right-of-way. Providing pedestrian connections to the right-of-way while warning people not to trespass on the right-of-way seems to be a conflict. However, during the Planning Board's plat review of this subdivision, several Planning Board members indicated that it might be possible to keep the two accesses but fence them off at the railroad right-of-way until such time as a trial corridor might be available. The developer did not seem to think this would be difficult to do, although the concern about liability would need to be addressed. It might be possible to both fence the access at the railroad right-of-way and put up signage that reads: "No Trespassing on

Railroad Right-of-Way.” These pedestrian corridors would need to be included in the park maintenance district and would simply serve as small park spaces until a connection is established at some time in the future.

The Planning Board at the public hearing for this subdivision agreed to maintain the accesses for future pedestrian access for a trail corridor in the railroad right-of-way. The developer also agreed that the corridors could be kept and fenced to address any concerns of trespassing on the railroad right-of-way (See **Condition 3**).

#### **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 linking 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 state and federal authorities.

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

The property is zoned Residential-7000R. The minimum lot size in this subdivision is 7,001-square-feet, which conforms to the zoning regulations for lot size. Residential-7000R zoning allows single family homes on lots of 7,000-square-feet or larger. This zoning is limited to single family homes as is proposed in this subdivision.

**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. The subdivider has provided utility easements on the preliminary plat as required by Montana-Dakota Utilities.

**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 and access onto Rimrock Road. The subdivision also provides connections to Copper Ridge Subdivision, 1<sup>st</sup> Filing.

**CONCLUSIONS OF FINDING OF FACT**

The proposed Copper Ridge Subdivision, 2<sup>nd</sup> Filing 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. The subdivision conforms to several goals of the Northwest Shiloh Area Plan while it also conflicts with several goals of that plan. The subdivision 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 December 12, 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, December 12, 2005

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**TITLE:** Preliminary Plat of Kingston Place 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 October 1, 2005, the subdivider applied for preliminary major plat approval for Kingston Place Subdivision, which contains 56 lots on approximately 20 acres of land. The subject property is located south of the intersection of Wicks Lane and Bench Boulevard, directly north of Anchor Avenue. The subject property is zoned Residential 7000 (R-7000) and is proposed for duplex and single-family residential development. The owner is King Heights, 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 Kingston Place 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 October 1, 2005, the subdivider applied for preliminary major plat approval for Kingston Place Subdivision, which contains 56 lots on approximately 20 acres of land. The subject property is located south of the intersection of Wicks Lane and Bench Boulevard, directly north of Anchor Avenue. The subject property is zoned Residential 7000 (R-7000) and is proposed for duplex and single-family residential development.

## **PROCEDURAL HISTORY**

- The preliminary plat application was submitted to the Planning Division on October 1, 2005.
- The Planning Board conducted the plat review on November 8, 2005.
- The Planning Board conducted a public hearing on November 22, 2005, and forwarded a positive recommendation to the City Council.
- The City Council will consider the preliminary plat on December 12, 2005.

## **BACKGROUND**

General location:

The subject property is located south of the intersection of Wicks Lane and Bench Boulevard, directly north of Anchor Avenue.

Legal Description:

Tract B1-A of Second Amended Tract B, NW $\frac{1}{4}$ , Section 23, Township 1N, Range 26E

Subdivider:

King Heights, LLC

Owner:

Same

Engineer and Surveyor:

Engineering, Inc.

Existing Zoning:

R-7000

Existing land use:

Single-Family Residence and Horse Pasture

Proposed land use:

Single-Family Residences and Duplexes

Gross area:

20 acres

Net area:

14.24 acres

Proposed number of lots:

56

Lot size:

Max: 120,903 square feet  
Min.: 7,200 square feet

Parkland requirements:

Subdivider is proposing to provide a cash-in-lieu of parkland dedication.

The subject property is bordered on the north by developing land within King Place Subdivision which contains both multi-family residential and commercial uses, on the south and west by single-family residences, and on the east by a church and vacant pasture land.

### **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 effects on local services, the approximately 18-foot wide strip of land located along the eastern border of the subject property shall be transferred to King Heights, LLC, or an easement obtained to connect to city services within the utility and multi-use path located to the east of the subdivision. If the property is unable to be transferred or an easement obtained, the subdivider shall work with the Public Utilities Department to provide utilities from the streets within Moody Subdivision to the south. (*Recommended by the City Public Works Department - Distribution and Collection Division and City-County Planning*)
2. To minimize effects on local services, the existing 20-foot sanitary sewer easement centered on the south property line from Naples Street to Rome Street shall remain clear and free of obstructions, fences, trees, etc. (*Recommended by the City Public Works Department - Distribution and Collection Division*)
3. To minimize effects on local services, the water main in Rome Street at the cross of the intersection of Anchor Avenue and Rome Street shall be abandoned at the developer's expense. (*Recommended by the County Water District of Billings Heights*)
4. To minimize effects on local services, the subdivider shall install a 5-foot wide pedestrian path along the southern boundary of the property within the 20-foot sanitary sewer and pedestrian right-of-way from Naples Street to the multi-use

trail to the east to provide access and City maintenance of the sanitary sewer line. A culvert and pedestrian crossing shall be installed across the existing ditch at the southeastern corner of the property. Section VI of the Subdivision Improvements Agreement (SIA) shall be revised to include the pedestrian right-of-way. *(Recommended by the Engineering Division)*

5. To minimize effects on local services, the radii for the intersection at Royal Avenue and King James Street and the intersection of Naples Street and Kingston Avenue shall be a minimum of 30-feet for the inner radius and 50-feet for the outer radius, measured along the curb. *(Recommended by the Engineering Division)*
6. 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)*
7. 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)*
8. To minimize effects on local services, Section VII. Parks and Open Space, in the SIA shall be revised to exclude references to how the cash-in-lieu of parkland dedication will be spent. *(Recommended by the Parks and Recreation Department)*
9. To minimize effects on agriculture and agricultural water user facilities, an easement for the existing ditch located along the eastern boundary of the property shall be clearly depicted on the final plat. A note shall be added to the SIA that the ditch easement shall remain free from obstructions, such as fences and trees. *(Recommended by the Yellowstone County Board of Planning)*
10. To minimize effects on agriculture and agricultural water user facilities, the subdivider shall work with the owner of Lot 10, Linda Subdivision to relocate the existing headgate to the ditch located along the eastern border of the site and possibly reconstruct the headgate within the ditch easement. *(Recommended by the Yellowstone County Board of Planning)*
11. To minimize the effects on wildlife and wildlife habitat, the subdivider shall control the dispersal of prairie dogs onto adjacent properties by working with the Department of Agriculture for relocation or providing an alternative method for removing the prairie dogs. If an alternate method (i.e. poisoned pellets) is proposed, the person(s) administering the poison shall be licensed through the Montana Department of Agriculture. *(Recommended by the Montana Department of Agriculture, Montana Fish, Wildlife, and Parks, and the Planning Division)*

12. 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.
13. 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 the internal streets, 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 from Section 23-605(d), BMCC, which states that double frontage lots should be avoided. As depicted on the plat, proposed Lots 1, Block 6, will be bordered on the west by Bench Boulevard and on the east by King James Street. Staff finds that this variance is acceptable, as a 1-foot no access strip has been provided along the eastern boundary of Lot 1 in order to prevent access from Bench Boulevard. 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(k), BMCC which specifies that the right-of-way dedication for principle arterial streets shall be a 60-foot half-width for a 120-foot total width. In accordance with a request from the City Engineering Department, the subdivider is proposing a half-width dedication of 50-feet along Bench Boulevard. The future street plan for this portion of Bench Boulevard includes a 50-foot half-width. The proposed variance will not be detrimental to the public and will not cause an increase in public costs.

### **STAKEHOLDERS**

A public hearing was conducted by the Planning Board on November 22, 2005. There were property owners present from Linda Subdivision to the northeast of the property and Moody Subdivision to the south. There were concerns regarding the ditch located on the southern and eastern border of the subject property and the number of prairie dogs located on the site.

The owner of Lot 10, Linda Subdivision retains a water share to this portion of the ditch and has a headgate located near the subdivision. As such, the Planning Board requested Condition #9 be added to this application requiring an easement for the ditch to be clearly depicted on the plat and that a note be added to the SIA that the ditch remains free from obstructions such as fences and trees. The SIA does state that water rights will not be transferred to subsequent lot owners; however the ditch will be perpetuated for water

users offsite. Furthermore, since the lot owner's headgate is located within the proposed easement for the ditch on the subject property, Condition #10 requires that the subdivider work with the owner of Lot 10, Linda Subdivision to relocate and reconstruct the headgate if necessary.

There were additional concerns expressed regarding the prairie dog population located on the property and whether the proposed subdivision might displace them onto adjacent properties. Since the November 22, 2005, public hearing, staff has contacted the Montana Department of Fish, Wildlife, and Parks, as well as the Montana Department of Agriculture regarding this issue and has been advised that this property is the potential site of a relocation project for the prairie dogs. In the spring of 2006, the Department of Agriculture is proposing to relocate the prairie dogs to the Crow Reservation; however they do realize that the developer's schedule may not coincide with the proposed relocation project. Therefore, in order to control the population and keep prairie dogs from dispersing onto adjacent properties when the subdivision is constructed, a method of poison control may be required. Condition #11 specifies that the subdivider shall control the dispersal of prairie dogs onto adjacent properties by working with the Department of Agriculture for relocation or providing an alternative method for removing the prairie dogs. If an alternate method (i.e. poisoned pellets) is proposed, the person(s) administering the poison shall be licensed through the Montana Department of Agriculture.

### **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 Kingston Place Subdivision, approval of the variances, and adoption of the Findings of Fact as presented in the staff report, to the City Council.

### **ATTACHMENTS**

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

## KINGSTON PLACE SUBDIVISION

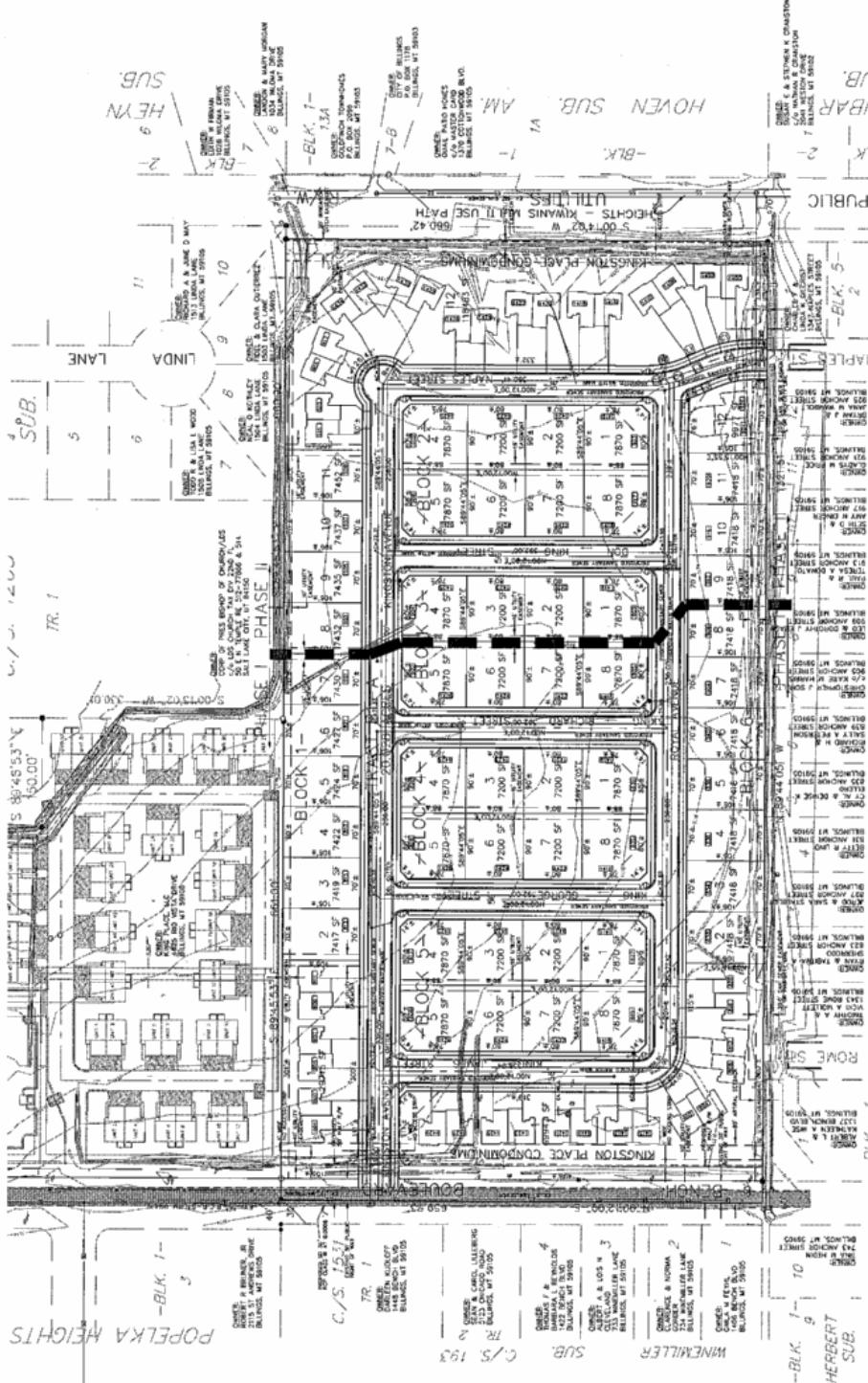
PRELIMINARY PLAT OF

BEING TRACT B1-A, OF SECOND AMENDED TRACT B, CERTIFICATE OF SURVEY No. 1056  
SITUATED IN THE NW 1/4 OF SEC. 23, T. 1 N., R. 26 E., P.M.M.  
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: KING HEIGHTS, L.L.C.  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1" = 80'

## Preliminary Plat of Kingston Place Subdivision

**ATTACHMENT A**



**ATTACHMENT B**  
Site Photographs



Figure 1: View east from Bench Boulevard toward the existing vacant pasture land.



Figure 2: View northeast from Bench Boulevard toward the existing single-family residence on the property.



Figure 3: View north along Bench Boulevard toward the adjacent developing land within King Place Subdivision.



Figure 4: View southeast toward an existing barn on the subject property. Directly adjacent to the south are single-family residences located within Moody Subdivision.

**ATTACHMENT C**  
Findings of Fact

The Planning Board is forwarding the recommended Findings of Fact for Kingston Place 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 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 and several outbuildings located on the southwest corner of the property. There is a ditch located along the southern boundary of the property and a portion of the eastern boundary, which shall be perpetuated. As specified in the SIA, any improvements to the ditch shall be permitted and approved by the ditch owner. No water rights will be transferred with this subdivision.

The owner of Lot 10, Linda Subdivision (to the northeast of the subject property) retains a water share to this portion of the ditch and has a headgate located near the subdivision. As such, Condition #9 requires an easement for the ditch to be clearly depicted on the plat and that a note be added to the SIA that the ditch remains free from obstructions such as fences and trees. Furthermore, since the lot owner's headgate is located within the proposed easement for the ditch on the subject property, Condition #10 requires that the subdivider work with the owner of Lot 10, Linda Subdivision to relocate and reconstruct the headgate if necessary.

**2. Effect on local services**

h. **Utilities** – Water to the subject property will be extended from the existing main line within Bench Boulevard to the west of the subdivision to 8-inch water mains constructed within the interior subdivision streets. 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 the proposed extensions are acceptable. However, Condition #3 specifies that the existing water main at the cross of the intersection between Anchor Avenue and Rome Street shall be abandoned at the developer's expense.

All interior subdivision streets will include 8-inch sanitary sewer lines to be connected to the existing trunk line located within the public utilities right-of-way to the east of the subject property. The Public Utilities Department did recently discover that there is a small strip of land approximately 18-feet in width located along the eastern border of the subject property that is not owned by the subdivider. This strip of land currently prevents the subdivision from

connecting to the sewer trunk line to the east. As such, the subdivider is in the process of completing a Quiet Title action to determine the ownership and ultimately transfer the property to the subdivider or gain an easement across the land to connect to the sewer line. If the land cannot be transferred or an easement obtained, the subdivider will be required to connect to sanitary sewer within Naples Street and Rome Street to the south. Condition #1 requires the property to be transferred or an easement obtained prior to approval of the final plat or an alternative connection within Moody Subdivision to the south be reviewed and approved by the Public Utilities Department.

There is a 20-foot wide sanitary sewer easement and pedestrian right-of-way located along the southern boundary of the subject property. Condition #2 requires that this easement remain free from obstructions including vegetation (trees and bushes) in case maintenance or repair is necessary for the sewer trunk. Furthermore, in order to provide maintenance for the sewer trunk connection to the east and the lines within the 20-foot sanitary sewer easement along the southern border of the Lot 12, Block 1, Engineering staff is requiring that a 5-foot wide hard surface pedestrian access be provided within the sanitary sewer easement to the east. A culvert shall also be installed across the existing ditch and pedestrian access to the City utility easement, as specified in Condition #4.

- i. **Stormwater** – As specified in the submitted SIA, stormwater discharge will be provided through a combination of surface drainage and curb and gutters. A storm drain connection will be provided to the existing lateral storm drain line in Bench Boulevard. 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 streets from Bench Boulevard, a principle arterial bordering the western boundary of the property and Naples Street located within Moody Subdivision to the south.

The subdivider is proposing seven (7) internal streets as part of this subdivision. The proposed streets will include a 56-foot right-of-way with a 34-foot wide paved surface from the back of curb to the 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 56-feet of right-of-way where 60-feet is required. Engineering staff is supportive of this variance, as there is sufficient area on each side of the street to accommodate the proposed 5-foot wide boulevard sidewalks, street lights, and fire hydrants.

The subject property is to be developed in two (2) phases. The first phase includes lots located on the western portion of the property and will include street improvements for King James Street, King George Street, King Richard Street and portions of Kingston Avenue and Royal Avenue. Phase 2 will include the lots located on the eastern portion of the property and the construction of Don King Street, Naples Street to its southern connection, and the remainders of Kingston Avenue and Royal Avenue.

As part of this application, the subdivider is required to provide a 60-foot half width dedication along Bench Boulevard. However, in accordance with a request from the City Engineering Department, the subdivider is proposing a half-width dedication of 50-feet along Bench Boulevard. The future street improvements plan for this portion of Bench Boulevard includes a 50-foot half width for 100-feet total width. A variance has been requested with this subdivision.

A Traffic Accessibility Study (TAS) was submitted to the Engineering Department for review and approval. The TAS determined that Kingston Avenue shall have a stop sign at its intersection with Bench Boulevard; all other intersections within the subdivision will be uncontrolled. The design and thickness of street improvements shall be determined by field tests and will be reviewed and approved by the City Engineering Division.

- 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.
- 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 1.54 acres of dedicated parkland. The subdivider is proposing to provide cash-in-lieu for the parkland dedication. The SIA does specify that the cash-in-lieu will be utilized for the required pedestrian connection to the utility easement to the east. The Parks Department has reviewed this language and is requiring the cash-in-lieu be removed from Section VII. Parks and Open Space, as specified in Condition #8.
- 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 #7. 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 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.

During the public hearing, there were concerns expressed regarding the number of prairie dogs located on the site and whether the subdivision might displace them onto other properties. Since the November 22, 2005, public hearing, staff has contacted the Montana Department of Fish, Wildlife, and Parks, as well as the Montana Department of Agriculture regarding this issue and has been advised that this property is the potential site of a relocation project for the prairie dogs. In the spring of 2006, the Department of Agriculture is proposing to relocate the prairie dogs to the Crow Reservation; however they do realize that the developer's schedule may not coincide with the proposed relocation project. Therefore, in order to control the population and keep prairie dogs from dispersing onto adjacent properties when the subdivision is constructed, a method of poison control may be required. Condition #11 specifies that the subdivider shall control the dispersal of prairie dogs onto adjacent properties by working with the Department of Agriculture for relocation or providing an alternative method for removing the prairie dogs. If an alternate method (i.e. poisoned pellets) is proposed, the person(s) administering the poison shall be licensed through the Montana Department of Agriculture.

### **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:

- a. **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.*

- b. **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 single-family residences and duplexes.*

- c. **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.*

- d. **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.*

- e. **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 connection to the multi-purpose trail located adjacent to the east 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.

**1. Heritage Trail Plan**

The proposed subdivision lies within the jurisdiction of the Heritage Trail Plan. There is a multi-use trail located adjacent to the east of the subdivision within the public utility easement. As part of this subdivision, the developer is proposing a sidewalk connection across the existing sewer connection located along the southeast corner to provide for City maintenance of the sanitary sewer and a connection to the existing multi-use trail to the east.

**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.

**F. 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, and single-family residences. The required principal arterial setback is depicted for the lots bordering Bench Boulevard.

**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 #6, 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 an internal road system via Bench Boulevard to the west and Naples Street to the south.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Kingston Place 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, December 12, 2005.

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Charles F. Tooley, Mayor

**ATTACHMENT D**  
Mayor's Approval Letter

December 12, 2005

King Heights, LLC  
2680 Overland Avenue  
Billings, MT 59102

Dear Applicant:

On December 12, 2005, the Billings City Council conditionally approved the preliminary plat of Kingston Place Subdivision. The conditions of approval are as follows:

1. To minimize effects on local services, the approximately 18-foot wide strip of land located along the eastern border of the subject property shall be transferred to King Heights, LLC, or an easement obtained to connect to city services within the utility and multi-use path located to the east of the subdivision. If the property is unable to be transferred or an easement obtained, the subdivider shall work with the Public Utilities Department to provide utilities from the streets within Moody Subdivision to the south. (*Recommended by the City Public Works Department - Distribution and Collection Division and City-County Planning*)
2. To minimize effects on local services, the existing 20-foot sanitary sewer easement centered on the south property line from Naples Street to Rome Street shall remain clear and free of obstructions, fences, trees, etc. (*Recommended by the City Public Works Department - Distribution and Collection Division*)
3. To minimize effects on local services, the water main in Rome Street at the cross of the intersection of Anchor Avenue and Rome Street shall be abandoned at the developer's expense. (*Recommended by the County Water District of Billings Heights*)
4. To minimize effects on local services, the subdivider shall install a 5-foot wide pedestrian path along the southern boundary of the property within the 20-foot sanitary sewer and pedestrian right-of-way from Naples Street to the multi-use trail to the east to provide access and City maintenance of the sanitary sewer line. A culvert and pedestrian crossing shall be installed across the existing ditch at the southeastern corner of the property. Section VI of the Subdivision Improvements Agreement (SIA) shall be revised to include the pedestrian right-of-way. (*Recommended by the Engineering Division*)
5. To minimize effects on local services, the radii for the intersection at Royal Avenue and King James Street and the intersection of Naples Street and Kingston Avenue shall be a minimum of 30-feet for the inner radius and 50-feet

for the outer radius, measured along the curb. *(Recommended by the Engineering Division)*

6. 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)*
7. 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)*
8. To minimize effects on local services, Section VII. Parks and Open Space, in the SIA shall be revised to exclude references to how the cash-in-lieu of parkland dedication will be spent. *(Recommended by the Parks and Recreation Department)*
9. To minimize effects on agriculture and agricultural water user facilities, an easement for the existing ditch located along the eastern boundary of the property shall be clearly depicted on the final plat. A note shall be added to the SIA that the ditch easement shall remain free from obstructions, such as fences and trees. *(Recommended by the Yellowstone County Board of Planning)*
10. To minimize effects on agriculture and agricultural water user facilities, the subdivider shall work with the owner of Lot 10, Linda Subdivision to relocate the existing headgate to the ditch located along the eastern border of the site and possibly reconstruct the headgate within the ditch easement. *(Recommended by the Yellowstone County Board of Planning)*
11. To minimize the effects on wildlife and wildlife habitat, the subdivider shall control the dispersal of prairie dogs onto adjacent properties by working with the Department of Agriculture for relocation or providing an alternative method for removing the prairie dogs. If an alternate method (i.e. poisoned pellets) is proposed, the person(s) administering the poison shall be licensed through the Montana Department of Agriculture. *(Recommended by the Montana Department of Agriculture, Montana Fish, Wildlife, and Parks, and the Planning Division)*
12. 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.
13. 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 double frontage lots, where Section 23-605(d), BMCC, states that double frontage lots should be avoided.
- A variance to permit a 50-foot half-width dedication for a principle arterial street, where Section 23-601(k), BMCC specifies that the right-of-way dedication for principle arterial streets shall be a 60-foot half-width.

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: Dennis Randall, Engineering, Inc.

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

# S1

**AGENDA ITEM:**



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## **CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 12, 2005**

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**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 \$1,246,083.17 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 14, 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

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

# S2

**AGENDA ITEM:**



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## **CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 12, 2005**

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**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 \$713,981.80 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 18, 2005, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

**ATTACHMENT:**

A -- List of claims greater than \$2500

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

**AGENDA ITEM:****CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA**  
**Monday, December 12, 2005****TITLE:** Annexation #05-10: Public Hearing & Resolution**DEPARTMENT:** Planning and Community Services**PRESENTED BY:** Candi Beaudry, AICP, Planning Division Manager

**PROBLEM/ISSUE STATEMENT:** Mr. Jeffrey Essmann submitted a petition to annex his property to the City of Billings under 7-2-4600, MCA. The .906-acre property is located on the east side of Blue Creek Road and it is currently vacant. The property owner is requesting annexation in order to obtain city water and sewer services to develop the property for commercial uses. A portion of the adjacent right-of-way would be annexed along with this property in accordance with 7-2-4211, MCA bringing the total area to 1.709 acres. The City Council acknowledged receipt of the petition on November 14, 2005, and set this meeting for a public hearing. The City Council will conduct a public hearing and approve or disapprove the resolution annexing the land.

**ALTERNATIVES ANALYZED:** MCA, Section 7-2-4600 allows owners of more than 50% of the property to petition the city for annexation. In this case, the owner of 100% of the land signed the petition. The Council can approve or deny the annexation petition.

**FINANCIAL IMPACT:** Upon annexation, the property will likely be developed for commercial uses and connect to City sewer and water mains in Blue Creek Road. City water currently exists within Blue Creek Road and sewer lines will be extended along Blue Creek Road within the next year. This development will help recover a portion of the City's investment in extending these utilities.

**RECOMMENDATION**

Staff recommends that the City Council approve this public services report and approve the resolution annexing Tract 1C of Amended Tract 1 of the 2<sup>nd</sup> Amendment to Certificate of Survey 566, including all adjacent right-of-way of Montana Highway No. 416 (Blue Creek Road). Prior to development of the site the following shall occur:

- a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or

b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

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

**ATTACHMENTS**

- A. Resolution
- B. Photographs

## **INTRODUCTION**

The owner of this property petitioned for City annexation under 7-2-4600, MCA in order to obtain City sewer and water services. The City Council can approve or deny the annexation.

## **PROCEDURAL HISTORY**

- Property owner submitted an annexation petition October 19, 2005.
- City Council acknowledged receipt of the petition on November 14, 2005.
- City Council will conduct an annexation public hearing on December 12, 2005, and decide to approve or deny the annexation.
- If the Council approves the petition for annexation, it shall hold the First Reading and Public Hearing on a resolution to adjust the City Council Ward boundaries on December 19, 2005, and the Second Reading on January 9, 2005.

## **BACKGROUND**

The subject property is located on the east side of Blue Creek Road at the intersection of Santiago Boulevard. It is a .906-acre vacant parcel of land just south of the Blue Basket and is contiguous with City limits to the north, south and east. The owner intends to develop the property for commercial purposes.

The City is extending a sewer main along Blue Creek Road to serve the residents of Cedar Park and Briarwood Subdivisions. City water is currently available adjacent to the property. The developer will pay all necessary hookup fees and construct the site to City standards at the time the parcel is developed.

An annexation agreement is not necessary for this annexation, as it is a vacant parcel that will undergo site development review at the time the property is developed. Required improvements and contributions will be outlined at that time in a Development Agreement.

## **ALTERNATIVES ANALYSIS**

The City Council has expressed concerns about how annexations may affect the City's ability to provide services to annexed property without diminishing the services provided to existing City residents. To address these concerns, Council adopted an annexation policy that lists criteria for suitable annexations. Those criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements meet City standards.
4. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
5. Upon approval of the final subdivision plat, the owners will form a Park Maintenance District.
6. Residential densities will be approximately 4 dwelling units per acre (when it is incorporated as part of the subdivision).

The only criteria applicable to this application are 1, 2 and 3. The subject property meets or will meet these Annexation Policy criteria except that it does not lie within the short-term Limits of Annexation (2004-2011). All property south of the Yellowstone River is identified as suitable for annexation only after year 2012. The reason for postponing annexations south of the River till this time is based primarily on the ability of emergency service providers to access property. Currently, the only practical access route is across the South Billings Boulevard Bridge. The lack of a secondary access is identified as a constraint to future development for the area south of the river. However, the fact that this property is already surrounded on three sides by City property currently receiving City police and fire services, and that the property is small and would be used for commercial purposes only, supports a recommendation of approval.

Although 7-2-4600, MCA allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan including a 5-year (minimum) plan that outlines how and when services and infrastructure will be extended to the annexed area and how they will be financed. This report follows that general format.

**Departmental Response:** City departments and Yellowstone County were given the opportunity to comment on this annexation. All City departments responded favorably. No comments were received from Yellowstone County.

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

**Water:** Water service is currently available in Blue Creek Road and Santiago Boulevard.

**Sewer:** The City is currently in the process of acquiring right-of-way for the extension of a sewer line to Briarwood Subdivision. It is anticipated that the line will be extended within the next year. The subject property will be able to connect to this line once it is constructed. The developer will be required to pay all local and interior water and wastewater construction fees in effect at the time they obtain services. The property is also subject to system development fees in effect at the time of development.

**Stormwater:** Stormwater runoff will be retained on-site. The stormwater collection facilities will be designed and constructed in accordance with City regulations at time of development.

**Transportation:** The annexation area is located at the intersection of Blue Creek Road and Santiago Boulevard. The Urban Transportation Plan classifies Blue Creek Road as principal arterial and is a State secondary route (Montana Highway 416). An increase in traffic or a need for additional street improvements as a result of this annexation is not anticipated.

A new State statute adopted in 2003, requires that City include the full width of any public street or road, including the right-of-way as part of the area to be annexed (7-2-

4211, MCA). Santiago Boulevard is currently within the City limits. The entire right-of-way of Blue Creek Road fronting the subject property will be annexed as part of this resolution.

**Fire Station:** Primary fire protection will be provided by Fire Station #4 located at 5<sup>th</sup> Street and Miles Avenue.

**Parks:** The area to be annexed is approximately one half mile from Riverfront Park. The proposed annexation and future development is not expected to negatively impact this park.

**Bicycle and pedestrian facilities:** Blue Creek Road is identified in the Heritage Trail plan as an on-street bicycle route. The subject property is also located within a proposed off-street trail corridor. While the City has no authority to require contribution of a trail corridor at the annexation stage, future development of the property would be encouraged to provide bicycle and pedestrian facilities.

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

**Transit:** MET does not regularly serve this area, but paratransit services will be provided.

**Fire:** The property is currently within the Blue Creek Volunteer Fire District (BCVFD) and is located adjacent to the Blue Creek Fire Station. After annexation, the Billings Fire Department will serve this area in cooperation with the (BCVFD). The Billings Fire Department approves of this annexation request.

**Police:** The Police Department had no objection with this annexation request.

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

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

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

## **STAKEHOLDERS**

The annexation by petition method does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was posted on the property and published in the Billings Gazette. The Planning Division has received no comments on this proposed annexation.

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

The 2003 Growth Policy guides development in the vicinity of the subject property. The annexation is consistent with the Growth Policy goals by encouraging new development in and around existing population centers.

### **RECOMMENDATION**

Staff recommends that the City Council approve this public services report and approve the resolution annexing Tract 1C of Amended Tract 1 of the 2<sup>nd</sup> Amendment to Certificate of Survey 566, including all adjacent right-of-way of Montana Highway No. 416 (Blue Creek Road). Prior to development of the site the following shall occur:

- a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

### **ATTACHMENTS**

- A. Resolution
- B. Photographs

## RESOLUTION NO. 04- \_\_\_\_\_

### A RESOLUTION OF THE CITY OF BILLINGS APPROVING PETITIONS FOR ANNEXATION AND ANNEXING TERRITORY TO THE CITY.

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law, and

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

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

1. TERRITORY ANNEXED. Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

A tract of land situated in the SE1/4 of Section 20, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 1C of Amended Tract One of the Second Amendment to Certificate of Survey No 566 Recorded July 9, 1975, Under Document No. 992687, Records of Yellowstone County, Montana; including all adjacent right-of-way of Montana Highway No. 416 / Blue Creek Road. Containing 1.709 +/- gross and 0.906 net acres.

(# 05-10) See Exhibit "A" Attached

2. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

3. CONDITIONS: The annexation is approved subject to the following condition:

That prior to development of the site, including the issuance of any building permits, the following shall occur:

- a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

PASSED by the City Council and APPROVED this 12<sup>h</sup> day of December, 2005.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Charles F. Tooley, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE  
CITY CLERK

Subject  
looking

property



southeast across Blue Creek Road towards Cedar Park Subdivision.



Subject  
property looking south across Santiago Boulevard, Blue Basket Convenience store visible in the background.

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 12, 2005**

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**TITLE:** Public Hearing and Resolution Renaming 34<sup>th</sup> Street West to Zimmerman Trail

**DEPARTMENT:** Public Works Department

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

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**PROBLEM/ISSUE STATEMENT:** Arlene Street from Rimrock Road to Poly Drive was renamed Zimmerman Trail in May 2005. Doing so extended the Zimmerman Trail name from Highway 3 south to Poly Drive where the new “Arlene Corridor” roadway section was constructed. Rights-of-way for the new roadway section have now been filed with the Yellowstone County Clerk & Recorder’s office and the next step is to rename the platted 34<sup>th</sup> Street West, between Colton Boulevard and Grand Avenue, to Zimmerman Trail. Our preliminary review indicates that no street addresses will be affected by the name change.

There is currently unplatte land between Poly Drive and Colton Boulevard through which the “Arlene Corridor” was constructed. This roadway section will be named Zimmerman Trail when the plat is filed in the future. Once this final stretch has been named, Zimmerman Trail will be continuous from Highway 3 south to Grand Avenue.

**ALTERNATIVES ANALYZED:**

- Name change from 34<sup>th</sup> Street West to Zimmerman Trail.
- Leave this section of the new arterial corridor named 34<sup>th</sup> Street West.

**FINANCIAL IMPACT:** None.

**RECOMMENDATION**

Staff recommends that the City Council conduct a public hearing and pass a resolution changing the name of 34<sup>th</sup> Street West, between Colton Boulevard and Grand Avenue, to Zimmerman Trail.

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

**ATTACHMENTS:**

Attachment A – Map showing the section of 34<sup>th</sup> Street West section to be renamed (1 page)  
Attachment B – Draft Resolution (1 page)

RESOLUTION NO. 05-\_\_\_\_\_

A RESOLUTION PURSUANT TO BILLINGS, MONTANA CITY CODE ARTICLE 22-7001, RENAMING THE STREET PRESENTLY NAMED 34th STREET WEST, FROM COLTON BOULEVARD SOUTH TO GRAND AVENUE, TO ZIMMERMAN TRAIL.

WHEREAS, the City Council has authority to change the name of any street or avenue pursuant to Section 22-700, Billings, Montana, City Code (BMCC); and

WHEREAS, the City Clerk published a notice of the public hearing in accordance with Section 22-702, Billings, Montana, City Code (BMCC); and

WHEREAS, the City Clerk mailed a notice of the public hearing to each property owner, or his agent on 34<sup>th</sup> Street West (from Colton Boulevard south to Grand Avenue) in accordance with Section 22-701, Billings, Montana, City Code (BMCC); and

WHEREAS, on Monday, December 12, 2005, the City Council held a public hearing on the renaming of 34<sup>th</sup> Street West, from Colton Boulevard south to Grand Avenue; and

WHEREAS, the Billings City Council finds that renaming 34<sup>th</sup> Street West, from Colton Boulevard south to Grand Avenue, is in the best interests of the City and the inhabitants thereof.

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

That once a copy of this resolution is filed with the Yellowstone County Clerk and Recorder, the street of 34<sup>th</sup> Street West, from Colton Boulevard south to Grand Avenue, is deemed changed to Zimmerman Trail.

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:



**CITY COUNCIL  
CITY OF BILLINGS, MONTANA  
Monday, December 12, 2005**

**SUBJECT:** Citizen's Committee on Antique and Classic Car Restoration

**THROUGH:** Ramona Mattix, AICP, Planning Director

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

**PROBLEM/ISSUE STATEMENT:** The City Council formed a special committee in December 2004 to review and make recommendations concerning possible changes to the city codes that define junk vehicles and how those vehicles may be stored on residential property. The committee has considered these issues and is making a recommendation that Section 27-601 of the Unified Zoning Regulations and Section 18-302 and 18-303 of the Nuisance Code be amended to allow for limited storage of vehicles under restoration in residential zones

**BACKGROUND:** The Citizen's Committee on Antique and Classic Car Restoration consists of representatives from the community including Mark Richlen and Jack Johnson of Bright & Beautiful, John Schilling and Jim Ronquillo of Neighborhood Task Forces, Mike Bell of Magic City Model A's and Don Brocopp, a classic and antique restoration expert.

States, cities and counties all regulate the storage of inoperable vehicles. The unenclosed storage of inoperable vehicles can affect property values and the aesthetic qualities of neighborhoods and whole communities. The current city codes require all inoperable vehicles or vehicle parts to be stored within an enclosed building or structure such as a garage. This regulation may be more stringent than necessary to provide protection of property values and community aesthetic appeal.

Billings hosts many car shows and parades every year that feature classic and antique vehicles. Many of these restored vehicles are owned by local hobbyists and entrepreneurs who restore vehicles as a profession. The committee studied various local regulations that allow some type of unenclosed storage of inoperable vehicles, in particular vehicles that are actively being restored.

**RECOMMENDATION:**

The Committee recommends the following:

1. That one vehicle under active restoration may be allowed on a residential property so long that it is shielded from public view and from adjacent property. Shielding and screening means it cannot be seen by someone standing at ground level from outside the property. This does not include tarps or similar covers but may include solid fencing, dense evergreen hedges or other screening materials. Project vehicles cannot be stored in any front yard, side yard or driveway.
2. That one additional vehicle may be allowed for a “parts” vehicle so long as it is stored outside of public view and not in a front yard, side yard or driveway.
3. That a system be established to track and monitor where active vehicle restoration projects occur in residential zones. This shall include a minimal fee (\$50.00+) that will allow up to three years for the restoration project to be completed. Two 1-year extensions of time may be allowed for a total of five (5) years to complete the restoration project. If the project is not complete after five (5) years the vehicle and any parts related to the project must be placed in an enclosed building. The code enforcement division will monitor these projects and will administer the program on a regular basis.

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

**ATTACHMENTS**

A:      Draft Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 18-302 AND 27-601 BY ADDING DEFINITIONS, PROVIDING FOR THE ALLOWANCE OF RESTORATION PROJECT VEHICLES AND PROVIDING FOR A PROCEDURE WHEREBY PROPERTY OWNERS MAY STORE SUCH VEHICLES FOR LIMITED PERIODS OF TIME, ESTABLISHING AN EFFECTIVE DATE, AND PROVIDING A SEVERABILITY CLAUSE.

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

**Section 1.** That section 18-302 of the Billings Montana City Code be amended so that such section shall read as follows:

Sec. 18-302. Definitions.

For the purposes of this article the following definitions shall apply:

*Abate* means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means, in such a manner and to such an extent that is determined necessary in the interest of the health, safety and general welfare of the effected community.

*Attractive hazard* means the open storage on property of any container that may attract children and having a compartment of more than one and one-half (1 1/2) cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot be easily opened from the inside.

*Dangerous structure* means any dangerous, decaying, unkempt, falling or damaged residential dwelling or other structure suitable for human occupancy excluding any structure related to an agricultural or farming operation.

*Enforcement officer* means any city employee so designated by the city council or the city administrator.

*Junk* includes the open storage of old appliances, equipment, or parts thereof, old iron or other scrap metal, automobile or truck tires, cardboard, old lumber or scrap wood, rags, rope, paper, debris, rubble, batteries, rubber debris, mattresses or any worn out, cast off or discarded article or material which is ready for destruction or has been collected or stored as salvage, for conversion to some other use or for reduction into components and is not part of a commercial or public salvaging or recycling operation.

*Junk vehicle* means any discarded, ruined, wrecked, or dismantled motor vehicle, including any component parts and which is not lawfully and validly licensed. For purposes of this article, any vehicle that is operable but unlicensed is considered a junk vehicle. For the purposes of this article, any vehicle defined as a Restoration Project Vehicle is not considered a junk vehicle.

*Nuisance* means a public nuisance created by allowing rubble, debris, junk, junk vehicle(s), dangerous structure(s) or refuse to accumulate so that it:

- (1) Endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property, or
- (2) A condition which renders any public right-of-way dangerous for passage.

*Obstruction to the public right-of-way* means the placement of any debris, refuse, rubble, dirt, gravel, soil, fence, junk, junk vehicle or other personal property so as to obstruct traffic, drainage, pedestrians or otherwise safe and open access to such right-of-way.

*Open storage* means exposed to the elements or not stored inside an enclosed structure which includes walls on all sides and a roof.

*Person* means any individual, firm, association, partnership, corporation or any entity, public or private.

*Premises* means any lot, parcel of land, building, parcel, real estate, land or portion of land whether improved or unimproved including any portion of any street, right-of-way or alley lying between such lot or parcel of land and the center of such street, right-of-way or alley.

*Responsible person* means any agent, lessee, owner or other person occupying or having charge or control of any premises.

*Restoration Project Vehicle* means a vehicle or parts of a vehicle for which the owner has obtained a permit from the Planning and Community Services Department to store such vehicle outside of an enclosed building for a limited period of time. All Restoration Project Vehicle(s) shall be shielded from public view and from adjacent property. Shielding and screening means the vehicle or vehicle parts cannot be seen by someone standing at ground level from outside the property. This does not include tarps or similar covers but may include solid fencing, dense evergreen hedges or other screening materials. Project vehicles cannot be stored in any front yard, side yard or driveway.

**Section 2.** That section 27-601 of the Billings Montana City Code be amended so that such section shall read as follows:

Sec. 27-601. Abandoned vehicles and storage restrictions.

(a) *Definitions.* For the purposes of this section, the terms used above shall be defined as follows:

*Automobile* means a two (2) or more wheeled or track vehicle designed to transport one (1) or more persons or properties from one (1) location to another including without limitation: trucks, buses, cars, motorcycles, scooters, farm and industrial equipment.

*Enclosed structure* means a building that protects the contents thereof from the elements, including sight obscuring walls on all sides and a roof.

*Inoperable vehicle* means any automobile incapable of immediate operation under its own power safely and in concurrence with governing and applicable traffic ordinances and statutes or any automobile not having current license plates lawfully affixed thereto. For the purposes of this article, any vehicle defined as a Restoration Project Vehicle is not considered a junk vehicle.

*Junk* means any worn out, cast off or discarded article or material which is ready for destruction or has been collected or stored as salvage, for conversion to some other use or for reduction into components. Junk includes but is not limited to old or scrap brass, rope, rags, batteries, paper, tires, rubber debris or waste, iron, steel and other old or scrap ferrous or non-ferrous material.

*Junk vehicle* means any automobile which is ruined, wrecked, partially dismantled and which is not lawfully and validly licensed. For the purposes of this article, any vehicle defined as a Restoration Project Vehicle is not considered a junk vehicle.

*Merchandise* means all items of movable personal property offered for sale to the public for which no title is required to be registered with, or issued by, the state.

*Open storage* means the storage for a period of five (5) days or more of an unlicensed or inoperable vehicle, appliance, implement or machinery, or any part thereof, outside of an enclosed structure.

*Permanent storage* means storage of chattel, salvage, rubbish or junk for a period exceeding five (5) days without moving

*Restoration Project Vehicle* means a vehicle or parts of a vehicle for which the owner has obtained a permit from the Planning and Community Services Department to store such vehicle outside of an enclosed building for a limited period of time. All Restoration Project Vehicle(s) shall be shielded from public view and from adjacent property. Shielding and screening means the vehicle or vehicle parts cannot be seen by someone standing at ground level from outside the property. This does not include tarps or similar covers but may include solid fencing, dense evergreen hedges or other screening materials. Project vehicles cannot be stored in any front yard, side yard or driveway.

(b) *Storage and display of merchandise in residential districts.* Outside display of merchandise is prohibited in all residential zoning districts.

(c) *Storage and display of merchandise in certain commercial districts.* Outside display of merchandise is permitted in residential professional, neighborhood commercial, community commercial, highway commercial, and controlled industrial zoning districts only if the merchandise is new and not used, is related to the principal use of the property, and such merchandise is removed each night into an enclosed structure. This section shall not apply to retail nurseries or temporary uses and structures regulated by section 27-614. Bufferyards and required landscaping shall not be used for the displaying of merchandise in any zoning districts.

(d) *Storage or parking of vehicles.* In all residential zoning districts, storage or parking of commercial vehicles shall be limited to one (1) delivery vehicle not to exceed eight thousand (8,000) pounds G.V.W. (gross vehicle weight).

(e) *Abandoned vehicles.* All inoperable automobiles, or parts thereof, parked or stored for a period exceeding five (5) days shall be considered abandoned. Any such automobile that in the judgment of the zoning enforcement officer appears to be abandoned, including parts thereto, shall be removed and disposed of in a manner set forth by the zoning enforcement officer.

(f) *Storage of trailers and recreational vehicles.* Snowmobiles, boats, or other recreational vehicles and campers, camper trailers or motor homes, and utility/sport trailers may be parked or stored on private property provided that all current accessory building zoning code setback requirements are observed. In addition to accessory building setback requirements, such items shall not be parked any nearer than five (5) feet from any door, window or other opening of a dwelling which provides light, air, entrance to, or exit from the dwelling as needed to preserve the health, safety and general welfare of the occupants of the dwelling.

However, it shall be unlawful for any person or firm to park or store such vehicles in any front yard or to occupy campers, camping trailers or motor homes for living or sleeping purposes.

(g) *Storage of salvage.* Permanent open storage of salvage, inoperable vehicles, rubbish or other chattel shall not be permitted in any zoning district. Exceptions to this restriction are principal uses of property (e.g., auto wrecking) which may be permitted in the highway commercial, controlled industrial or heavy industrial zoning districts, as regulated by the commercial/industrial district regulations in BMCC section 27-306.

(h) *Inoperable vehicle or junk vehicle.* Storage, parking or leaving any inoperable vehicle or junk vehicle shall not be permitted in any district. This section shall not apply to:

(1) Automobiles stored in commercial or industrial districts which are regulated by BMCC sections 27-301, et seq.; or

(2) An automobile or part thereof which is completely enclosed within a building in a lawful manner and where it is not visible from the street or other public or private property.

(3) Restoration Project Vehicles so long as the owner maintains a valid Restoration Project Vehicle permit.

(i) Restoration Project Vehicle permit.

(1) A Restoration Project Vehicle permit may be issued by the Planning and Community Services Department on the following terms and conditions:

(a) A restoration permit will be issued to the private property owner only.

(b) The vehicle being restored shall be titled and insured to the titled property owner being issued the permit.

(c) Only one (1) vehicle restoration permit at a time will be issued to a property owner. One (1) additional vehicle may be included as a “parts” vehicle with the one (1) vehicle restoration permit.

(d) The vehicle restoration permit shall be valid for a maximum of one (1) vehicle and one (1) “parts” vehicle and shall be valid for three (3) years from the date of issuance.

(e) A vehicle restoration permit may be extended for a maximum of two (2) one-year extensions of the original permit.

(f) At all times that the vehicle, including any “parts” vehicle, is not being worked on for restoration, said vehicle shall be shielded from public view and adjacent properties. Shielding and screening means the vehicle or vehicle parts cannot be seen by someone standing at ground level from outside the property. This does not include tarps or similar covers but may include solid fencing, dense evergreen hedges or other screening materials. Project vehicles cannot be stored in any front yard, side yard or driveway.

(g) Permit forms shall be developed and available free of charge from the Planning and Community Services Department.

(h) The fee for a vehicle restoration permit shall be \$50.00. Each extension requested of the original three (3) year permit shall be \$50.00. Fees are payable at the time the permit is issued.

(i) By obtaining a vehicle restoration permit, the property owner agrees that a Code Enforcement Officer may inspect the property at any reasonable time while the permit is in effect.

(j) Violations of the conditions of approval may be grounds for the Planning and Community Services Department to cancel, revoke or suspend such vehicle restoration permit.

**Section 3. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**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 \_\_\_\_\_, 2006

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_\_ day of  
\_\_\_\_\_, 2006.

CITY OF BILLINGS

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

ATTEST:

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

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## AGENDA ITEM:



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**CITY COUNCIL ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 12, 2005**

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**TITLE:** Inner Belt Loop Planning Study

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Scott Walker, Transportation Planner

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**PROBLEM/ISSUE STATEMENT:** The focal point of the *Inner Belt Loop Connection Planning Study* is to evaluate project feasibility from a technical or engineering perspective (i.e. cost, safety, design considerations, potential impacts, etc.) as well as to gauge the level of public support for such a facility. As a result, the evaluation of engineering feasibility was limited to a review and assessment of existing data, preliminary geometric design, and potential project costs. This Inner Belt Loop Planning Study is not a regulatory document. It is merely a place to begin the planning efforts of the area.

The broad study area for the Inner Belt Loop Connection Planning Study can be generally described as the mostly undeveloped area west of the Billings Heights and north of Montana Highway 3 encompassing the Alkali Creek drainage, bounded to the south by the Billings Logan International Airport.

This corridor planning study is a result of continued recommendations from approved planning documents, traffic studies, and citizen advisory groups, as well the continued growth and development of the Alkali Creek area. Specifically, the development of this report serves to satisfy recommendations made by the *1990 Transportation Plan for Billings Montana* and the *Billings Urban Area 2000 Transportation Plan*. Furthermore, continued planning of this corridor addresses traffic issues discussed within the *Rimrock Road & Zimmerman Trail Intersection Improvements Design Study Report* and the *West Wicks Lane & Governors/Gleneagles Boulevard Traffic Signal Design Study Report*. Lastly, this report is expected to complement several current and ongoing planning projects including the Arlene corridor, the Shiloh Road corridor, and the Billings By-Pass corridor. The specific areas of interest for this planning study revolve around the following key project tasks: Collection and Review of Existing Information, Stakeholder, Agency, and Landowner Involvement and Comment, Cultural and Archeological

Survey, Planning Level Engineering Analysis, Planning Level Opinion of Cost, Public Comment, and Conclusions and Recommendations.

**ALTERNATIVES ANALYZED:** The development of a transportation link between the Billings Heights and MT Hwy 3 at or near Zimmerman Trail has been an element of local planning documents for several decades, including the most recent Billings area transportation plans. Based on these evaluations, development of an inner belt loop was identified as a long-range improvement project that should be considered by the City. This study has identified and discussed several alternative routes.

**FINANCIAL IMPACT:** None

**RECOMMENDATION**

Staff recommends that Council support this Planning Study. The Mayor will bring the recommendation with him to the Policy Coordinating Committee (PCC) meeting.

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

For your information the Inner Belt Loop Study can be found on the City of Billings web page.

<http://www.ci.billings.mt.us/Online/PDF/Government/planning/IBLReport-Prefinal.pdf>

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 12, 2005**

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**TITLE:** Interlocal Library Agreement

**DEPARTMENT:** Library

**PRESENTED BY:** Bill Cochran, Library Director

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**PROBLEM/ISSUE STATEMENT:**

At its Work Session of October 3, 2005, the City Council referred to its Ad Hoc Library Interlocal Agreement Committee the Interlocal Agreement as amended and approved by the City Council at its Agenda Meeting of June 13, 2005 for further review.

**ALTERNATIVES ANALYZED:**

At its meeting of October 25, 2005, the Ad Hoc Library Interlocal Agreement Committee reviewed the Interlocal Agreement as amended and approved by the City Council on June 13, 2005 and suggestions from Council members regarding the number of members of the Library Board, the allocation of members between City and County representatives, the number required for a quorum, and review of policy recommendations by the City Council and County Commission.

**FINANCIAL IMPACT:**

The proposed draft interlocal agreement documents and maintains the current funding levels of 9.5 mills minimum by the City of Billings and 3 mills minimum by Yellowstone County.

**RECOMMENDATION**

The Ad Hoc Library Interlocal Agreement Committee recommends that Council approve the revised draft Interlocal Agreement and submit the approved agreement to the Yellowstone Board of County Commissioners for review and action.

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

**ATTACHMENTS**

A. Draft Interlocal Agreement

## INTERLOCAL AGREEMENT

### BETWEEN YELLOWSTONE COUNTY AND THE CITY OF BILLINGS TO OPERATE PARMLY BILLINGS LIBRARY

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between the respective governing bodies of the City of Billings, Montana and the County of Yellowstone, Montana, hereinafter referred to as "**BILLINGS**" and "**YELLOWSTONE**," respectively,

#### WITNESSETH:

**WHEREAS**, the purpose of this agreement is to provide a basis for cooperation between **YELLOWSTONE** and **BILLINGS** which will result in equitable library service to residents of Yellowstone County, Montana; and

**WHEREAS, BILLINGS** and **YELLOWSTONE** have agreed to continue the functions of a joint city-county library pursuant to **BILLINGS**'s self governing powers and the terms and conditions of this Interlocal Agreement; and

**WHEREAS, BILLINGS** and **YELLOWSTONE** wish to enter into an agreement pursuant to §§7-11-101 through 7-11-108, MCA, whereby library services are provided for residents of Yellowstone County from facilities operated by the joint efforts and authority of both parties; and

**WHEREAS, BILLINGS** and **YELLOWSTONE** have agreed to furnish certain funds and revenue to assist in the operation of the joint operation of the **PARMLY BILLINGS LIBRARY** pursuant to the laws of the State of Montana; and

**WHEREAS, BILLINGS** and **YELLOWSTONE** have previously entered into an interlocal agreement for these same purposes on October 27, 1975, which was amended by the mutual agreement of the parties on September 26, 1977, after **BILLINGS** adopted a charter form of government; and

**WHEREAS, BILLINGS** and **YELLOWSTONE** now wish to restate and revise their earlier mutual agreements as appropriate;

**NOW, THEREFORE**, in consideration of the execution of this agreement and the mutual covenants set forth herein, the parties renew and reconfirm their intention to continue and maintain the **PARMLY BILLINGS LIBRARY** under the terms, conditions and covenants herein contained, and it is hereby mutually agreed as follows:

1. **BILLINGS** and **YELLOWSTONE** agree to continue and perform the functions of a joint city-county library to residents of Yellowstone County, Montana, so as to extend the services to of the **PARMLY BILLINGS LIBRARY** to residents of the County of Yellowstone.

2. **BILLINGS** shall retain ownership of its building and will provide said building for the use of **PARMLY BILLINGS LIBRARY**.

3. All books, periodicals, pamphlets, audio-visual materials and other library materials in the possession of **PARMLY BILLINGS LIBRARY** and all materials hereafter acquired shall be equally accessible to residents of the City of Billings and Yellowstone County, Montana under the rules and regulations of the **PARMLY BILLINGS LIBRARY** during the term of this agreement.

4. That in the event of the termination of this agreement by either **BILLINGS** or **YELLOWSTONE**, books and any cash reserves shall be distributed to **BILLINGS** and **YELLOWSTONE** in the same proportions as expenses were shared during the term hereof. Those books subject to distribution are only those books from the circulating collection.

5. In consideration of the promises, conditions, and obligations herein set forth, the parties do hereby agree to support and fund the annual library budget as finally determined, approved, and accepted by both parties in the following manner: **BILLINGS** agrees to support the budget in an amount no less than 9.5 mills, and **YELLOWSTONE** agrees to support the budget in an amount no less than 3.0 mills. When less than the mill levies of 9.5 mills for **BILLINGS** and 3.0 mills for **YELLOWSTONE** is required to fund the library budget, then the percent of the total budget for each entity shall remain the same percent as it would be if the 9.5 for **BILLINGS** and 3.0 mills for **YELLOWSTONE** were assessed.

6. Each party shall pay its respective share of the budget into a **PARMLY BILLINGS LIBRARY** fund managed by the City of Billings and shall not be used for any purpose except those as authorized by the City Council and the **PARMLY BILLINGS LIBRARY** Board of Trustees for library services as provided by the Laws of the State of Montana. Any money not spent in any fiscal year shall be credited to a Library Reserve Account to be spent in accordance with budgets subsequently adopted by **BILLINGS**.

7. The Library Board of Trustees shall be composed of ~~seven~~ nine (7) (9) members, ~~four~~ six (4) (6) of whom shall be appointed by the Mayor, with confirmation by the Billings City Council, and three (3) of whom shall be appointed by the Board of County Commissioners of Yellowstone County, Montana. A Library Trustee may be removed only by vote of the appointing legislative body or the bylaws adopted by the **PARMLY BILLINGS LIBRARY** Board of Trustees. The terms of those Trustees appointed by **BILLINGS** will not exceed four (4) years. The terms of those Trustees appointed by **YELLOWSTONE** will not exceed five (5) years. No Trustee shall serve more than two (2) full terms in succession. A Trustee appointed to succeed any retiring Trustee shall be appointed before the first day of July of each year in the same manner as the persons for whom the successor is appointed. Vacancies in the Board of Trustees shall be filled for the unexpired term in the same manner as original appointments.

Trustees shall serve without compensation but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds. A quorum of the Library Board of Trustees shall be ~~three~~ five (3) (5) members or more.

8. The primary role of the Board of Trustees is to advocate for the Library to the community, the Billings City Council, the Yellowstone Board of County Commissioners, the State of Montana, and the federal government, as appropriate, to ensure the best possible public library services for the residents of Billings and Yellowstone County. The Library Board of Trustees shall have the powers and duties set forth in this agreement. The Library Board of Trustees shall select one of its members as chairman, and such other officers as they deem necessary, for one (1) year terms. The Library Board of Trustees shall adopt rules for governance of its own affairs in accordance with this agreement.

9. The Library Board of Trustees shall prepare a three-year plan for Library services and programs by January 1 of each year, to serve as direction for Library staff for preparation of the Library budget for the following and future fiscal years. The Library Board of Trustees shall review and approve requests for grant applications and for funding by Library support groups to ensure consistency with the Library plan and service and program priorities. The Library Director shall submit to the Library Board of Trustees for review and action, any significant gifts to the Library, prior to receipt of the gift unless timely receipt as a condition of the gift precludes such notice, in which case the Library Director shall report on the gift to the Library Board of Trustees at the next meeting after its receipt. The Library Board of Trustees shall ~~be responsible for annual review~~ be responsible for annual review, ~~revision and approval~~ and approval of all Library policies relating to public services, programs and use of Library, subject to submission no later than March 1 of each year to the City Attorney's office ~~Council Attorney's office~~ for ~~legal~~ legal review, for implementation by July 1, the beginning of each fiscal year.

10. The City Administrator shall consult with the Library Board of Trustees, and the Library Board of Trustees shall provide input, on all matters relating to the hiring and evaluation of the Library Director. The Library Board of Trustees shall provide a recommendation to the City Council on contracts affecting Library matters. The Library Board of Trustees shall report on Library matters to the Billings City Council and Yellowstone Board of County Commissioners at least annually.

11. This agreement may be terminated by either party upon giving to the other ninety (90) days notice, in writing, of their intention to do so.

12. This agreement is in force and effect from the date of its execution by the parties until the 30<sup>th</sup> day of June, 2005, after which it will be automatically renewed from year to year upon the same terms and conditions unless and until notice of termination is given by one party to the other as provided in Paragraph 12 above.

13. This agreement supersedes and takes the place of all previous agreements and contracts between the parties hereto with reference to library service, and it is the intention of the

parties to terminate all former contracts without liability of any kind or character upon the parties hereto, or either of them.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement the day and year first above written.

**BILLINGS:**

**CITY OF BILLINGS**, a Montana  
Municipal Corporation

By: \_\_\_\_\_  
CHARLES F. TOOLEY, Mayor

**ATTEST:**

By: \_\_\_\_\_  
MARITA HEROLD, City Clerk

**YELLOWSTONE:**

**COUNTY OF YELLOWSTONE**

By: \_\_\_\_\_  
JOHN OSTLUND, Chairman

**ATTEST:**

By: \_\_\_\_\_  
TONY NAVÉ, Clerk and Recorder

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## AGENDA ITEM:



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**CITY COUNCIL ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 12, 2005**

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**TITLE:** 2005-06 CTEP Project Applications

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Scott Walker, Transportation Planner

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**PROBLEM/ISSUE STATEMENT:** Each year Billings submits projects to the Montana Department of Transportation for funding from the Community Transportation Enhancement Project (CTEP) program. These projects typically represent construction of pedestrian and/or bicycle facilities in the community. Council must formulate a recommendation to the Policy Coordinating Committee (PCC).

**ALTERNATIVES ANALYZED:**

- Approve the CTEP applications for submission as recommended by TAC, Planning Board or County Commission.
- Approve the CTEP applications as amended by Council vote.
- Do not approve the CTEP applications for submission. This would result in the loss of CTEP funding for this year.

**FINANCIAL IMPACT:** These projects were budgeted and planned to utilize CTEP funding. Failure to approve the applications would result in the loss of the CTEP funding. As a result, the projects would not be fully funded, and additional funding would need to be allocated in order to proceed with construction.

**RECOMMENDATION**

Staff recommends that Council formulate a recommendation so the Mayor can bring it with him to the Policy Coordinating Committee (PCC) meeting.

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

## **INTRODUCTION**

Each year, projects are submitted for Community Transportation Enhancement Project (CTEP) funding, to offset some of the construction costs. These projects are typically pedestrian and/or multi-modal transportation projects that include construction of sidewalks, bike lanes and bike paths.

Other categories eligible for CTEP funding include; acquisition of scenic easements, landscaping, rehabilitation of historic buildings, establishment of transportation museums, historic preservation, archeological planning and research, mitigation of water pollution due to highway runoff, preservation of abandoned railroad corridors, control and removal of outdoor advertising, educational and safety programs.

In order for CTEP funding to be authorized, an application must be submitted and each application must go through a local selection process. This process includes a recommendation from the Technical Advisory Committee (TAC), and recommendations from the Planning Board, County Commission and City Council. Projects are then submitted to the Montana Department of Transportation (MDT) for final approval.

## **PROCEDURAL HISTORY**

- Completed Items
  - Council approves CTEP project applications for submission
  - CTEP project applications received
  - Technical Advisory Committee (TAC) reviews applications and makes recommendation on which projects to fund and their priority
  - County Commissioners review the applications and approve/revise TAC's recommendation and prioritization list
  - Planning Board reviews applications and approves/revises TAC's recommendation and prioritization list
- Future Items
  - City Council reviews applications and approves/revises TAC's recommendation and prioritization
  - Policy Coordination Committee reviews the applications and action taken by the other groups and determines the final recommendation and prioritization
  - The final recommendation and prioritization are reviewed by the Montana Department of Transportation (MDT)
  - MDT forwards the recommendation and prioritization to the Highway Commission for final approval
  - Highway Commission approves the recommendation and prioritization
  - MDT creates the project specific agreements and forwards them to the City
  - City Council accepts and executes the project specific agreements
  - The executed agreements are returned to MDT
  - The Highway Commission approves the project agreements

- MDT authorizes the City to begin project development
- Project development and design
- Project construction
- Project close-out

## **BACKGROUND**

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

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

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

Council has previously approved the recommended projects during the approval of the Capital Improvement Plan. All the projects will proceed through the established CTEP project approval process for the City of Billings and Yellowstone County.

## **BACKGROUND**

It should be noted that project request this year totals \$1,000,609 and CTEP funding available is \$561,000. Current projects and recommendations are as follows:

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## **F.Y. 2005/06 CTEP PROPOSALS**

- **Milton Lane - School Route (Sidewalks)**

This project would fund sidewalks, drive approaches, accessibility ramps, curb& gutter and storm drain improvements along Milton Lane (and the Bench School frontage on Rex Lane) from Lake Elmo to Main Street.

CTEP Funds: **\$125,000** City of Billings/Local Match: **\$19,375** Project Cost: **\$525,000 \***

\*This amount includes \$380,625 in additional local funding which includes CDBG, Storm Drain Funds, Gas Tax, and direct property assessments.

- **Bannister Drain Trail**

This project will provide for hard surfaced trail improvements from King Avenue south to the McCall Trail, approximately  $\frac{1}{4}$  mile and from the Midland Trail to the McCall Trail, approximately  $\frac{1}{4}$  mile. Also a crossing at King Avenue connecting to the Famous Dave's trail.

CTEP Funds: **\$312,405** City of Billings/Local Match: **\$48,424** Project Cost: **\$384,329\***

\* This amount includes \$23,500 of additional funds in the form of a Recreational Trails Grant.

- **Swords Park Trail (Phase II)**

This project would construct approximately 1 mile of hard surfaced path extending the existing trail connection that was built from the west side of Swords Park to where it currently ends at the fork in the Black Otter Trail Road. Phase II will continue the trail access to the east end of Swords Park and eventually make the connection to the north to the pedestrian underpass that will be built as part of the Airport Road project.

CTEP Funds: **\$415,584** City of Billings/Bond Issue Match: **\$64,416** Project Cost: **\$480,000**

- **Big Ditch Trail (Phase II)**

This project would construct approximately  $\frac{1}{2}$  mile of hard surface path from Larchwood Lane west to 46<sup>th</sup> Street West. It also includes a connector to Ridgewood Lane S. and north to the park and parking lot.

CTEP Funds: **\$147,620** City of Billings/Bond Issue Match: **\$22,880** Project Cost: **\$170,500**

## **F.Y. 2005/06 CTEP APPLICANT REQUESTS**

**\$ 1,000,609**

## **F.Y. 2005/06 CURRENT CTEP DOLLARS AVAILABLE**

**\$ 561,000**

## TAC RECOMMENDATION

PROJECT	CTEP REQUEST	RECOMMENDED FUNDING
<b>1. Milton Lane-School Route</b>	\$125,000	\$125,000
<b>2. Swords Park Trail Phase II</b>	\$415,584	\$415,584
<b>TOTAL</b>	\$540,584	\$540,584

\* TAC further recommends the remaining \$20,416 be kept in reserve for possible cost overruns.

## PLANNING BOARD RECOMMENDATION

PROJECT	CTEP REQUEST	RECOMMENDED FUNDING
<b>1. Milton Lane-School Route</b>	\$125,000	\$125,000
<b>2. Big Ditch Trail Phase II</b>	\$147,620	\$147,620
<b>3. Bannister Drain Trail</b>	\$312,405	\$288,380
<b>TOTAL</b>	\$585,025	\$561,000

\*The Planning Board also expressed strong support for the Swords Park Trail Phase II but would like staff to pursue other funding options for this project.

## YELLOWSTONE COUNTY COMMISSION

PROJECT	CTEP REQUEST	RECOMMENDED FUNDING
<b>1. Milton Lane-School Route</b>	\$125,000	\$125,000
<b>2. Big Ditch Trail Phase II</b>	\$147,620	\$147,620
<b>3. Bannister Drain Trail</b>	\$312,405	\$288,380*
<b>TOTAL</b>	\$585,025	\$561,000

\*Currently the State Recreational Trails Program is recommending the award of approximately \$23,000 for the Bannister Drain Trail. If this Grant is not awarded The Commission recommends funding the Bannister Drain Trail at the requested amount by allocating \$24,025 of 2006-07 CTEP Dollars.

## **ISSUES**

There are discrepancies among the recommendations. The TAC felt that Swords Park should be the highest trail priority because of its high profile in the community. The Planning Board asked that other funding be pursued for this project, either federal earmark funds or Congestion Mitigation Air Quality (CMAQ) monies. It should be noted that we were unsuccessful in obtaining federal earmark funds for trails in the last session and that CMAQ monies are committed to road projects until 2010. The Board of County Commissioners gave highest priority to the Milton Land School Route in the Heights. The City Council members will need to determine which projects are their priority.

## **RECOMMENDATION**

Staff recommends that Council formulate a recommendation so the Mayor can bring it with him to the Policy Coordinating Committee (PCC) meeting.

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 12, 2005**

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**TITLE:** Property Tax Incentives

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Deputy City Administrator

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**PROBLEM/ISSUE STATEMENT:** The City Council will consider adopting three (3) resolutions that create three distinct property tax incentive programs. The programs are authorized by state law and some have been periodically used in the City and in Yellowstone County. The Council heard a staff presentation on the programs at a July work session and authorized staff to prepare the program documents and to conform them as nearly as possible to the programs already in place in the County.

**ALTERNATIVES ANALYZED:** The programs are discretionary for each city. The Council can approve, modify or deny each of the four resolutions.

**FINANCIAL IMPACT:** Each program has a different exemption rate and term, however all of them apply only to the increase in taxable value that results from property improvements. Therefore, the programs don't cause any tax losses since the base taxable value remains in place. The programs apply only to the School District's and City's property tax levies. They do not apply to any of the City's fees and assessments that support programs such as solid waste disposal, street maintenance or arterial street construction. Tax exemption cost estimates can be produced for each application because the exemption's value depends on the amount of investment and each program's rates and terms.

**RECOMMENDATION**

Staff recommends that Council approve the resolutions adopting three (3) property tax incentive programs and operating guidelines.

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

## ATTACHMENTS

- A: Resolution on new or expanding industries
- B: Resolution on remodeling, reconstructing or expanding buildings
- C: Resolution on remodeling, reconstructing or expanding certain commercial buildings

## **INTRODUCTION**

The Council will consider adopting resolutions that establish tax incentive programs for certain property improvements. Each program is distinct, so the Council may approve, approve with modifications or disapprove any of the proposed programs contained in the resolutions.

## **BACKGROUND**

State code allows cities and counties to implement four (4) property tax incentive programs that encourage new investment in various types of property. The City of Billings has periodically operated two (2) of the programs and approved some tax exemptions. The City's and Yellowstone County's programs are not the same and there has been some confusion about which governing body has authority to approve the tax exemptions. The City and County have only one (1) program in common at this time. The three (3) resolutions that are presented to Council will adopt programs that mirror the County's, where applicable, and that clearly identify the Council's authority to approve/disapprove exemptions for City and School District levies.

One of the four programs is not recommended for adoption at this time. The historic preservation tax incentive program requires participation from the Yellowstone Historic Preservation Board or the State Historic Preservation Office. The local board is examining the program and its expected role before committing to the assistance that the program requires. The Board will complete its review after January 1 and its recommendation will be forwarded to the Council at that time.

Once the programs are established, applications from individual property owners can be accepted and processed according to the guidelines attached to each resolution. BSEDA has agreed to process the city applications and will charge the applicants the same fee that is charged to county applicants (presently \$300). In all three programs, the Council may abate only the City and School District taxes. If the property owner wants County tax exemption, he/she must apply to Yellowstone County. These applications can be processed simultaneously.

Resolution A adopts a program that gives tax exemptions for certain new or expanding industrial buildings or industries that modernize their processes. The program requires at least \$50,000 investment for existing industries and \$125,000 investment for new industries. It taxes the improvements at 50% of their taxable value for five (5) years following issuance of a building permit and each year thereafter the percent taxable increases by 10% until 100% of the value is taxed in the tenth and subsequent years.

Resolution B adopts a program that gives tax exemptions for remodeling, reconstructing or expanding existing buildings. This is presently a city program, having been originally adopted in 1989. This resolution repeals the prior resolution. The new program applies to all existing buildings, so it is not limited to commercial/industrial buildings. The improvements must increase the property's taxable value by at least 2.5%. The County's program also establishes a threshold investment of \$500,000, so the City's proposed resolution also contains that threshold. The incentive that the State code establishes is that 0% of the improvement's taxable value is subject to the tax levy during the construction period, 20% during the first year, 40% in the second year, etc. until the full value is taxable in the fifth and subsequent years. The County

modified those terms so that 0% is taxable during construction and for the following four years, then 100% is taxable in the fifth and subsequent years. The proposed City resolution is structured that way. This is the only program that allows the governing body to modify the exempt percentage up until the fifth year, when 100% of the value must be taxable.

Resolution C adopts a program that gives tax exemptions for remodeling, reconstructing or expanding existing, vacant commercial buildings. The building may not have been used for a business for at least six months prior to the application and the improvements must increase the property's taxable value by at least 5%. The property improvements are exempt from property tax during construction, up to 12 months, and for five (5) years following completion. Each year thereafter adds 20% to the value until the full value is taxed in the tenth and subsequent years. Yellowstone County does not currently operate this program.

### **ALTERNATIVES ANALYSIS**

Council asked that these resolutions establishing tax incentive programs be developed for its consideration, so staff didn't examine other alternatives. However, each of the programs is discretionary, so the Council can approve or disapprove the programs or it could modify the proposals as long as the changes comply with State law. The consequence of not approving the programs is that it creates a conflict with Yellowstone County, which routinely approves these types of applications and in the long run, could put the City at a competitive disadvantage compared to the county.

### **RECOMMENDATION**

Staff recommends that Council approve the resolutions adopting three (3) property tax incentive programs and operating guidelines.

### **ATTACHMENTS**

- A: Resolution on new or expanding industries
- B: Resolution on remodeling, reconstructing or expanding buildings
- C: Resolution on remodeling, reconstructing or expanding certain commercial buildings

**ATTACHMENT A**

**RESOLUTION 05-\_\_\_\_\_**

**A RESOLUTION CREATING A CITY OF BILLINGS TAX INCENTIVE PROGRAM  
FOR NEW AND EXPANDING INDUSTRY**

**WHEREAS**, the City Council of the City of Billings believes that it is in the public interest for new industries to locate in Billings and for existing industries to expand in Billings; and

**WHEREAS**, the Montana Legislature has approved, in Sections 15-24-1401 and 15-24-1402, MCA, a means for Montana cities to provide incentives for certain types of new or expanding industries in the form of property tax reductions over a period of ten (10) years; and

**WHEREAS**, the City Council desires to offer those property tax incentives to qualified industries and for qualified improvements or modernized processes.

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

1. That it is in the public interest to encourage economic development in the city of Billings through property tax incentives for new and expanding industries.
2. A tax incentive program is hereby established that meets the requirements set forth in 15-24-1401 and 15-24-1402 MCA and applicable Administrative Rules of Montana.
3. Each applicant shall meet the following minimum criteria:
  - a. is an industry as defined in 15-24-1401 MCA;
  - b. if expanding, the industry has invested at least \$50,000 of qualifying improvements or modernized processes within this or the preceding tax year;
  - c. if new to the city, the industry has invested at least \$125,000 in qualifying improvements or modernized processes within this or the preceding tax year;
  - d. provide an estimate of the number of new jobs that will be created by the new or expanding industry, the hiring schedule and the salary ranges for the new employees;
  - e. provide proof from the Yellowstone County Treasurer's office that all of the applicant's taxes have been paid. Taxes paid under protest do not preclude application approval; and
  - f. the applicant has completed the application procedures outlined in attached Exhibit A.
4. Benefits conferred by Billings' new or expanding industry tax incentive program are as follows:

- a. In the first five (5) years after a construction permit is issued, the qualifying improvements or modernized processes that represent a new or expanding industry must be taxed at fifty percent (50%) of their taxable value;
- b. Each year thereafter, the percentage will increase by equal percentages until the full taxable value is attained in the tenth (10<sup>th</sup>) year;

5. The tax incentive is limited to the number of mills levied and assessed by the local high school district, the local elementary school district and the City of Billings.
6. The City Council must authorize the granting of the tax incentive to any applicant by passing a resolution approving the application of the schedule of tax incentives set forth above in Paragraph 4 or some other schedule, for each existing building or structure as to which the tax incentive is granted.

**AND BE IT FURTHER RESOLVED** that property owners are hereby encouraged to apply to the City of Billings for consideration of tax incentives authorized pursuant to Section 15-24-1401 and Section 15-24-1402, M.C.A. for new industries or expanding existing industries or modernized processes.

**PASSED AND APPROVED** by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

CITY OF BILLINGS

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

ATTEST:

By: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk

## EXHIBIT A

### APPLICATION PROCEDURES FOR CITY OF BILLINGS, MONTANA TAX INCENTIVE PROGRAM FOR NEW AND EXPANDING INDUSTRIES

- Prospective clients contact Big Sky Economic Development Authority (BSEDA) who acts as the intermediary in the application process, and an initial meeting is scheduled.
- At the initial meeting, prospective client project is discussed to determine if the projects meets the tax incentive application criteria. If the project appears to qualify for an incentive, the client is given tax incentive applications, copies of the tax incentive program cited in the *Montana Code Annotated* and copies of the adopting resolutions.
- Clients then complete and return applications and supporting documentation and the applicable processing fee to BSEDA. BSEDA reviews the application for completeness.
- An appointment is then scheduled with the designated City staff to review the project documentation and perform a site visit if needed. This leads to either staff endorsement of the project or a determination that the project does not meet the program criteria.
- City staff will prepare and submit a staff report, accompanied by the application documentation, and schedule a public hearing with the City Council. The staff report will advise the Council why the application should be approved, conditionally approved, including recommended conditions, or denied.
- City staff will prepare a resolution for Council consideration that contains the elements required by state law and administrative rules.
- City staff shall notify by certified mail, all taxing jurisdictions that may be affected by the proposed tax benefit.
- The City Council will conduct a public hearing on the application at its next available regular meeting and will approve, conditionally approve or disapprove the application.
- BSEDA will send a letter to the applicant regarding the Council's decision, including any conditions of approval.
- When the construction reaches substantial completion, the client contacts BSEDA and schedules a final inspection to determine if the project meets tax incentive requirements and any conditions of approval.
- If the project meets all City and State requirements, BSEDA will work with City staff to prepare and submit a final approval letter and appropriate documentation to the Montana Department of Revenue.

The following definitions and terms apply to the new and expanding industry tax incentive program:

- “Expansion” means an industry that invests at least \$50,000 in qualifying improvements or modernized processes within this or the previous tax year
- “New” means an industry that is new to the city of Billings and has invested at least \$125,000 in qualifying improvements or modernized processes within this or the

preceding tax year. New industry does not include property treated as new industrial property under Section 15-6-135 MCA (class 5 industrial property)

- “Industry” means, but is not limited to, a firm that a) engages in mechanical or chemical transformation of materials into products, b) engages in the extraction or harvesting of minerals, ore or forestry products, c) engages in processing Montana raw materials such as minerals, ore, agricultural products and forestry products, d) engages in transportation, warehousing or distribution of commercial products or materials if 50% or more of the industry’s gross sales are from outside the state, or e) earns 50% of more of its annual gross income from out of state sales
- “Qualifying” means meeting all of the terms, conditions and requirements for a reduction in taxable value under this program

**ATTACHMENT B**

**RESOLUTION 05-\_\_\_\_\_**

**A RESOLUTION CREATING A CITY OF BILLINGS TAX INCENTIVE PROGRAM  
FOR REMODELING, RECONSTRUCTING  
OR EXPANDING BUILDINGS OR STRUCTURES  
AND REPEALING CITY RESOLUTION #89-16126**

**WHEREAS**, the City Council of the City of Billings believes that it is in the public interest that the community's existing buildings and structures be remodeled, reconstructed or expanded, thereby improving the community's appearance, expanding employment and increasing the tax base; and

**WHEREAS**, the Montana Legislature has approved, in Section 15-24-1501, MCA, a means for Montana cities to provide tax incentives for certain remodeling, reconstruction or expansion of existing buildings; and

**WHEREAS**, the City Council desires to offer those property tax incentives to existing building owners that remodel, reconstruct or expand their buildings.

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

1. That it is in the public interest to encourage existing building remodeling, reconstruction or expansion in the city of Billings through property tax incentives.
2. A tax incentive program is hereby established that meets the requirements set forth in Section 15-24-1501, MCA and applicable Administrative Rules of Montana.
3. The incentive applies only to the taxable value of the improvements made to the building due to the remodeling, reconstruction or expansion. The percentage of the increased taxable value that is subject to taxation during the construction period and for the five years following construction shall be as follows:

Construction period	0%
First year through the fourth year following construction	0%
Fifth year following construction	100%
Following years	100%

4. Each applicant shall meet the following minimum criteria:
  - a. the construction increases the property's value by at least 2.5% as determined by the Montana Department of Revenue;
  - b. the construction costs meet or exceed \$500,000;

- c. provide documentation that all property taxes on the property have been paid, except that taxes paid under protest do not preclude application approval;
- d. provide information on the number and pay ranges of jobs that are created or retained by the construction project; and
- e. the applicant has completed the application procedures outlined in attached Exhibit A.

5. The tax incentive is limited to the number of mills levied by the local high school district, the local elementary school district and the City of Billings.
6. The City Council must authorize the granting of the tax incentive to any applicant by passing a resolution approving the application of the schedule of tax incentives set forth above in Paragraph or some other schedule, for each existing building or structure as to which the tax incentive is granted.
7. City of Billings Resolution No. 89-16126 is hereby repealed.

**AND BE IT FURTHER RESOLVED** that property owners are hereby encouraged to apply to the City of Billings for consideration of tax incentives authorized pursuant to Section 15-24-1501, M.C.A. for the remodeling, reconstruction or expansion of buildings and structures where the remodeling, reconstruction or expansion of buildings and structures will increase the taxable value by at least 2 ½% and the cost of the remodeling, reconstruction or expansion exceeds \$500,000, as determined by the State of Montana Department of Revenue or its agents.

**PASSED AND APPROVED** by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2005.

**CITY OF BILLINGS**

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

**ATTEST:**

By: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk

## EXHIBIT A

### APPLICATION PROCEDURES FOR CITY OF BILLINGS, MONTANA TAX INCENTIVE PROGRAM FOR REMODELING, RECONSTRUCTING OR EXPANDING EXISTING BUILDINGS

- Prospective clients contact Big Sky Economic Development Authority (BSEDA) who acts as the intermediary in the application process, and an initial meeting is scheduled.
- At the initial meeting, prospective client project is discussed to determine if the projects meets the tax incentive application criteria. If the project appears to qualify for an incentive, the client is given tax incentive applications, copies of the tax incentive program cited in the *Montana Code Annotated* and copies of the adopting resolutions.
- Clients then complete and return applications and supporting documentation and the applicable processing fee to BSEDA. BSEDA reviews the application for completeness.
- An appointment is then scheduled with the designated City staff to review the project documentation and perform a site visit if needed. This leads to either staff endorsement of the project or a determination that the project does not meet the program criteria.
- City staff will prepare and submit a staff report, accompanied by the application documentation, and schedule a public hearing with the City Council. The staff report will advise the Council why the application should be approved, conditionally approved, including recommended conditions, or denied.
- City staff will prepare a resolution for Council consideration that contains the elements required by state law and administrative rules.
- The City Council will conduct a public hearing on the application at its next available regular meeting and will approve, conditionally approve or disapprove the application.
- BSEDA will send a letter to the applicant regarding the Council's decision, including any conditions of approval.
- When the construction reaches substantial completion, the client contacts BSEDA and schedules a final inspection to determine if the project meets tax incentive requirements and any conditions of approval.
- If the project meets all City and State requirements, BSEDA will work with City staff to prepare and submit a final approval letter and appropriate documentation to the Montana Department of Revenue.

**ATTACHMENT C**

**RESOLUTION 05-\_\_\_\_\_**

**A RESOLUTION CREATING A CITY OF BILLINGS TAX INCENTIVE PROGRAM  
FOR REMODELING, RECONSTRUCTING OR EXPANDING CERTAIN  
COMMERCIAL PROPERTY**

**WHEREAS**, the City Council of the City of Billings believes that it is in the public interest that the community's existing, vacant commercial buildings or structures be remodeled, reconstructed or expanded, thereby improving the community's appearance, expanding employment and increasing the tax base; and

**WHEREAS**, the Montana Legislature has approved, in Section 15-24-1502 MCA, a means for Montana cities to provide tax incentives for remodeling, reconstructing or expanding certain commercial property; and

**WHEREAS**, the City Council desires to offer those property tax incentives to remodel, reconstruct or expand certain commercial property.

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

1. That it is in the public interest to encourage existing, vacant commercial building remodeling, reconstruction or expansion in the city of Billings through property tax incentives.
2. A tax incentive program is hereby established that meets the requirements set forth in Section 15-24-1502 MCA and applicable Administrative Rules of Montana.
3. Each applicant shall meet the following minimum criteria:
  - a. The commercial building or structure has not been used in a business for at least six (6) months immediately preceding the date of application to the City
  - b. the construction increases the property's taxable value by at least 5% as determined by the Montana Department of Revenue
  - c. provide documentation that all property taxes on the property have been paid, except that taxes paid under protest do not preclude application approval
  - d. provide information on the number and pay ranges of jobs that are created or retained by the construction project
  - e. the applicant has completed the application procedures outlined in attached Exhibit A.
4. The incentive is limited to the increase in taxable value of the building improvements due to the remodeling, reconstruction or expansion. The percentage of the increased

taxable value that is subject to taxation during the construction period and for the ten years following construction shall be as follows:

Construction period up to 12 months and for 5 years following completion	Exempt
First year following exemption	20%
Second year following exemption	40%
Third year following exemption	60%
Fourth year following exemption	80%
Fifth year following exemption and all subsequent years	100%

5. The tax incentive is limited to the number of mills levied by the local high school district, the local elementary school district and the City of Billings.
6. The City Council must authorize the granting of the tax incentive to any applicant by passing a resolution approving the application of the schedule of tax incentives set forth above in Paragraph 4 or some other schedule, for each existing building or structure as to which the tax incentive is granted.

**AND BE IT FURTHER RESOLVED** that property owners are hereby encouraged to apply to the City of Billings for consideration of tax incentives authorized pursuant to Section 15-24-1502, M.C.A. for remodeling, reconstruction or expansion of vacant, existing commercial buildings where the remodeling, reconstruction or expansion will increase the property's taxable value by at least 5% as determined by the State of Montana Department of Revenue or its agents.

**PASSED AND APPROVED** by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2005.

CITY OF BILLINGS

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

ATTEST:

By: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk

## EXHIBIT A

### APPLICATION PROCEDURES FOR CITY OF BILLINGS, MONTANA TAX INCENTIVE PROGRAM FOR REMODELING, RECONSTRUCTING OR EXPANDING EXISTING, VACANT COMMERCIAL BUILDINGS

- Prospective clients contact Big Sky Economic Development Authority (BSEDA) who acts as the intermediary in the application process, and an initial meeting is scheduled.
- At the initial meeting, prospective client project is discussed to determine if the project meets the tax incentive application criteria. If the project appears to qualify for an incentive, the client is given tax incentive applications, copies of the tax incentive program cited in the *Montana Code Annotated* and copies of the adopting resolutions.
- Clients then complete and return applications and supporting documentation and the applicable processing fee to BSEDA. BSEDA reviews the application for completeness.
- An appointment is then scheduled with the designated City staff to review the project documentation and perform a site visit if needed. This leads to either staff endorsement of the project or a determination that the project does not meet the program criteria.
- City staff will prepare and submit a staff report, accompanied by the application documentation, and schedule a public hearing with the City Council. The staff report will advise the Council why the application should be approved, conditionally approved, including recommended conditions, or denied.
- City staff will prepare a resolution for Council consideration that contains the elements required by state law and administrative rules.
- The City Council will conduct a public hearing on the application at its next available regular meeting and will approve, conditionally approve or disapprove the application.
- BSEDA will send a letter to the applicant regarding the Council's decision, including any conditions of approval.
- When the construction reaches substantial completion, the client contacts BSEDA and schedules a final inspection to determine if the project meets tax incentive requirements and any conditions of approval.
- If the project meets all City and State requirements, BSEDA will work with City staff to prepare and submit a final approval letter and appropriate documentation to the Montana Department of Revenue.

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 12, 2005**

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**TITLE:** Engage Legal Services to Review Tussing Settlement Agreement

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Deputy City Administrator

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**PROBLEM/ISSUE STATEMENT:** At its November 28 meeting, the City Council requested that staff contact appropriate outside legal counsel to review the Tussing settlement agreement and provide guidance to the Council. The Mayor, and subsequently some Council members, provided a list of potential resources. The attorneys were contacted and a draft engagement letter has been prepared. The Council may engage one of the attorneys for this service. Since the attorney will work for the Council, staff recommends that the Council approve the engagement rather than authorizing staff to approve it.

**ALTERNATIVES ANALYZED:**

- The City Attorney has stated a conflict of interest with performing this work
- Attorneys from Billings and other communities have been contacted about advising the Council
- The Council may choose to take no further action

**FINANCIAL IMPACT:** The exact financial impact will depend on which attorney is selected. Funds for consulting attorneys are budgeted in the City Attorney budget, professional services are budgeted in the City Administrator budget and the Council may expend Council Contingency if it adopts a resolution directing that expenditure.

**RECOMMENDATION**

A recommendation will be made at the December 12 meeting.

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

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