

CITY OF BILLINGS

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

AGENDA

COUNCIL CHAMBERS

January 23, 2006

6:30 P.M.

CALL TO ORDER – Mayor Tussing
PLEDGE OF ALLEGIANCE – Mayor Tussing
INVOCATION – Councilmember Jim Ronquillo
ROLL CALL
MINUTES -- January 9, 2006
COURTESIES – Billings Assn. of Realtors
PROCLAMATIONS
BOARD & COMMISSION REPORTS
ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #7 thru #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. Bid Awards:

(1) Two New Current Year Large Area Mowers and One Tandem Trailer. (Opened 1/17/06). Recommend postponing to 2/13/06.
[\(Corresponding Staff Memo A\)](#)

B. W.O. 04-33: Lake Elmo Road Right-of-Way Acquisition, Professional Services Contract for surveying, Engineering, Inc., \$60,828.00.
[\(Corresponding Staff Memo B\)](#)

C. W.O. 03-23: Turn Lane for Yellowstone River Road & Hawthorne Lane, Right-of-Way Agreement with Tracy R. Arnold, Lot 1, Block 2, Fritz Subdivision, \$337.50.

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

D. Memorandum of Understanding with BikeNet for PPL Montana Community Fund grant application for the Big Ditch Trail, Phase 2, \$10,000.00, contingent upon transfer of the grant funds to the City.

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

E. Airport Business Park Secured Storage Space Lease with Big Sky Airlines, \$1,153.20 in the 1st year, adjusted annually by CPI-U, term: 2 years.

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

F. Limited Commercial Aviation Hangar and Ground Lease with Billings Clinic, \$21,600.00 1st year, adjusted annually by CPI-U, term: 5 years.

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

G. Limited Commercial Aviation Hangar and Ground Lease with Jack Bolme, current lease of \$15,840.00/year, adjusted annually by the CPI-U, term: 5 years.

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

H. Consent and Estoppel in regard to Commercial Ground Lease for communication equipment site lease at the Billings Regional Landfill, MTPCS, LLC, \$5,000.00 lease and use fee in the 1st year, adjusted annually by CPI, term: 20-year lease, 15 years remaining.

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

I. Consent and Estoppel in regard to Stewart Park Antenna Site Lease, MTPCS, LLC, \$2,500.00/year ground space rent and \$2,500.00 use fee for each antenna installed on the tower, adjusted annually by CPI, term: 15-year lease, 7 years remaining.

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

J. Acknowledge receipt of petition to vacate a portion of Broadwater Avenue right-of-way located on the existing Tract 3, C/S 1877, Engineering, Inc., petitioner, and setting a public hearing date for 2/13/06.

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

K. Second/final reading ordinance amending BMCC by repealing Chapter 23, Sections 23-101 through 23-1501, declaring them to be null, void and of no effect, and adding a new Chapter 23 with sections to be numbered 23-101 through 23-1107, providing comprehensive subdivision regulations.

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

L. Second/final reading ordinance for Zone Change #772: a zone change from Residential Manufactured Home to Residential 6000 on Lot 6, Block 3, Superior

Homes Subdivision, located at 406 Roxy Lane, Ann Bustell, owner, approval of zone change and adoption of 12 criteria.

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

M. Final plat of Tierra Yellowstone Industrial Park Subdivision.

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

N. Bills and Payroll.

(1) December 22, 2005

[\(Corresponding Staff Memo N1\)](#)

(2) December 30, 2005

[\(Corresponding Staff Memo N2\)](#)

(3) December 1, 2005 (Court)

[\(Corresponding Staff Memo N3\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION** to adopt the *Billings Heights Neighborhood Plan*. Planning Board recommends approval of adopting the plan as part of the Yellowstone County/City of Billings 2003 Growth Policy. **(Action:** approval or disapproval of Planning Board recommendation.)

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

3. **PUBLIC HEARING AND SPECIAL REVIEW #800:** a special review to allow a four-plex and a rehabilitation service center in a Residential-6,000 zone described as Tract A of C/S 2237 and located at 1721 8th Avenue North, Rimrock Foundation, David Cunningham, applicant, Design Lab Architects, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

4. **PUBLIC HEARING AND SPECIAL REVIEW #801:** a special review to allow a 72-unit assisted living facility and 7 independent living cottages in a Residential-6,000-Restricted zone described as Tract C of C/S 1011 and located at 3345 Grand Avenue. Robert and Cynthia Cover, applicants, Springer Group Architects, Lowell Springer, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

5. **TOM ROMINE PROPERTY – LOTS 25-27, 38-40, SUNNYCOVE FRUIT FARMS:**
(A) PUBLIC HEARING AND RESOLUTION approving the *Tom Romine Property Urban Planning Study* and expanding the Urban Planning Area to include the subject property. Planning Board recommends approval. **(Action:** approval or disapproval of Planning Board recommendation.)
[\(Corresponding Staff Memo 5A\)](#)
- (B) PUBLIC HEARING AND RESOLUTION** annexing Lots 5, 6, 26-28, 38 and 39 of Sunnycove Fruit Farms, located south of Rimrock Rd. between 58th and 62nd Sts. W, Thomas E. Romine and Paul V. Hoyer, petitioners, Annex #06-01. Staff recommends conditional approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 5B\)](#)
6. **PUBLIC HEARING AND SPECIAL REVIEW #799:** a special review for the production and storage of hydraulic cement and concrete materials in a Controlled Industrial zone on Lot 2, Block 6, Tierra West Industrial Park Subdivision, 2nd Filing, generally located at the northeast corner of Hesper and South 32nd Street W. Cretex Concrete products West, Inc. (dba Elk River Concrete Products), Steve Wagner, applicant, Engineering, Inc., agent. Zoning Commission recommends conditional approval. (Public hearing continued and action delayed from 1/9/06). **(Action:** approval or disapproval of Zoning Commission recommendation.)
[\(Corresponding Staff Memo 6\)](#)
7. **EXCHANGE CITY GOLF CORPORATION (ECGC) 2006 ANNUAL BUDGET.** Staff recommends approval of the budget as presented. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 7\)](#)
8. **AMENDMENT #1, COBB FIELD STADIUM DESIGN AND FEASIBILITY STUDY CONSULTANT CONTRACT.** (Delayed from 12/19/05). HNTB Montana Inc., \$20,000.00. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 8\)](#)
9. **CHANGE ORDER #2: CONTRACT FOR CLASSIFICATION AND COMPENSATION STUDY,** Associated Employers of Montana (AEM) and Employers Association Inc., \$17,550.00. (Delayed from 1/19/06). Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 9\)](#)
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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: Award of Bid for 2 Replacement Park Mowers and 1 Trailer
DEPARTMENT: Park, Recreation, and Public Lands
PRESENTED BY: Gene Blackwell, Acting PRPL Director

PROBLEM/ISSUE STATEMENT: Bids were opened at 2:00 p.m. on Tuesday, January 17, 2006, for the purchase of a replacement 16 foot mower unit and a replacement 11 foot mower unit with trailer to replace Units #1678 and #1637, as approved in the FY 06 Equipment Replacement Program. Specifications and bid documents were distributed to Billings-area dealers. The opening of bids is too late to allow it to be awarded at the January 23rd, 2006, City Council meeting and, accordingly, it is recommended to delay the award to the February 13th regular meeting.

FINANCIAL: The amount budgeted for the replacement of these 2 units is \$104,767. The replacement of the mowers is in the adopted FY 06 budget as part of the approved Equipment Replacement Plan for the City Of Billings.

RECOMMENDATION

Staff recommends that City Council delay the award of the bid until the February 13, 2006, City Council meeting.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

A. Attachments related to bids received are not available at this time.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: W.O. 04-33 – Lake Elmo Road Right of Way Acquisition, Contract for Professional Land Surveying Services

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Road improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five phase plan to complete street improvements of Lake Elmo Road between Main Street and Pemberton Lane. The existing right of way between Hilltop and Wicks is too narrow to allow the needed street improvements. Therefore, it will be necessary to acquire right of way from approximately 78 parcels along this one mile length of street. The necessary land surveying services to support the right of way acquisition process include right of way control and topographic surveying, initial street layout, and updating deed exhibits. The scope of work is too extensive for staff to accomplish in a timely manner. Therefore, Public Works developed and advertised a Request for Proposals (RFP) for land surveying services to support the right of way acquisition process. The proposal review committee recommended Engineering, Inc. as the best qualified firm, and staff initiated scope and fee negotiations for the land surveying tasks. Staff presents this contract for Council approval. A copy of the proposed contract is on file with the City Clerk.

ALTERNATIVES ANALYZED:

- Award the Contract for Professional Land Surveying Services to Engineering, Inc. (Estimated right-of-way acquisition completion date of January 2007)
- Not award the contract and perform the initial street layout and surveying work in-house. (Unknown completion date due to the large number of parcels involved.)

FINANCIAL IMPACT: The cost of land surveying services is \$60,828.00. The project funding (for design, right-of-way, and construction) is as follows:

<u>CIP Project ENG R014 Lake Elmo Road – Hilltop Road to Wicks Lane</u>			
FY 2005	\$ 50,000	FY 2007	\$ 210,000
FY 2006	\$ 228,375	<u>FY 2008</u>	<u>\$2,264,050</u>
		Total	\$2,752,425

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute a Contract for Professional Land Surveying Services with Engineering, Inc. for \$60,828.00.

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

INTRODUCTION

Lake Elmo Road improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five phase plan to complete street improvements of Lake Elmo Road between Main Street and Pemberton Lane. The street improvements are anticipated to include full depth street reconstruction, curb & gutter, sidewalks, some type of multi-use facility, accessibility ramps, crosswalks, and storm drain improvements. The existing right of way between Hilltop and Wicks is too narrow to allow these necessary street improvements. The typical existing right of way width along this stretch is 60 feet with portions narrower and some portions wider. It will be necessary to acquire right of way from approximately 78 parcels along this one-mile length of street. To that end, Public Works developed a Request for Proposals (RFP) for land survey services required for right of way acquisition.

PROCEDURAL HISTORY

Completed Items

- November 3 and November 10, 2005 – RFP advertisement dates
- November 18, 2005 – Proposals received by the Engineering Division
- December 2005 – Proposal review committee met, reviewed proposals submitted in response to the RFP, and recommended Engineering, Inc. as the best qualified firm
- December 2005 – Initiated negotiations with Engineering, Inc. for land surveying scope of work and fee
- January 12, 2006 – Determination with County Clerk & Recorder that MCA 76-3-201(h) and ARM Rule 24-183-1104(g) does not require filing of amended plats for right-of-way parcels

Future Items

- January 23, 2006 – Award of Contract for Professional Services for Land Surveying services related to right of way acquisition (**this memo**)
- Spring of 2006 – Public meeting with property owners affected by right of way acquisition
- January 2007 – Estimated completion of right of way acquisition tasks
- 2007 – Design and construction begins
- 2007/2008 – Construction complete

BACKGROUND

Lake Elmo Road improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five phase plan to complete street improvements of Lake Elmo Road between Main Street and Pemberton Lane. The five phases and their improvement status are as follows:

Phase

Phase I – Wicks Lane to Angel Drive
Phase II – Main Street to Hansen Lane

Status

Completed in 1999.
Project opened bids in Sept 2005. Bids exceeded the project budget. Re-scoping to re-bid.

Phase III – Sioux Lane to Wicks Lane	Right of way acquisition (this memo)
Phase IV – Hilltop Road to Rice Lane	Right of way acquisition (this memo)
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

The scope of work for this land surveying services related to right of way acquisition project includes control and topographic surveying for the one-mile corridor, initial street and storm drain layout to determine catch points, developing right of way strip maps, and preparing/updating right of way agreement exhibits for approximately 78 different parcels. The survey data will be of quality and accuracy to be used for project design in the future. This scope of work is too extensive for staff to handle in a timely manner due to the large number of parcels involved. As a consequence, staff decided to seek the help of a qualified consultant for this project.

Staff advertised a Request for Proposals (RFP) for land surveying services to support right of way acquisition because ROWAG, the consultant hired to perform appraisals and right of way negotiations, does not do land surveying, and Staff felt that choosing a consultant rather than using a subconsultant to ROWAG was most appropriate.

ALTERNATIVES ANALYSIS

The consultant selection committee comprised of Chris Hertz of the Engineering Division, Tim Grant of the Engineering Division, Scott Walker of Public Works, and Nicholas Bailey of the Engineering Division reviewed the proposals submitted. Proposals to provide the requested services were received from Engineering, Inc., HKM Engineering, Inc.; and Morrison-Maierle, Inc. Each of the proposals was reviewed by the selection committee members (four members total) and scored in the following categories: Previous Surveying and Platting Experience (50 points available), Key Project Staff, Subconsultants and Availability (40 points available), and Grammar, Spelling and Conformance to RFP Instructions (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 recommended Engineering, Inc. as the clear winner. Engineering Division staff then initiated negotiations with Engineering, Inc. for scope and fee for a Contract for Professional Land Surveying Services for this project.

Staff is recommending that Council approve the contract that has been prepared. If approved, it is anticipated that the Consultant will begin work immediately, and right of way acquisition tasks for the project would be completed by January 2007.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute a Contract for Professional Land Surveying Services with Engineering, Inc. for \$60,828.00.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: WO 03-23 Turn Lane for Yellowstone River Road and Hawthorne Lane
Right-of-Way Agreement with Tracy R. Arnold

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Work Order 03-23 Turn Lane for Yellowstone River Road and Hawthorne Lane will widen Yellowstone River Road at the intersection of Hawthorne Lane to provide an eastbound, left-turn lane. The right-of-way needed was identified with Work Order 03-23. Tracy R. Arnold, owner of Lot 1, Block 2, Fritz Subdivision, has agreed to sell the necessary right-of-way, as shown on the attachment, and grant a temporary construction easement. The City Engineer's Office is currently working on the subdivision plat, which will dedicate the right-of-way.

ALTERNATIVES ANALYZED:

1. Approve the Right-of-Way Agreement with Tracy R. Arnold and authorize the Mayor to sign the subdivision plat once completed.
2. Do not approve the Right-of-Way Agreement with Tracy R. Arnold or authorize the Mayor to sign the subdivision plat once completed.

FINANCIAL IMPACT: The cost of the right-of-way and construction easement from Tracy R. Arnold is \$337.50. This amount will be paid from the project budget for W.O. 03-23 Turn Lane for Yellowstone River Road and Hawthorne Lane.

RECOMMENDATION

Staff requests that Council approve the Right-of-Way Agreement with Tracy R. Arnold and authorize the Mayor to sign the subdivision plat dedicating the right-of-way once the plat is completed.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A. Right-of-Way Agreement with Tracy R. Arnold

INTRODUCTION

Work Order 03-23 Turn Lane for Yellowstone River Road and Hawthorne Lane will widen Yellowstone River Road at the intersection of Hawthorne Lane to provide an eastbound, left-turn lane. The City Engineer's Office has been negotiating for the necessary right-of-way from the adjacent property owner for approximately six months. The right-of-way needed was identified on the design plans for the project and must be acquired prior to construction. This is the only right-of-way the City needs to acquire for this project.

PROCEDURAL HISTORY

The City Engineer's Office has negotiated the property value with the property owner. An appraisal was not obtained, due to the high cost of the appraisal versus the amount being paid for the right-of-way. Once the right-of-way has been acquired, the City Engineer's Office will begin the construction process, which is anticipated to start in the spring of 2006.

BACKGROUND

The City Engineer's Office has been negotiating with the property owner for the necessary right-of-way to add an eastbound left-turn lane on Yellowstone River Road for the last six months. To accommodate frequent left-turns and traffic volumes, it is necessary to widen Yellowstone River Road to accommodate a left-turn lane. The design for this project has been completed by Kadrmas, Lee, & Jackson. Once the right-of-way has been acquired, construction will begin and is anticipated to take 60 calendar days to complete.

ALTERNATIVES ANALYSIS

Approve the Right-of-Way Agreement with Tracy R. Arnold and authorize the Mayor to sign the subdivision plat once completed. Under this option, the City Engineer's Office will complete the subdivision plat dedicating the right-of-way.

Do not approve the Right-of-Way Agreement with Tracy R. Arnold or authorize the Mayor to sign the subdivision plat once completed. Under this option, there would not be enough right-of-way to construct the left-turn lane.

RECOMMENDATION

Staff requests that Council approve the Right-of-Way Agreement with Tracy R. Arnold and authorize the Mayor to sign the subdivision plat dedicating the right-of-way once the plat is completed.

ATTACHMENT

A. Right-of-Way Agreement with Tracy R. Arnold

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D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: Memorandum of Understanding (MOU) with BikeNet for PPL Montana Community Fund grant application for Big Ditch Trail, Phase 2

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

PRESENTED BY: Darlene Tussing, Alternate Modes Coordinator

PROBLEM/ISSUE STATEMENT: The City of Billings is seeking grant monies for approved trail projects to help supplement the required local match dollars.

ALTERNATIVES ANALYZED: Most of the Federal granting programs required a local match. The 1999 General Obligation Bond was passed by the voters of Billings to provide that match. With the dwindling GO bond funding, if the City does not seek other sources of matching dollars, the opportunity to seek federal funds for trail construction would be limited.

FINANCIAL IMPACT: The CTEP funding of \$147,620.00 has been approved for the Big Ditch Trail, Phase 2, but it requires a local match of 14% or \$22,880. PPL Montana Community Fund Grant application could provide up to \$10,000 for the required match and an additional pending grant for \$10,000 was submitted to Bikes Belong Coalition. If these grants do not materialize, the 1999 General Obligation Bond for matching dollars for the trails could be used since it was designated for trails in this area.

RECOMMENDATION

Staff recommends that Council approve the Memorandum of Agreement and assist BikeNet in submitting a grant to the PPL Montana Community Fund contingent upon the agreement to transfer grant funds to the City for the Big Ditch, Phase 2, project.

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

ATTACHMENT

A-Memorandum of Understanding Agreement
B-Letter of Request from BikeNet

INTRODUCTION

The City of Billings is seeking additional funding sources to provide the required 14% local match for the CTEP Big Ditch Trail, Phase 2 project.

PROCEDURAL HISTORY

Some granting foundations and agencies will not accept grants from political subdivisions and require a non-profit 501 (c)(3) status. BIKENET, a local trail advocacy group, that formed to help support trails in the Billings community, has a non-profit 501 (c)(3) status and has been willing to help the City provide some of the local match.

BACKGROUND

The 1999 General Obligation Bond issue that was passed to provide matching dollars for trails in various areas of Billings, is diminishing rapidly and the City is looking for other opportunities for acquiring those matching dollars. Two grants that the City has consistently received are the Federal CTEP (Community Transportation Enhancement Program) which requires a 14% local match and the RTP (Recreational Trails Program) which requires a 20% local match. In order to receive these federal funds, the City of Billings needs a source of funding which can provide that match whether it is through the general obligation bond program or through other grants. Some grants can only be applied for through a non-profit 501 (c) (3) organization such as the BikeNet group. The PPL Montana Community Fund Grant could provide up to \$10,000 and the deadline for the application is January 27, 2006. PPL Montana requires that only community and environmental organizations, school districts, community colleges, and universities are eligible to apply. BikeNet is willing to assist the City of Billings in securing additional funds for trails, but needs help writing grants. The Planning and Community Service Department could provide grant writing assistance to the BikeNet group with a Memorandum of Understanding (MOU) that if the grant is awarded, BikeNet would transfer the funding to the City for that project. The PPL Montana Community Fund Grant would be submitted for a maximum \$10,000 request towards the Big Ditch Trail, Phase 2, which has been approved for the 2006 CTEP funding cycle and requires a local match of \$22,880.

ALTERNATIVES ANALYSIS

Most of the Federal granting programs required a local match. The 1999 General Obligation Bond was passed by the voters of Billings to provide that match. With the dwindling GO bond funding, if the City does not seek other sources of matching dollars, the opportunity to seek federal funds for trail construction would be limited.

STAKEHOLDERS

The stakeholders would include the City of Billings and the citizens and visitors of the Greater Billings community who access and use the trail network for recreation and as a transportation corridor. BikeNet, the local advocacy group, has a strong interest in helping to support the trails in the Billings area and have showed their support by holding an annual fund raiser to help provide matching dollars for federally funded trail projects. A trail census was conducted in 2003 and 2005 and the results confirmed an increased usage of the trail system.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The adopted Heritage Trail Plan suggests possible funding sources for potential trail projects. This list includes private funding sources from local or national foundations.

SUMMARY

The City of Billings is seeking additional funding for the local match for the CTEP trail project, the Big Ditch Trail, Phase 2. Ten Thousand dollars can be applied for from the PPL Montana Community Fund. However, only community and environmental organizations, school districts, community colleges, and universities are eligible to apply who have a 501 (c)(3) status. BikeNet is willing to apply for this grant with the assistance of the Planning and Community Services Department with the understanding that if the funding is granted to BikeNet that they will transfer the money to the City for the project.

RECOMMENDATION

Staff recommends that Council approve the Memorandum of Agreement and assist BikeNet in submitting a grant to the PPL Montana Community Fund.

ATTACHMENTS

A-Memorandum of Understanding Agreement
B-Letter of Request from BikeNet

Memorandum of Understanding

This is an agreement between the CITY OF BILLINGS, a municipal corporation, hereinafter referred to as "CITY", and BIKENET, a local non-profit 501(c)(3) advocacy group for trails, hereinafter referred to as "BIKENET" for a mutual agreement concerning grants.

- A. BIKENET agrees that it will submit a grant application to PPL Montana Community Fund Grant which requires application from a non-profit 501 (c) (3) status organization.
- B. The grant submitted through BIKENET for this City trail project is designated in the approved Rimrock West Master Park Plan, the Heritage Trail Plan, the Capital Improvement Plan and grant submittal needs approval from the City Council and the BikeNet Board of Directors.
- C. The Planning and Community Service Department hereby agrees to provide grant writing assistance to BIKENET including word processing, copying, postage and other administrative items.
- D. BIKENET agrees to transfer the grant funding to the CITY for construction of the project in the event the grant application is approved by PPL Montana Community Fund Grant. The grant application will expressly advise PPL Montana Community Fund Grant that any funds given to BIKENET for this purpose will ultimately be transferred to the CITY on the condition that all funds so transferred are to be used entirely in the construction of the proposed trail.

IN WITNESS WHEREOF, the parties have executed this agreement on this 23rd day of January, 2006.

BIKENET

BY: _____
Authorized Signature

THE CITY OF BILLINGS

BY: _____
MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

January 5, 2006

City of Billings
City Hall
210 N. 27th
Billings Montana 59101

Dear Mayor and City Council Members,

The BikeNet Board of Directors supports the Heritage Trail Plan and the work the City has accomplished with the development of the trail network. Since BikeNet is a non-profit 501 (c)(3) organization, it can assume the responsibility to fund raise to help provide the local matching dollars for the some of the CTEP trail projects. In fact, BikeNet provided \$5,000 to the Descro Trail and is also providing \$20,951.35 for the match for the Big Ditch Trail, Phase 1 which should be built during the next construction season.

BikeNet is also willing to submit grants to foundations and funding agencies that will only accept applications from non-profit 501 (c)(3) organizations. We are a volunteer organization and have no paid staff, so we would need assistance from the City to write those grants. We are aware that PPL Montana Community Fund has a grant application due on January 27, 2006 and we would be willing to submit that grant for the Big Ditch Trails, Phase 2. It would be the understanding of BikeNet that if our organization received any funding from the grant, those funds would then transfer to the City to pay for the trail project.

We hope that BikeNet can be of assistance to the City of Billings for the trail projects and we look forward to working with you in the future.

Sincerely,

Suzanne McKiernan, Chair
BikeNet Board of Directors

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: Airport Business Park Secured Storage Space Lease with Big Sky Airlines
DEPARTMENT: Aviation and Transit
PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: Big Sky Airlines desires to lease space in the secured bunker and ware yard area of the Airport Business Park, located at the very north side of the Airport. This is a short term lease of one of the bunkers (198 square feet) and 320 square feet of the secured ware yard area. This two-year lease allows Big Sky the ability to store items that were left over from the Essential Air Service contract they held in Texas, as well as the equipment and parts left over from the transition of the aircraft fleet from Metroliners to Beech 1900's. Big Sky will utilize this storage space while they seek parties interested in the purchase of these items.

FINANCIAL IMPACT: This two-year Lease will generate \$1,153.20 in the first year, and the Lease rentals in the second year will be adjusted by the annual increase in the Consumer Price Index for all Urban Consumers (CPI-U).

RECOMMENDATION

Staff recommends that Council approve a two-year Lease for Secured Storage Space with Big Sky Airlines.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: Limited Commercial Aviation Hangar and Ground Lease with Billings Clinic

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Billings Clinic (formerly Deaconess Billings Clinic) desires to renew the Limited Commercial Aviation Hangar and Ground Lease it has enjoyed for the past five years. The Billings Clinic is asking for an additional five-year lease term for this City owned hangar property. The Billings Clinic currently utilizes this 4,800 square foot hangar to operate its emergency flight service functions, including the storage, maintenance, and preparation of their fixed wing aircraft for the transport of seriously ill patients to and from distant locations.

FINANCIAL IMPACT: This five-year lease will generate \$21,600 in annual revenue in the first year, with lease rentals in subsequent years adjusted on an annual basis using the Consumer Price Index for all Urban Consumers (CPI-U). This rate is very similar to what is being charged to other tenants utilizing City owned executive hangars.

RECOMMENDATION

Staff recommends that Council approve the Limited Commercial Aviation Hangar and Ground Lease with the Billings Clinic.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: Limited Commercial Aviation Hangar and Ground Lease with Jack Bolme
DEPARTMENT: Aviation and Transit
PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: On May 31, 2005, the City took over the ownership of an executive hangar, the result of a Reversion of Improvements clause that was used in the lease agreements twenty years ago. This is the third hangar that became City property through this process. On June 3, 2005, the Council agreed to allow the original owner of the hangar, Jack Bolme, to continue to lease the hangar through the end of December. He requested the short time frame for the lease because he was subleasing the hangar to the U.S. Fish and Wildlife through December 31, 2005, and did not have an extension of that sublease in place at that time. The U.S. Fish and Wildlife has committed to sublease this space for an additional five-year period, hence Mr. Bolme is requesting a five-year lease from the City to mirror the U.S Fish and Wildlife lease. The building is a sixty (60) foot by sixty (60) foot aircraft hangar on the west end of the Airport and includes approximately 720 square feet of finished office space.

FINANCIAL IMPACT: Since the Lease rate was adjusted in June, this five-year Lease will continue to generate \$1,320 per month for the next five months for a total of \$6,600 (\$15,840 annualized). During the term of the Lease, the rate will be adjusted each June 1st using the Consumer Price Index for all Urban Consumers (CPI-U). This rate is very similar to what is being charged to other tenants utilizing City owned executive hangars.

RECOMMENDATION

Staff recommends that Council approve the Limited Commercial Aviation Hangar and Ground Lease with Jack Bolme for five years, beginning January 1, 2006.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: Approval of Consent and Estoppel in regards to Commercial Ground Lease for Communication Equipment Site Lease at the Billings Regional Landfill

DEPARTMENT: Public Works

PRESENTED BY: David Mumford, Director of Public Works

PROBLEM/ISSUE STATEMENT: On April 9, 2001 the City Council approved a commercial ground lease with **3 Rivers PCS, Inc.** (tenant) for use as a communications equipment site at the Billings Regional Landfill. The period of the agreement is 20 years from the date of approval, and terminates April 8, 2021. On July 25, 2005 the City Council approved a Consent and Estoppel which assigned the lease to **MTPCS, LLC**, a Delaware limited liability company. The tenant is seeking loans and other financial accommodations from two lenders. This document will allow the lenders to step in should the tenant default on the loans. The lenders have required this new document as a condition of providing the loans and it is in essence a subordination agreement. The City Attorney has reviewed this document for form and content.

FINANCIAL IMPACT: The ground lease provides for an initial rental and use fee of \$5,000 and is adjusted annually based upon the Consumer Price Index.

RECOMMENDATION

Staff recommendation is that the City Council approve the Consent and Estoppel Certificate as attached.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS:

A. Three copies – Consent and Estoppel Certificate

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: Approval of Consent and Estoppel in regards to Commercial Ground Lease for Stewart Park Antenna Site.

DEPARTMENT: Department of Parks, Recreation, and Public Lands

PRESENTED BY: Gene Blackwell, Acting PRPL Director

PROBLEM/ISSUE STATEMENT: In 1998 a 50 foot by 40 foot antenna tower site in Stewart Park along with easements for access and power supply was leased by **3 Rivers PCS, Inc.** from the City of Billings. The period of the agreement is 15 years from the date of approval, February 23, 1998. Another communication firm, **MTPCS, LLC**, a Delaware limited liability company, acquired the **3 River PCS, Inc.** lease for the premises for the remaining term of the lease, the transfer of which was approved by the City Council on June 27, 2005. The tenant is seeking loans and other financial accommodations from two lenders. This document will allow the lenders to step in should the tenant default on the loans. The lenders have required this new document as a condition of providing the loans and it is in essence a subordination agreement. The City Attorney has reviewed and approved this document for form and content.

FINANCIAL IMPACT: The lease agreement provides for the fees to be adjusted annually by the amount of change in the Consumer Price Index during the previous year. Should default occur, the transfer would be of the lease in its entirety and would not change obligations and payments due from the lessee during the remaining term of the lease. The yearly payments have been received when due and are up to date with no payment in arrears.

RECOMMENDATION

Staff recommends approval by the City Council of the Consent and Estoppel Certificate for reassignment in case of default, as attached.

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

ATTACHMENTS:

A. Three copies – Consent and Estoppel Certificate for reassignment of Stewart Park Antenna Tower Site Lease.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: Acknowledge Receipt of Petition to Vacate a Portion of Broadwater Avenue Right-of-Way and Set a Public Hearing Date

DEPARTMENT: Public Works Department – Engineering Division

PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: Engineering, Inc. has submitted a petition to vacate a portion of Broadwater Avenue right-of-way, as indicated on attached Exhibit A. The right-of-way to be vacated is approximately 650 feet long by 30 feet wide and is located immediately west of 52nd Street West within the proposed Legacy Subdivision.

ALTERNATIVES ANALYZED:

- Acknowledge receipt of petition to vacate a portion of Broadwater Avenue right-of-way and set a public hearing date of February 13, 2006.
- Do not acknowledge receipt of petition to vacate a portion of Broadwater Avenue right-of-way.

FINANCIAL IMPACT:

The portion of street being vacated is 19,345 square feet. The right-of-way will be dedicated for Dovetail Avenue and will provide continuity to the west in the future. The City Engineer's Office recommends the right-of-way be vacated at no cost since right-of-way will be dedicated for Dovetail Avenue.

RECOMMENDATION

Staff recommends that Council acknowledge receipt of the petition to vacate the above-referenced portion of Broadwater Avenue and set a public hearing date for February 13, 2006.

Approved By: City Administrator _____ City Attorney ____

ATTACHMENT

A. Exhibit A

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



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, January 23, 2006**

TITLE: Second Reading of Ordinance for the Amended City Subdivision Regulations (Article 23, BMCC)

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: The 2005 Legislature approved Senate Bill 116 in April, enacting a number of changes to the Subdivision and Platting Act (Title 76-3, Montana Code Annotated) and requiring adoption of updated local subdivision regulations by October, 2006. In response to this mandate and in order to implement some of the goals of the 2003 Growth Policy, Planning staff, in collaboration with other City staff and community members, is presenting a new draft set of City Subdivision Regulations for adoption. The City Council held a public hearing on the Amended City Subdivision Regulations (Article 23, BMCC) on December 19, 2005 and voted to adopt the ordinance containing the new regulations on January 9, 2006. The City Council must approve ordinances through two readings. A copy of the entire 132-page ordinance can be acquired from the City Clerk's office, or found on the City Planning Website at: www.ci.billings.mt.us/Government/planning/index.php.

FINANCIAL IMPACT: There are no foreseen financial impacts to the City for adopting the Amended City Subdivision Regulations.

RECOMMENDATION

Planning Board recommends that Council adopt the City Subdivision Regulations, as Amended.

Approved By: City Administrator ____ City Attorney ____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REPEALING CHAPTER 23, SECTIONS 23-101 THROUGH 23-1501 OF THE CODE AND DECLARING SAME TO BE NULL AND VOID AND OF NO EFFECT; AND BY ADDING A NEW CHAPTER 23 WITH SECTIONS TO BE NUMBERED 23-101 THROUGH 23-1107; PROVIDING COMPREHENSIVE SUBDIVISION REGULATIONS.

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

Section 1. That Chapter 23, Sections 23-101 through 23-1501 of the Billings, Montana City Code as adopted by Ordinances numbered 3819, 3998, 4237, 82-4476, 83-4486, 84-4574, 84-4577, 85-4668, 86-4688, 86-4690, 86-4705, 86-4706, 87-4738, 91-4880, 93-4934, 95-4996, 00-5126, 00-5128, 02-5221, and 03-5249 ARE HEREBY REPEALED AND DECLARED NULL AND VOID AND OF NO EFFECT.

Section 2. That the Billings, Montana City Code be amended by adding a new Chapter 23, Articles 23-100 through 23-1100 with sections to be numbered 23-101 through 23-1107, to read as follows:

Chapter 23

SUBDIVISION REGULATIONS

Article 23-100. GENERAL PROVISIONS.

Section 23-101. Title.

These regulations will be known and may be cited as “The Subdivision Regulations of the City of Billings” hereinafter referred to as “these Regulations.”

Section 23-102. Authority.

Authorization for these Regulations is contained in the Montana Subdivision and Platting Act (MSPA) (Title 76, Chapter 3, Montana Code Annotated (MCA)). The reviewing authority is the City-County Planning and Community Services Department.

Section 23-103. Purpose.

The purposes of these Regulations are to promote the public health, safety and general welfare of the citizens of the City of Billings by regulating the subdivision of land and to promote a vision

for the development of the lands within the City for the best possible environment in which to enjoy life, experience natural features, raise a family, earn a living, conduct business, obtain an adequate education, have access to health care facilities, and to be adequately protected from crime and disasters.

These Regulations are intended to comply with Part 5 of the MSPA, and are intended to provide for:

- A. The orderly development of the jurisdictional area in accordance with adopted growth policies, neighborhood plans, motorized and non-motorized transportation plans, park plans, capital improvement plans, and other adopted policies and plans.
- B. The public health, safety and general welfare of existing and future residents by avoiding danger or injury by reason of natural hazard or the lack of drainage, access, emergency services or other public services.
- C. The coordination of roads within subdivided land with the existing and planned transportation network and avoid and minimize traffic congestion.
- D. The dedication of land for roadways and for public utility easements.
- E. Proper physical and legal road access, including obtaining of necessary easements and rights of way.
- F. The promotion of adequate open spaces for travel, light, air, and recreation.
- G. Adequate transportation, water, drainage, and sanitary facilities.
- H. The conservation of natural resources and development in harmony with the natural environment.
- I. The promotion of cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services.
- J. The efficient expenditure of public funds for the supply of public services.
- K. The standardization of making and filing of any plat for subdivided lands.
- L. The protection of the rights of all documented property owners affected by the proposed subdivision including water, mineral, and air.
- M. The administration of these regulations by defining the powers and duties of approving authorities including procedures for the review and approval of all plats of subdivisions covered by these provisions.

Section 23-104. Jurisdiction.

These Regulations govern the subdivision of land within the City of Billings. These Regulations do not cover the Town of Broadview, and the unincorporated areas of Yellowstone County, or the City of Laurel and the four and one-half (4 ½) mile Laurel Planning Jurisdiction as shown on the map filed with the Yellowstone County Clerk and Recorder's Office (see Appendix A for jurisdiction map).

If a proposed subdivision lies partly within an incorporated city or town, the preliminary plat must be submitted to, and approved by, both the City and the County governing bodies (76-3-601(2)(c), MCA).

When a proposed subdivision is also proposed to be annexed to a municipality, the subdivision review and annexation procedures will be coordinated to minimize duplications of hearings, reports and other requirements, whenever possible (76-3-601(2)(d), MCA).

These Regulations supplement all other regulations, and where they are at variance with other laws, regulations, ordinances, or resolutions, the more restrictive requirements apply.

Section 23-105. Exemptions for Certain Divisions of Land.

The Montana Subdivision and Platting Act provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the method of disposition is adopted for the purpose of evading the requirements of Title 76, Chapter 3, MCA.

The procedures, criteria and requirements provided in Appendix B shall be used to review an exemption from subdivision review and to evaluate whether the division of land is for the purpose of evading the Montana Subdivision and Platting Act.

Section 23-106. Construction Timing.

The applicant or his/her contractors may not proceed with any construction work on a proposed subdivision, including grading and excavation relating to public improvements, until the governing body has given preliminary plat approval of the proposed subdivision plat. If improvements are initiated prior to final plat approval, the subdivider shall assume all risks and liability for error in improvement placement and the improvements must comply with the conditions and agreements of the preliminary plat approval.

Section 23-107. Transfers of Title.

Except as noted below, a final subdivision plat must be filed for record with the Yellowstone County Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner. After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met (76-3-303, MCA):

- A. That under the terms of the contracts the purchasers of lots in the proposed subdivision make all payments to an escrow agent, which must be a bank, savings and loan association, or title/escrow company chartered to do business in the State of Montana;
- B. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the County Clerk and Recorder;
- C. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the County Clerk and Recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;
- D. That the County Treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and
- E. That the contracts contain the following language conspicuously set out therein: “The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the County Clerk and Recorder, title to the property cannot be transferred in any manner.”

Section 23-108. Suitability of Land.

If the Yellowstone County Board of Planning after review, finds any portion of a parcel of land proposed to be subdivided unsuitable for subdivision because of potential hazards such as flooding, land slides, steep slopes, rock falls, high water table, polluted or non-potable water supply, high voltage lines, high pressure gas lines, danger from fire or explosion or other features which may be detrimental to the health, safety, or general welfare of existing or future residents, they will not recommend approval of the subdivision unless the hazards can be eliminated or overcome through approved design and construction.

Section 23-109. Permission to Enter.

The governing body or its designated agent(s) or agency may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider. The submission of a preliminary plat or final plat application constitutes a grant of permission by the subdivider to enter the subject property.

Section 23-110. Severability.

If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, that judgment will affect only the part held invalid.

Section 23-111. Regulations in Effect.

Review and approval or disapproval of a subdivision under these Regulations may occur only under those Regulations in effect at the time an application for approval of a preliminary plat or an extension of preliminary plat approval is submitted to the governing body.

Article 23-200. DEFINITIONS.

Section 23-201. Definitions.

Whenever the following words or phrases appear in these regulations, they shall have the meaning assigned to them by this section. The word “shall” is always mandatory, and the word “may” indicates use of discretion in making decisions.

ACCESS:

A. **LEGAL ACCESS:** When the subdivision abuts a public street or road under the jurisdiction of the City, the County, or the State, or when the subdivider has obtained documented, adequate, and appropriate easements from a public road to the subdivision across all intervening properties.

B. **PHYSICAL ACCESS:** When a road or driveway conforming to City and/or County standards provides vehicular access from a public or private road to the subdivision.

ADJOINING PROPERTY OWNERS: Persons who are owners of record and/or owners under contract for deed of properties adjoining the land being proposed for subdivision platting.

AGRICULTURE: Montana Code Annotated definitions for “agriculture” and “agricultural”

will apply as follows:

41-2-103, MCA. Definitions. As used in this part, the following definitions apply: (1) “Agriculture” means: (a) all aspects of farming, including the cultivation and tillage of the soil; (b)(i) dairying; and (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act [12 U.S.C. 1141j(g)]; (c) the raising of livestock, bees, fur-bearing animals, or poultry; and (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

81-8-701, MCA. Definitions. The following definitions apply: (1) “Agricultural and food product” includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

AGRICULTURAL WATER USER FACILITIES: Those facilities which convey water for agricultural land as defined in 15-7-202, MCA, or which provide water for the production of agricultural products as defined in 15-1-101, MCA, including, but not limited to, ditches, drains, pipes, and head gates.

AGRICULTURAL WATER USER: Persons and lands legally entitled to water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right.

APPLICANT: The owner of land proposed for subdivision or the owner's legally designated representative for the purposes of submitting a request to subdivide (See SUBDIVIDER).

BIKEWAY: A generic term for any road, street, path or way, which is specifically designated for bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are to be shared with other transportation modes.

BLOCK: A group of lots, tracts or parcels within well-defined and fixed boundaries. Such boundaries may include streets, railroads, irrigation ditches, streams, platted lands or a combination thereof.

BOARD OF COUNTY COMMISSIONERS: The governing body for Yellowstone County, Montana.

BOULEVARD: An area of public right-of-way or private easement between the paved edge of the street or road and the private property line. The boulevard provides for the opportunity to separate vehicle traffic from pedestrian travel. Boulevards often have sidewalks and mailboxes located in them and often are landscaped. A parkway median is a landscaped area located in the middle of the street or road.

CERTIFICATE OF SURVEY: A drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

CONSERVATION SUBDIVISION: A development in a rural setting that is characterized by compact lots and common open space, and where the natural features of land are maintained to the greatest extent possible.

CHECKPRINT: A paper copy of the final plat submitted by the subdivider for review of errors and omissions, and compliance with Administrative Rules of Montana and conditions of approval by staff prior to submitting the final plat on mylar.

CITY COUNCIL: The governing body for the City of Billings, Montana.

CLUSTER DEVELOPMENT: A subdivision of land with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped (76-3-103(2), MCA). (See Section 23-711 for example)

CONDOMINIUM: A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project with the land and all other parts of the project held in common ownership or use by owners of the units (70-23-101, et seq., MCA).

COVENANT (DEED RESTRICTION): A limitation contained in a deed that restricts or regulates the use of the real property, and are not enforced by the governing body.

DEDICATION: The deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted (76-3-103(3), MCA).

CITY-COUNTY PLANNING DIRECTOR: The Director of the Planning and Community Services Department or an authorized reviewing authority.

DIVISION OF LAND: The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to the Montana Subdivision and Platting Act. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land (76-3-103(4), MCA).

DRIVEWAY: A vehicular access serving no more than 2 lots or 5 dwelling units.

DWELLING UNIT: Any building or portion thereof providing complete, independent and permanent living facilities for one family. A family is any number of individuals, related by blood, marriage, adoption or other legal means, including any number of minor children in foster care, and/or any number of unrelated persons (including any domestic servants or caregivers) living together in a dwelling unit. (24 CFR Part 4, Section 982.401).

EASEMENT: Authorization by a property owner for another to use the property for a specified purpose, in which the owner agrees not to build, or otherwise obstruct or interfere with the specified purpose.

ENGINEER (REGISTERED PROFESSIONAL ENGINEER): A person licensed in conformance with the Montana Professional Engineers' Registration Act (67-37, MCA) to practice engineering in the State of Montana.

FLOOD: When water from any watercourse or drainage rises above the bank or moves outside the channel of that watercourse or drainage (76-5-103, MCA).

100-YEAR FLOOD: A flood magnitude expected to recur on the average of once every 100 years, or a flood magnitude which has a 1% chance of occurring in any given year (76-5-103, MCA).

FLOODPLAIN: The area adjoining the watercourse or drainage that would be covered by the floodwater of a flood of 100-year frequency (76-5-103, MCA).

FLOODWAY: The channel of a watercourse or drainage and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainage (76-5-103, MCA).

GREENBELT/GREENWAY: Corridors of protected open space managed for conservation and recreation purposes as designated by the governing body. They often follow natural land or water features and link nature reserves, parks, cultural features and historic sites with each other and with populated areas. These corridors may be privately or publicly owned.

GROWTH POLICY: The Yellowstone County and City of Billings Growth Policy and any version of this policy adopted by the Billings City Council and Board of County Commissioners pursuant to 76-1-601, MCA.

LOCAL SERVICES: Any and all services or facilities that local government entities are authorized to provide.

LOT: A parcel, plot, or other land area created by subdivision or certificate of survey for sale, rent, or lease.

LOT MEASUREMENTS:

- a. Lot Depth -- The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
- b. Lot Width -- The average width of the lot.
- c. Lot Frontage -- The width of the lot line that fronts a public street right-of-way or public road easement where the lot usually has a driveway access.
- d. Lot Area -- The area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way.

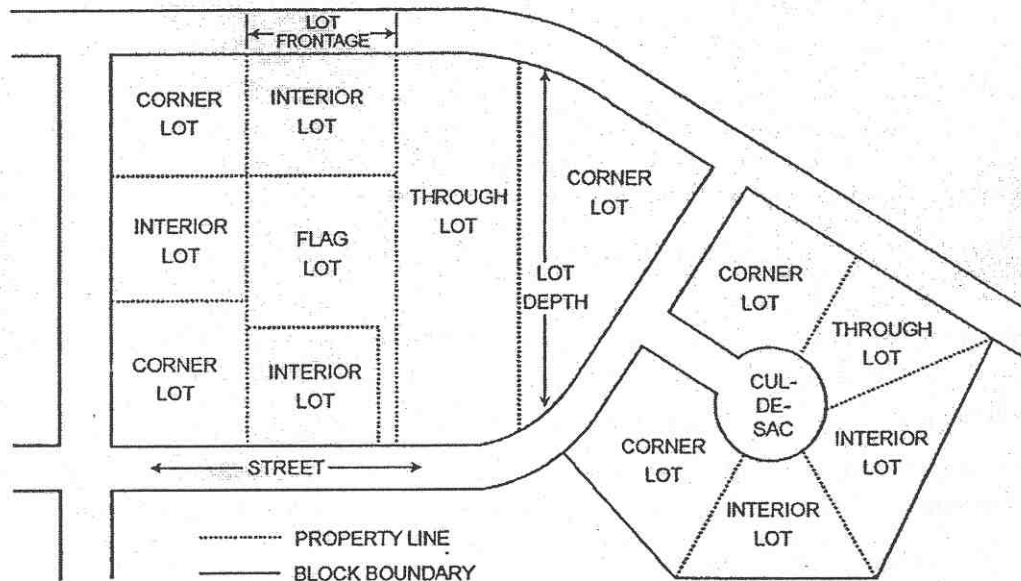
LOT TYPES: (See Figure 23.200.1)

- a. Corner Lot: A lot located at the intersection of two streets.
- b. Interior Lot: A lot with frontage on only one street.
- c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.
- d. Flag Lot
- e. Irregular Lot

MANUFACTURED HOME: A detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, "trailer homes," "house trailers," and "mobile homes" whether or

not the unit has been constructed after June 15, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include “modular” or “factory-built buildings” that are fabricated at a factory in accordance with the International Residential/Building Code applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.

Figure 23.200.1. Lot Types



MANUFACTURED HOME SPACE: A designated portion of a parcel of land designed for the accommodation of one manufactured home and its accessory buildings or structures for the exclusive use of the occupants.

MANUFACTURED HOME PARK: A single parcel of land or a lot that is designed or used for temporary or permanent spaces for 2 or more manufactured homes where either the space for a manufactured home or a manufactured home itself is available to the general public for residential use.

MANUFACTURED HOME PAD: That area of a manufactured home space that has been prepared for the placement of a manufactured home.

MASTER PLAN (Overall Plan; Sequential Development): The plan of a subdivision designed for a single tract and proposed to be subdivided in various stages, phases or configurations.

MEDIAN: A raised divider made of dirt, concrete or other material located in the middle of a street or road between travel lanes that is often landscaped (See BOULEVARD).

MOBILE HOME OR TRAILER: See MANUFACTURED HOME.

MODULAR HOME: A dwelling unit constructed in accordance with the standards set forth in the International Residential/Building Code and bearing the insignia of the State of Montana,

applicable to site-built homes, and composed of components assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY MINIMUM STANDARDS: Minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to Title 76, Chapter 4, Part 1, MCA.

MONUMENT (PERMANENT MONUMENT): Any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.

MULTI-USE PATH: A hard or soft-surfaced trail physically separated from motorized vehicular traffic by an open space or barrier and either within the public right-of-way or within an independent right-of-way. These paths may also be used by pedestrians, in-line skaters, wheelchair users, joggers and other non-motorized users.

NATURAL ENVIRONMENT: The physical conditions that exist within a given area, including land, air, water, minerals, plants, animals, and objects of aesthetic significance.

NO ACCESS EASEMENT: A line designated on a subdivision plat for the purpose of restricting vehicular access from a public right-of-way to a lot.

OPEN SPACE: Any land which is provided or preserved for park or recreational purposes as designated by the governing body; conservation of land or other natural resources; historic or scenic purposes; or assisting in the shaping of the character, direction, and timing of community development.

PLANNED NEIGHBORHOOD DEVELOPMENT (PND): A subdivision consisting of a planned mixture of land uses such as residential clusters, industrial parks, shopping centers, and/or office building parks built in a prearranged relationship to each other and having open space and community facilities in common ownership or use (76-3-103(10), MCA).

PLANNING BOARD: The Yellowstone County Board of Planning.

PLAT: A graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

- a. Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnishes a basis for review by a governing body.
- b. Final Plat: The final drawing of the subdivision and dedication required to be prepared for filing for record with the County Clerk and Recorder containing all elements and requirements set forth in these regulations and the Montana Subdivision and Platting Act (76-3, MCA).
- c. Amended Plat: The final drawing of any change to a filed platted subdivision.

- d. **Exempt Plat:** The final drawing of a plat that is exempt from subdivision review but subject to survey requirements in accordance with 76-3-201 and 76-3-207, MCA.

PUBLIC HEALTH AND SAFETY: A condition of optimal well being, free from danger, risk, or injury for a community at large, a small class of persons or a specific individual.

PUBLIC IMPROVEMENT: Any structure or facility constructed to serve the residents of a subdivision or the general public.

PUBLIC ROAD OR STREET: A road, street or easement that has been dedicated for public use.

RECREATIONAL CAMPING VEHICLE: A vehicle primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle.

RECREATIONAL VEHICLE PARK: Any area or tract of land containing two (2) or more spaces that are available for rent to the general public for parking or placement of temporary recreational vehicles. This term does not include a parcel composed of individually platted lots.

RECREATIONAL VEHICLE SPACE: A designated portion of a recreational vehicle park designed for the placement of a single recreational vehicle and the exclusive use of its occupants.

REVIEWING AUTHORITY: City-County Planning Department.

STATE: The State of Montana.

STREET TYPES: For purposes of these regulations, street types are defined using the Institute of Transportation Engineers Manual as follows:

- a. **Alley:** Minor rights-of-way used primarily for vehicular access to the back or side of properties that abut on and are otherwise served by public roads.
- b. **Arterial:** Any major carrier of traffic which generally terminates at both ends at a location that will produce more than 2,000 vehicles per day traffic, or upon which the nature of the traffic is such that more than 60% of the vehicles are using the street for mobility rather than land access. They are typically located no more than 1 mile apart.
 - 1. **Principal Arterial:** A street which serves the major centers of a metropolitan area, the highest traffic volume corridors, and the longest trip desires, and which carries a high proportion of the total urban area travel on a minimum of mileage.
 - 2. **Minor Arterial:** A street that interconnects with and augments the principal arterials, provides service to trips of moderate length at a lower level of travel

mobility than principal arterials, and distributes travel to geographic areas smaller than those identified as principal arterials.

- c. Collector: A street that generally terminates at both ends at an arterial or collector but because of location, curvilinear design, or limited feeder area will not generally serve more than 2,000 vehicles per day, or the nature of the traffic is such that approximately 50% of the traffic is using the street for land access and 50% for mobility. They are typically located between arterial streets at no more than ½ -mile from an arterial street.
- d. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.
- e. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.
- f. Half-Street: A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
- g. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic.
- h. Loop: A local street which begins and ends on the same street, generally used for access to properties.

SUBDIVIDER: Any person or entity that owns or buys land, divides it into usable lots and develops or rents the lots, or sells the lots to others for development.

SUBDIVISION: A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any re-subdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes (76-3-103(16), MCA). However, condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act are exempt from the provisions of the Act (76-3-203, MCA).

SUBDIVISION, MAJOR: A subdivision that does not qualify for review as a minor subdivision.

SUBDIVISION, FIRST MINOR: A subdivision of a parcel that has never been subdivided or created by a subdivision, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA since July 1, 1973 (76-3-609(2), MCA). Furthermore the first minor subdivision contains five or fewer lots, legal

and physical access to all lots is provided and no land is required to be dedicated to public use for parks or playgrounds.

SUBDIVISION, SUBSEQUENT MINOR: Divisions of land creating five (5) or fewer lots that are not first minor subdivisions from a tract of record.

SUBDIVISION FOR RENT OR LEASE: A subdivision for rent or lease is created when any portion of a parcel is rented or leased for the purposes of temporary or permanent residential or commercial use. The rented/leased land is owned as one parcel under single ownership, which can include a number of persons owning the property in common. Subdivisions created by rent or lease are exempt from the survey and filing requirements of the Montana Subdivision and Platting Act (MSPA), but must be submitted for review and approval by the governing body before portions thereof may be rented or leased (76-3-208, MCA).

SUBDIVISION QUALIFYING FOR EXPEDITED REVIEW: A subdivision qualifying for an abbreviated review and approval process when it meets the definition of a first minor subdivision that contains one or two parcels, proper access to all lots is provided, no land in the subdivision will be dedicated to public use for parks or playgrounds, and the plat has been approved by the Montana Department of Environmental Quality whenever approval is required.

SURVEYOR (REGISTERED LAND SURVEYOR): A person licensed in conformance with the Montana Professional Engineer's Registration Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.

SURVEYOR (EXAMINING LAND SURVEYOR): A registered land surveyor duly appointed by the City of Billings or Yellowstone County to review surveys and plats submitted for filing.

SWALE: A drainage channel or depression designed to direct surface water flow.

TOWNHOME/TOWNHOUSE: A building or structure that has two (2) or more one (1) family dwelling units erected as a single building, each being separated from the adjoining unit or units by an approved fire wall or walls along individual property lines and providing for fee simple ownership of land and dwelling unit.

TRACT OF RECORD: An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the County Clerk and Recorder's office (76-3-103(17)(a), MCA).

TRAFFIC CONTROL DEVICES: All signs, signals, markings, and other devices used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, pedestrian facility, or multi-use trail by authority of a public agency having jurisdiction.

TRANSPORTATION PLAN: Billings Urban Area 2005 Transportation Plan Update, or any newer transportation planning document adopted by the Billings City Council and Board of County Commissioners for the Billings urban area.

UTILITY: A service to the public including, but not limited to, sanitary and storm sewers, water, electric power, gas, telephone, cable television, and other communication means.

VICINITY SKETCH: A map included with a site plan or placed on a plat that enables the viewer to clearly determine the location of a proposed subdivision in the City.

WILDLIFE: Non-domesticated animals.

WILDLIFE HABITAT: A place frequented by wildlife or a site where wildlife live.

Article 23-300. SUBDIVISION REVIEW PROCEDURES.

Section 23-301. Compliance with Local Regulations and State Law.

No subdivision of any lot, tract or parcel of land shall be undertaken; no street, sanitary sewer, storm sewer, water main, or other facilities in connection therewith shall be constructed, opened or extended for public use and travel, or for the common use of occupants of buildings except in strict accordance with the provisions of this Chapter and related state statutes.

Section 23-302. Major Subdivisions.

Divisions of land creating six (6) or more parcels must be reviewed as a major subdivision. The major subdivision shall be reviewed by the governing body of the jurisdiction where the subdivision is located. A copy of the application shall also be provided to school district trustees (76-3-601(2)(b), MCA).

If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and county governing body (76-3-601(2)(c), MCA).

When a proposed subdivision is also proposed to be annexed to any municipality, the subdivision review and annexation procedures will be coordinated to minimize duplications of hearings, reports, and other requirements whenever possible (76-3-601(2)(d), MCA).

- A. **Preapplication Meeting.** The purpose of the preapplication meeting is to provide the subdivider with requirements of local subdivision regulations and the Montana Subdivision and Platting Act. A preapplication meeting must be requested no later than twenty (20) working days and no earlier than one hundred and twenty (120) working days prior to submittal of a major preliminary plat application for completeness review. At the time of request, the subdivider shall provide the Planning Director or designee with ten (10) sketch plans of the proposed subdivision for review and discussion. The sketch plan should be legibly drawn to scale no greater than 1 inch = 400 feet (1:4,800), showing in simple form the layout of proposed features in relation to existing conditions. The sketch plan may be a freehand sketch made directly on a print of a topographic map. See Appendix C for recommended preapplication sketch plan contents and other meeting recommendations.

The Planning Director or designee will schedule the preapplication meeting to occur within fifteen (15) working days of the receipt of the sketch plan, and shall notify the subdivider and any affected City Departments of the time and place of the meeting.

The preapplication meeting shall not constitute approval of a preliminary or final plat. Rather, it shall be deemed an expression of general acceptance of the sketch plan submitted.

- B. Preapplication Completeness Review.** One (1) month prior to submittal deadline for major preliminary plat applications, the subdivider shall submit one (1) copy of the application including the preliminary plat and supporting documents to the Planning Director or designee for review accompanied by the applicable fee. After receipt of the copy the Planning Director or designee shall notify the subdivider within five (5) working days as to the completeness of the application. A complete application will include all those items listed in Appendix D “Preliminary Plat Requirements”, where applicable, and any additional information identified at the preapplication meeting. If the Planning Director or designee determines the application complete, the subdivider may submit the application, plat and supporting documentation for sufficiency review. If the Planning Director or designee determines the application is incomplete, the subdivider must correct the deficiencies and resubmit the application.
- C. Preapplication Sufficiency Review.** Within fifteen (15) working days after notifying the applicant that the application is complete, the Planning Director or designee will determine that the information in the application is sufficient to allow for review of the proposed subdivision. If the Planning Director or designee determines the information is sufficient, the applicant will be notified that the complete and sufficient application may be submitted at the application submittal deadline. If the Planning Director or designee determines the information is insufficient, the subdivider must correct the deficiencies prior to the next submittal deadline or postpone submittal to a future submittal deadline.
- D. Major Preliminary Plat Application Submittal.**
- 1. Required.** The subdivider shall submit to the Planning Director or designee, for review and recommendation, a preliminary plat of the proposed major subdivision which conforms to the requirements of these Regulations. Information required in submittal of plats and supporting documents shall be performed by or under the supervision of a registered land surveyor or professional engineer licensed to practice in the State of Montana, as their respective licensing laws allow.
 - 2. Application submittal.** Complete and sufficient application for major preliminary plat approval shall be made to the Planning Director or designee on or before 3:00 p.m. of the first day of any given month. When the date of submittal falls on a weekend or holiday, the submittal shall be on the following working day by 3:00 p.m. The application form is provided in Appendix E “Preliminary Plat Application” and

must be accompanied by the required preliminary plat, and supporting documents and applicable fee.

3. **Review period.** Upon receipt of a complete and sufficient application, the governing body has sixty (60) working days to approve, conditionally approve, or deny the preliminary plat application. The review period may be extended upon written consent from the subdivider.

E. Preliminary Plat Contents and Submittal Copies.

1. **Content.** The preliminary plat shall clearly show the information listed in Appendix D “Preliminary Plat Requirements.”
2. **Copies.** The subdivider shall provide the number of copies of the preliminary plat as determined by the Planning Director or designee. All plats shall be 24 inch by 36 inch size and/or 11 inch by 17 inch size as specified by the Planning Director or designee. One (1) electronic copy of the plat shall be provided in either AutoCad ® or ArcGIS ® format and one (1) copy shall be provided in .pdf, .jpg or .tif format.

F. Supporting Documentation.

1. **Required documents.** The supporting information shall include those documents listed in Appendix F “Required Supporting Documents for Major Preliminary Plat Applications.”
2. **Required copies.** The subdivider shall provide the number of copies of the supporting documents as determined by the Planning Director or designee. All documents shall be typed and in a format specified by the Planning Director or designee.

G. Staff and Agency Review.

1. **Review procedure schedule.** Upon receipt of a complete and sufficient major preliminary plat application, the Planning Director or designee shall develop a schedule for the review period. The schedule shall include the dates, times and location of all key meetings, hearings and actions, and the dates of all key deadlines.
2. **Submittal distribution.** Planning staff shall distribute the application to all affected City Departments, local, state, and federal agencies, school districts and public utilities for review, and include a copy of the review procedure schedule. These affected entities shall determine what effect the proposed subdivision may have on their ability to provide services and submit recommendations for mitigation of those impacts. The affected entities shall respond to the Planning staff within approximately ten (10) working days. A public utility or agency review may not delay the governing body’s action on the plan beyond the sixty (60) working day

review period. Failure of any agency to complete a review of a plat will not be the basis for denial of the plat by the governing body (76-3-504(1)(i), MCA).

3. **Department plat review meeting.** Planning staff shall arrange a department plat review meeting to publicly review comments from the affected entities and inform the subdivider of revisions or additions required to bring the application into compliance with local regulations and state law. The subdivider and their representative are required to attend the department plat review meeting and shall be given a copy of all comments received to date from the affected entities.
 4. **Application resubmittal.** The Planning staff shall notify the subdivider, in writing, of the resubmittal requirements within one (1) working day of the department plat review meeting. The subdivider shall revise the plat and supporting documents as required and submit the number of copies of the revised application and documents as determined by the Planning Director or designee within five (5) working days of receipt of the resubmittal notice.
 5. **Final staff comments.** Affected departments shall provide the Planning staff with final written comments regarding the resubmitted documents within five (5) working days of receipt of resubmittal.
 6. **Hearing notice.** The Planning Board shall hold a public hearing on all major preliminary plat applications. Planning staff shall place a notice in a newspaper of general circulation in the County not less than fifteen (15) days prior to the date of a public hearing. The Planning staff shall also notify the subdivider and each property owner of record, and each purchaser under contract for deed of property immediately adjoining land included in the plat by certified mail not less than fifteen (15) days prior to the date of hearing (76-3-605(3), MCA).
 7. **Staff report.** Planning staff shall prepare staff reports and presentations for the Planning Board plat review meeting and public hearing. A copy of each staff report shall be provided to the subdivider at least five (5) working days prior to the Board or governing body meeting. Each staff report shall provide a recommendation for approval, conditional approval or denial of the application and draft findings of fact as basis for the recommendation. The Planning staff shall also prepare a report forwarding the recommendation of the Planning Board to the governing body including the Board's recommendation for approval, conditional approval or denial of the applications and draft findings of fact as basis for the recommendation.
- H. **Planning Board Plat Review.** The Planning Board, as the authorized agent of the governing body shall conduct a plat review of the major preliminary plat application at a regularly scheduled meeting prior to the scheduled public hearing. The purpose of the plat review meeting is to consider the following relevant review criteria:

1. The environmental assessment and all criteria discussed therein, unless the plat is exempted from the requirement of submitting an environmental assessment pursuant to 76-3-210(1), MCA; and
2. The effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety (76-3-608(3)(a), MCA); and
3. Compliance with:
 - a. The Montana Subdivisions and Platting Act (76-3-101 et seq., MCA) (76-3-608(3)(b), MCA); and
 - b. The provision of easements for the location and installation of any planned utilities (76-3-608(3)(c), MCA); and
 - c. The provision of legal and physical access to each parcel within the subdivision (76-3-608(3)(d), MCA); and
 - d. The required notation of that access on the applicable plat and any instrument of transfer concerning the parcel (76-3-608(3)(d), MCA); and
 - e. Local zoning requirements; and
4. Consistency with the adopted Growth Policy, Transportation Plan, and the Heritage Trail Plan.¹
5. **Determination.** The Planning Board shall determine if there are any significant adverse impacts the subdivision may have based on its review of this information and formulate recommended conditions to reasonably minimize those impacts.

In reviewing a subdivision and when requiring mitigation, the Planning Board may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude recommendation of approval of the plat.

- I. **Public Hearing.** The Planning Board shall conduct the public hearing and consider all relevant evidence as related to the proposed plat before preparing its written findings of fact and recommendation to the governing body. The subdivider or their agent shall be given the opportunity to object to any testimony given. The subdivider shall be allowed to submit in writing his or her own proposed findings of fact to the Board and the governing body following the hearing.

¹ A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy (76-1-605(2)(b), MCA).

The relevant evidence considered at the public hearing on the preliminary plat shall include the criteria listed above in Section H. of this Article.

After holding the public hearing and reviewing the evidence concerning the plat, the Planning Board shall submit its recommendations to the governing body to approve, conditionally approve or deny the major preliminary plat in writing no later than ten (10) days after the public hearing (76-3-605(4), MCA).

J. **Subsequent Hearing.** Before acting on the subdivision application, the governing body shall determine whether public comments or documents presented at the Planning Board public hearing constitute:

1. Information that the public has not had a reasonable opportunity to examine and comment, or
2. New information never submitted or considered by the Planning Board or staff.

If the governing body determines that public comments or documents meets at least one (1) of the criteria listed above, it may act on the subdivision application in accordance with this Article or schedule a subsequent public hearing for consideration of the new information only. The subsequent public hearing shall be held by the Planning Board at the Planning Board's next scheduled meeting for which proper notice for the public hearing on the subdivision application can be provided.

If a subsequent hearing is held, the sixty (60) working day review period is suspended and the new hearing must be noticed and held within forty-five (45) days of the governing body's determination to hold a subsequent public hearing. The sixty (60) working day review period will resume from the date of the subsequent public hearing. The governing body may not consider any information that is presented after the subsequent hearing (76-3-615, MCA).

K. **Subdivider's Preference for Mitigation.** No later than ten (10) days before the meeting when the governing body is to consider the Planning Board's recommendation on the preliminary plat, the subdivider may submit in writing to the governing body comments on and responses to the Planning Board's recommendations. This document may include the subdivider's alternative proposals, if any, for mitigating the impacts identified in the Planning Board's recommendations. The governing body shall give due weight and consideration to the subdivider's expressed preferences (76-3-608(5)(b), MCA).

L. **Governing Body Action.** The governing body's decision to approve, conditionally approve, or deny a subdivision is based on the preliminary plat, applicable environmental assessment, public hearing, Planning Board recommendations, or additional information that demonstrates the development of the subdivision meets the requirements of the Montana Subdivision and Platting Act and these Regulations. A governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational

services (76-3-608(1), MCA), or solely on compliance with a Growth Policy (76-1-605(2)(b), MCA).

The governing body shall issue written findings of fact that weigh the criteria as listed in Section 23-302 H. of this Article. The governing body shall determine if there are any significant adverse impacts the subdivision may have based on its review of this information and formulate conditions to reasonably minimize those impacts (76-3-608(4), MCA).

In reviewing a subdivision and when requiring mitigation, the governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat (76-3-608(5)(a), MCA).

The governing body shall approve, conditionally approve or deny the preliminary plat within sixty (60) working days of the submittal deadline and when the application was considered complete and sufficient. The governing body shall send the subdivider a letter stating the reasons for the denial or enumerating the conditions which must be met to assure approval of the final plat along with written findings of fact (76-3-608(4), MCA).

M. Preliminary Plat Approval Period. The approval or conditional approval shall be valid for not more than three (3) calendar years. At the end of this period the governing body may, at the request of the subdivider, extend its approval for a period of one (1) year. The governing body may extend the approval for more than one (1) year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, according to Article 23-500 of these Regulations (76-3-610(1), MCA).

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing the approval is obtained within the original or extended approval period described above (76-3-610(2), MCA).

N. Appeal Process. A decision of the governing body regarding a proposed subdivision may be appealed to the district court, as provided in Section 23-1105 of these Regulations and 76-3-625, MCA.

O. Final Plat. A final plat application shall be submitted for review and approval following the procedures outlined in Section 23-307 of this Article prior to the expiration of the preliminary plat approval period.

Section 23-303. First Minor Subdivisions from a Tract of Record.

Divisions of land creating five (5) or fewer lots from a tract of record that has not been subdivided or created by a subdivision under the Montana Subdivision and Platting Act or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA since July 1, 1973 shall be reviewed as first minor

subdivisions from a tract of record, hereafter referred to as a “first minor” (76-3-609, MCA). The requirement of holding a public hearing does not apply to the first minor subdivision created from a tract of record (76-3-609(2)(d)(ii), MCA). Unless the subdivision lies within an area that has adopted zoning regulations, the application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in Section 23-303 H. of these Regulations (76-3-609(2)(c), MCA).

The first minor subdivision shall be reviewed by the governing body of the jurisdiction where the subdivision is located. A copy of the application shall also be provided to school district trustees (76-3-601(2)(b), MCA).

If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and county governing body (76-3-601(2)(c), MCA).

When a proposed subdivision is also proposed to be annexed to any municipality, the subdivision review and annexation procedures will be coordinated to minimize duplications of hearings, reports, and other requirements when possible (76-3-601(2)(d), MCA).

- A. **Preapplication Meeting.** The purpose of the preapplication meeting is to provide the subdivider with requirements of local subdivision regulations and the Montana Subdivision and Platting Act. A preapplication meeting must be requested no later than twenty (20) working days and no earlier than one hundred and twenty (120) working days prior to submittal of a minor preliminary plat application for completeness review. At the time of request, the subdivider shall provide the Planning Director or designee with ten (10) sketch plans of the proposed subdivision for review and discussion. The sketch plan should be legibly drawn to scale no greater than 1 inch = 400 feet (1:4,800), showing in simple form the layout of proposed features in relation to existing conditions. The sketch plan may be a freehand sketch made directly on a print of a topographic map. See Appendix C for recommended preapplication sketch plan contents and other meeting recommendations.

The Planning Director or designee will schedule the preapplication meeting to occur within fifteen (15) working days of the receipt of the sketch plan, and shall notify the subdivider and any affected City Departments of the time and place of the meeting.

The preapplication meeting shall not constitute approval of a preliminary or final plat. Rather, it shall be deemed an expression of general acceptance of the sketch plan submitted.

- B. **Preapplication Completeness Review.** One (1) month prior to a submittal deadline for minor preliminary plat applications, the subdivider shall submit one (1) copy of the application including the preliminary plat and supporting documents to the Planning Director or designee for review accompanied by the applicable fee. After receipt of the copy the Planning Director or designee shall notify the subdivider within five (5) working days as to the completeness of the application. A complete application will include all

those items listed in Appendix D “Preliminary Plat Requirements”, where applicable, and any additional information identified at the preapplication meeting. If the Planning Director or designee determines the application complete, the subdivider may submit the application, plat and supporting documentation for sufficiency review. If the Planning Director or designee determines the application is incomplete, the subdivider must correct the deficiencies and resubmit the application.

- C. **Preapplication Sufficiency Review.** Within fifteen (15) working days after notifying the applicant that the application is complete, the Planning Director or designee will determine that the information in the application is sufficient to allow for review of the proposed subdivision. If the Planning Director or designee determines the information is sufficient, the applicant will be notified that the complete and sufficient application may be submitted at the application submittal deadline. If the Planning Director or designee determines the information is insufficient, the subdivider must correct the deficiencies prior to the next submittal deadline or postpone submittal to a future submittal deadline.

D. **First Minor Preliminary Plat Application Submittal.**

1. **Required.** The subdivider shall submit to the Planning Director or designee, for review and recommendation, a preliminary plat of the proposed first minor subdivision which conforms to the requirements of these Regulations. Information required in submittal of plats and supporting documents shall be performed by or under the supervision of a registered land surveyor or professional engineer licensed to practice in the State of Montana as their respective licensing laws allow.
2. **Application submittal.** Complete and sufficient application for first minor preliminary plat approval shall be made to the Planning Director or designee on or before 3:00 p.m. of the first or fifteenth day of any given month. When the date of submittal falls on a weekend or holiday, the submittal shall be on the following working day by 3:00 p.m. The application form is provided in Appendix E “Preliminary Plat Application” and must be accompanied by the required preliminary plat, supporting documents and applicable fee.
3. **Review period.** Upon receipt of a complete application, the governing body has thirty-five (35) working days to approve, conditionally approve, or deny the preliminary plat application. The review period may be extended upon written consent from the subdivider.

E. **Preliminary Plat Contents and Submittal Copies.**

1. **Content.** The preliminary plat shall clearly show the information listed in Appendix D “Preliminary Plat Requirements.”
2. **Copies.** The subdivider shall provide the number of copies of the preliminary plat as determined by the Planning Director or designee. All plats shall be 24 inch by 36 inch size or 11 inch by 17 inch size as specified by the Planning Director or designee.

One (1) electronic copy of the plat shall be provided in either AutoCad ® or ArcGIS® format and one (1) copy shall be provided in .pdf, .jpg or .tif format.

F. Supporting Documentation.

1. **Required documents.** The supporting information shall include those documents listed in Appendix G “Required Supporting Documents for First Minor Preliminary Plat Applications.”
2. **Required copies.** The subdivider shall provide the number of copies of the supporting documents as determined by the Planning Director or designee. All documents shall be typed and in a format specified by the Planning Director or designee.

G. Staff and Agency Review.

1. **Review procedure schedule.** Upon receipt of a complete and sufficient first minor preliminary plat application, the Planning Director or designee shall develop a schedule for the review period. The schedule shall include the dates, times and location of all key meetings and actions and the dates of all key deadlines.
2. **Submittal distribution.** Planning staff shall distribute the application to all affected City Departments, local, state, and federal agencies, school districts and public utilities for review, and include a copy of the review procedure schedule. These affected entities shall determine what effect the proposed subdivision may have on their ability to provide services and submit recommendations for mitigation of those impacts. The affected entities shall respond to the Planning staff within approximately fifteen (15) working days. A public utility or agency review may not delay the governing body’s action on the plan beyond the thirty-five (35) working day review period. Failure of any agency to complete a review of a plat will not be the basis for denial of the plat by the governing body (76-3-504(1)(i), MCA).
3. **Staff report.** Planning staff shall prepare a staff report and presentation for the governing body. A copy of the report shall be provided to the subdivider at least five (5) working days prior to the governing body meeting. The staff report shall provide a recommendation for approval, conditional approval or denial of the applications and draft findings of fact to justify the recommendation.

H. Governing Body Action. At a regularly scheduled meeting the governing body shall consider the following information in deciding whether to approve, conditionally approve, or deny a preliminary plat:

1. Unless the subdivision is proposed in an area that is zoned, the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety (76-3-608(3)(a), MCA); and

2. Compliance with:
 - a. The Montana Subdivisions and Platting Act (76-3-101 et seq., MCA) (76-3-608(3)(b), MCA); and
 - b. The provision of easements for the location and installation of any planned utilities (76-3-608(3)(c), MCA); and
 - c. The provision of legal and physical access to each parcel within the subdivision (76-3-608(3)(d), MCA); and
 - d. The required notation of that access on the applicable plat and any instrument of transfer concerning the parcel (76-3-608(3)(d), MCA); and
 - e. Local zoning requirements; and
 3. Consistency with the adopted Growth Policy, Transportation Plan, and the Heritage Trail Plan (76-1-606, MCA); and
 4. A summary of probable impacts prepared in accordance with Section 23-904 of these Regulations.
 5. The governing body shall give due weight and consideration to the subdivider's expressed preferences (76-3-608(5)(b), MCA). The governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services (76-3-608(1), MCA) or solely on compliance with the Growth Policy (76-3-605(2)(b), MCA).
 6. The governing body shall issue written findings of fact that weigh the criteria listed in this section. The governing body shall determine if there are any significant adverse impacts the subdivision may have based on its review of this information and formulate conditions to reasonably minimize those impacts (76-3-608(4), MCA).
 7. In reviewing a subdivision and when requiring mitigation, the governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat (76-3-608(5)(a), MCA).
 8. The governing body shall approve, conditionally approve or deny the preliminary plat within thirty-five (35) working days of the submittal deadline and when the application was considered complete and sufficient. The governing body shall send to the subdivider a letter stating the reasons for the denial or enumerating the conditions which must be met to assure approval of the final plat, along with written findings of fact (76-3-608(4), MCA).
- I. **Preliminary Plat Approval Period.** The approval or conditional approval shall be valid for not more than three (3) calendar years; at the end of this period the governing body

may, at the request of the subdivider, extend its approval for a period of one year. The governing body may extend the approval for more than one (1) year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, according to Article 23-500 of these Regulations (76-3-610(1), MCA).

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing the approval is obtained within the original or extended approval period described above (76-3-610(2), MCA).

J. **Appeal Process.** A decision of the governing body regarding a proposed subdivision may be appealed to the district court, as provided in Section 23-1105 of these Regulations and 76-3-625, MCA.

K. **Final Plat.** A final plat application shall be submitted for review and approval following the procedures outlined in Section 23-307 of this Article prior to the expiration of the preliminary plat approval period.

Section 23-304. Subsequent Minor Subdivisions.

Divisions of land creating five (5) or fewer lots that are not first minor subdivisions from a tract of record shall be reviewed as major subdivisions in accordance with Section 23-302 of this Article (76-3-609(4), MCA). The subsequent minor subdivision will be reviewed by the governing body where the jurisdiction in which it is located. A copy of the application shall also be provided to school district trustees (76-3-601(2)(b), MCA).

Section 23-305. Subdivisions Qualifying for Expedited Review.

A. **Eligibility.** Subdivisions, hereafter referred to as “expedited review plats” containing one (1) or two (2) parcels are eligible for expedited review when:

1. They meet the definition of a first minor subdivision from a tract of record; and
2. Legal and physical access to all lots is provided; and
3. No land in the subdivision will be dedicated to public use for parks or playgrounds; and
4. The plat has been approved by the Montana Department of Environmental Quality or County Environmental Health whenever approval is required or the plat has been approved by the City of Billings Public Works Department for sanitary water, sewer and storm water facilities²; and

² If MDEQ or County Health approval has not yet been obtained, the applicant may submit a checkprint for review and approval to the Planning Department. The applicant may submit the checkprint approval to MDEQ or County Health as required as proof of preliminary plat approval. Proof of MDEQ or County Health approval must be submitted with the final plat and supplemental documents prior to recording the final plat.

5. No public improvements are required.

If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and county governing body (76-3-601(2)(c), MCA).

When a proposed subdivision is also proposed to be annexed to any municipality, the subdivision review and annexation procedures will be coordinated to minimize duplications of hearings, reports, and other requirements when possible (76-3-601 (2)(d), MCA).

- B. Preapplication Meeting.** The purpose of the preapplication meeting is to provide the subdivider with requirements of local subdivision regulations and the Montana Subdivision and Platting Act. A preapplication meeting must be requested no later than twenty (20) working days and no earlier than one hundred and twenty (120) working days prior to final plat submittal. At the time of request, the subdivider shall provide the Planning Director or designee with ten (10) sketch plans of the proposed subdivision for review and discussion. The sketch plan should be legibly drawn to scale no greater than 1 inch = 400 feet (1:4,800), showing in simple form the layout of proposed features in relation to existing conditions. The sketch plan may be a freehand sketch made directly on a print of a topographic map. See Appendix C for recommended preapplication sketch plan contents and other meeting recommendations.

The Planning Director or designee will schedule the preapplication meeting to occur with fifteen (15) working days of the receipt of the sketch plan, and shall notify the subdivider and any affected City Departments of the time and place of the meeting.

The preapplication meeting shall not constitute approval of a preliminary or final plat. Rather, it shall be deemed an expression of general acceptance of the sketch plan submitted.

C. Expedited Review Plat Application Submittal.

1. **Required.** The subdivider shall submit to the Planning Director or designee, for review and recommendation, a final plat of the proposed minor subdivision which conforms to the requirements of Section 23-307 of this Article. Information required in submittal of plats and supporting documents shall be performed by or under the supervision of a registered land surveyor or professional engineer licensed to practice in the State of Montana, as their respective licensing laws allow.
2. **Checkprint.** Prior to submitting the final plat on mylar, a subdivider must submit four (4) copies of a final plat application, four (4) paper prints of the final plat, four (4) draft copies of the supporting documents and one (1) copy of the survey closure calculations to the Planning Director or designee for review. The final plat application form is provided in Appendix I "Final Plat Application" and the form and

content of the checkprint and the supporting documents are described in Appendix J “Final Plat Requirements”. The final plat review fee and the subdivision title commitment or title report are not required at this stage.

One (1) copy of the checkprint, supporting documents and survey closure calculations shall be forwarded to City Public Works Department for their review and comment. One (1) copy of the checkprint and supporting documents shall be forwarded to the Billings Fire Department for their review and comment. Both departments shall notify Planning staff of any changes required to conform to the local regulations and state law within ten (10) working days after receipt of the checkprint.

Planning staff shall notify the subdivider no later than fifteen (15) working days after receipt of the checkprint of any changes required. A red-lined copy of the checkprint shall be returned to the subdivider along with the reviewer’s comments. If the checkprint is approved by all reviewing departments, the Planning staff shall provide a letter to the County Health Department or the Montana Department of Environmental Quality stating that the plat has been reviewed and is recommended for approval. This letter shall be submitted by the applicant along with their application for sanitary facility approval as proof that the proposed plat has been reviewed and approved.

3. **Application submittal.** Application for expedited plat approval shall be submitted to the Planning Director or designee on or before 3:00 p.m. at least twenty-five (25) working days prior to the date of the City Council memo deadline. The application form is provided in Appendix H “Expedited Final Plat Application” and must be accompanied by the required final plat, supporting documents and applicable fee.

- D. **Final Plat and Supporting Documents Contents and Submittal Copies.** The subdivider shall submit one (1) electronic copy in either AutoCad ® or ArcGIS ® format and one (1) copy in .pdf, .jpg or .tif format. The subdivider must also submit two (2) signed mylar originals of the final plat. The form and content of final plat is provided in Appendix J “Final Plat Requirements.” The final plat must be accompanied by a complete expedited review plat application form as provided in Appendix H “Expedited Final Plat Application”, a subdivision title commitment or title guarantee prepared within the previous six (6) months, all supporting documents and the required review fee.
- E. **Review Procedure.** Planning staff shall route the application, final plat and supporting documents to the appropriate departments and officials for their signatures within sufficient time to assure the documents are placed on the first available agenda of the governing body for their consideration and authorized signatures.
- F. **Governing Body Action.** At a regularly scheduled meeting, the governing body shall consider the following information in deciding whether to approve or deny a final plat:

1. The effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety (76-3-608 (3)(a), MCA); and
2. Compliance with:
 - a. The Montana Subdivisions and Platting Act (76-3-101 et seq., MCA) (76-3-608 (3)(b), MCA); and
 - b. The provision of easements for the location and installation of any planned utilities (76-3-608(3)(c), MCA); and
 - c. The provision of legal and physical access to each parcel within the subdivision (76-3-608(3)(d), MCA); and
 - d. The required notation of that access on the applicable plat and any instrument of transfer concerning the parcel (76-3-608(3)(d), MCA); and
 - e. Local zoning requirements; and
3. Consistency with the adopted Growth Policy, Transportation Plan, and the Heritage Trail Plan.
4. The governing body shall give due weight and consideration to the subdivider's expressed preferences (76-3-608(5)(b), MCA). The governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services (76-3-608(1), MCA) or based solely on compliance with the Growth Policy (76-3-605(2)(b), MCA).
5. In the event the governing body denies the final plat, it shall send a letter to the subdivider stating the reasons for the denial along with written findings of fact (76-3-608(4), MCA).

G. **Approval Period.** Final plat approval shall be in force not more than twelve (12) months from the date of the governing body's approval. At the end of the period the governing body may, at the request of the subdivider, after review and recommendation of the Planning Board, extend its approval for no more than twelve (12) months.

After all required signatures have been obtained; the plat shall be recorded with the County Clerk and Recorder within the twelve (12) months of the date of approval.

Section 23-306. Amended Plats.

- A. **Required.** A division of lots within a platted subdivision filed with the County Clerk and Recorder that redesigns or rearranges six (6) or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the County Clerk and Recorder (76-3-207(2)(a), MCA).

B. **Eligibility.** Amended plats shall be processed as first minor subdivisions, as described in Section 23-303, if they meet the following criteria:

1. Legal and physical access to all lots is provided; and
2. No land in the subdivision will be dedicated to public use for parks or playgrounds; and
3. The plat has been approved by the Montana Department of Environmental Quality or County Environmental Health whenever approval is required or the plat has been approved by the City of Billings for sanitary water, sewer and stormwater facilities or no public improvements are required.

Amended plats not meeting these criteria shall be reviewed as major subdivisions.

C. **Form and Content.** An amended plat shall be entitled “Amended Plat” and follow the form and content shown in Appendix D “Preliminary Plat Requirements.”

Section 23-307. Final Plat Submittal Requirements.

- A. **Required.** After receiving a preliminary plat approval for a major, first minor or subsequent minor, the subdivider may submit a final plat of the proposed subdivision as required by this Article. The final plat shall incorporate all required conditions and changes and conform to the approved preliminary plat and this Section.
- B. **Checkprint.** Prior to submitting the final plat on mylar, a subdivider must submit four (4) copies of a final plat application, four (4) paper prints of the final plat, four (4) draft copies of the supporting documents and one (1) copy of the survey closure calculations to the Planning Director or designee for review. The final plat application form is provided in Appendix I “Final Plat Application” and the form and content of the checkprint and the supporting documents are described in Appendix J “Final Plat Requirements”. The final plat review fee and the subdivision title commitment or title report are not required at this stage. The Planning Director or designee may require additional documentation to ascertain whether the conditions of preliminary plat approval have been met.

One (1) copy of the checkprint, supporting documents and survey closure calculations shall be forwarded to City Public Works Department for their review and comment. One (1) copy of the checkprint and supporting documents shall be forwarded to the Billings Fire Department for their review and comment. Both departments shall notify Planning staff of any changes required to conform to the conditions of final plat approval or local regulations and state law within ten (10) working days after receipt of the checkprint.

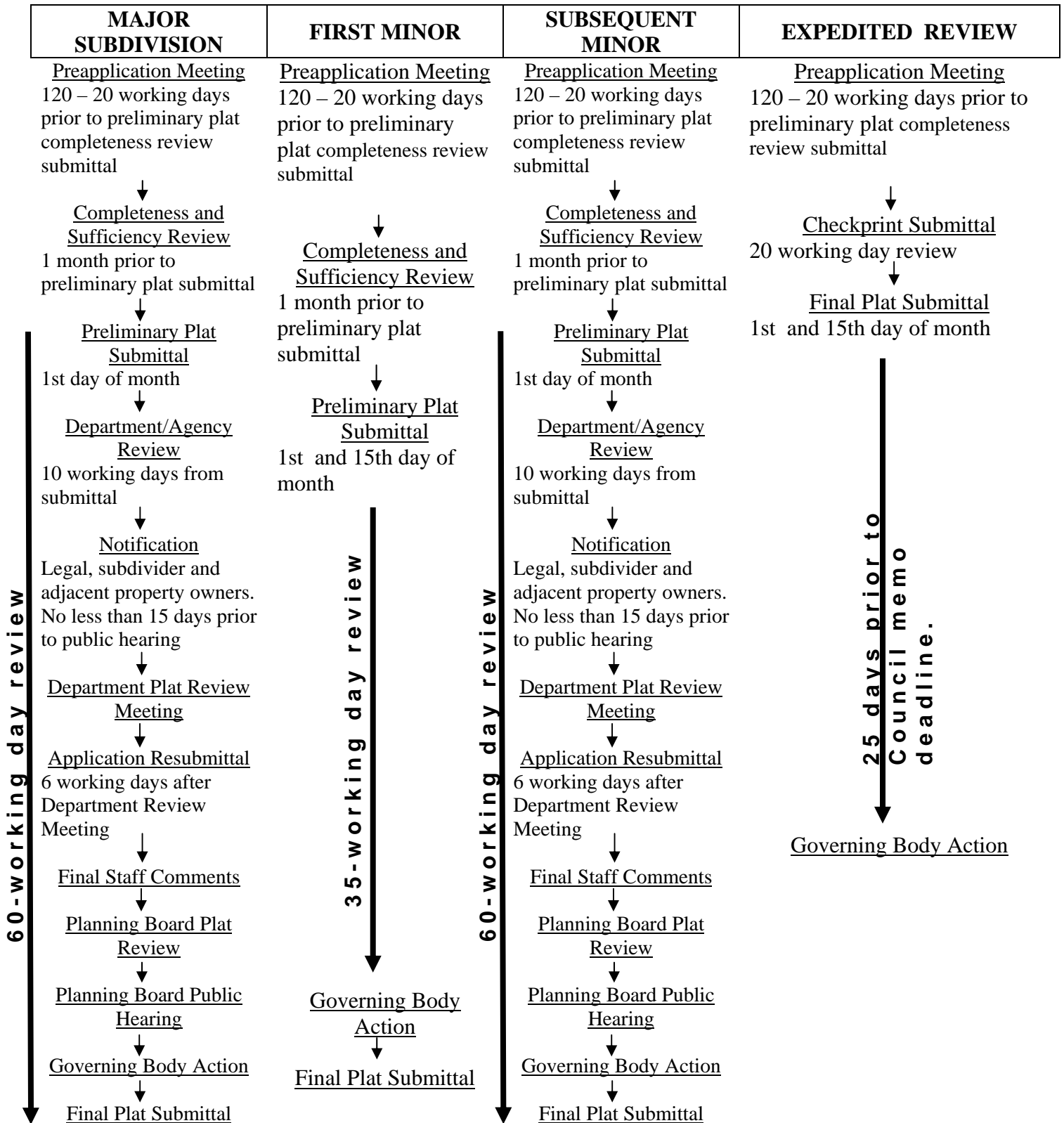
Planning staff shall notify the subdivider no later than fifteen (15) working days after receipt of the checkprint of any changes required. A red-lined copy of the checkprint shall be returned to the subdivider along with the reviewer’s comments.

- C. **Final Mylar Submittal.** Application for final plat approval shall be submitted to the Planning Director or designee on or before 3:00 p.m. at least twenty-five (25) working days prior to the City Council memo deadline. The subdivider shall submit one (1) electronic copy in either AutoCad ® or ArcGIS ® format and one (1) copy in .pdf, .jpg or .tif format. The subdivider must also submit two (2) signed mylar originals of the final plat. The form and content of final plat is provided in Appendix J “Final Plat Requirements.” The final plats must be accompanied by a complete final plat application form as provided in Appendix I “Final Plat Application”, a subdivision title commitment or title guarantee prepared within the previous six (6) months, all supporting documents and the required review fee.
- D. **Review Procedure.** Planning staff shall route the application, final plat and supporting documents to the appropriate departments and officials for their signatures within sufficient time to assure the documents are placed on the first available agenda of the governing body for their consideration and authorized signatures.
- E. **Approval Period.** Final plat approval shall be in force not more than twelve (12) months from the date of the governing body’s approval. At the end of the period the governing body may, at the request of the subdivider, after review and recommendation of the Planning Board, extend its approval for no more than twelve (12) months.

After all required signatures have been obtained; the plat shall be recorded with the County Clerk and Recorder within the twelve (12) months of the date of approval.

Section 23-308.

Flowchart of Subdivision Procedures.



Article 23-400. DEVELOPMENT REQUIREMENTS.

Section 23-401. General.

All subdivisions approved by the governing body must comply with the provisions of this Article, except where granted a variance pursuant to Section 23-1101, Variances, of these Regulations. The requirements contained in this Article apply to subdivisions within the City of Billings as outlined in Section 23-104 of these Regulations.

Section 23-402. Conformance with Zoning.

In addition to the standards outlined in this Article, the design and development of a subdivision must conform to any applicable zoning regulations as found in the Unified Zoning Regulations (Article 27, BMCC).

Section 23-403. Improvement Design.

Engineering and survey plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared by a professional engineer or professional land surveyor as their respective licensing laws allow in accordance with the Montana Subdivision and Platting Act (MSPA) and these Regulations.

Section 23-404. Lots.

- A. **Regulation of Lots:** Each lot must contain a building site that can be designed to meet applicable building codes, site development standards, driveway slope standards, and zoning requirements of the Unified Zoning Regulations.
- B. **Dimensions, Orientation and Topography:** The lot size, depth, shape and orientation shall be appropriate for the location, contemplated use of the subdivision and the zoning of the property. Flag lots shall be discouraged except in cases where they are necessary due to topography or other physical constraints on the property. Slopes of more than 25% are excessive for building sites and shall be subject to a geotechnical analysis. Areas within the subdivision with a slope of 25% or greater shall be identified on the face of the preliminary and final plats.
- C. **Frontage:** Residential lots shall have a minimum of thirty two (32) feet of frontage on a public right of way or private easement. Lots in commercial and industrial subdivisions shall have a minimum lot width frontage of forty four (44) feet on a public right of way or private easement, or through a reciprocal access easement.
- D. **Division by Rights-of-Way:** No single lot may be divided by a public road, alley, or access easement.
- E. **Corner Lots:** Design of corner lots must meet the following requirements:

1. Corner lots must be of sufficient size to provide a building site while meeting the clear vision requirements specified in Section 27-618 of the Unified Zoning Regulations.
2. All residential corner lots adjacent to a street identified as a Principal or Minor Arterial must have vehicular access only to an internal street in the subdivision identified as a Collector or Residential street.

F. **Double Frontage Lots:** Double frontage lots (See Figure 23.200.1.) are allowable where they are necessary due to topography and when a one (1) foot wide no-access easement is provided for separation of residential development from railroad or street rights-of-way.

1. Residential Areas: For any residential subdivision where an Arterial street abuts or runs through any portion of the subdivision, the subdivision plan shall provide for lots to back onto the arterial street and provide a one (1) foot wide no-access easement to prevent vehicle access to the arterial street.
2. Commercial Areas: For any commercial subdivision where an Arterial street abuts or runs through any portion of the subdivision, the subdivision plan shall provide for shared accesses to the arterial street or access via internal roads with a one (1) foot wide no-access easement to prevent uncontrolled vehicle access to the Arterial street.

Section 23-405. Blocks.

A. **Size and Orientation:** Length, width and shape of blocks shall be determined with consideration of the following:

1. Provision of adequate building sites suitable to the needs of the type of use contemplated;
2. Needs for convenient and necessary access, circulation, traffic control and traffic safety, and public safety;
3. Limitations or opportunities created by the topography.

B. **Rights-Of-Way for Internal Non-motorized Connections:** Public rights-of-way for internal non-motorized connections within blocks will be required when essential to provide circulation or safe access to schools, playgrounds, shopping, transportation and other community facilities. Pathways shall also be installed at the end of cul-de-sacs where deemed appropriate.

C. **Block Numbering:** All blocks shall be identified with Arabic numerals.

Section 23-406. Streets and Roads.

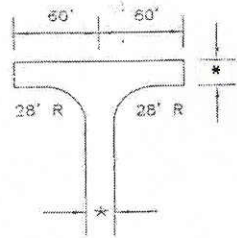
A. **Streets and Roads, General:** The arrangement, type, extent, width, grade, and location of all streets shall conform to any adopted area plans including, but not limited to, the Growth Policy and Transportation Plan, and must be considered in their relation to

existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.

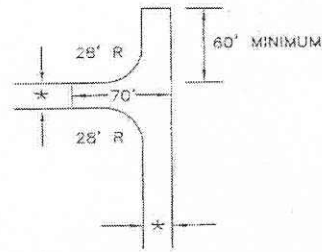
1. Relation to Undeveloped Areas: When a proposed subdivision adjoins undeveloped land, streets within the proposed subdivision shall be arranged to allow access to the adjoining undeveloped land. Streets within the proposed subdivision shall be constructed to the boundary lines of the tract to be developed, unless prevented by topography or other physical conditions.
2. Relation to Developed Areas: The subdivider shall arrange the streets to provide for the continuation of streets between adjacent developed properties when such continuation is necessary for the convenient movement of traffic, effective provision of emergency services and efficient provision of utilities. Such provision may be waived where the adjacent land use is incompatible with the proposed subdivision, or when prevented by topography or other physical conditions.
3. Separation of Through and Local Traffic: Whenever a subdivision abuts or contains an existing or proposed highway, Arterial street or Collector street, the subdivider may be required to provide frontage roads, reverse frontage lots with a no-access strip preventing access along the rear property lines, planting or fencing screens, shared accesses, or other treatment as may be necessary to adequately protect residential properties and to separate through and local traffic.
4. Distance between Parallel Right-of-Way: Where a subdivision borders on or contains a railroad, limited access highway, canal, stream or ditch right-of-way, the subdivider may be required to provide a street or easement approximately parallel to and on each side of the right-of-way at a distance sufficient to allow for the operations and maintenance of the intervening land. Such distances shall also be determined with regard for the requirements of approach grades and future grade separation.
5. Second Access: To facilitate traffic movement, the provision of emergency services, and the placement of utilities, all major subdivisions and subsequent minor subdivisions shall provide a minimum of two access roads built to the standards of this Chapter to all lots in the subdivision. Provision of a second access may be required for first minor subdivisions when deemed necessary for the health, safety and welfare of the new lot owners. If, in the judgment of the Planning Board, a second access cannot be provided for reasons of topography or other physical conditions, the subdivider shall provide an emergency access road, built to the standards detailed in Section 23-413 of these Regulations.
6. Dead-end Roads: Dead-end access roads or driveways in excess of one hundred fifty (150) feet shall not be permitted without an approved turn around at the terminus. Where streets terminate, the subdivider shall provide a “cul-de-sac” or “hammerhead-T” turnaround conforming to the design standards outlined in Figure 23.406.A.1. The maximum allowable length of a dead-end road is six hundred (600) feet. In cases where a dead-end road may be extended in the future, a right-of-way easement or dedication may be required to be provided.

Figure 23.406.A.1.

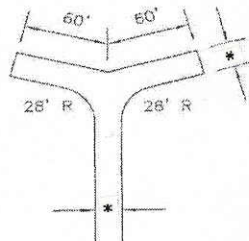
ACCEPTABLE TURNAROUNDS



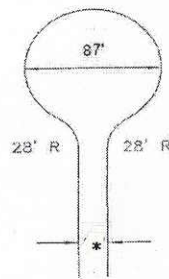
120' HAMMERHEAD



ACCEPTABLE ALTERNATIVE
TO 120' HAMMERHEAD



ACCEPTABLE ALTERNATIVE
TO 120' HAMMERHEAD



87' CUL-DE-SAC

* Width as Required by Table 23-406.B.1

7. **Half Streets:** Half streets are prohibited except when they are essential to the subdivision, are beneficial to the City, or when the City Public Works Department is satisfied that the other half of the street will be dedicated to the public when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
8. **Street Continuity:** Streets that are a continuation of streets in contiguous territory shall be so aligned as to assure that their centerlines shall coincide and shall have matching names. In cases where straight continuations are not physically possible, such centerline shall be continued by a centerline offset of not less than one hundred twenty-five (125) feet.
9. **Tangent for Reverse Curves:** A tangent shall be introduced where necessary as determined by City Engineering between reverse curves on arterial and collector streets.
10. **Deflected Street Lines to be Curved:** When continuing street lines deflect from each other at any one point by more than five (5) degrees, they shall be connected by a

curve with a radius adequate to ensure adequate stopping sight distance at the center line of a street in accordance with the most current American Association of State Highway and Transportation Officials (AASHTO) Manual guidelines.

11. Intersections: Local streets shall be laid out so as to intersect as nearly as possible at right angles and no local street shall intersect any other local street at less than eighty (80) degrees. Such angle of eighty (80) degrees or greater shall be retained for at least fifty (50) feet back from the intersection. Any street intersection involving an arterial and/or collector street, shall intersect at ninety (90) degrees, shall be retained for at least one hundred (100) feet back from the intersection. Not more than two (2) streets shall intersect at any one point unless specifically approved by the City Public Works Department.
12. Lot Corners at intersections: Lot corners at all street intersections shall be designed to accommodate public infrastructure and the requirements of the American Disabilities Act (ADA).
13. Sight distance: The alignment of all streets and roads must provide adequate sight distances in accordance with the most current American Association of State Highway and Transportation Officials (AASHTO) Manual guidelines. Intersections must be designed to provide adequate visibility for traffic safety based on the designed operating speeds of the intersecting roadways.
14. Approach Permits: The subdivider shall obtain the applicable approach or curb cut permits for all new accesses to City streets. The subdivider shall obtain an approach permit approved by the Montana Department of Transportation (MDT) for any vehicular access onto a state highway.
15. Street/Road Names and Lot Addresses: New streets/roads aligned with existing streets/roads shall have the same name as the existing street/road. All new street names and lot addresses shall be approved by the City Fire Department prior to final plat approval in order to avoid duplication and confusion with names of existing roads.
16. Street/Road Signs and Traffic Control Devices: Street or road signs and traffic control devices of the size, shape, and height approved by the governing body must be placed at all intersections. Traffic control devices must conform to the standards contained in the *Manual on Uniform Traffic Control Devices*.
17. Central Mail Delivery: When required by the United States Postal Service, the developer shall provide a cluster/gang mailbox area for mail delivery.

B. Streets and Roads Design and Improvement Standards:

1. General: The design and improvement standards contained in this section shall apply to all construction, reconstruction of streets and roads dedicated to the public within the City limits.

2. Improvement Design: All street improvements shall be designed by and constructed under the supervision of a professional Civil Engineer, registered in the State of Montana, and shall meet or exceed the right-of-way and construction standards for the type of street to be constructed found within these regulations, the adopted Transportation Plan, and adopted policies of the City Public Works Department.
3. Plans and Specifications approval: Plans and specifications for all streets shall be provided to and approved by the City Engineer. The subdivider shall provide professional engineering services for construction inspections, and post-construction certifications. The plans and specifications shall be approved by the City Engineer prior to initiation of any street improvement construction. In addition, a copy of the road plans and specifications for any emergency access roads shall be reviewed and approved by the City Fire Department prior to construction.
4. Traffic Accessibility Study: Prior to the City Council's action on the preliminary plat, a traffic accessibility study shall be prepared by a licensed Engineer and approved by the City Engineer for any new residential, institutional, commercial or industrial development which will generate five hundred (500) or more vehicular trips per day, as referenced in the Trip Generation Report of the Institute of Transportation Engineers. A vehicular trip is defined as a one-way journey of a person in an automobile or a transit vehicle. If the study indicates a need for the installation of traffic signals, intersection improvements, or other off-site street improvements to facilitate traffic flow generated by the entire proposed development, the identified improvement shall be installed or a financial contribution for the subdivision's proportional share shall be made prior to final plat approval of the subdivision. The study shall include, but not be limited to the following:
 - a. Estimated number of vehicular trips per day;
 - b. Location of approaches;
 - c. Circulation patterns;
 - d. Location and type of traffic-control devices;
 - e. Pedestrian systems;
 - f. Bicycle systems;
 - g. Projected turning movements;
 - h. Impacts on existing street intersections.
5. Street and Road Dedication: All streets providing access to the proposed subdivision shall be dedicated to the public.

6. Right-of-Way and Street Widths: Street right-of-way and surface widths shall be provided as shown in Table 23.406.B.1, below.

Table 23-406.B.1. Required Dedications and Street Improvements for Subdivisions within the City Limits

Street Type	Right-of-Way	B-B Curb Width	Lane Width	Parking Width	Turn lane width	Median Width	Boulevard Width	Sidewalk Width
Principal Arterial	130'	64'-86'*	11'-12'**	---	14'	---	10'	5'/10'***
Minor Arterial	100'	42'-66'*	12'	---	---	14'	10'	5'
Collector	74'	53'-39'	11'	8'	14'	---	5'	5'
Commercial Local Access	70'	44'-45'	13.5'	8'	14'	---	5'	5'
Residential Local Access	56'	34' min.	n/s	n/s	---	---	5'	5'
Cul-de-Sac 100-600 feet	56'	34' min.	n/s	n/s	---	---	5'	5'
Cul-de-Sac <100 feet	40'	29' min.	n/s	n/s	---	---	---	---

* A traffic study is required to determine final width.

** Interior lane(s) is 11' and the outside lane is 12'.

*** Sidewalk is 5' on one side and 10' on the other side.

n/s No specific width is specified.

7. Alleys: Proposed alleys in both residential and commercial subdivision shall meet the following standards:
- The width of an alley shall be a minimum of twenty (20) feet.
 - Alley intersections and sharp changes in alignment shall be avoided, but where necessary, corners shall be designed to permit single unit truck movement.
 - Dead-end alleys shall be avoided where possible, but if unavoidable, shall be provided with adequate turnaround facilities at the end.
8. Grading/Cut and Fill: All streets and alleys with or adjacent to the subdivision shall be excavated or filled to the grade established and shall provide for surface water drainage as specified by City Public Works according to City specifications.
9. Base Construction: The type of base required will vary depending on the nature of the existing material and with the particular type of traffic to be accommodated, and shall be approved by City Public Works according to a geotechnical analysis.
10. Street Surfacing: A pavement surface shall be required on all streets as specified by City Public Works.

11. Street Grades: All street grades shall conform to the requirements of the City. Street grades shall not exceed the following, with due allowance for reasonable vertical curves and intersection treatment. Street centerline horizontal curves shall be designed for the following minimum speeds:

<u>Street Type</u>	<u>Percent Grade</u>	<u>Speed (M. P. H.)</u>
Arterial	4	45
Collector	7	35
Local Access	12	25

12. Curbs and Gutters: Standard integral curb and gutter shall be placed on all arterial, collector and commercial streets. Standard integral curb and gutter is preferred on local residential streets but drive-over curb may be used upon approval by City Public Works. The allowable minimum curb and gutter grade shall be four-tenths percent and the desirable minimum curb and gutter grade will be five-tenths percent.

13. Sidewalks: Boulevard style sidewalks shall be installed on both sides of all streets, except cul-de-sacs less than one hundred (100) feet in length. Arterial and Collector streets may have a multi-use trail on one side in lieu of one of the required boulevard sidewalks. The Planning Board may recommend to the City Council that it waive or modify the requirement for boulevard walks on both sides of a local residential street when the subdivision constructs an approved multi-use bicycle/pedestrian path connected and accessible to all lots in combination with or in lieu of sidewalks. Required sidewalk and boulevard widths shall follow those listed in Table 23.406.B.1, above.

14. Street Lighting: Street lights may be installed in conformance with standards adopted by the City.

15. Access Driveways: Access driveways to new lots shall be allowed as regulated by the City's Curb Cut Regulations found in Article 6-1208, BMCC.

C. **Multi-Use Trails, General**: All subdivisions must be reviewed for compliance with the Heritage Trail Plan³ to provide multi-use trail and greenway corridors for safe, convenient non-motorized transportation routes throughout the City and County.

1. To comply with the Heritage Trail Plan, all subdivisions should provide a twenty (20) foot wide multi-use trail easement across the property if:
 - a. The Heritage Trail Plan indicates that a proposed multi-use trail corridor crosses the subdivision property; or
 - b. The Heritage Trail Plan indicates that a proposed greenway corridor crosses the subdivision property.

³ The Heritage Trail Plan is not a regulatory document. It is advisory in nature.

2. If the Heritage Trail Plan indicates that a proposed trail or greenway corridor crosses the subdivision property, and a segment of the trail or greenway corridor has already been provided on adjacent property, then the subdivision should connect the trail or greenway segments at the property lines to provide for a continuous trail or greenway corridor.
3. In the case of major subdivisions, if the Heritage Trail Plan indicates that a proposed trail or greenway corridor crosses the subdivision property, dedication of linear park land including a trail easement shall be considered as all, or a portion of, the required parkland dedication (See Sections 23-1004 and 23-1002 of these Regulations).

Section 23-407. Storm Drainage Facilities.

- A. **General:** Facilities and design for storm water drainage shall be provided in accordance with standards set by the City of Billings Storm Water Management Manual (SWMM) and the Montana Department of Environmental Quality (MDEQ). The subdivider shall provide a storm water collection and conveyance system which is designed and constructed in accordance with applicable City standards and which is connected to an existing storm drainage system. If there is no existing storm drainage system in the area or if the existing system has insufficient capacity to carry the additional discharge, the subdivider shall provide an onsite area for retention or detention with controlled outlet capacity, if needed. Such on-site retention or detention and controlled outlet shall be utilized only if specifically approved by the City.
- B. **Drainage Discharge:** Discharge of storm drainage is subject to the following:
 1. Storm drain systems shall not discharge into sanitary sewer facilities.
 2. Storm drain systems shall not discharge into agricultural water user's facilities without the written permission of the appropriate irrigation district.
 3. Stormwater detention or retention ponds may be located within public park land at the discretion of the City Parks Department. Such areas shall not count toward the park land dedication requirement unless they are approved by the City Parks Department, designed to serve as an amenity to the park, and fit into the planned uses and improvements to the park (See Article 23-1000 of these Regulations).
- C. **Easements:** Easements may be required between lots and along public right-of-way to manage storm drainage in subdivisions.
- D. **System Maintenance:** If any onsite retention or detention facilities are utilized, unless otherwise provided a special maintenance district shall be created prior to filing the final subdivision plat in order to provide funds for the maintenance of such facilities.

- E. **Future Improvements:** If any onsite retention or detention facility is used, a waiver of right to protest against a future storm drain system special improvement district shall be executed by the subdivider and recorded and filed with the final plat.

Section 23-408. Sanitary Sewer Systems.

- A. If the subdivision is within the City limits, the subdivider shall install complete sanitary sewer system facilities in accordance with the requirements of the City and the Montana Department of Environmental Quality (MDEQ).

An application for extension of sanitary sewer services shall be submitted for review and approval by the City. The subdivider shall submit plans and specifications for the proposed facilities to the City and to MDEQ and shall obtain necessary approvals prior to construction.

- B. If any boundary of the subdivision is within five hundred (500) feet of a public sanitary sewer system, the subdivider must connect to the sewer district and install sanitary sewer system facilities.

The governing body may grant a variance from the requirement to connect to a public system if the subdivider demonstrates that connection to the public system is physically or economically impractical. For purposes of this section, a connection is economically impractical if the cost is greater than three times the cost of installation of an approvable system on the site.

- C. Where individual septic systems are proposed, the system shall meet the standards set forth in Title 17, Chapter 36 (Subdivisions/Onsite Wastewater Treatment), Montana Administrative Rules and obtain approval by the Montana Department of Environmental Quality and/or the Yellowstone County Environmental Health Department.

1. For lots less than twenty (20) acres, MDEQ approval shall be obtained prior to the submission of the final plat application.
2. For lots equal to or greater than twenty (20) acres, Yellowstone City-County Health Department approval is required prior to the submission of the final plat application.
3. A waiver of right to protest the creation of a future special improvement district for a sanitary sewer system shall be executed by the subdivider and recorded and filed with the final plat.

Section 23-409. Water Supply Systems.

- A. If the subdivision is within the City limits, the subdivider shall install complete water system facilities in accordance with the requirements of the City and the Montana Department of Environmental Quality (MDEQ).

An application for extension of water service shall be submitted for review and approval by the City. The subdivider shall submit plans and specifications for the proposed facilities to the City and to the MDEQ and shall obtain necessary approvals prior to construction.

- B. If the subdivision is within the County Water District of Billings Heights (CWDBH), the subdivider shall install complete water system facilities in accordance with the requirements of the CWDBH and the MDEQ.

An application for extension of water service shall be submitted for review and approval by the CWDBH. The subdivider shall submit plans and specifications for the proposed facilities to the CWDBH and to the MDEQ and shall obtain necessary approvals prior to final plat approval.

- C. If any boundary of the subdivision is within five hundred (500) feet of a public water system, the subdivider must connect to the water system and install system facilities.

The governing body may grant a variance from the requirement to connect to a public system if the subdivider demonstrates that connection to the public system is physically or economically impractical. For purposes of this section, a connection is economically impractical if the cost is greater than three times the cost of installation of an approvable system on the site.

- D. If individual water supply systems (e.g. wells or cisterns) are proposed, the system shall satisfy the standards set forth in Title 17, Chapter 36 (Subdivisions/Onsite Wastewater Treatment), Montana Administrative Rules and obtain approval by the MDEQ or the Yellowstone County Environmental Health Department.

1. For lots less than twenty (20) acres, the subdivider must obtain MDEQ approval prior to submission of the final plat.
2. For lots equal to or greater than twenty (20) acres, the subdivider must obtain Yellowstone City-County Health Department Subdivision approval prior to submission of the final plat.
3. A waiver of right to protest the creation of a future special improvement district for a water system shall be executed by the subdivider and filed and recorded and filed with the final plat.

Section 23-410. Utilities.

- A. All new utilities serving the subdivision including electricity, cable television, and telephone shall be placed underground, with the exception of fire hydrants, cable closures, alignment markers, etc. Easements for utilities shall be clearly indicated on the plat.

1. Easements across lots or centered on common rear or common side lot lines shall be provided for public utilities and shall be at least sixteen (16) feet wide; easements located along perimeter lot lines shall be at least eight (8) feet in width. The width of an easement may vary depending upon the utility company serving the subdivision.
 2. Utility facilities shall be designed by utility firms in cooperation with the subdivider, subject to applicable laws and rules and regulations of any appropriate regulatory authority having jurisdiction over such facilities. The subdivider shall have the construction of all private utilities inspected by a licensed professional engineer prior to final plat approval or release of the financial guarantee for improvements.
- B. Where a subdivision is proposed in part or in whole within an airport influence area and noise zone, as defined in BMCC, Article 5-400, a perpetual air rights easement shall be executed.

Section 23-411. Watercourse and Irrigation Easements (76-3-504(1)(j), (k), MCA).

- A. **Easements for irrigation facilities WITHIN the subdivision:** Easements are required to be shown on the face of the preliminary and final plats for all drainage ways, irrigation canals/ditches and their laterals, and below-ground pipelines that traverse the property to be subdivided, providing for irrigation within the subdivision, except as noted in Section 23-411.B., below. In addition, an easement document shall be filed with the final plat. The easements provided shall meet the following standards:
1. Easements shall be provided in locations of appropriate topography and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
 2. Easements of a sufficient width to allow for construction, repair, maintenance, and inspection of the ditch shall be provided. The easement width shall be based on the policy of the appropriate irrigation district; and
 3. The easement document shall prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the water users.
- B. **Exclusion of easement requirements for irrigation within the subdivision:** The subdivider need not establish irrigation easements as provided in Section A. above if one of the following is met:
1. The average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land

and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or

2. The water rights are removed from the property being subdivided or evidence is provided by the subdivider that the appropriate legal or administrative process has been initiated to remove the water rights from the land within the subdivision. Furthermore, the fact the water rights have been or will be removed from the land within the subdivision shall be denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

C. Easements through the subdivision for the benefit of downstream water users:

Easements are required to be shown on the face of the preliminary and final plats for all drainage ways, irrigation canals/ditches and their laterals, and below-ground pipelines on the property being subdivided that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. In addition, an easement document shall be recorded with the final plat. The easements provided shall meet the following standards:

1. Easements shall be provided in locations of appropriate topography and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
2. Easements of a sufficient width to allow for construction, repair, maintenance, and inspection of the ditch shall be provided. The easement width shall be based on the policy of the appropriate irrigation district; and
3. The easement document shall prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the water users.

D. Additional Provisions:

1. The realignment or relocation of active irrigation ditches or pipelines is discouraged. If an irrigation facility is proposed to be realigned or relocated, the developer shall receive written permission of the appropriate irrigation district and/or water user and the subdivider's Professional Engineer shall certify prior to final plat approval that the water entering and exiting the realigned or relocated irrigation facility is the same quality and amount of water that entered or exited the facility prior to realignment or relocation.

2. New storm water generated from a subdivision shall not be discharged into an irrigation facility unless the subdivider receives written approval from the appropriate irrigation district and/or water user prior to final plat approval.

Section 23-412. Disposition of Water Rights (76-3-504(1) (j), MCA).

If a subdivision will create lots averaging less than five acres in size, the subdivider shall submit evidence with the final plat indicating that either A. and B., below, or C., below, has been provided:

- A. **Reservation and transfer of water rights:** The subdivider shall reserve all or a portion of the water rights on the land to be subdivided and transfer these water rights to a single entity for use by landowners within the subdivision who have a legal right to the water. Any remaining surface water rights from the land shall be reserved and severed; and
- B. **Establish landowner's water use agreement:** If the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, the subdivider shall establish a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
- C. **All rights reserved and severed:** All surface water rights shall be reserved and severed from the land proposed for subdivision.

Section 23-413. Fire Protection Requirements.

To ensure a reasonable level of fire protection and life-safety for the public and firefighters, an approved water supply capable of providing the required water flow for fire protection shall be provided in accordance with this section and the adopted fire code to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into the jurisdiction.

A. Definitions.

Approved: Acceptable to the fire department having jurisdiction.

Fire Department having jurisdiction: Fire Department or Fire District serving the area in which the subdivision is located.

- B. **Major, Minor, and Subsequent Minor Subdivisions:** For all subdivisions, the subdivider shall provide the following minimum mechanism for fire suppression:

A pressurized fire hydrant system meeting the flow requirements of the adopted Fire Code, National Fire Protection Association (NFPA) 1142, and the City of Billings Public Utilities Department Rules and Regulations.

C. **Emergency Secondary Access Roads:** In the event that an emergency secondary access road is approved as a means of providing a second access to a subdivision, as required by Section 23-406.A.5. of these Regulations, it shall be built to the following standards:

1. Emergency access roads shall be designed to a minimum unobstructed surface width of not less than twenty (20) feet and shall be constructed to adequately support a forty (40) ton vehicle with a surface so as to provide all weather driving capabilities. The road shall be constructed to City standards. Where required by the Fire Department having jurisdiction, gates or other approved barricades shall be required at either end of the road to restrict through traffic. A sign shall be fixed to each gate in a conspicuous manner. The sign shall read "EMERGENCY ACCESS ONLY" using black letters not less than two (2) inches wide and six (6) inches high on a white retro reflective background.
2. Prior to construction, a cross-sectional design of the road including location, section, surfacing, and drainage, and design of gates or barriers shall be submitted to and approved by the Billings Fire Department and the City Engineer's Office. The storm drain design shall accommodate runoff during a ten (10) year storm event to ensure that there is no blockage of the roadway in the event of an emergency. The drainage shall not encroach into the travel way.
3. Emergency access roads will be assigned a name by the Billings Fire Department. In order to ensure the roads are entered into and reflected on the County GIS mapping system, the road shall be shown on the plat along with the name assigned to the road. Emergency access roads will not have conventional street signs identifying them by the assigned name.

Two (2) sets of final plans showing corrections/revisions after review and approval shall be submitted to the Fire Department. The Fire Department will forward one (1) set of plans to County GIS to ensure that the emergency access road and road name are entered into the GIS mapping system.

Section 23-414. Flood Hazard Evaluation.

If any portion of a proposed subdivision is within the floodway of a flood of one hundred (100) year frequency as defined by Title 75, Chapter 5, MCA and the Federal Emergency Management Agency (FEMA), or deemed subject to flooding by the City, or if any portion of a proposed subdivision is within two thousand (2,000) horizontal feet and less than twenty (20) vertical feet of a live stream draining an area of twenty-five (25) square miles or more, the flood hazard evaluation criteria found in Appendix O shall be applied, as applicable.

Article 23-500. GUARANTEE OF PUBLIC IMPROVEMENTS.

Section 23-501. Subdivision Improvements Agreement.

Prior to granting approval of the final plat by the governing body the subdivider shall have installed all of the required improvements as stipulated in these regulations, or shall, prior to receiving approval of the final plat, enter into a written subdivision improvements agreement (SIA) with the governing body guaranteeing the construction and installation of all required improvements in conformance with all policies, standards and ordinances adopted by the City. The agreement shall stipulate, among other things, which type of security arrangements acceptable to the governing body the subdivider elects to use, the time schedule acceptable to the City, the subdivider's plans for accomplishing the required improvements and an agreement that the subdivider shall guarantee all improvements for a period of one (1) year from the date of acceptance by the City. (See Appendix K for SIA template)

Section 23-502. Security Guarantee.

The subdivider shall provide a monetary security guarantee from the following listed methods in the amount of one hundred twenty-five (125) percent of the estimated total cost or actual construction contract amount of installing all required improvements including engineering and administration fees, as estimated by a Professional Engineer and approved by the Public Works Department.

- A. **Escrow account.** The subdivider shall deposit cash, or other instrument readily convertible into cash at face value, either with the City, or in escrow with a financial institution. The use of any instrument other than cash, and in the case of an escrow account, the financial institution with which the funds are to be deposited, shall be subject to the approval of the governing body or designee (See Appendix L for Escrow template). In the case of an escrow account, the subdivider shall file with the City an agreement between the financial institution and the subdivider guaranteeing the following:
 - 1. That the funds of the escrow account shall be held in trust until released by the governing body or designee and may not be used or pledged by the subdivider as security in any other matter during that period; and
 - 2. That in the case of a failure on the part of the subdivider to complete the improvements, then the financial institution shall immediately make the funds in the account available to the City for use in the completion of those improvements.
- B. **Irrevocable letter of credit.** The subdivider shall provide, from a financial institution or other reputable institution subject to the approval of the governing body or designee, an irrevocable letter of credit (See Appendix M for Letter of Credit template). This letter shall be deposited with the City and shall certify the following:
 - 1. That the creditor does guarantee funds of the required amounts, as estimated by the subdivider and approved by the Public Works Department, for completing all required improvements; and
 - 2. That, in the case that the subdivider fails to complete the specified improvements within the required time period, the creditor shall pay to the City immediately, and

without further action, such funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter; and

3. That the letter of credit may not be withdrawn, or reduced in amount, until released by the governing body or designee; and
4. That the letter of credit shall be renewed from year to year until such time the improvements are completed.

C. **Bond.** The subdivider shall provide a surety bond to guarantee the funds to complete improvements, subject to any requirements of the bonding company. The bond shall be payable to the City and shall remain in effect until the improvements have been completed and accepted by the City. The subdivider shall bear all costs associated with the provision of the guarantee.

D. **Sequential development.** Where a subdivision is to be developed in phases, a phasing plan shall be prepared by the developer, and reviewed and approved by the governing body with the preliminary plat. The phasing plan shall be included in the SIA and shall describe which lots are included in each phase, what improvements shall be completed with each phase, and the approximate completion date of each phase. Improvements included in the first phase shall be constructed or guaranteed using one of the acceptable monetary security guarantees prior to final plat approval by the governing body. Lots within subsequent phases shall be restricted from being transferred or developed. A "Restrictions on Transfers and Conveyances" contract shall be entered into for subsequent phases by the subdivider and the governing body and shall be filed with the final plat documents with the Clerk & Recorder (See Appendix N for Restrictions on Transfers and Conveyances template). A release on the restrictions on transfers and conveyances may be filed with the Clerk & Recorder only after the necessary improvements for each particular phase are constructed, approved and accepted by the City, or guaranteed using one of the acceptable monetary security guarantees.

E. **Other.** Any other method that may be acceptable to the Planning Board and the governing body.

Section 23-503. Reduction of Guarantees.

In those cases where improvement guarantees have been made by the method in Sections 23-502 A., B., or C., the amount of the guarantee may be reduced upon installation and acceptance by the City of the required improvements. The amount of the reduction shall not exceed the percentage that the accepted improvements made up of all originally required improvements.

Section 23-504. Release of Guarantee.

Upon completion of required improvements by the subdivider and acceptance of them by the City, all in conformance with this Chapter, the City shall authorize the release of any remaining portion of the improvement guarantee of ninety percent (90%) of the original amount. The remaining ten percent (10%) will be released after any deficiencies are corrected after the one-

year warranty inspection. The acceptance of improvements by the City shall initiate the one-year warranty period.

Article 23-600. SUBDIVISIONS FOR RENT OR LEASE

Section 23-601. General.

- A. **Purpose.** A subdivision for rent or lease is created when any portion of a parcel is rented or leased for the purposes of situating a temporary or permanent residential or commercial structure owned by the renter or lessee. The rented/leased land is owned as one (1) parcel under single ownership, which can include a number of persons owning the property in common. Examples of subdivisions for rent or lease include, but are not limited to, manufactured home parks and recreational vehicle parks.
- B. **Review & approval required.** Subdivisions created by rent or lease are exempt from the survey and filing requirements of the Montana Subdivision and Platting Act (MSPA), but must be submitted for review and approval by the governing body before portions thereof may be rented or leased (76-3-208, MCA). Approval must be based on the criteria found in Article 23-300 of these Regulations.
- C. **Zoning requirements.** Subdivisions for rent or lease shall follow the requirements outlined in the Unified Zoning Regulations Sections 27-305 and 27-308, and any other applicable Sections of those Regulations.

Section 23-602. Review Procedures.

A. Submittal requirements.

- 1. Subdivisions for rent or lease require submittal of those requirements outlined in Article 23-300 of these Regulations except that the subdivider shall submit an unsurveyed final plan drawn to scale, rather than a final plat.
- 2. Supplementary materials. In addition to the submittal requirements outlined in Article 23-300, preliminary and final plans for subdivisions for rent or lease shall show the following:
 - a. A layout of all spaces proposed for rent or lease.
 - b. Location of common areas and facilities.
 - c. Parks and/or recreation areas.
 - d. Landscaping plan, if required by Section 23-603.E.2 below.

- B. **Review procedures.** Subdivisions for rent or lease shall follow the applicable review procedures outlined in Article 23-300 of these Regulations. In lieu of a final plat, a final plan drawn to scale shall be submitted for approval by the governing body. The approved

final plan shall be filed with the Yellowstone County Clerk & Recorder as an exhibit, not as a final plat.

Section 23-603. Manufactured Home Park Development Requirements.

A. Manufactured home spaces.

1. The number of allowed spaces is limited to what is approved on the final plan.
2. Manufactured home spaces must be arranged to permit the safe and practical placement and removal of manufactured homes.
3. All manufactured homes must meet the minimum setback requirements of Article 27-308, BMCC from all perimeter boundary lines. In the case where a boundary line is adjacent to an arterial street, all homes and accessory structures must meet setbacks as required in Article 27-602, BMCC.
4. The manufactured home pad must be located at least ten (10) feet from the street that serves it.
5. Location of space limits on the ground must be approximately the same as those shown on the approved plans. Precise surveying of space limits is not required either on the plans or on the ground.
6. The size of the manufactured home pad must be suitable for the general market to be served and must fit the dimensions of manufactured homes anticipated. At a minimum the pad should measure fourteen (14) feet wide and seventy (70) feet long. All pads shall be constructed of at least six (6) inches of gravel over a stabilized sub-base.
7. The total area occupied by a manufactured home and its roofed accessory buildings and structures may not exceed one-third (1/3) of the area of a space.
8. All manufactured homes shall be separated by a minimum of sixteen (16) feet.
9. There shall be a minimum of fifteen (15) feet between all attached structures such as carports, awnings, decks, and stairs and any adjacent manufactured home.
10. There shall be a minimum of six (6) feet between detached structures and any adjacent manufactured home. Detached structures are defined as any structure that is more than six (6) feet away from the manufactured home.
11. A minimum of two (2) off-street parking spaces must be provided on or adjacent to each manufactured home space. The driveway must be located to allow for convenient access to the manufactured home, and be a minimum of ten (10) feet wide.
12. One (1) guest parking space must be provided for each ten (10) manufactured home spaces. Group parking may be provided.

B. Streets.

1. All streets within a manufactured home park or recreational vehicle park shall be private.
2. Private streets shall be designed to provide access to all sites. No site shall have vehicular access to a public street. The streets shall be laid out to discourage through traffic and intersections with public streets shall be kept to a minimum.
3. Streets may be designed for no on-street parking, on-street parking on one (1) side only or on-street parking on both sides. All streets shall be paved to a typical crown section, an invert section or a straight warp section. All streets shall be bordered by either sidewalks meeting the current Americans with Disabilities Act (ADA) standards, a double gutter, integral curb and gutter or other method approved by the governing body on the uphill side of a street, but in all cases a sidewalk shall be required on at least one (1) side of the street.
4. The minimum back-of-curb to back-of-curb width for streets with no on-street parking shall be twenty (20) feet. If a crown section is used, double gutter or curb and gutter shall be placed along both sides. If a warp section is used a sidewalk shall be placed along the uphill side and a double gutter or curb and gutter along the downhill side. The requirements of Section 23-407 (Storm Drainage) of these Regulations shall apply if curb and gutter are not utilized.
5. The minimum back-of-curb to back-of-curb width for streets with on-street parking on one (1) side shall be twenty-nine (29) feet. The requirements along the sides shall be the same as for streets with no on-street parking except curb and gutter shall be required along the parking side.
6. The minimum back-of-curb to back-of-curb width for streets with on-street parking along both sides shall be thirty-four (34) feet. Curb and gutter shall be required along both sides in all cases or comply with Section 23-407 (Storm Drainage) of these regulations.
7. Curvilinear streets shall have no centerline curve with less than a one hundred (100) foot radius. At intersections, the inside edge of the paved street shall have a minimum of a twenty (20) foot radius.
8. All streets shall intersect at an angle of ninety (90) degrees except where the subdivider can show just cause not to and with the approval of the governing body.
9. The layout near street intersections shall be such that a clear vision area is maintained. Stopping sight distance on curves shall be as required on subdivision streets.
10. All traffic-control devices used shall comply with the current edition of the Manual on Uniform Traffic Control Devices, published by the U.S. Department of Transportation.

C. **Fire protection.** The manufactured home park shall provide an adequate water supply for fire suppression needs, following the requirements as found in Section 23-413 of these Regulations. The means for fire protection shall be subject to approval by the local fire district and the governing body.

D. **Health standards/license requirement.** In addition to the criteria of this Section, manufactured home parks must also meet the minimum standards of the Montana Department of Public Health and Human Services (MDPHHS) under Title 50, Chapter 52, MCA and the requirements of the Montana Department of Environmental Quality (MDEQ) under Title 50, Chapter 60, MCA. The governing body shall not grant final approval of a manufactured home and/or recreational vehicle park until the subdivider first obtains the applicable licenses and approvals for the facility from MDPHHS and MDEQ.

E. **Additional provisions**

1. Manufactured home parks shall meet the parkland dedication requirements as outlined in Article 23-1000 of these Regulations.
2. Manufactured home parks located adjacent to industrial, commercial or lower-density residential land uses shall provide screening such as fences or natural growth along the property boundary lines separating the community from such adjacent uses.
3. All manufactured home parks shall have a sign near the main entrance showing the park layout.
4. Centralized mail delivery shall be provided at one or more locations within the park. Location and design of such group mail collection site(s) shall be reviewed and approved by the United States Postal Service and the Public Works department.
5. It shall be unlawful to operate a manufactured home park without holding a valid license issued by the Montana Department of Environmental Quality (MDEQ), to be renewed annually.

Section 23-604. Recreational Vehicle Park Development Requirements.

A. **Recreational vehicle spaces.**

1. Recreational vehicle spaces must be arranged to allow for the safe movement of traffic and access to spaces.
2. Recreational vehicles must be separated from each other and from other structures by at least fifteen (15) feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle.

3. No recreational vehicle space may be located less than twenty (20) feet from any public street or highway right-of-way.
4. The density of a recreational vehicle park may not exceed twenty five (25) recreational vehicle spaces per acre of gross site area.

B. Streets.

1. Roads within recreational vehicle parks must be designed to provide safe traffic circulation and parking.
2. Design of the streets within a recreational vehicle park shall follow those guidelines on street design for manufactured home parks above (Section 23-603.B.).

C. Additional standards.

Recreation vehicle parks shall also follow the guidelines listed in Section 23-603.C. Fire protection; Section 23-603.D. Health standards/license requirement; and Section 23-603.E. Additional provisions.

Section 23-605. Timing of Improvements.

- A. The subdivider shall install all required improvements before renting or leasing any portion of the subdivision. The governing body or designated agent will inspect all required improvements in order to ensure conformance with the approved construction plans and specifications. The subdivider shall guarantee all improvements for a period of one year from the date of written approval by the governing body or designated agent.
- B. If the subdivider seeks approval of the final plan prior to the installation and completion of all required improvements, the subdivider shall enter into a written agreement with the governing body guaranteeing the construction and installation of all required improvements. This agreement shall specify which type of security arrangements the subdivider elects to use and the time schedule proposed for accomplishing the required improvements. Acceptable monetary security guarantees are described in Article 23-500 of these Regulations.

Article 23-700. CLUSTER DEVELOPMENTS AND PLANNED NEIGHBORHOOD DEVELOPMENTS (MCA 76-3-509)

Section 23-701. Purpose.

The purpose of this Article is to promote maximum flexibility in the design of new developments within the City of Billings and to encourage innovation within a framework of timely, efficient and flexible design review. Developments that utilize innovative, progressive planning and site design techniques and methods to allow a mixture of land uses, densities, setbacks and building heights are encouraged. Cluster Developments are encouraged where community resources are

present and desirable for protection or preservation. Those areas include but are not limited to wildlife habitat, river and stream corridors, wetlands, historical or archeological sites or prime agricultural lands. Planned Neighborhood Developments are encouraged where the proposed development is in excess of twenty acres and diversity in land uses is desirable.

Section 23-702. Definitions.

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

Cluster Development: A Cluster Development is a subdivision creating five (5) or more lots clustered in a group that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped. A minimum of thirty percent (30%) of the area within the subdivision shall be reserved for open space owned by common ownership (76-3-103(2), MCA).

Maximum Density Calculation: The maximum number of residential dwelling units allowed is calculated by dividing the gross square footage of the Cluster Development area (including any Open Space area) by the required lot area in the underlying zoning district.

Master Plan: A master plan is a site plan for a Planned Neighborhood Development that shows lots, blocks, streets, alleys and areas for various land uses including open space within the development. The master plan shall be part of the subdivision approval and any significant change to such master plan shall be considered an amended subdivision.

Planned Neighborhood Development (PND): A Planned Neighborhood Development (PND) is a subdivision consisting of a planned mixture of land uses such as residential clusters, industrial parks, shopping centers, and/or office building parks built in a prearranged relationship to each other and having open space and community facilities in common ownership or use (76-3-103(10), MCA).

Section 23-703. Cluster Development General Requirements.

- A. Cluster development may be applied to any residential subdivision of five (5) or more lots. The subdivision shall generally conform to the Growth Policy and the underlying zoning district(s) although the lots may be smaller in area than required in the underlying zoning district.
- B. The maximum size of any developed parcel or lot within a cluster development is 175,000 square feet.
- C. A minimum of 30% of the total area within the subdivision shall remain undeveloped in a cluster development. The undeveloped parcel must be protected in perpetuity and prohibit further division of the parcel. (See Section 23-708)
- D. Cluster developments are exempt from the review criteria in Section 23-302.H. of these Regulations (76-3-509(e)(ii), MCA).

E. Cluster developments are exempt from the parkland dedication requirements in Article 23-1000 in so far as the cluster development meets or exceeds parkland dedication requirements of Section 23-1002 of these Regulations.

F. Cluster developments shall comply with all other requirements of these Regulations.

Section 23-704. Design Standards and Applications for Cluster Developments.

A. The Cluster development subdivision shall follow all applicable review procedures, as outlined in Article 23-300 of these Regulations.

B. **Site Analysis Map.** A site analysis map shall be submitted with the preliminary plat application including the following information:

1. Property boundaries;
2. All streams, rivers, lakes, wetlands and other hydrologic features;
3. Topographic contours with a minimum of 5-foot intervals; where lots are proposed on slopes 10% or less, contours must be shown at 2 foot intervals.
4. All proposed open space areas;
5. General vegetation characteristics;
6. General soil types;
7. The planned location of protected open space;
8. Existing roads and structures;
9. Potential connections with existing open space, parks and trails.

C. **Open Space Management Plan.** An open space management plan, as described in Section 23-707 of this Article, shall be prepared and submitted with the preliminary plat application. The management plan will be reviewed as a supporting document of the preliminary plat. Review and recommendations to the governing body on the proposed open space management plan will be prepared by the Planning Board.

D. **Instrument of Permanent Protection Required.** An instrument of permanent protection as detailed in Title 76, Chapter 6, MCA, the Open-Space Land and Voluntary Conservation Easement Act, shall be placed on the open space concurrent with the application for final plat approval.

E. **Maximum Density.** The maximum number of dwelling units shall be calculated by dividing the gross area of the lot including the open space by the required lot area of the underlying zoning district. The applicant need not demonstrate the development capability of the land to calculate the maximum dwelling unit density.

F. **Other Requirements.** The applicant shall adhere to all other applicable requirements of the underlying zoning district(s) with the exception of minimum lot area per dwelling unit (See Maximum Density above). The proposed number of dwelling units shall not exceed the maximum density but each dwelling unit may be placed on a lot of less than the minimum lot area required by the underlying zoning district(s). Subsequent to a

preliminary plat approval, the applicant shall apply for and receive a zoning variance (Article 27-1500, BMCC) from the minimum lot area required within the zoning district(s).

Section 23-705. Open Space.

- A. At least thirty percent (30%) of the gross area of a cluster development shall be reserved as open space.
- B. **Resource Protection Areas:** The following are considered resource protection areas and are required to be included within the open space when present. These resource areas must be mapped and shown on the preliminary plat.
 - 1. The 100-year floodplain.
 - 2. Riparian zones of at least seventy five (75) feet in width along all perennial and intermittent streams.
 - 3. Areas of at least 5,000 square feet with percent grade of twenty five percent (25%) or greater.
 - 4. Wetlands that meet the definition used by the Army Corps of Engineers pursuant to the Clean Water Act.
 - 5. Populations of endangered or threatened species, or habitat for such species.
 - 6. Archaeological sites, cemeteries and burial grounds or historic sites listed as such with any state or federal agency.
- C. **Other Resource Areas.** The following are considered important resource areas and may or may not be included within the open space at the discretion of the applicant.
 - 1. Historic sites or structures not listed as such with state or federal agencies.
 - 2. Existing native forests or prairie of at least one (1) acre contiguous area.
 - 3. Other significant natural features and scenic view sheds such as ridge lines, peaks and rock outcrops, particularly those that can be seen from public roads.
 - 4. Prime agricultural lands of at least two (2) acres contiguous area.
 - 5. Existing trails that connect the tract to neighboring areas.
 - 6. Areas at the base of any ridge line or rimrock of at least one (1) contiguous acre.
- D. Above-ground utility rights-of-way and small areas of impervious surface may be included within the protected open space. Such areas shall make up not more than five percent (5%) of the required open space area.
- E. At least seventy five percent (75%) of the open space shall be in a contiguous tract of a minimum size of 45,000 square feet. The open space should adjoin any neighboring areas of open space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected open space.
- F. The open space should be directly accessible to the largest practicable number of lots within the subdivision. Non-adjoining lots shall be provided with safe, convenient access to the open space.

Section 23-706. Permitted Uses of Open Space.

A. Uses of Open Space may include the following:

1. Conservation of natural, archeological or historical resources;
2. Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;
3. Walking, bicycle trails or other multi-use trails as defined in the Heritage Trail Plan;
4. Passive recreation areas, such as open fields;
5. Active recreation areas;
6. Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are adhered to;
7. Landscaped storm water management facilities approved by the governing body, community wastewater disposal systems and individual wastewater disposal systems located on soils particularly suited to such uses;
8. Easements for drainage, access, and underground utility lines;
9. Other conservation-oriented uses compatible with the purposes of this Article.

B. Prohibited uses of Open Space.

1. Golf courses;
2. Roads, parking lots and impervious surfaces, except as specifically authorized in the previous sections;
3. Agricultural and forestry activities not conducted according to accepted Best Management Practices;
4. Impoundments;
5. Other activities as determined by the applicant and recorded on the legal instrument providing for permanent protection.

Section 23-707. Ownership and Management of Open Space.

A. Ownership of Open Space. Open space shall be owned by one of the following entities:

1. The open space shall be dedicated to the public as public parkland. Acceptance of the open space shall be at the discretion of the governing body, as recommended by the City Park Board; or
2. A Homeowners' Association representing residents of the subdivision may own the open space. Membership in the association shall be mandatory and automatic for all homeowners of the subdivision and their successors. The Homeowners' Association shall have lien authority to ensure the collection of dues from all members.

B. Management Plan. The applicant shall submit a Plan for Management of Open Space and Common Facilities (Management Plan) that:

1. Allocates responsibility and guidelines for the maintenance and operation of the open space and any facilities located thereon, including provisions for ongoing maintenance and for long-term capital improvements;
2. Estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the open space and outlines the means by which such funding will be obtained or provided;
3. Provides that any changes to the Management Plan be approved by the Planning Department, or in the case of publicly owned open space, approved by the Park Board; and
4. Provides for enforcement of the Management Plan.

C. Maintenance.

1. Open space dedicated to the public shall be maintained according to the Management Plan by a Park Maintenance District (PMD) to be established prior to final plat approval.
2. Maintenance of open space owned by a Homeowner's Association shall be the responsibility of the Homeowner's Association. In the event the party responsible for maintenance of the open space fails to maintain all or any portion in reasonable order and condition the City of Billings may assume responsibility for its maintenance and may enter the premises and take corrective action, including the provision of extended maintenance. The costs of such maintenance may be charged to the Homeowners' Association, or to the individual property owners that make up the Homeowners' Association, and may include administrative costs and penalties. Such costs shall become a lien on all subdivision properties.

Section 23-708. Legal Instrument for Permanent Protection of Open Space.

- A. **Legal Instrument.** Privately owned open space shall be protected in perpetuity by a binding legal instrument that is recorded with the deed. The instrument for permanent protection shall include clear restrictions on the use of the open space. These restrictions shall include all restrictions contained in this Chapter, as well as any further restrictions the applicant chooses to place on the use of the open space.
- B. **Tax Assessment of Open Space.** Once a legal instrument for permanent protection has been placed upon the open space, the Yellowstone County Board of Assessment shall be directed to reassess the open space at a lower value to reflect its more limited use. If the Open Space is used purely for passive recreational purposes and the terms of the instrument for permanent protection effectively prohibit any type of significant economic activity, then the assessment shall be at a value of zero.

Section 23-709. Planned Neighborhood Developments General Requirements.

A Planned Neighborhood Development (PND) project is intended to encourage the use of improved techniques for the development and arrangement of a mixture of land uses more than is

available under conventional zoning regulations or land restrictions that separate land uses into distinct zones. It is further the intent of PNDs to allow for the integration of housing, business, and community facilities, and to allow for the preservation of the natural environment through efficient utilization of open space.

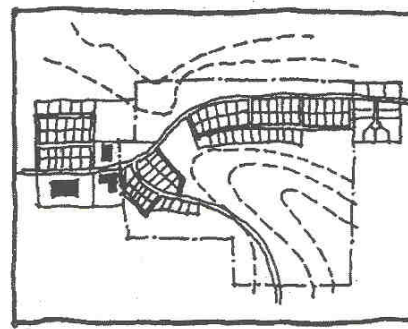
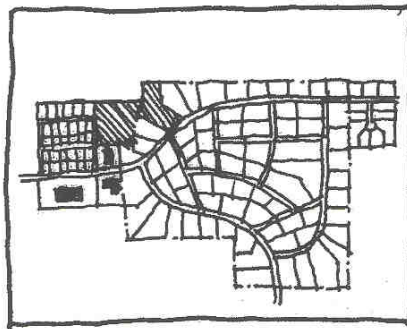
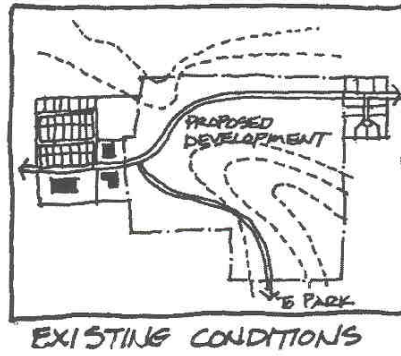
- A. A PND may be applied to any mixed use subdivision of five (5) or more lots. The subdivision shall generally conform to the adopted Growth Policy. The underlying zoning district(s) land use designations and building setbacks and other limitations shall be used as a general guide. The applicant is encouraged to design the PND to allow a mixture of land uses, densities, setbacks and building heights.
- B. The maximum size of any developed parcel or lot within a PND is 350,000 square feet.
- C. The minimum size for any area designated for common use by the residents or owners of the PND or by the public is 45,000 square feet. The area may be designated for active or passive recreation, for conservation purposes or for any other use in common by the residents and owners of the PND or by the public.
- D. Planned Neighborhood Developments are exempt from the review criteria in Section 23-302.H. of these Regulations.
- E. Planned Neighborhood Developments are exempt from the parkland dedication requirements in Article 23-1000 in so far as the PND meets or exceeds parkland dedication requirements of Section 23-1002.
- F. Planned Neighborhood Developments shall comply with all other requirements of these Regulations.
- G. Planned Neighborhood Developments shall be considered a Special Review use for purposes of the Unified Zoning Code (Article 27-1500, BMCC).

Section 23-710. Design Standards and Applications for Planned Neighborhood Developments.

- A. The PND shall follow the applicable review procedures, as outlined in Article 23-300 of these Regulations.
- B. **Site Analysis Map.** A site analysis map shall be submitted with the preliminary plat application including the following information:
 - 1. Property boundaries;
 - 2. All streams, rivers, lakes, wetlands and other hydrologic features;
 - 3. Topographic contours with a minimum of 5-foot intervals; where lots are proposed on slopes 10% or less, contours must be shown at 2 foot intervals.
 - 4. All proposed open space areas;
 - 5. General vegetation characteristics;
 - 6. General soil types;

7. The planned location of protected open space;
 8. Existing roads and structures;
 9. Potential connections with existing open space, parks and trails.
- C. Planned Neighborhood Developments are allowed in any zoning district as a Special Review use. Each land use area within a Planned Neighborhood Development will not be a separate zoning district but will apply for and receive special review approval (see Article 27-1500, BMCC for procedure) concurrently with the preliminary plat application (Article 23-300, BMCC). The Planned Neighborhood Development shall provide opportunities for mixed land uses, various housing types and densities, recreational opportunities, and areas for neighborhood services such as schools, community centers, fire or police stations, libraries, and places of employment.
- D. **Master Plan:** A Master Plan must be submitted showing the proposed design and land use areas of the development. The Master Plan should be of sufficient detail to determine build-out population, traffic circulation and control requirements, permitted uses or mix of uses within each area, building envelopes for each developed lot, recreation areas and open space. If open space is provided it shall conform to the requirements of Sections 23-705 through 23-708 of this Article.
- The Master Plan must also show development phasing and construction timing for each phase of the development including any construction or improvements for public parks, trails, community centers, fire and police stations, schools or other public facilities that will serve the Planned Neighborhood Development. Each development phase must contain mixed uses and housing densities. Common elements such as playgrounds, parks, neighborhood service areas and community centers must be included for development within each phase of the development.
- E. The Planned Neighborhood Development must be consistent with any adopted Growth Policy, Neighborhood Plan, Heritage Trail Plan, Transportation Plan, Public Utilities Facilities Plan, and any other pertinent public facilities or land use plan that may apply to the PND subdivision area.

Section 23-711. Examples of Cluster Development designs.



Section 23-712. Examples of Planned Neighborhood Developments Designs.



Article 23-800. CONDOMINIUMS AND TOWNHOMES.

Section 23-801. Condominium Development.

- A. **Exemptions.** All condominium developments are subdivisions subject to the terms of these Regulations and the Montana Subdivision and Platting Act (MSPA), except those exempted by 76-3-203, MCA, as described below.
1. The approval of the original division of land expressly contemplated the construction of the condominiums, and any applicable park dedication requirements in 76-3-621, MCA are complied with; or
 2. The condominium proposal is in conformance with applicable local zoning regulations where local zoning regulations are in effect.
- B. **Procedures.** All condominium developments which are not exempt from subdivision review, are subject to the applicable procedures contained in Article 23-300, Subdivision Review Procedures or Article 23-600, Subdivisions for Rent or Lease. The applicable subdivision procedure will be based on:
1. Whether a division of land is to be created.
 2. The number of proposed units.
 3. Whether the land is a first or subsequent minor subdivision.

Section 23-802. Townhome Development.

All townhome developments are subject to the applicable procedures contained in Article 23-300. The applicable subdivision procedure will be based on:

- A. The number of proposed units; and
- B. Whether the land is a first or subsequent minor subdivision.

Section 23-803. Condominium and Townhome Standards.

- A. Condominium and townhome developments shall comply with those standards contained in Article 23-400, Development Requirements and Article 23-1000, Parks, Trails and Open Space.
- B. All buildings and structures in a condominium or townhome development shall meet the minimum setback requirements of Article 27-308, BMCC from all perimeter boundary lines. In the case where a boundary line is adjacent to an arterial street, all homes and accessory structures must meet setbacks as required in Article 27-602, BMCC.

- C. Condominium developments shall comply with all applicable provisions of the Unit Ownership Act – Condominiums, Title 70, Chapter 23, MCA, as amended.

Article 23-900. ENVIRONMENTAL ASSESSMENT.

Section 23-901. Purpose.

The environmental assessment is a tool by which to evaluate a proposed subdivision's impact on the natural environment, adjacent properties, local services, and the community as a whole. From this evaluation the most appropriate course of action can be determined to mitigate any negative impacts created by the subdivision. The environmental assessment is required by 76-3-603, MCA, unless otherwise exempted.

Section 23-902. General Requirements.

- A. **Major Subdivision.** The subdivider shall provide an environmental assessment with the submittal of the preliminary plat containing the following information:
1. A description of the surface and ground water, geology and soils, vegetation, and wildlife use within the area of the proposed subdivision, as required by Section 23-903 Environmental Description Contents, of these Regulations.
 2. A community impact report containing an analysis of anticipated impacts of the proposed subdivision on the community and local services as required by Section 23-904 Community Impact Report Contents, of these Regulations.
 3. A summary of probable impacts of the proposed subdivision based on the criteria described in 76-3-608, MCA, as required by Section 23-905 Summary of Probable Impacts, of these Regulations.
 4. Additional relevant and reasonable information related to the applicable regulatory criteria per 76-3-501, MCA as may be required by the governing body or designee.
- B. **Subsequent Minor Subdivision.** An environmental assessment must accompany the preliminary plat and shall include only the summary of probable impacts of the proposed subdivision based on the criteria described in 76-3-608, MCA, as required by Section 23-905 **Summary of Probable Impacts**, of these Regulations.
- C. **Exemptions.** The following subdivisions shall not be required to submit an environmental assessment:
1. A first minor subdivision from a tract of record (76-3-609(3), MCA).
 2. A subdivision qualifying for expedited review as described in Section 23-305 of these Regulations.

3. Other subdivisions that satisfy all of the following criteria (76-3-608(7), MCA):
 - a. The proposed subdivision is completely within an area adopted by the Growth Policy pursuant to 76-1-601, et seq., MCA.
 - b. The proposed subdivision is located within zoning pursuant to 76-2-201 through 76-2-328, MCA.
 - c. The proposed subdivision is located within an area where a long-range public works development program (i.e. Capital Improvements Plan) has been adopted pursuant to 76-1-601(4), MCA.

Section 23-903. Environmental Description Contents.

A. Surface Water.

1. Locate on a plat overlay or sketch map all surface water and the delineated floodways that may affect or be affected by the proposed subdivision including natural water systems (streams, lakes, rivers, or marshes), artificial water systems (canals, ditches, aqueducts, reservoirs, irrigation or drainage systems), and land subject to flooding (see also Section 23-414 and Appendix O—Flood Hazard Evaluation).
2. Describe all surface water that may affect or be affected by the proposed subdivision including name, approximate size, present use, and time of year that water is present.
3. Describe the proximity of proposed construction (such as buildings, sewer systems, roads) to surface water.
4. Describe any existing or proposed stream bank or shoreline alterations and/or any proposed construction or modification of lakebeds or stream channels. Provide information on the location, extent, type, and purpose of any proposed alteration.
5. Please indicate which of the following water quality permits have been or will be applied for and describe the reasons why these permits are required.

<u>PERMIT</u>	<u>AGENCY</u>
310 Permit	Local Conservation District
SPA 124 Permit	Department of Fish, Wildlife and Parks
Floodplain Permit	County Floodplain Administrator
Section 404 Permit, Section 10 Permit	U. S. Army Corps of Engineers
318 Authorization	Department of Environmental Quality
Navigable Rivers Land Use License or Easement	Department of Natural Resources and Conservation

B. Groundwater.

1. Using available information, provide the estimated seasonal minimum and maximum depth to the water table, dates on which these depths were determined, and the location and depth of all known aquifers that may be affected by the proposed subdivision.
2. Provide a description of any steps necessary to avoid the degradation of groundwater and groundwater recharge areas.

C. Geology/Soils/Slopes.

1. Using available information locate on a plat or overlay any known geologic hazards affecting the proposed subdivision which could result in property damage or personal injury due to any of the following: rock falls or slides; land, mud or snow slides; high water table, unstable or expansive soil conditions, slopes greater than twenty five percent (25%).
2. Explain the measures that will be taken to prevent or materially lessen the danger of future property damage or injury due to existing geologic hazards.
3. Provide a statement describing any unusual soil, topographic or geologic conditions on the property, which may limit the capability for construction or excavation using ordinary and reasonable techniques. The statement should address conditions such as shallow bedrock, high water table, unstable or expansive soil conditions, and slope. Describe the location and amount of any cut or fill three (3) or more feet in depth. Where cuts or fills are necessary, describe prevention of erosion and the promotion of revegetation, such as replacement of topsoil and grading.
4. Include soil reports obtained from the USDA, Natural Resource and Conservation Service (NRCS) containing the physical properties and engineering indexes for each soil type, the soil limitations for sanitary facilities, building site development, and water features for each soil type. Describe any special design methods planned to overcome the soil limitations.

D. Vegetation.

1. Indicate the distribution of the major vegetation types and identify critical plant communities as identified by the NRCS.
2. Describe measures to preserve trees and critical plant communities (e.g., design and location of roads, lots and open spaces).

E. Wildlife.

1. Describe species of fish and wildlife that inhabit the area affected by the proposed subdivision.

2. Identify on an exhibit map any known critical or "key" wildlife areas, such as big game winter range, migration routes, waterfowl nesting areas, habitat for rare or endangered species, and wetlands.
3. Submit the impacts of the proposed development on fish and wildlife as identified by the Montana Department of Fish, Wildlife and Parks (MFWP). Provide a written statement outlining any recommendation of MFWP and any mitigation efforts to mitigate adverse impacts.

Section 23-904. Community Impact Report Contents.

A. Impact on agriculture and agricultural water user facilities.

1. Describe the number of acres in crop production and whether the property is in whole or in part a viable farm unit, e.g. was the property under production during the last regular season.
2. Describe the uses of land within the vicinity of the proposed subdivision.
3. Describe existing irrigation rights on the property and whether the rights will be transferred, retained by the original owner, or severed.
4. Explain any modification or relocation of ditches or any easements to be provided with the subdivision. The subdivider shall notify the affected ditch company of the subdivision and shall obtain permission to reroute or alter the ditch in any way.

B. Impact on local services and public health and safety.

1. Water Supply.
 - a. Describe how water will be provided for domestic use and fire protection.
 - b. Indicate the number of gallons per day of water the proposed subdivision will require and whether the water supply is sufficient to meet the needs of the anticipated population of the subdivision. Describe any anticipated effects on existing water systems or wells within the area.
 - c. Based on available information, specify whether the proposed water supply satisfies the standards set forth by MDEQ for quality, quantity and construction criteria.
 - d. If connection to an existing public, community, or shared water system is proposed, identify and describe the existing system and approximate distance to the connection from the proposed subdivision.

- i Provide written evidence that permission to connect to that system has been obtained.
 - ii Provide information regarding the capacity of the existing water system and its adequacy for serving the proposed subdivision.
 - e. If a new community or shared water system is proposed, identify who will install that system, and how the system will be maintained.
 - f. If individual water systems are proposed, describe the adequacy of supply of groundwater for individual wells or cisterns and the method used to determine adequacy.
2. Sewage Disposal.
- a. Describe the proposed method of sewage disposal.
 - b. Indicate the number of gallons of effluent per day that will be generated by the proposed subdivision at full occupancy, whether the proposed method of sewage disposal is sufficient to meet the anticipated needs of the subdivision, and whether it meets the standards of MDEQ.
 - c. If connection to an existing public sewer system is proposed, provide a description of the system and the approximate distance from proposed subdivision.
 - i Provide written evidence from the appropriate sewer jurisdiction granting permission to connect to that system shall be submitted with the preliminary plat.
 - ii Provide information regarding the installation, maintenance and phasing of any proposed public sewage disposal system.
 - d. If a new community or shared sewer system is proposed, identify who will install that system, and how the system will be maintained.
 - e. If individual septic systems are proposed, describe the location and specifications of septic systems.
3. Solid Waste Disposal.
- a. Provide evidence that there is an existing solid waste collection and disposal system available that can accommodate the anticipated additional volume.
 - b. If no existing collection and disposal system is available, describe the proposed method of solid waste collection and disposal.

- c. Describe how the proposed system satisfies the standards set forth by MDEQ.
- 4. Storm water.
 - a. Provide calculations indicating how much storm water run-off will be generated as a result of the proposed development.
 - b. Provide a description of the proposed storm water collection and drainage systems that satisfy the standards set forth by Section 23-407.
- 5. Roads.
 - a. Describe any proposed access roads or substantial improvements to existing public or private access roads.
 - b. If connections to any existing roads are proposed, identify all access permits that are necessary from the city, county or state.
 - c. Discuss whether any of the individual lots or tracts have access directly to arterial roads.
 - d. Explain any proposed closure or modification of existing roads.
 - e. Describe provisions considered for dust control on roads.
 - f. Explain how road maintenance will be provided to meet MDEQ guidelines for prevention of water pollution and erosion.
 - g. Indicate who will pay the cost of installing and maintaining the roads.
 - h. Discuss how much daily traffic will be generated on existing local and neighborhood roads and main arterials when the subdivision is fully developed.
 - i. Indicate the capacity of existing and proposed roads and if they are capable of safely handling the increased traffic resulting from the proposed subdivision. Describe any additional maintenance that will be necessary due to increased traffic and who will pay the cost of maintenance.
 - j. Indicate ownership of any private access to the subdivision, including private driveway easements.
- 6. Utilities.
 - a. Indicate which utility companies are proposed to serve the subdivision.

- b. State the method of furnishing electric, natural gas or telephone service, where provided, the extent to which these utilities will be placed underground, and the estimated completion of each utility installation.
- c. Indicate if there are any existing utility lines on the property such as transmission lines, pipelines, etc. and if so, describe the impacts they may have on the proposed subdivision.

7. Emergency Services.

- a. Describe the emergency services available to the subdivision including fire protection, police protection, ambulance, and medical services
- b. Provide an estimate of the number of responses generated by the subdivision, and the method of determining those numbers.
- c. Describe roads to the subdivision and provide information on compaction standards and widths that satisfy the requirements set forth for emergency vehicle access.
- d. In the event that the proposed subdivision is located within the Wildland Urban Interface (WUI), the subdivider shall submit a plan to mitigate fire hazard in accordance with the fire department having jurisdiction.
- e. Describe any health or safety hazards on or near the subdivision, such as mining activity, high-pressure gas lines, dilapidated structures or high voltage power lines. These conditions should be accurately described and their origin and location identified and any proposed mitigation.

8. Schools.

- a. Describe the available educational facilities that would service this subdivision.
- b. Provide an estimate of the number of school children that will be generated from the proposed subdivision and provide the basis for the estimate.
- c. Provide information regarding whether increased enrollment can be accommodated by the present personnel, facilities and the existing school bus system. This should include any recommendations of the administrator(s) and plans to mitigate adverse impacts of the proposed development on the provision of educational services.

9. Parks and Recreation Facilities.

- a. Describe any park and recreation facilities to be provided within the proposed subdivision and other recreational facilities that may serve the subdivision.
- b. State how the required parkland dedication is being satisfied.

C. Land Use.

1. Indicate compliance with zoning encompassing all or part of the proposed subdivision. If the proposed subdivision is located near the jurisdictional area of an incorporated city or town, state whether annexation is proposed

2. Describe how the subdivision will affect access to any public lands. Where public lands are adjacent to or near the proposed development, describe present and anticipated uses for those lands.
3. Describe the effect of the subdivision on adjacent land uses.
4. Describe any on-site or off-site land uses creating a nuisance, such as unpleasant odors, unusual noises, dust or smoke.

D. Historical Features.

Provide a letter from the State Historic Preservation Office (SHPO) indicating whether any historic features such as paleontological, archeological or cultural sites, structures, or objects are present on the subject property. If such features are present, provide a written statement outlining any recommendations of SHPO and any plans for inventory, study and/or preservation and mitigation for any adverse impacts.

E. Visual Impact.

1. Describe any efforts to visually blend development activities with natural surroundings.
2. If the subdivision is located near the Yellowstone River or the Rimrocks, describe any potential impacts to these natural amenities. Discuss any mitigation efforts to preserve the views.
3. Provide information regarding revegetation after construction and any proposed landscaping to be provided along streetscapes.

Section 23-905. Summary of Probable Impacts

A. Describe the effects the proposed subdivision has on the following:

1. Agriculture
2. Agricultural water user facilities
3. Local services
4. The natural environment
5. Wildlife and wildlife habitat
6. Public health and safety

- B. Describe how the proposed subdivision complies with the following:
1. Survey requirements provided in Part 4 of the MSPA
 2. These subdivision regulations
 3. The subdivision review process as described in Article 23-300 of these Regulations
- C. Describe how the proposed subdivision provides for easements for the location and installation of any planned utilities.
- D. Describe how the proposed subdivision provides for legal and physical access to each lot and the required notation of that access on the plat.

Article 23-1000. DEDICATION OF PARKS, TRAILS AND OPEN SPACE

Section 23-1001. Purpose.

The purpose of parkland dedication is to:

- Meet the goals and objectives associated with parks, open space, trails and other non-motorized transportation facilities in the Heritage Trail Plan, Yellowstone County and City of Billings Growth Policy, Parks2020, The Yellowstone County Comprehensive Parks Plan, the Yellowstone River Greenway Master Plan and the Billings Urban Area Transportation Plan.
- Preserve critical wildlife habitat, wetlands, riparian areas, river and stream corridors.
- Preserve and protect historical and cultural features.
- Provide active and passive park land and open space that is accessible and functional for use by the residents of a specific development and, where preferred, by the community.

Section 23-1002. Park Land Dedication Requirements (76-3-621, MCA).

- A. Except as provided in Sections 23-1008 and 23-1009, a subdivider shall dedicate to the City a cash or land donation equal to:
1. 11% of the area of the net land proposed to be subdivided into parcels of one-half acre or smaller;
 2. 7.5% of the area of the net land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;
 3. 5% of the area of the net land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

4. 2.5% of the area of the net land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.
- B. Park dedication requirements for subdivisions that provide for multi-family and condominium developments, and that provide permanent, multiple spaces for recreational camping vehicles or manufactured homes shall be in lieu of those provided in Section 23-1002(A) and are as follows:
1. 11% of the area of the net land proposed to be developed at a density of one dwelling unit per half acre or less;
 2. 7.5% of the area of the net land proposed to be developed at a density of between one dwelling unit per half acre and one dwelling unit per one acre;
 3. 5% of the area of the net land proposed to be developed at a density of between one dwelling unit per one acre and one dwelling unit per 3 acres; and
 4. 2.5% of the area of the net land proposed to be developed at a density of between one dwelling unit per 3 acres and one dwelling unit per 5 acres.
- C. The governing body, in consultation with the subdivider, the Planning Board, and the Parks Recreation and Public Lands Department (PRPL) may determine suitable locations for parks and playgrounds and, provided that consideration is given to the preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. The combination could include some land dedication to meet the requirement with the cash-in-lieu balance going toward park improvements on the land dedicated. In determining whether land or cash is suitable, proximity to existing parks, including schools and other public or private recreational facilities shall be considered by the PRPL.
- D. A Park Maintenance District shall be formed or expanded with any new parkland dedication.

Section 23-1003. School Land Dedication in Lieu of Park Land Dedication (76-3-621(8), MCA).

Subject to the approval of the governing body and acceptance by the Billings School District #2 Board of Trustees, a subdivider may dedicate land as required by Section 23-1002 to a school district if the land is adequate to be used for school facilities or buildings.

Section 23-1004. Linear Park Land Dedication for Trail Corridors.

To be consistent with the Heritage Trail Plan, Yellowstone County and City of Billings Growth Policy, Parks2020, the Yellowstone River Greenway Master Plan and the Billings Urban Area Transportation Plan, linear parks for trails may be counted toward the required park dedication

pursuant to Section 23-1002 of this Article. These parks shall provide corridors for trails and meet the following requirements:

- A. The location of the proposed linear park section is identified as part of the Heritage Trail Plan trail system.
- B. The proposed linear park should be no more than twenty (20) feet in width except when designed to incorporate other park features as approved as part of a parks master plan.
- C. Maintenance of the linear park is provided through a Park Maintenance District as with all other dedicated parks.

Section 23-1005. Stormwater Detention/Retention Ponds in Parks.

Stormwater detention or retention ponds may be located within public park land, but such areas shall not count toward the park land dedication requirement unless they are designed and constructed to serve as an amenity to the park and fit into the planned uses and improvements to the park. An example of a stormwater detention area that is an amenity to a park could be several ponds with water features connecting them designed to have a trail around them with picnic shelters.

Section 23-1006. Determining Cash Contribution for Park Land.

Upon submittal of a final plat application, the subdivider shall provide one of the following to verify the fair market value of the land being subdivided that supports the cash contribution for park land the subdivider is providing:

- A. A Comparative Market Analysis performed by a licensed realtor that meets the following criteria:
 - 1. It provides the per acre sale price of at least three (3) comparable parcels of land.
 - 2. The comparable sales must have occurred within one (1) year of the date of the subdivision final plat application submittal.
 - 3. The comparable sales must be within two (2) miles of the subdivision.
- B. A raw land appraisal by a licensed appraiser.
- C. The sale price of the property being subdivided if it was purchased within one (1) year of the date of the subdivision final plat application submittal.

Section 23-1007. Use of Dedicated Money or Land for Parks (76-3-621(5), MCA).

The governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision and community as follows:

- A. The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas, or use the money for the purchase of public open space or conservation easements only if:
 - 1. The park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and
 - 2. The City Council has formally adopted a park plan that establishes the needs and procedures for use of the money.
- B. The governing body may not use more than 25% of the dedicated money for park maintenance.

Section 23-1008. When Park Land Dedication May Not Be Required (76-3-621(2), MCA).

The following subdivisions may not require parkland dedication:

- A. A minor subdivision.
- B. Land proposed for subdivision into parcels larger than 5 acres.
- C. Subdivision into parcels that are all nonresidential.
- D. A subdivision in which parcels are not created, except for condominiums and when that subdivision provides permanent multiple spaces for recreational camping vehicles or mobile homes (See Section 23-1002.B. of this Article).
- E. A subdivision in which only one additional parcel is created.
- F. Cluster Developments and Planned Neighborhood Development (See Sections 703.E. and 709.E. of these Regulations).

Section 23-1009. Waiving Park Land Dedication Requirement (76-3-621(6), MCA).

The governing body shall waive the park dedication requirement if:

- A. The subdivision provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under Section 23-1002 of this Article.
- B. The subdivision provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and the area of

the land proposed to be subdivided, by virtue of providing long-term protection is reduced by an amount equal to or exceeding the area of the dedication required under Section 23-1002 of this Article.

- C. The area of the land proposed to be subdivided, by virtue of a combination of the provisions of Sections 23-1009.A. and B. of this Article, is reduced by an amount equal to or exceeding the area of the dedication required under Section 23-1002 of this Article.
- D. The subdivider dedicates land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and the area of the land equals or exceeds the area of the dedication required under Section 23-1002 of this Article.

Article 23-1100. ADMINISTRATIVE PROVISIONS.

Section 23-1101. Variances.

The City Council may grant reasonable variances from the design and improvement standards of these Regulations when strict compliance would result in undue hardship and the result would not negatively affect public health and safety. The granting of a variance shall not have the effect of nullifying the intent and purpose of these Regulations. The City Council may not approve a variance that would permit structures within the 100-year floodplain, as defined in 76-5-101, MCA.

- A. **Requesting a Variance.** The subdivider shall include with the submission of the preliminary plat a written statement describing the facts of hardship upon which the request for the variance is based. Each requested variance shall be deemed a separate application, for which a fee shall be required, to be processed concurrently with the preliminary plat. Information addressing each of the following findings shall accompany the application to be approved by the City Council. The City Council shall not approve variances unless the subdivider has demonstrated that the request satisfies the following findings:
 - 1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
 - 2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced;
 - 3. The variance will not result in an increase in taxpayer burden;
 - 4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy; and

5. The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.
- B. In granting variances, the City Council may require conditions of approval that will, in their judgment, secure the objectives of these Regulations.
- C. When any such variance is granted, the motion of approval of the proposed subdivision shall contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.
- D. An application for a variance is not necessary where Planned Neighborhood Developments are proposed, as modifications to the standards and requirements of these Regulations may be approved by the City Council.

Section 23-1102. Amendments to Subdivision Regulations.

- A. These Regulations may be amended by the City Council by their own motion or upon recommendation of the Planning Board to the City Council.
- B. Prior to amending these Regulations the governing bodies shall conduct a public hearing and public notice shall be given of the intent to amend these Regulations and of the public hearing by publication of the time and place of the hearing in a newspaper of general circulation in the County not less than 15 days prior to the date of the hearing.

Section 23-1103. Corrections or Vacations of Recorded Final Plats and Supporting Documents.

- A. Corrections to recorded final plats shall be processed as exempt plats pursuant to the requirements set forth in Appendix B, provided that there is evidence of at least one of the following:
 1. There is a discrepancy in the map.
 2. Material evidence is provided that does not appear on any map filed by the Yellowstone County Clerk and Recorder.
 3. There is evidence that suggests alternate locations of lines or points.
 4. The recorded plat does not positively show the location, size of lots or blocks, or the location or width of any street or alley.
- B. Corrections to a recorded Subdivision Improvements Agreement (SIA) or other supporting document of the final plat to which the City Council is party, may be submitted provided that they do not significantly alter the original approval. Requests to alter a recorded SIA or supporting document shall follow these procedures:

1. A written request to amend the recorded document shall be submitted to the Planning Department.
 2. The request will be circulated for review by the agencies affected by the proposed amendment. The Planning Department will, in consultation with the affected agencies, submit a recommendation to the City Council.
 3. A public hearing may be required based on the information received by the reviewing agencies. Notice of the public hearing shall be given in accordance with these Regulations.
 4. The City Council may approve the request if it does not significantly alter the original approval and does not conflict with the review criteria set forth in these Regulations.
- C. Any plat prepared and recorded in accordance with these Regulations may be vacated, either in whole or in part.
1. If the vacation affects five (5) or fewer lots it shall be processed as an exempt plat pursuant to the requirements set forth in Appendix B.
 2. If the vacation affects six (6) or more lots it shall be reviewed as an amended plat pursuant to Section 23-306 of these Regulations.
 3. If the vacation includes public rights-of-way, the applicant must first obtain approval for the right-of-way vacation from the governing body in accordance with the applicable procedures. Title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions, as determined by the City Council or designee.
 4. When any utility lines or any other public or private facility are located in a vacated street or alley, at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility shall be granted an easement over the vacated land to continue the operation and maintenance of the public or private utility facility.

Section 23-1104. Corrections or Adjustments to Plats, Conditions and Supporting Documents after Preliminary Plat Approval.

- A. Minor adjustments may be approved by the City Council or designee, in consultation with the appropriate agencies, prior to the filing of the final plat. Minor adjustments are those changes, which, in the opinion of the City Council or designee, do not affect the basic character of lots or blocks, do not affect the open space requirement, and do not affect the original street design. Minor adjustments shall not change existing Conditions of Approval or require additional conditions. Minor adjustments may require that a new plat be drawn; however they do not require that the plat be re-submitted for preliminary plat review.

- B. Major adjustments are those which, in the opinion of the City Council or designee, substantially alter the basic design, or alter open space requirements of the subdivision. Changes to conditions of approval placed on the preliminary plat shall be considered major adjustments unless otherwise determined using the criteria in Section 23-1104.C., below. Any changes which constitute a major adjustment shall require that a new plat be drawn and the plat be re-submitted for preliminary plat review as specified in Article 23-300.
- C. **Requested Amendments to Conditions.** Upon written request of the subdivider, the City Council may amend conditions of preliminary plat approval where it can be found that errors or changes beyond the control of the subdivider have rendered a condition unnecessary, impossible or illegal. Requests to amend a condition of approval shall follow these procedures:
1. The request to amend the condition shall be submitted in writing to the Planning Department.
 2. The request will be circulated for review by the agencies affected by the proposed amendment. The Planning Department will, in consultation with the affected agencies, submit a recommendation to the City Council.
 3. A public hearing may be required based on the information received by the reviewing agencies. Notice of the public hearing shall be given in accordance with these Regulations.
 4. The City Council may approve the request if it can be found that the original condition is unnecessary, impossible or illegal and does not conflict with the review criteria set forth in these Regulations.
- D. Once the preliminary plat is approved, unless inaccurate or incomplete information has been found or a change to a condition has been requested, the City Council may not impose any additional conditions as a prerequisite to final plat approval, providing that approval is obtained within the original or extended approval period as provided in these Regulations.

Section 23-1105. Appeals.

- A. A person who has filed with the City Council an application for a subdivision under these Regulations may bring an action in district court to sue the City Council to recover actual damages caused by a final action, decision, or order of the City Council or these Regulations that is arbitrary or capricious.
- B. A party who is aggrieved by a decision of the City Council to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within thirty (30) days after the decision, appeal to the district court. The petition must specify the grounds upon which the appeal is made.

C. The following parties may appeal under the provisions of Section 23-1105.B.:

1. The subdivider;
2. A landowner with a property boundary contiguous to the proposed subdivision or a landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
3. The Yellowstone County Board of County Commissioners;

D. For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Section 23-1106. Schedule of Fees.

The required fee shall accompany the preliminary plat, final plat, exempt surveys, and any proposed variances. A schedule of fees for plats shall be established by the City Council by resolution, as set forth in Appendix P.

Section 23-1107. Penalty for Violation.

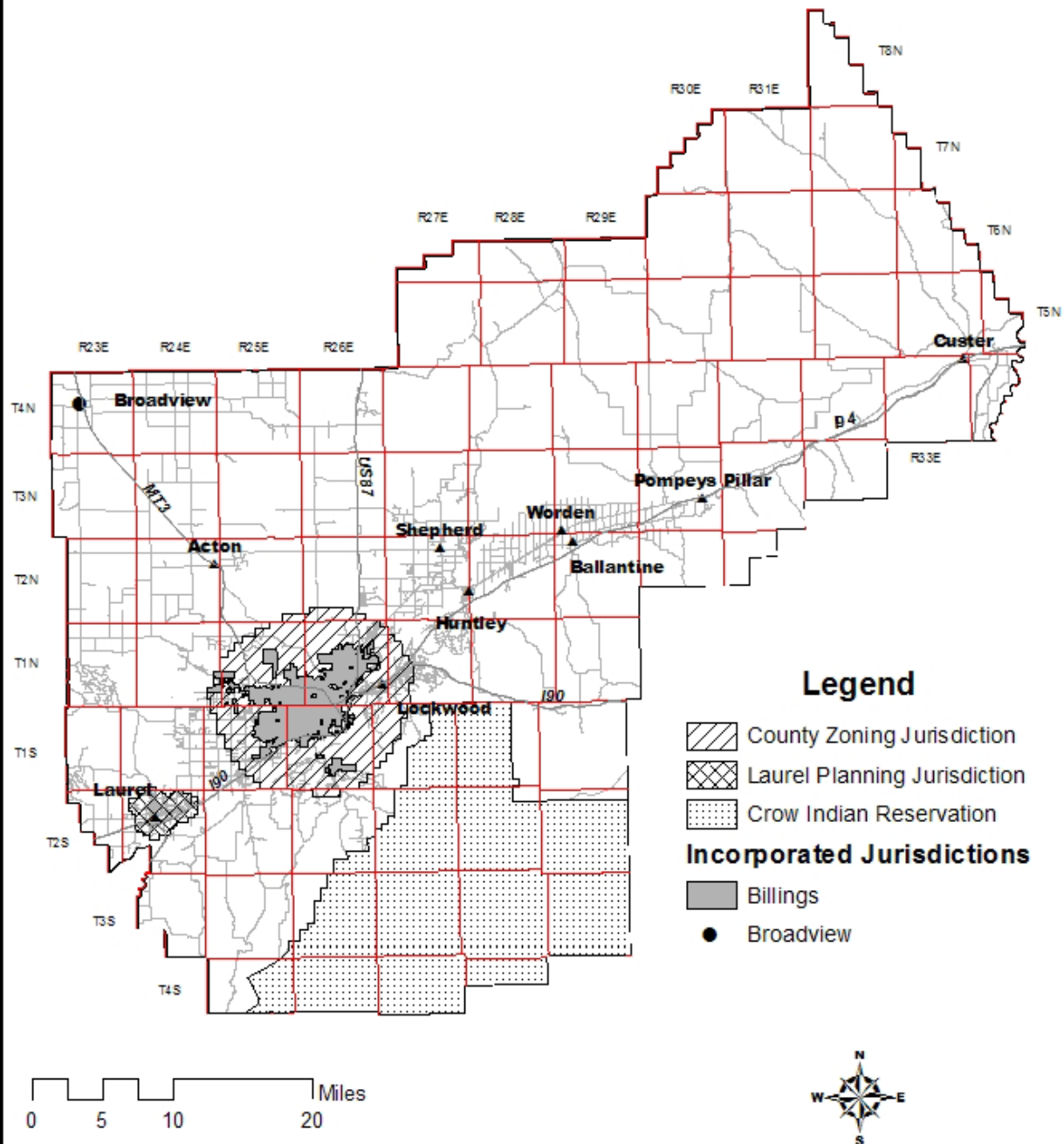
A. Except as provided in 76-3-303, MCA, every final subdivision plat shall be filed with the County Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner. If illegal transfers are completed, the County Attorney shall commence action to enjoin further sales or transfers and compel compliance with the provisions of the Montana Subdivision and Platting Act (76-3-101 et seq., MCA) and these Regulations. The cost of such action shall be imposed against the person transferring the property.

Each sale, lease or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of the Montana Subdivision and Platting Act or these Regulations shall be deemed a separate and distinct offense.

B. Any person who violates any of the provisions of the Montana Subdivision and Platting Act (76-3-101 et seq., MCA) or these Regulations is guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or by imprisonment in jail for not more than three (3) months or by both fine and imprisonment.

APPENDIX A
Jurisdictional Map

Yellowstone County Board of Planning Planning Jurisdiction



APPENDIX B
Evasion Criteria

City of Billings Evasion Criteria

A. Purpose.

The State of Montana provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the development is an attempt to evade the Montana Subdivision and Platting Act (MSPA), 76-3-101, et. seq., MCA.

The following procedures, criteria and requirements shall be used to review an exemption from subdivision review and to determine whether the division of land is for the purpose of evading the MSPA.

B. Procedures and General Requirements.

1. Any person seeking exemption from the requirements of the Subdivision and Platting Act (76-3-101 et. seq., MCA) shall submit to the Clerk and Recorder (1) a certificate of survey, exempt amended plat, or where a survey is not required an instrument of conveyance, and (2) evidence of, and a notarized statement affirming, entitlement to the claimed exemption signed by the landowner.
2. When a certificate of survey, exempt amended plat, or instrument of conveyance is submitted to the Planning Department, the Planning Department shall cause the documents to be examined by the designated agents of the governing body: (the City or County Public Works Department, City or County Attorney, Sanitarian, Treasurer, and Clerk and Recorder). The agents shall examine the proposed land division to determine whether it complies with the requirements set forth in this Resolution, the Montana Subdivision and Platting Act, and the Montana Sanitation in Subdivisions Act (76-4-101, et seq., MCA).
3. After the review to evaluate compliance with the requirements contained in this section, the agents shall submit written comments as to whether the use of the exemption is intended to evade the purposes of the Act, after which a written recommendation will be presented to the governing body for its review.
4. If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, they shall recommend to the Clerk and Recorder to file the certificate of survey, exempt amended plat, or record the instrument of conveyance and accompanying documents. If the agents find that the proposed use of the exemption does not comply with the statutes and these criteria, they shall advise the Clerk and Recorder of their determination and recommend whether or not to file or record the documents, and upon his/her concurrence, the Clerk shall return the materials to the landowner with an explanation as to why the recordation was declined.

APPENDIX B
Evasion Criteria

5. Any person whose proposed use of an exemption has been denied by the designated agents may appeal the agents' decision to the governing body. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is not intended to evade the Act.

If the governing body concludes that the information provided by the developer overcomes the recommendation by staff that the exemption is being used to evade the Act, they may authorize the use of the exemption in writing. A certificate of survey claiming such an exemption from subdivision review, which otherwise is in proper form, may be filed (or an exempt amended plat or an instrument of conveyance recorded) if the governing body has signed a certificate of an exemption as provided in these regulations.

6. Landowners or their representatives are encouraged to meet with the governing body's designated agents to discuss whether a proposed land division or use of an exemption is in compliance with these criteria.

The agents may issue an advisory opinion only, and the opinion does not constitute a commitment by the local officials when the documents creating the proposed land division are submitted to the Clerk and Recorder.

7. The governing body and its agents, when determining whether an exemption is claimed for the purpose of evading MSPA, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: (1) the nature of the use of the parcel, (2) the prior history of uses of the particular tract in question, (3) the proposed configuration of the tracts if the proposed exempt transaction is completed, and (4) any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review (State ex rel. Dreher v. Fuller, 50 St. Rptr. 454, 1993).
8. Exempt divisions of land that would result in a pattern of development equivalent to a subdivision shall be presumed to be adopted for purposes of evading the Act. A "pattern of development" occurs whenever three (3) or more parcels of less than 160 acres each with common covenants or facilities pertaining to each parcel have been divided from the original tract.
9. If the use of an exemption is determined to be an evasion of MSPA, the landowner may submit a subdivision application for the proposed land division.

C Exemption as a Gift or Sale to a Member of the Immediate Family (76-3-207(1)(b), MCA).

1. Statement of Intent: The intention of this exemption is to allow a landowner to convey one parcel to each member of the immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.

APPENDIX B
Evasion Criteria

2. "Immediate family" is defined as the spouse, children by blood or adoption, or parents of the grantor (76-3-103(7), MCA).
3. Any certificate of survey filed that would use this exemption to create a parcel for conveyance to a family member must clearly identify the name of the grantee, the grantee's relationship to the landowner, and the parcel to be conveyed under this exemption, and be accompanied by, or contain, the landowner's written certification of compliance. The certificate of survey or other instrument must also cite the exemption claimed and include the language provided in Section H of this Chapter. Also, the certificate of survey or instrument of conveyance shall be accompanied by a deed or other conveying document.
4. One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review. However, the use of the exemption may not result in more than one remaining parcel of less than 160 acres.
5. Any proposed use of the family conveyance exemption to divide a tract that was previously created through use of an exemption shall be presumed to be an evasion of the Act if it creates a pattern of development consistent with an overall plan with characteristics such as common roads, utility easements, restrictive covenants, open space or common marketing. This presumption will not be rebutted by previous ownership of the tracts, and pertains to remaining tracts of less than 160 acres as well as to those tracts that were previously created through the use of one or more of the exemptions.
6. The use of the family conveyance exemption to divide tracts that were created as part of an overall development plan with characteristics such as common roads, utility easements, restrictive covenants, open space or a common marketing or promotional plan shall be presumed that the use of the exemption is an evasion the Act.

D. Exemption to Provide Security for a Construction Mortgage, Lien or Trust Indenture (76-3-201(1)(b) MCA).

1. Statement of Intent: Under policies of many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a landowner who is buying a tract using financing or a contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.
2. When claiming this exemption, the landowner shall submit the following documents to the City-County Planning Department:
 - a. A signed statement from both the landowner and the lending institution that the

APPENDIX B
Evasion Criteria

creation of the exempted parcel is necessary for the owner to secure construction financing through a construction mortgage, lien or trust indenture on the exempted parcel.

- b. Any certificate of survey that uses this exemption must bear the acknowledged certificate of the property owner stating that the division of land in question is exempted from review as a subdivision, cite the exemption claimed, and include the language provided in Section H. of this Chapter.
3. The use of this exemption is presumed to have been adopted for the purpose of evading MSPA if:
 - a. It will create a site for more than one dwelling unit;
 - b. The loan is for someone other than the owner of record or the recorded contract purchaser of the parcel to be divided.
 - c. It will create a pattern of development which is equivalent to a subdivision with characteristics such as common roads, sewer, water, utility easements, restrictive covenants, open space or a common marketing or promotional plan.

E. Exemption for Agricultural Purposes (76-3-207 (1)(c), MCA).

1. Statement of Intent: The intention of this exemption is to allow a landowner to create a parcel without local review where the parcel will be used only for production of livestock or agricultural crops and where no residential, commercial, or industrial buildings will be built.
2. "Agricultural Purpose," for purposes of these evasion criteria, means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the Montana Department of Environmental Quality (MDEQ), provided the applicable exemption is properly invoked by the property owner.
3. The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purposes of evading MSPA:
 - a. The parties to the transaction by gift, sale, or agreement, must enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes or open space. The covenant must be signed by the property owner, the buyer or lessee and the governing body. An example of a covenant is provided in Section H. of this Chapter.
 - b. The landowner must demonstrate that the planned use of the exempted

APPENDIX B

Evasion Criteria

parcel is for agricultural purposes and that no residential, commercial or industrial buildings will be built (e.g., a statement signed by the buyer).

- c. Any change in use of the land for anything other than agricultural purposes subjects the parcel to full review as a subdivision.
- d. Residential, commercial and industrial structures, including facilities for commercial processing of agricultural products are excluded uses on parcels created under this exemption unless the covenant is revoked and the land division is reviewed under MCA Title 76, Chapter 3.
- e. A certificate of survey that uses this exemption must bear the acknowledged certificate of the property owner stating that the division of land in question is exempted from review as a subdivision, cite the exemption claimed, and include the language provided in Section H. of this Chapter.

F. Relocation of Common Boundary (76-3-207(1) (a, d and e), MCA).

1. Statement of Intent: The intended purpose of this exemption is to allow a change in the location of a boundary line between two parcels and to allow a one-time transfer of a tract to effect that change in location without subdivision review.
2. If the relocation of a common boundary would result in the permanent creation of an additional parcel of land, the division of land must be reviewed as a subdivision. If a temporary tract is created, language shall be added to indicate that the temporary tract is merged forever with the adjacent tract.
3. Within a platted subdivision, a division of lots that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the County Clerk and Recorder in accordance with Section 306 of these Regulations.
4. Certificates of survey or amended plats claiming this exemption must be clearly distinguished between the existing boundary location and the new boundary. This shall be accomplished by representing the existing boundary with a dashed line and the new boundary with a solid line. The appropriate certification must be included on the certificate of survey as provided in Section H. of this Chapter.

G. Remainder Parcels.

Statement of Intent: Any part of an original tract of record, less than 160 acres that is left following the segregation of other parcels from the tract for the purpose of transfer shall be reviewed as part of the subdivision.

APPENDIX B
Evasion Criteria

H. Certification.

1. **Exemption Certificates.** The following represents examples of certificates to be used on certificates of surveys for the following types of exemptions: relocation of common boundaries, land gift or sale to family member, agricultural exemption, and security for constructions.

CERTIFICATE OF EXEMPTION
(RELOCATION OF COMMON BOUNDARY)

I (We) certify that the purpose of this survey is to relocate common boundaries between adjoining properties existing outside of a platted subdivision. Therefore this survey is exempt from review as subdivision pursuant to Section 76-3-207 (1)(a), (d), or (e), MCA.

DATED THIS _____ day of _____, 20_____.

CERTIFICATE OF EXEMPTION
(FAMILY GIFT OR SALE)

I (We) certify that the purpose of this survey is to create Tract # _____ for transfer of ownership as a family gift or sale and that no prior family sale has been conveyed to ((name), our (my) (relationship)_____ and that this exemption complies with all conditions imposed on its use. Therefore this survey is exempt from review as a subdivision pursuant to Section 76-3-207(1)(b), MCA, and the City of Billings Subdivision Regulations.

DATED THIS _____ day of _____, 20_____.

APPENDIX B
Evasion Criteria

CERTIFICATE OF EXEMPTION
(FOR AGRICULTURAL PURPOSES)

I (We) certify that the purpose of this survey is to create Tract #_____, as shown on this certificate of survey, for gift or sale, which is to be used for agricultural purposes only, and that this exemption complies with all conditions imposed on its use. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-207(1)(c), MCA and the City of Billings Subdivision Regulations.

I also hereby enter a covenant, to run with the land, that Tract _____ as shown hereon, will be used exclusively for agricultural purposes only. No building or structure requiring water or sewer facilities shall be utilized on Tract _____. This covenant is revocable only by the mutual consent of the governing body and the property owner.

DATED THIS _____ day of _____, 20_____.

(Signature) _____
Property Owner(s)

CERTIFICATE OF EXEMPTION
(SECURITY FOR CONSTRUCTION)

I certify that the purpose of this survey is to create a parcel of land to provide security for construction or loan purposes and that this exemption complies with all conditions imposed on its use. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-201(1)(b) MCA and from review by the Montana Department of Environmental Quality (16.16.605(1)(b)).

DATED THIS _____ day of _____, 20_____.

APPENDIX B
Evasion Criteria

2. **Governing Body Certification.** If the exemption is approved after appeal to the Governing Body, the Governing Body shall so certify in a printed certificate on the Certificate of Survey.

I, Mayor of the City of Billings, do hereby certify that the use of the exemption claimed on the accompanying Certificate of Survey has been duly reviewed, and has been found to conform to the requirements of the MSPA, Section 76-3-101, et. seq., MCA, and the City of Billings Subdivision Regulations.

DATED THIS _____ day of _____, 20_____.

(Signature)

APPENDIX C
Preapplication Recommendations

The following information is recommended submittal material for all pre-application meeting requests. The analysis of the feasibility of the proposal by staff may depend on the amount of information that is provided. The submittal material must be provided to the Planning Department at least one week in advance of the scheduled pre-application meeting time.

Submittal Copies Required

10 Copies of conceptual drawing and other supplemental materials

Conceptual drawing identifying the following:

1. Proposed subdivision name
2. Legal description including quarter Section, Township and Range and any underlying survey data
3. Owner, subdivider (if different from owner)
4. Proposed lot layout with approximate dimensions and size
5. Existing streets, roads, alleys and/or access easements within or adjacent to the subject property
6. Proposed legal and physical access to each lot and dimensions of right-of-way and street surfaces; proposed road names
7. Existing easements on or adjacent to the subject property (i.e. access, irrigation, utility, pipelines, trails, etc.)
8. Proposed easements
9. Location of all existing physical features on or adjacent to the subject property, including but not limited:
 - Structures
 - Above-ground utility lines
 - Irrigation facilities
 - Rock outcrops
 - Topographic features (hills, drainages, draws, etc.)
 - Streams, lakes, wetlands, areas within flood plain
10. Location of existing or proposed fire hydrants, or other fire suppression water source
11. Potential layout of:
 - Water distribution system
 - Sanitary sewer system
 - Storm drainage facilities
12. Existing and proposed zoning, if applicable
13. Existing and proposed land use
14. Existing or proposed parkland or trail easements

APPENDIX C
Preapplication Recommendations

Recommended Supplemental and Supporting Documentation

1. Vicinity map showing access to and from property
2. USGS Topographic map with subject property identified
3. Soils survey map (County) or soils hazard map (City) with subject property identified
4. Flood Insurance Rate Map (FIRM) if property is in or nearby a mapped floodplain
5. Well logs from adjacent properties
6. Zoning map showing subject property and surrounding property zoning
7. Photographs of site
8. When subject property is proposed to be subdivided in separate filings, a Master Plan of the entire area to be developed

Frequently Asked Questions at a Pre-Application Meeting

1. What type of review does the proposed subdivision require? (i.e. major, 1st minor, subsequent minor, expedited review, exempt, amended) Procedures for the appropriate review type will be explained.
2. Is the property within an existing subdivision or certificate of survey?
3. Is there an existing Subdivision Improvements Agreement?
4. Will the property be further subdivided?
5. Is there any right-of-way dedication necessary?
6. Does the Transportation Plan or Heritage Trail Plan affect the property?
7. Will the subdivision generate 500 Average Daily Trips (ADT)? If so, Traffic Study is required.
8. What improvements are necessary? (i.e. water, sewer, storm water management, street, sidewalk/trail)
9. Is public water and sanitary sewer service available or within 500 feet of the property?
10. Will there be a need to request any variances from the Subdivision Regulations?
11. What is the proposed use of the subdivision?
12. Is the property zoned? Is a zone change proposed? Is a special review through zoning needed for the proposed uses?
13. How will parkland dedication requirements be met (if applicable)?
14. Is an Environmental Assessment required?
15. Is the property within a flood hazard area?
16. Are there existing irrigation water rights on the property? If so, how will they be delineated or severed? Will the irrigation facility be moved, altered or

APPENDIX C
Preapplication Recommendations

covered?

APPENDIX D
Preliminary Plat Requirements

The following information is required for all preliminary plat submittals

Submittal Copies

_____	24"x36" plat and supplements (number of copies specified by staff)
_____	11"x17" plat and supplements (number of copies specified by staff)
<u> 1 </u>	Electronic copy of plat (in AutoCad ® or ArcInfo ® format) and supplements (a high quality scanned copy in .jpg or .pdf may suffice if other formats are unavailable)
<u> 1 </u>	Electronic copy of plat (in .jpg or .pdf format)

Plat Contents:

1. Subdivision name that does not duplicate an existing subdivision name
2. Legal description including quarter section, Township and Range
3. Owner, subdivider (if different from owner), engineer and surveyor
4. Date plat was prepared
5. North arrow and scale bar
6. Vicinity map of sufficient detail to locate the subdivision
7. Names and addresses of adjoining property owners
8. Names of adjoining subdivisions and certificates of survey
9. Location of all existing physical features on land adjacent to and within subdivision, including but not limited to:
 - Structures
 - Utilities
 - Irrigation facilities
 - Rock outcrops
 - Areas of 25% slope or greater
10. Locations and dimensions of:
 - Proposed streets and street names that do not duplicate existing street names
 - Sidewalks and/or pathways, trails
 - Alleys, internal private streets, driveways
 - Easements
 - Parkland
 - Street centerline curve radii
11. Proposed layout of:
 - Water distribution system
 - Sanitary sewer system
 - Storm drainage facilities
 - Location of nearest available utilities
12. Lot lines, lot numbers, lot areas and block numbers

APPENDIX D
Preliminary Plat Requirements

13. Site data including:
 - Number of lots
 - Maximum lot area
 - Minimum lot area
 - Area of parkland
 - Linear feet of streets
 - Net and gross acreage of land to be subdivided
 - Existing and proposed zoning
 - Existing and proposed land use
14. Tentative finished grades of each street indicated by spot elevations
15. Location of streams, lakes, wetlands, floodplain boundaries, and land subject to flooding
16. In case of a subsequent subdivision, the subdivision superimposed on a copy of the existing plat
17. All plats shall be neatly drawn in a professional manner
18. All plats to be filed as an addition to the City shall be noted in title
19. Contour lines of not more than five (5) foot intervals; where lots are proposed on slopes 10% or less, contours must be shown at 2 foot intervals
20. Approximate location of all sections lines and corners pertinent to the proposed subdivision.

APPENDIX E
Preliminary Plat Application

Subdivision Name: _____

Date of Preapplication Meeting: _____

Type: Major _____ First Minor _____ Subsequent Minor _____

Tax Code: _____

Location:

Legal Description: _____

1/4 Section: _____, Township: _____, Range: _____

General Location: _____

Subdivider Information:

Name (Include a list of officers if corporation): _____

Address: _____

Telephone: _____ Email: _____

Owner Information:

Name: _____

Address: _____

Telephone: _____ Email: _____

Plat Data:

Gross Area: _____

Net Area: _____

Number of Lots: _____

Maximum Lot Size: _____

Minimum Lot Size: _____

Linear Feet of Streets: _____

Existing Zoning: _____

Surrounding Zoning: _____

North: _____

South: _____

East: _____

West: _____

Existing Land Use: _____

Proposed Land Use: _____

Parkland Requirement:

Land: _____ Acres: _____

Cash: _____ Cash: \$ _____

APPENDIX E
Preliminary Plat Application

Variances Requested (list and attach Variance Request):

1. _____
2. _____
3. _____

Service Providers for Proposed Subdivision

Gas: _____

Electric: _____

Telephone: _____

School (Elementary, Middle, High): _____

Irrigation District: _____

Cable Television: _____

List of Materials Submitted with Application

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Agent Information

Name: _____

Address: _____

Telephone: _____ Email: _____

I declare that I am the owner of record of the above-described property, and have examined all statements and information contained herein, and all attached exhibits, and to the best of my knowledge and belief, is true and correct.

Owner of Record

Date

Owner Under Contract

Date

The submission of a preliminary plat application constitutes a grant of permission by the subdivider to enter the subject property (Sec. 23-109).

APPENDIX F
Required Supporting Documents for Major Preliminary Plat Applications

Supplemental and Supporting Documentation

1. Names and addresses of immediately adjoining property owners typed or neatly printed on address labels.
2. Draft Subdivision Improvements Agreement (Appendix L).
3. Environmental Assessment or Summary of Probable Impacts, when applicable (Article 23-900).
4. Traffic Accessibility Study (TAS) when applicable, containing the following information:
 - a. Trip generation, using the Institute of Transportation Engineers Trip Generation Manual;
 - b. Trip distribution;
 - c. Traffic assignment;
 - d. Capacity analysis;
 - e. Evaluation; and
 - f. Recommended access plan, including access points, modifications and any mitigation techniques.
 - g. Land use and trip generation in the form of a table of each type of land use, the number of units or square footage, as appropriate, the trip rates used (daily and peak) and resulting trip generation.
 - h. Traffic graphics, which show:
 - AM peak hour site traffic;
 - PM peak hour site traffic;
 - AM peak hour total traffic;
 - PM peak hour total traffic;
 - Total daily traffic (with site generated traffic shown separately).
 - i. AM and PM capacity analysis with an AM and PM peak hour capacity analysis provided for:
 - All major drive accesses that intersect collector or arterial streets or roads; and
 - All arterial-arterial, collector-collector and arterial-collector intersections within one mile of the site, or as required by the Director of Public Service during the pre-application review.
 - j. Capacity. Indicate the levels of service (before and after development) of existing and proposed streets and roads, including appropriate intersections, to safely handle any increased traffic. Describe any anticipated increased maintenance that will be necessary due to increased traffic and who will pay the cost of maintenance.
 - k. Bicycle and Pedestrian Pathways, Lanes and Routes. Describe bicycle and pedestrian pathways, lanes or routes to be developed with the development.
 - l. Traffic Calming. Detailed drawings of any proposed traffic calming installations, including locations and turning radius templates.
5. Preliminary water and sanitation information, including:
 - a. A site plan or exhibit that shows:
 - The location, within 100 feet outside of the exterior property line of subdivision and on the proposed lots, of:

APPENDIX F
Required Supporting Documents for Major Preliminary Plat Applications

- Floodplains
- Surface water features
- Springs
- Irrigation ditches
- Existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
- For parcels less than 20 acres, mixing zones identified, and
- The representative drainfield site used for the soil profile description, and
- The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities
- b. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the Montana Department of Environmental Quality (MDEQ).
- c. A drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by MDEQ pursuant to 76-4-104, MCA.
- d. Evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:
 - A soil profile description from a representative drainfield site identified on the vicinity map, as provided above, that complies with standards published by the MDEQ,
 - Demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer, and
 - In cases in which the soil profile or other information indicates that groundwater is within 7 feet of the natural ground surface, evidence that the groundwater will not exceed the minimum vertical separation distance
- e. For new water supply systems, unless cisterns are proposed, evidence of adequate water availability;
 - Obtained from well logs or testing of onsite or nearby wells;
 - Obtained from information contained in published hydrogeological reports; or
 - As otherwise specified by rules adopted by the MDEQ pursuant to 76-4-104, MCA
- f. A preliminary analysis of potential impacts to the groundwater quality from new wastewater treatment systems, using as guidance rules adopted by the Board of Environmental Review pursuant to 75-5-301 and 75-5-303, MCA related to standard mixing zones for groundwater, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment

APPENDIX F
Required Supporting Documents for Major Preliminary Plat Applications

systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection, the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, Chapter 4.

- g. A subdivider whose land division is excluded from review under 76-4-125(2), MCA is not required to submit the water and sanitation information listed above.
- 6. Geotechnical Report that includes:
 - a. A summary of hazards present and recommended actions.
 - b. A description of proposed construction.
 - c. A description of the investigation methods, including field investigations, laboratory analysis and report preparation.
 - d. A description of the site conditions, including soil, bedrock, groundwater and other physical features present that may limit development.
 - e. Analysis of engineering properties and recommendations in relation to foundations; over-excavation and engineered fill; bearing capacity; lateral loads on basement walls; soil friction factor; earthwork; site grading and runoff control; foundation and retaining wall drainages; slabs on grade; reinforcing, utilities testing and concrete considerations; and ventilation and radon.
 - f. Summary of engineering limitations.
 - g. The report shall be accompanied by figures and tables sufficient to convey the results of each test hole and an overall site plan showing the location of each test hole. The spacing of test holes will be dependent of the horizontal and vertical variation of the subsurface material. In all cases, the spacing should result in a representation of all soils present on the subdivision.
- 7. Draft protective and restrictive covenants, if any.
- 8. Draft Articles of Incorporation when Homeowner's Association is proposed.
- 9. When a tract of land is to be subdivided in separate filings, a Master Plan of the entire area to be developed.

APPENDIX G
Required Supporting Documents for First Minor Preliminary Plat Applications

Supplemental and Supporting Documentation

1. Draft Subdivision Improvements Agreement
2. Traffic Accessibility Study (TAS) when applicable, containing the following information:
 - a. Trip generation, using the Institute of Transportation Engineers Trip Generation Manual;
 - b. Trip distribution;
 - c. Traffic assignment;
 - d. Capacity analysis;
 - e. Evaluation; and
 - f. Recommended access plan, including access points, modifications and any mitigation techniques.
 - g. Land use and trip generation in the form of a table of each type of land use, the number of units or square footage, as appropriate, the trip rates used (daily and peak) and resulting trip generation.
 - h. Traffic graphics, which show:
 - AM peak hour site traffic;
 - PM peak hour site traffic;
 - AM peak hour total traffic;
 - PM peak hour total traffic;
 - Total daily traffic (with site generated traffic shown separately).
 - i. AM and PM capacity analysis with an AM and PM peak hour capacity analysis provided for:
 - All major drive accesses that intersect collector or arterial streets or roads; and
 - All arterial-arterial, collector-collector and arterial-collector intersections within one mile of the site, or as required by the Director of Public Service during the pre-application review.
 - j. Capacity. Indicate the levels of service (before and after development) of existing and proposed streets and roads, including appropriate intersections, to safely handle any increased traffic. Describe any anticipated increased maintenance that will be necessary due to increased traffic and who will pay the cost of maintenance.
 - k. Bicycle and Pedestrian Pathways, Lanes and Routes. Describe bicycle and pedestrian pathways, lanes or routes to be developed with the development.
 - l. Traffic Calming. Detailed drawings of any proposed traffic calming installations, including locations and turning radius templates.
3. Preliminary water and sanitation information, including:
 - a. A site plan or exhibit that shows:
 - The location, within 100 feet outside of the exterior property line of subdivision and on the proposed lots, of:
 - Floodplains
 - Surface water features
 - Springs
 - Irrigation ditches
 - Existing, previously approved, and, for parcels less than 20 acres,

APPENDIX G

Required Supporting Documents for First Minor Preliminary Plat Applications

- proposed water wells and wastewater treatment systems;
- For parcels less than 20 acres, mixing zones identified, and
- The representative drainfield site used for the soil profile description, and
- The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities
- b. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the Montana Department of Environmental Quality (MDEQ).
- c. A drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by MDEQ pursuant to 76-4-104, MCA.
- d. Evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:
 - A soil profile description from a representative drainfield site identified on the vicinity map, as provided above, that complies with standards published by the MDEQ,
 - Demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer, and
 - In cases in which the soil profile or other information indicates that groundwater is within 7 feet of the natural ground surface, evidence that the groundwater will not exceed the minimum vertical separation distance
- e. For new water supply systems, unless cisterns are proposed, evidence of adequate water availability;
 - Obtained from well logs or testing of onsite or nearby wells;
 - Obtained from information contained in published hydrogeological reports; or
 - As otherwise specified by rules adopted by the MDEQ pursuant to 76-4-104, MCA
- f. A preliminary analysis of potential impacts to the groundwater quality from new wastewater treatment systems, using as guidance rules adopted by the Board of Environmental Review pursuant to 75-5-301 and 75-5-303, MCA related to standard mixing zones for groundwater, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection, the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, Chapter 4.
- g. A subdivider whose land division is excluded from review under 76-4-125(2),

APPENDIX G
Required Supporting Documents for First Minor Preliminary Plat Applications

MCA is not required to submit the water and sanitation information listed above.

4. Geotechnical Report that includes:
 - a. A summary of hazards present and recommended actions.
 - b. A description of proposed construction.
 - c. A description of the investigation methods, including field investigations, laboratory analysis and report preparation.
 - d. A description of the site conditions, including soil, bedrock, groundwater and other physical features present that may limit development.
 - e. Analysis of engineering properties and recommendations in relation to foundations; over-excavation and engineered fill; bearing capacity; lateral loads on basement walls; soil friction factor; earthwork; site grading and runoff control; foundation and retaining wall drainages; slabs on grade; reinforcing, utilities testing and concrete considerations; and ventilation and radon.
 - f. Summary of engineering limitations.
 - g. The report shall be accompanied by figures and tables sufficient to convey the results of each test hole and an overall site plan showing the location of each test hole. The spacing of test holes will be dependent of the horizontal and vertical variation of the subsurface material. In all cases, the spacing should result in a representation of all soils present on the subdivision.
5. Draft protective and restrictive covenants, if any.
6. Draft Articles of Incorporation when Homeowner's Association is proposed.
7. When a tract of land is to be subdivided in separate filings, a Master Plan of the entire area to be developed.

City of Billings
EXPEDITED FINAL PLAT APPLICATION

- if yes, please attach copies.

APPENDIX H
Expedited Final Plat Application

9. Name, address & telephone of professional consultant(s)

Surveyor/engineer: _____

Address: _____

Attorney: _____

Address: _____

Other: _____

Address: _____

I declare that I am the owner of record and that all the statements and information contained in all exhibits transmitted herewith are true and correct. I hereby apply for approval of the final plat of:

Owner/Owners: _____

(Signature of Owner/Owners)

Owners under Contract: _____

(Signature of Owners under contract)

City of Billings
FINAL PLAT APPLICATION

- Required:**

APPENDIX I
Final Plat Application

Other:

10. **Deed restrictions or covenants?** Yes _____ No _____

if yes, please attach copies.

11. **Name, address & telephone of professional consultant(s)**

Surveyor/engineer: _____

Address: _____

Attorney: _____

Address: _____

Other: _____

Address: _____

I declare that I am the owner of record and that all the statements and information contained in all exhibits transmitted herewith are true and correct. I hereby apply for approval of the final plat of:

Owner/Owners: _____

(Signature of Owner/Owners)

Owners under Contract: _____

(Signature of Owners under contract)

APPENDIX J
Final Plat Requirements

1. A final subdivision plat may not be approved by the governing body or filed by the County Clerk and Recorder unless it complies with the following requirements:
 - a. Final subdivision plats must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches or 24 inches by 36 inches overall to include a 1 1/2-inch margin on the binding side.
 - b. Two signed copies on 3 mil. or heavier matte stable-base polyester film or equivalent must be submitted.
 - c. If more than one sheet must be used to adequately depict the land subdivided, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed or referred to on one sheet.
 - d. A survey that modifies a filed subdivision plat must be entitled "amended plat of (lot, block and name of subdivision being amended)," and unless it is exempt from subdivision review by [76-3-201](#) or [76-3-207](#)(1)(d) or (e), MCA, may not be filed with the County Clerk and Recorder unless it meets the filing requirements for final subdivision plats specified in these requirements.
2. A final plat submitted for approval must show or contain, on its face the following information. The surveyor may, at his or her discretion, provide additional information regarding the survey.
 - a. A title or title block indicating the quarter section, section, township, range, principal meridian, county and, if applicable city or town, in which the subdivision is located. The title of the plat must contain the words "plat" and either "subdivision" or "addition".
 - b. The name of the person(s) who commissioned the survey and the name(s) of the owner of the land to be subdivided if other than the person(s) commissioning the survey, the names of any adjoining platted subdivisions, and the numbers of any adjoining certificates of survey previously filed.
 - c. Vicinity sketch of sufficient area to identify the location of the subdivision.
 - d. A north arrow.
 - e. A scale bar. The scale must be sufficient to legibly represent the required information and data on the plat.
 - f. The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM [8.94.3001](#)(1)(c).
 - i. If additional monuments are to be set after the plat is filed, the location of these monuments must be shown by a distinct symbol, and the plat must bear a certification by the surveyor as to the reason the monuments have not been set and the date by which they will be set.

APPENDIX J
Final Plat Requirements

- ii. All monuments found during a retracement that influenced the position of any corner or boundary indicated on the plat must be clearly shown as required by ARM [8.94.3001](#)(1)(c).
- g. The location of any section corners or corners of divisions of sections pertinent to the survey.
- h. Witness and reference monuments and basis of bearings. For purposes of these the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown on the plat. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the plat shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.
- i. The bearings, distances and curve data of all boundary lines. If the subdivision is bounded by an irregular shoreline or body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.
 - i. The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel with one or more riparian boundaries as the parcel existed at the time of survey.
 - ii. For purposes of these regulations a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.
- j. Data on all curves sufficient to enable the re-establishment of the curves on the ground. For circular curves these data must at least include radius and arc length. For non-tangent curves, which must be so labeled, the plat must include the bearings of radial lines or chord length and bearing.
- k. Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.
- l. All lots and blocks in the subdivision, designated by number, the dimensions of each lot and block, the area of each lot, and the total acreage of all lots. (Excepted parcels must be marked "Not included in this subdivision" or "Not included in this plat," as appropriate, and the bearings and lengths of these excepted boundaries must be shown.)
- m. All streets, alleys, avenues, roads and highways; their widths (if ascertainable) from public records, bearings and area; the width and purpose of all road rights-of-way and all other easements that will be created by the filing of the plat; and the names of all streets, roads and highways.
- n. The location, dimensions and areas of all parks, common areas and other grounds dedicated for public use.

APPENDIX J
Final Plat Requirements

- o. The total acreage of the subdivision.
- p. A narrative legal description of the subdivision as follows:
 - (i) If the parcel being subdivided is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.
 - (ii) If the plat depicts the division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the number of the parcel or lot affected by the survey.
 - (iii) If the parcel surveyed does not fall within (2)(p)(i) or (ii), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision.
 - (iv) If the plat establishes the boundaries of a subdivision containing one or more interior parcels, the information required by this subsection is the legal description of the perimeter boundary of the subdivision.
- q. **Certificate of Surveyor.** The dated signature and the seal of the surveyor responsible for the survey and a memorandum of any oaths administered under [76-3-405](#), MCA. The affixing of this seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting Act ([76-3-101](#) through [76-3-625](#), MCA) and the regulations adopted under that Act.
- r. **Certificate of Dedication.** The dated, signed and acknowledged consent to the subdivision of the owner of the land being subdivided. For purposes of this rule when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "owner" and "owner of the land" refers to the seller under the contract-for-deed.
- s. **If applicable, Consent to Platting.**
- t. **Certificate of Approval.** Certification by the governing body that the final subdivision plat is approved.
- u. **Notice of Approval.** Statement that the final plat is approved by the Yellowstone County Board of Planning.
- v. **Certificate of City Engineer's Office.** If applicable, Certification by the City Engineer that municipal water, sewage disposal and solid waste disposal will be provided. (City only)
- w. **Errors and Omissions Review.** Certification of the reviewing surveyor that the survey has been examined and approved.
- x. **Certificate of City Attorney.** Certification that the plat has been reviewed and accepted by the City Attorney.

APPENDIX J
Final Plat Requirements

- y. **Certificate of County Treasurer.** Certification of county treasurer showing current tax payment.
- z. If applicable, the owner's certificate of dedication of streets, parks, playground easements or other public improvements
- aa. Space for the clerk and recorder's filing information.

** See Appendix B for templates of all Certifications.

3. Supporting documentation shall consist of the following:

- a. Final plat application completed and signed;
- b. All documentation necessary to guarantee the complete installation of all required improvements including the Subdivision Improvements Agreement and any documents related to financial security for improvements;
- c. An original Title Report or Subdivision Guarantee prepared within the recent 6 months;
- d. Evidence that the Montana Department of Environmental Quality or Yellowstone County Public Health Department has approved the sewage disposal system and/or the water system. This applies to individual and public water supply and sewage disposal systems. When applicable and pursuant to Section 23-504, evidence signed by the City shall be submitted;
- e. Copies of protective and restrictive covenants, if any;
- f. Applicable final plat fee.

APPENDIX K
Subdivision Improvements Agreement Template

SUBDIVISION IMPROVEMENTS AGREEMENT
(*Name of Subdivision*)
Table of Contents
(City of Billings, Montana)

I.	Variances	(page #)
II.	Conditions that Run with the Land	
III.	Transportation	
	A. Streets	
	B. Sidewalks	
	C. Street Lighting	
	D. Traffic Control Devices	
	E. Access	
	F. Heritage Trail Plan	
	G. Public Transit	
IV.	Emergency Services	
V.	Storm Drainage	
VI.	Utilities	
	A. Water	
	B. Sanitary Sewer	
	C. Power, Telephone, Gas, and Cable Television	
VII.	Parks/Open Space	
VIII.	Irrigation	
IX.	Soils/Geotechnical Study	
X.	Phasing of Improvements	
XI.	Financial Guarantees	
XII.	Legal Provisions	

APPENDIX K
Subdivision Improvements Agreement Template

SUBDIVISION IMPROVEMENTS AGREEMENT

(Name of Subdivision)

This agreement is made and entered into this ____ day of _____, 200__, by and between *(Subdivider)*, whose address for the purpose of this agreement is **ADDRESS**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

(for minor subdivisions insert the following)

WHEREAS, the plat of *(Subdivision Name)*, located in the City of Billings, Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

(for major subdivisions, exclude above and insert the following)

WHEREAS, at a regular meeting conducted on ____ day of _____, 2004, the Board of Planning recommended conditional approval of a preliminary plat of *(Subdivision Name)*; and

(Insert the following for both major and minor subdivisions)

WHEREAS, at a regular meeting conducted on ____ day of _____, 2004, the City Council conditionally approved a preliminary plat of *(Subdivision Name)*; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to *(Subdivision Name)* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

A. Subdivider has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City’s Subdivision Regulations (Section 23.1401, BMCC): *(Please insert any applicable variances in the provided 1, 2, 3 format)*

1. Variance #1

2. Variance #2

APPENDIX K
Subdivision Improvements Agreement Template

II. CONDITIONS THAT RUN WITH THE LAND *(Please insert any applicable conditions in the provided A, B, C format. The following are typical conditions that run with the land which may or may not be applicable to this subdivision)*

- A.** Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development.
- B.** Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.
- C.** Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction.
- D.** No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.
- E.** There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.
- F.** Lot owners should be aware that portion(s) of this property lie within the floodplain/floodway, as depicted on the Flood Insurance Rate Maps (FIRM) for this area. Please be advised that special development restrictions may apply within these specified areas.

III. TRANSPORTATION

A. Streets

(This section should include, but not be limited to the following):

- Rights-of-way widths
- Pavement widths and surface types
- Curb and gutter design
- Other required street improvements

APPENDIX K
Subdivision Improvements Agreement Template

B. Sidewalks

(This section should include, but not be limited to the following):

- Types of required sidewalk
- Location of required sidewalks
- Widths and surface
- Other required sidewalk improvements

C. Street Lighting *(Describe)*

- Location and types of lighting to be installed, if required

B. Traffic Control Devices *(Describe)*

- Location and type of proposed stop signs and/or signals
- Other required traffic control devices

C. Access *(Describe)*

- Location and widths of proposed accesses
- Restrictions on access
- Other required access improvements

D. Heritage Trail Plan *(Include)*

- Statement of whether subdivision is within the Heritage Trail Plan
- Location and type of proposed trail or trail connection
- Ownership arrangement of trail corridor – easement or dedication
- Other required trail improvement

E. Public Transit *(Describe)*

- Location and type of improvements required to ensure public transit service

IV. EMERGENCY SERVICE

(This section should include, but not be limited to the following):

- Location and specifications for emergency access road including width, base and surface material, blockade and required signage
- Urban Wildland Interface Code requirements (required for highly wooded areas)

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Section 23-706, BMCC, a stormwater management plan shall be submitted to and approved by the Engineering Division.

(This section should include, but not be limited to the following):

- Description and location of existing and proposed detention facilities
- Any improvements to the existing system
- Other required improvements

VI. UTILITIES

APPENDIX K
Subdivision Improvements Agreement Template

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department – Distribution and Collection Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. 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 construction fees and franchise fee in effect shall be submitted with the applications.

It is acknowledged that the properties subject to this Subdivision Improvements Agreement shall be subject to the appropriate water and wastewater local and interior construction fees in effect at the time of payment. Fees shall be paid for the lots in each phase as applied for in the extension application and as per the first paragraph above.

The Developer/Owner acknowledges that the subdivision shall be subject to the applicable System Development Fees in effect at the time new water and/or sanitary sewer service connections are made.

It is acknowledged that all fees stated above are subject to the Franchise Fee in effect at the time of payment.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

A. Water

(This section should describe any water facilities unique to the subdivision).

B. Sanitary Sewer

(This section should describe any sanitary sewer facilities unique to the subdivision).

C. Power, Telephone, Gas, and Cable Television

(This section should include, but not be limited to the following):

- Services to be provided within the public right-of-way, existing or to be installed
- Width and location of required utility easements

VII. PARKS/OPEN SPACE

(This section should include, but not be limited to the following):

- The parkland requirement for this subdivision (dedication or cash-in-lieu)
- Required park improvements to the park and timing of construction
- Required formation of a Park Maintenance District

For minor plats, where no parkland dedication is required, please insert the following statement:

APPENDIX K
Subdivision Improvements Agreement Template

There is no parkland requirement for proposed (Subdivision Name), as this is a minor subdivision [MCA 76-3-617(3)(a)].

VIII. IRRIGATION

(This section should include, but not be limited to the following):

- Irrigation District affected by the proposed development
- Required mitigation efforts to protect the ditches during construction
- Location and width of existing and proposed onsite easements for ditches

IX. SOILS/GEOTECHNICAL STUDY

(This section should include, but not be limited to the following):

- Results of geotechnical study
- Construction restrictions due to the results of the study
- Required mitigation efforts

X. PHASING OF IMPROVEMENTS (include if applicable)

Description of each Phase including:

- A. Required improvements
- B. Timing of improvements
- C. Reference to release of lots (documentation)
- D. Restrictions on lot sales (documentation)
- E. Financial guarantees for improvements

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a special improvement district or private contracts secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said special improvement district or private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

XII. LEGAL PROVISIONS

- A. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings.
- B. The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.
- C. The covenants, agreements, and all statements in this Agreement apply to and shall be binding on the heirs, personal representatives, successors and assigns of the respective parties.
- D. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any

APPENDIX K
Subdivision Improvements Agreement Template

notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.

- E.** Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.
- F.** Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

“SUBDIVIDER”

(Name of Subdivider)

By: _____

Its: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 2005, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the _____ of *(Subdivider)*, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

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

This agreement is hereby approved and accepted by the City of Billings, this ____ day of _____, 2005.

“CITY”
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____

APPENDIX K
Subdivision Improvements Agreement Template

City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 2005, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

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

APPENDIX K
Subdivision Improvements Agreement Template

Waiver of Right to Protest

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

Subdivision Description/Name

Signed and dated this _____ day of _____, 2005.

Subdivider/Owner

By: _____

Its: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 2005, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be Subdivider/Owner Name, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

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

Notary Public in and for the State of Montana
Printed name: _____
Residing in Billings, Montana
My commission expires: _____

APPENDIX L
Escrow Agreement Template

ESCROW AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 20__ by and between _____ ("Purchaser"), whose address for purposes of this Agreement is _____, AMERICAN TITLE & ESCROW, a Montana corporation ("American Title"), of 1216 16th Street West, Alpine Village No. 21, Billings, Montana 59102, the CITY OF BILLINGS, MONTANA ("City"), c/o City Engineer's Office, 510 North Broadway, 4th Floor, Billings, Montana 59101, and _____ ("Seller"), whose address for the purposes of this Agreement is _____.

1. Seller has agreed to sell and convey unto Purchaser all of its right, title and interest in and to certain real property in _____ Subdivision, (the "Subdivision"), which real property is more particularly described as follows (the "Purchaser's Lot"):

Lot ____, Block ____, of _____ Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document No. _____.

2. In connection with the development of the Subdivision, certain public improvements (the "Improvements") must be made within or adjacent to the Subdivision in accordance with that certain Subdivision Improvements Agreement between Seller and the City dated the ____ day of _____, 20__, and recorded the ____ day of _____, 20__, under Document No. _____, records of Yellowstone County, Montana (the "SIA"); and

3. Pursuant to Article ____ of the SIA, Seller has agreed that an amount equal to the total estimated cost per square foot of the Improvements multiplied by the total square footage of Purchaser's Lot ("Estimated Costs"), as described in the SIA, with respect to any lot in the Subdivision will be deposited into a separate interest bearing account for the benefit of Purchaser to be held in escrow with American Title; and

4. American Title has agreed to act as escrow agent for the purposes of receiving the above-referenced funds and disbursing the same for payment of future SID assessments upon formation of one or more such districts, or for the payment of one or more private contract costs of constructing the Improvements contemplated by the SIA in the event an SID is not formed, which funds will be obtained, held and disbursed by American Title in accordance with the terms of this agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Escrowed Funds. Purchaser shall deposit the Estimated Costs in the amount of _____ (spell out) _____ Dollars (\$_____) (the "escrowed funds") into escrow with American Title in an interest bearing account under Purchaser's Federal Identification Number # _____, for the benefit of Purchaser and the City (the "Escrow Account") at the closing of the sale of the Purchaser's Lot, by Seller to Purchaser. The escrowed funds amount is based upon Estimated Costs of \$_____ per square foot on the

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Escrow Agreement Template

_____square feet of land contained within the Purchaser's Lot. The escrowed funds deposited into the Escrow Account will be held and disbursed by American Title in accordance with the provisions of paragraphs 4, 5 and 6 below.

2. Seller's Obligation Terminated. From and after the date of this Agreement, Seller shall have no further obligation or liability for the Estimated Costs, or the construction and/or payments for the Improvements, or any future SID assessments, relating to the Purchaser's Lot.

3. Purpose of Escrow Arrangement. American Title agrees that it shall receive and hold the escrowed funds in the Escrow Account, for the benefit of Purchaser and the City, and shall make disbursements or payments to the City and/or Purchaser pursuant to the provisions of paragraphs 4, 5 and 6 below.

4. Payments from Escrow. Upon receipt of a written authorization from Purchaser and the City for payments in connection with actual SID assessments or private contracts for construction of the Improvements, American Title shall disburse the escrowed funds as follows:

- (a) If one or more special improvement districts are created the escrowed funds shall be paid by American Title to the City for application to the actual assessments for the Improvements against the Purchaser's Lot.
- (b) In the event one or more special improvement districts for the Improvements is not or cannot be created, then the amounts held on deposit in the Escrow Account shall be applied toward payment under one or more private contracts for construction of the Improvements attributable to the Purchaser's Lot in accordance with the SIA.

5. Interest on the Escrowed Funds. Interest accrued on the escrowed funds shall be paid to Purchaser in annual disbursements on the first day of December of each year, until such time as final disbursement is made pursuant to paragraph 6 below.

6. Additional Assessments: Return of Excess. If the actual amount of the special improvement district assessments for the Improvements is greater than the escrowed funds held in the Escrow Account with respect to the Purchaser's Lot; then the City shall levy said difference against the Purchaser's Lot. If the Improvements are constructed by one or more private contracts and the actual amount of the private contracts for the Improvements attributable to the Purchaser's Lot is greater than the escrowed funds held in the Escrow Account with respect to the Purchaser's Lot, then the Purchaser shall be responsible for said difference. If the actual amount of the special improvement district assessments or the private contracts for the Improvements is less than the escrowed funds held in the Escrow Account, then American Title shall return such excess to Purchaser after payment of the full amount of the actual SID assessments or the private contracts, and Purchaser shall be entitled to retain such excess.

7. Escrow Fees. Purchaser and Seller shall share equally the costs associated with initial set-up fees of the Escrow Account, and thereafter Purchaser shall be solely responsible for all other fees, costs, taxes and expenses related to the escrowed funds and the Escrow Account and the performance of duties under this Agreement by American Title. American Title shall have a lien upon all moneys, papers and properties held by it in connection herewith for any fees, costs,

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or expenses, due American Title hereunder.

8. Scope of Agreement. This Agreement governs only the deposit of the escrowed funds relating to the Purchaser's Lot by Purchaser into escrow with American Title, the disbursement of those funds for payment of actual SID assessments or private contracts, if any, related to the Improvements, to or for the benefit of Purchaser's Lot, and the annual disbursement of interest accrued on the escrowed funds to Purchaser. Other than the matters specifically addressed herein, this Agreement shall not supersede or modify the terms and covenants of the SIA, nor shall any party other than those executing this Agreement be entitled to claim the benefits of this Agreement. No payment made under this Agreement with respect to a private contract for all or any portion of the Improvements shall be evidence of the performance of said private contract, either wholly or in part, and no payment or disbursement by American Title shall be construed to be an acceptance by either Purchaser or the City of defective work or improper materials pursuant to such private contract.

9. Rights and Duties of American Title. It is expressly understood between the parties hereto that American Title is to be considered as a depository and agent to collect, hold and disburse the escrowed funds only, and shall not be responsible or liable in any manner whatsoever for the sufficiency or correctness as to form, manner of execution, or validity of any instructions or authorizations for payment relating to said escrowed funds, nor as to the identity, authority or rights of any person executing such written authorization. American Title assumes no responsibility, nor is it to be held liable, as to the condition of title to the Purchaser's Lot involved herein, nor as to any assessments, liens or encumbrances against the Purchaser's Lot, except with respect to liens or encumbrances arising from the negligence or willful misconduct of American Title with reference to its obligations and duties under this Agreement.

10. Disputes. In the event of any disagreement between the parties hereto or any parties interested herein, resulting in adverse claims and conflicting demands being made in connection with the escrowed funds and the Escrow Account, and disbursements therefrom, American Title shall be entitled at its option to refuse to comply with said conflicting demands so long as such disagreement shall continue. In so refusing, American Title may also refuse to deliver any moneys, papers or property involved in or affected by this escrow, and shall not be or become liable to the parties to this escrow for its failure and/or refusal to comply with the conflicting or adverse demands of the parties hereto. Further, American Title shall be entitled to continue to so refrain to act until (a) the parties hereto have reached an agreement settling their differences and shall have notified American Title in writing of such agreement, or (b) the rights of the parties have been duly adjudicated by a court of competent jurisdiction, except that nothing herein shall be construed to require American Title to institute any litigation to determine the rights of the parties hereto.

In the event of any disagreement between the parties hereto, or if conflicting demands or claims are made upon American Title by the parties hereto or interested herein or by any other party, American Title shall have the right to employ legal counsel to advise it and/or represent it in any suit or action brought affecting this escrow or the funds held in connection herewith. Purchaser and the City shall be jointly and severally liable to American Title for any and all attorney's fees, costs, and disbursements incurred by American Title in connection herewith, and upon demand shall forthwith pay the same to American Title. The liability of Purchaser and the City for reimbursement for the amount of such attorney's fees, costs and disbursements paid to

APPENDIX L
Escrow Agreement Template

American Title shall be governed by the provisions of paragraph 12 below.

11. Default: Remedies. The failure of any party to perform its obligations under the terms of this Agreement shall constitute a default hereunder. In the event of any such default, and the failure of the defaulting party to cure the same within ten (10) days after written notice thereof by the non-defaulting party or parties, then such non-defaulting parties may:

- (a) Commence a suit or suits in equity or at law, including without limitation an action for the specific performance of any covenant or agreement contained herein; or
- (b) Commence a suit or suits for damages arising from the failure to perform any covenant or agreement contained herein; or
- (c) Pursue enforcement of any other appropriate legal or equitable remedies.

12. Attorney Fees and Costs. In the event it becomes necessary for any party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement, to give any notice required herein with respect to any default, or to reimburse American Title for any attorney's fees, costs or disbursements it may incur pursuant to paragraph 10 above, then the prevailing party or parties shall be entitled to payment or reimbursement for reasonable attorney's fees, costs and expenses, from the party or parties who do not prevail.

13. Notices. Any notice required under this Agreement shall be served on all other parties either personally or by certified mail, return receipt requested, addressed to the party to be served at the following address:

Purchaser: _____

American Title: 1216 16th Street West
Alpine Village No. 21
Billings, Montana 59102
ATTN: _____

City: c/o City Engineer's Office
510 North Broadway
4th Floor
Billings, Montana 59101
ATTN: Public Works Director

Seller: _____

A party wishing to change its designated address shall do so by notice in writing to the other

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party. Notice served by mail shall be deemed complete when deposited in the United States mail, postage prepaid. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice.

14. Amendments: Waiver. No amendments or modifications to this Agreement, or of any provisions contained herein, shall be binding or enforceable unless the same shall be in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement. Any waiver or failure to enforce the terms of this Agreement by any of the parties hereto shall not constitute a waiver by said parties of the right to enforce or compel performance with respect to any continuing or subsequent default hereunder.

15. Headings. The headings used herein are for convenience only, and shall not be construed as part of this Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

16. Binding Effect. The covenants, agreements and all statements in this Agreement shall inure to and shall be binding on the heirs, personal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the day and year first above written.

"Purchaser"

By: _____
Its: _____
Federal Tax Identification No. _____

"American Title"

AMERICAN TITLE INSURANCE COMPANY

By: _____
Its: _____

"City"

CITY OF BILLINGS, MONTANA

By: _____
Its: _____

"Seller"

By: _____
Its: _____
Federal Tax Identification No. _____

APPENDIX M
Letter of Credit Template

(Must be on Lender's Letterhead)

IRREVOCABLE STANDBY LETTER OF CREDIT

DATE: _____

BENEFICIARY:
City of Billings Public Works
Billings, MT 59101

APPLICANT: Subdivider's name
Subdivider's address

LETTER OF CREDIT NO. _____

EXPIRATION DATE: _____

AT: OUR COUNTERS PRESENTLY LOCATED AT
Lender's address here

AMOUNT: US\$ _____
NOT EXCEEDING: -US- spell out _____ Dollars-

We hereby issue our Irrevocable Standby Letter of Credit available by your draft(s) drawn at sight on us and accompanied by the following documents:

1. Beneficiary's signed statement certifying that (subdivider's name), has failed to pay for required improvements concerning subdividing _____ Subdivision in the City of Billings, Yellowstone County.
2. Copy of mandatory improvements.
3. The original Letter of Credit

This Letter of Credit shall be deemed extended without amendment for one year from the expiration date, unless thirty (30) days prior to any expiration date we shall notify you by Registered Mail that we elect not to consider this Letter of Credit renewed for any such period.

In any communication with us regarding this Letter of Credit, please make specific reference to our Letter of Credit No. at the top of this letter.

Drafts drawn under this Credit must bear the clause: "Drawn under _____ Bank Irrevocable Standby Letter of Credit No. _____ dated _____." The amount of each drawing must be endorsed on the reverse of this credit by the negotiating bank.

To the extent applicable hereto, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication, No. 500.

We hereby engage with you that draft(s) drawn and/or documents presented and negotiated under and in compliance with the terms of this Irrevocable Standby Letter of Credit will be duly honored upon presentation to us.

_____ BANK

By: _____

APPENDIX N
Restrictions on Transfers and Conveyances Template

**DECLARATION OF RESTRICTION ON TRANSFERS.
AND CONVEYANCES**

_____ **SUBDIVISION**

THIS DECLARATION is made this ____ day of _____, 20__, by (insert owner's name) hereinafter referred to as "Declarant,"

WITNESSETH:

WHEREAS, the Declarant is the owner of all of the lots in _____ Subdivision, situated in Section __, Township _____. Range ____, PMM., City of Billings, Yellowstone County, Montana, hereinafter referred to as the "Subdivision"; and

WHEREAS, in connection with the filing of the plat for the Subdivision, the Declarant executed that certain Subdivision Improvements Agreement dated the ____ day of _____, 20__ to the City of Billings, which Agreement contains restrictions against the sale, conveyance or transfer of certain lots in the Subdivision until such time as a private contract has been executed providing for the installation and construction of required public improvements; and

WHEREAS, in order to more fully evidence the restriction against sale, conveyance, or transfer and to give third parties notice of such restrictions, the Declarant desires to execute and record this Declaration of Restrictions.

NOW, THEREFORE, in consideration of these premises, the Declarant, for itself and its successors and assigns, does hereby declare:

1. Except as hereinafter provided, the Declarant does hereby agree and declare that the following described lots shall not be sold, transferred, or conveyed to any third party unless and until a release has been executed and recorded in accordance with the provisions hereinafter appearing:

Phase II:

Lots ____ through ____, inclusive, Block ____; _____ Subdivision in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (_#_ lots total).

Phase III:

Lots ____ though ____, inclusive, Block ____; and Lots ____ through ____, inclusive, Block ____, _____ Subdivision in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (_#_ lots total).

APPENDIX N
Restrictions on Transfers and Conveyances Template

2. It is the express purpose and intent of this Declaration to restrict or preclude sale, transfer, or conveyance of the above-described lots until such time as a private contract has been executed and necessary funding guarantees provided, as the case may be, providing for the construction and installation of those public improvements required under the above-described Subdivision Improvements Agreement which by reference thereto is hereby incorporated herein as though fully set forth at this point. It is anticipated, however, that the Declarant will develop _____ Subdivision, in distinct phases, upon providing for the installation and construction of the public improvement necessary to serve the particular phase. In that regard a release of some but not all of the above described lots may be executed and recorded from time to time, in accordance with the provisions hereinafter appearing, and upon the recording of said release, the covenants and restrictions contained herein with respect to the lots described in said release shall be deemed canceled and terminated, and of no further force and effect.
3. Upon compliance with the requirements for a private contract specified above, a release for the lot or lots affected thereby shall be executed and recorded by the City of Billings, pursuant to the provisions contained in the said Subdivision Improvements Agreement. The execution and recording of said release shall be deemed conclusive evidence to all third parties purchasing or acquiring any lot described therein that the restriction against sale, conveyance, or transfer of said lot has been removed.
4. UNTIL SUCH RELEASE IS EXECUTED AND RECORDED, THIS DECLARATION SHALL SERVE AS NOTICE TO ALL THIRD PARTIES PURCHASING OR ACQUIRING ANY OF THE ABOVE-DESCRIBED LOTS OF THE EXPRESS RESTRICTIONS AGAINST ANY SUCH SALE, CONVEYANCE OR TRANSFER, AND OF THE TERMS AND CONDITIONS OF THE SAID SUBDIVISION IMPROVEMENTS AGREEMENT, AND SHALL FURTHER SERVE AS NOTICE THAT THE CITY OF BILLINGS MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED IN THE SUBDIVISION IMPROVEMENTS AGREEMENT SHOULD THE TERMS OF THIS DECLARATION BE VIOLATED.
5. The terms, conditions, and restrictions contained in this Declaration shall not preclude or restrict the ability of the Declarant to (a) sell, convey, and transfer all of the above-described lots, all of the lots in one phase, or those lots remaining subject to the terms of this Declaration, as one unit or group, to a third party, parties or entities; provided, however, that such sale shall be subject to this Declaration and the lots shall continue to be subject to the restrictions herein provided against the sale, transfer and conveyance until a release has been executed and recorded; or (b) enter into sale and purchase agreements for individual lots; provided, however, that the deeds or other conveyance documents shall not be delivered to the prospective buyer nor shall the closing under any such sale and purchase agreements occur until such time as a release covering the

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Restrictions on Transfers and Conveyances Template

affected lot has been executed and recorded.

6. The terms and conditions of this Declaration shall run with the land and shall be binding upon and shall inure to the benefit of the Declarant, the City of Billings, and their successors and assigns.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

(Name of Declarant)

STATE OF MONTANA)
 : ss.
County of YELLOWSTONE)

On this _____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the person who signed the foregoing instrument and who acknowledged to me that he executed the same.

Notary Public in and for the State of Montana
Printed name: _____
Residing at Billings, Montana
My commission expires: _____

APPENDIX O
Flood Hazard Evaluation

FLOOD HAZARD EVALUATION

A. Definitions. (Sec. 76-5-103, MCA) Whenever the following words and phrases are used in this Appendix, they shall be given the meaning attributed to them by this section.

1. Channel: The geographical area within either the natural or artificial banks of a watercourse or drainway.
2. Flood: The water of any watercourse or drainway that is above the bank or outside the channel and banks of the watercourse or drainway.
3. Flood of 100-year Frequency (aka Base Flood): A flood having a one percent (1%) chance of being equaled or exceeded in any given year. A 100-year flood is the same as a base flood.
4. Floodplain: The area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" by the federal emergency management agency.
5. Floodway: The channel of a stream and the adjacent overbank areas that must be reserved in order to discharge a base flood without cumulatively increasing the water surface elevation more than one half (1/2) foot.
6. Watercourse: Any depression two (2) feet or more below the surrounding land serving to give direction to a current of water at least nine (9) months of the year and having a bed and well-defined banks.

B. General.

1. Flood Hazard Areas (See 76-3-504, MCA): Land subject to being flooded by a flood of 100-year frequency as defined in this Appendix by the Federal Emergency Management Agency (FEMA), or land deemed to be subject to flooding by the City or County, may not be subdivided for building or residential purposes, or other uses that may increase or aggravate flood hazards to the public health, safety or welfare, or that may be prohibited by state or local floodplain or floodway regulations. Land deemed to be subject to flooding by the City or County may include (but is not limited to) land subject to shallow flooding, groundwater rise, historically flooded lands and lands located within 2,000 horizontal feet of the channel bank of the watercourse.
2. Where the 100-year floodway has been delineated by a FEMA Flood Insurance Rate Map (FIRM), a FEMA Floodway Map or a City- or County-approved study on land in a subdivision, the 100-year floodway boundary and 100-year floodplain boundary shall be shown on the plat of the subdivision and the area within the 100-year floodway shall be labeled as a "No-Build Zone."
3. Where the subdivision is within a flood hazard area that has been identified by the City or County, a Flood Study shall be completed as outlined in Part B and Part C of this Appendix, and the 100-year floodway boundary and 100-year floodplain boundary shall be shown on the plat of the subdivision and the area within the 100-year floodway (see

APPENDIX O
Flood Hazard Evaluation

Figure 1) shall be labeled as a “No-Build Zone.”

C. Flood Study Requirements.

1. A Flood Study shall be required for a subdivision if:
 - a. Any portion of a proposed subdivision is within 2,000 horizontal feet and less than 20 vertical feet from the channel bank of a watercourse draining an area of 25 square miles or more, and no official floodplain or floodway delineation (study) of the watercourse has been made; or
 - b. The subdivision is within a flood hazard area that has been identified by the City or County.
2. The Flood Study shall be performed by a registered Professional Engineer experienced in this field of work. Upon the request of the City or County, the study shall be submitted to the Yellowstone County Floodplain Administrator and/or the Floodplain Management Section, Water Resources Division, Montana Department of Natural Resources and Conservation (DNRC) for review and comment. A copy of the Flood Study and written comment from County Floodplain Administrator and/or the DNRC shall be provided to the Planning Department.

D. Flood Study Contents. The Flood Study shall include the following:

1. Certification: Certification by a registered professional engineer, including license number, seal or stamp, signature and date.
2. Written Report: A narrative report containing a description of the study area, data collection, the type of modeling method used for both the hydrology and hydraulics, discussion of the parameters used, modeling results and conclusions.
3. Site Plan: An overall scaled site plan of the subdivision with location of lot lines and an identified scale for vertical and horizontal distance showing the following:
 - a. Vicinity Map
 - b. Watercourse
 - c. 100-year floodplain and floodway boundaries
 - d. Contours shown at intervals between one (1) foot and four (4) feet depending on the site, or at the discretion of the Floodplain Administrator.
 - e. Cross-sections
 - f. Bridges or other constrictions in the floodplain

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Flood Hazard Evaluation

- g. USGS gauging stations (if any)
 - h. Location and elevation of a temporary benchmark(s) established within the subdivision and referenced to mean sea level with appropriate elevation adjustment.
- 4. Cross-sectional information:
 - a. Cross-section elevations and stations should be determined at points representing significant breaks in ground slope and at changes in the hydraulic characteristics of the floodplain (i.e., points where ground cover, soil, or rock conditions change). Elevations shall be reported in NAVD 88 or NGVD 29 datum.
 - b. The number of cross-sections needed, and the distance between cross-sections will vary depending on the site, the slope of the watercourse, the slope of the channel, and the hydraulic characteristics of the reach. A minimum of four cross sections are required over the entire reach with at least two cross-sections at the property where the elevations are desired. Additional cross-sections shall be taken above, below and at bridges, control structures, or natural constrictions in topography.
 - c. Each cross-section shall cross the entire floodplain. The cross-section alignment should be perpendicular to the general flow of the watercourse (approximately perpendicular to contour lines). Elevation stations should be recorded at the channel bank and within the channel to determine the channel bottom shape. Cross sections shall be reasonably spaced to accurately define the study area.
 - d. A profile sheet scaled the same as a FEMA Flood Insurance Study showing the observed water surface profile, base flood elevation, location of cross sections, subdivision boundaries, watercourse profile, and thalweg (lowest point of the channel bottom along the reach of the watercourse).
- 5. Bridges/Culverts/Pipes: Provide descriptions and sketches of all bridges, culverts and pipes within the reach, showing unobstructed waterway openings and elevations.
- 6. Water Surface: Base Flood elevation of the water surface is to be determined and shown on each valley cross section.
- 7. Supporting Documentation: Provide engineering reports of calculations and assumptions, historical references, research of published hydrology or calculations showing how hydrology was derived, and other documentation of research information.
- 8. Electronic Data: Provide maps and any other information provided for a Flood Study that may be utilized by FEMA that meets their specific guidelines for digital and electronic data. Please refer to FEMA's Flood Hazard Mapping Program at www.fema.gov/fhm/ for

APPENDIX O Flood Hazard Evaluation

specific guidelines and specifications for data collection.

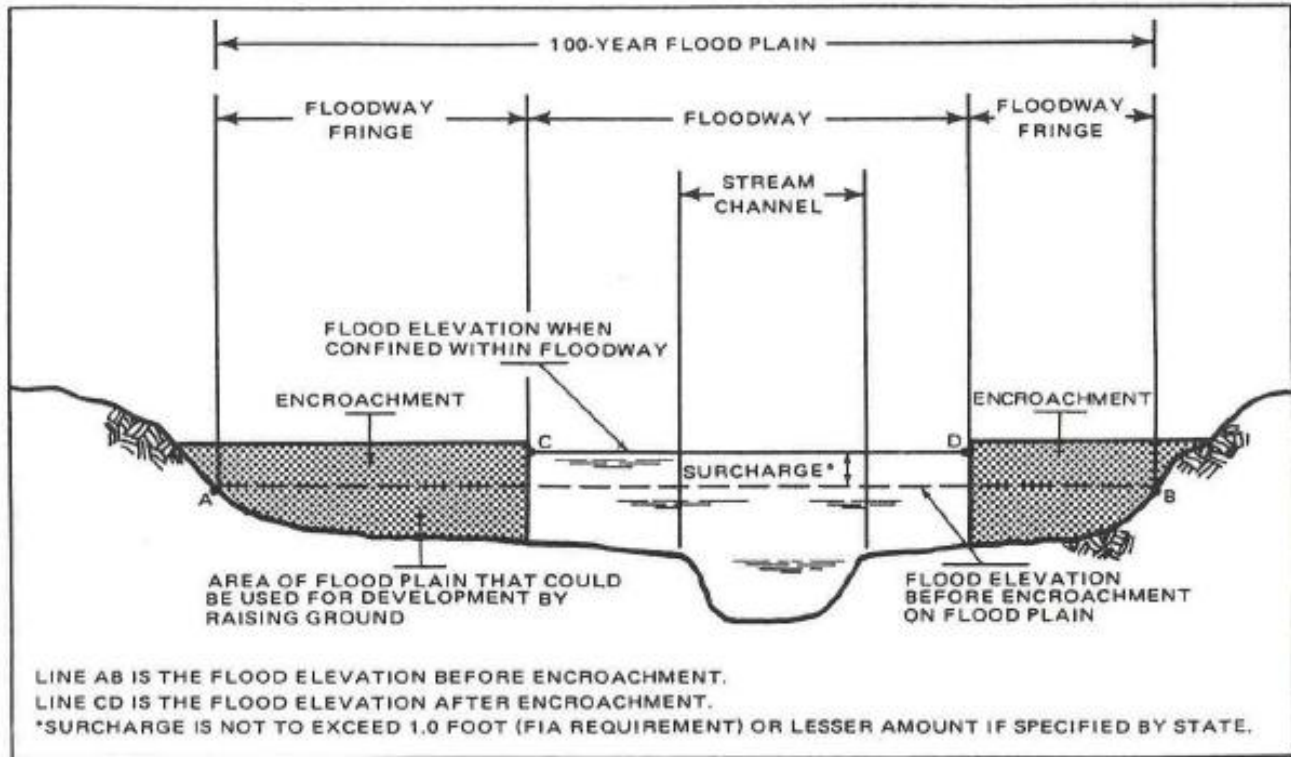


Figure 1. 100-Year Floodplain Cross-Section Diagram

Planning Division Application and Review Fees

By Ordinance 4314, the Billings City Council approved the following fees for subdivision applications, effective September 8, 2003:

Subdivision Applications

Preliminary Major Plat	6 to 40 lots	\$1,500.00
	41 to 200 lots	\$3,500.00
	Over 200	\$4,500.00
Preliminary Minor Plat		\$550.00
Final Major Plat	6 to 40 lots	\$400.00
	41 to 200 lots	\$600.00
	Over 200	\$900.00
Final Minor Plat		\$250.00
Exempt Plat		\$200.00
Legal Ad for Subdivision	Pass through charge	

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 applications, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on the first reading on this ____ day of _____, 2005.

PASSED, ADOPTED AND APPROVED on second reading this ____ day of _____, 2006.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By: _____
City Clerk

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L

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: Zone Change #772, Second Reading of Ordinance
DEPARTMENT: Ramona Mattix, AICP, Planning & Community Services Director
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting to rezone a 37,461 square foot (0.86 acre) property from Residential Manufactured Home (RMH) to Residential 6000 (R-6000). The property is legally described as Lot 6, Block 3, Superior Homes Subdivision, is addressed as 406 Roxy Lane and is generally located east off of Lake Elmo Drive midway between Sharron Lane (north) and Kathy Lane (south). The owner and representative is Ann Bustell. The City Council approved the first reading of the zone change ordinance on January 9, 2006.

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

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

FINANCIAL IMPACT: The zone change could increase the City's tax base upon development of the property.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #772 on the second reading and adopt the determinations of the discussed 12 criteria.

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

ATTACHMENTS:

- A. Zoning Commission Determinations
- B. Ordinance

ATTACHMENT A
Zoning Commission Determinations

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

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

The proposed zone change is generally consistent with the following goals of the Growth Policy:

a. **Goal: More housing and business choices within each neighborhood (p. 6).**

The proposed zoning would provide for more housing choices within this portion of the city.

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

The subject property is within an urbanized portion of the City and is bordered on the south by single-family residences, on the north by multi-family residential units, on the west by developing duplexes, and on the east by manufactured homes.

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

The proposed zoning will address urban sprawl by providing for greater density within an infill development.

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

The proposed zoning will not increase the traffic generated from this site significantly. Any traffic impacts will be addressed during the subdivision process and/or site development.

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

Roxy Lane is a local residential gravel street bordering the property on the north, accessed via Lake Elmo Drive, a collector status street to the west. While improvements to Roxy Lane are not necessary at this time, they may be required upon subdivision, site development, or as additional properties develop along this street.

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

The proposed zoning will allow single-family residences, duplexes and multi-family residential units. The Unified Zoning Regulations contain minimum setbacks and lot coverage requirements, as well as height restrictions all zoning districts.

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

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

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

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures and a minimum lot sizes required for duplexes. The R-6000 zoning district permits a maximum lot coverage of 40% and requires 7,000 square feet to construct a duplex. As calculated, five (5) duplexes could be constructed on the subject property. While the R-6000 zoning district does permit up to 10-plexes on a property, a Special Review would be required for any attached residential units above a duplex.

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

The subject property is bordered on the north by multi family residential uses and on the west by duplexes, both located in the R-6000 zoning district. The proposed zoning will not create any more of a concentration of population than the adjacent residential zoning districts.

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

Transportation: The new zoning will not affect the adjacent streets or traffic patterns. Any proposed roads or improvements will be reviewed upon site development.

Water and Sewerage: The County Water District of Billings Heights will provide water to the property; City sewer will be provided through existing lines within Lake Elmo Drive.

Schools and Parks: According to the Yellowstone County tax records, children from this development would attend Bench Elementary, Castlerock Middle School and Skyview High School. There are two (2) parks within the vicinity of this property including Lake Elmo State Park to the north and Meadowlark Park to the west.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate service will

be reviewed and ensured at the time of subdivision or site plan review.

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

The surrounding land uses are a mixture of multi-family residential units, duplexes, manufactured homes, and single-family residential units. The applicant's proposal for duplexes is alike in character to these land uses.

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

The subject property is suitable for the requested zoning district.

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

The new zoning is not expected to appreciably alter the value of structures in the area.

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

The proposed zoning will permit for more dense development, as well as provide an infill project within an already urbanized portion of the City.

ATTACHMENT B

ORDINANCE NO. 05-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Lot 6, Block 3, Superior Homes Subdivision, containing
approximately 37,461 square feet (0.86 acres). **THE
SUBJECT PROPERTY IS LOCATED AT 406 ROXY LANE.**

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 6, BLOCK 3, SUPERIOR HOMES 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 January 9, 2006.

PASSED, ADOPTED AND APPROVED on second reading January 23, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Marita Herold, CMC/AAE, City Clerk

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AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, January 23, 2006

TITLE: Final Plat of Tierra Yellowstone Industrial Park Subdivision, 2nd Filing

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

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Tierra Yellowstone Industrial Park Subdivision, 2nd Filing is being presented to the City Council for approval. On September 12, 2005, the City Council conditionally approved the five lot preliminary minor plat for the existing property. The property is generally located at the northeast corner of 32nd St. West and Hesper Road, just south of Gabel Road. This subdivision reconfigures 13 existing lots and the vacated Conrad Road to create 4 lots that are approximately 2 acres in size and one lot just over 20 acres in size. The owners are Elk River Concrete Products Company, Harold Miller, and Jon, Glenda and Vera Mae Reineking. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

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

RECOMMENDATION

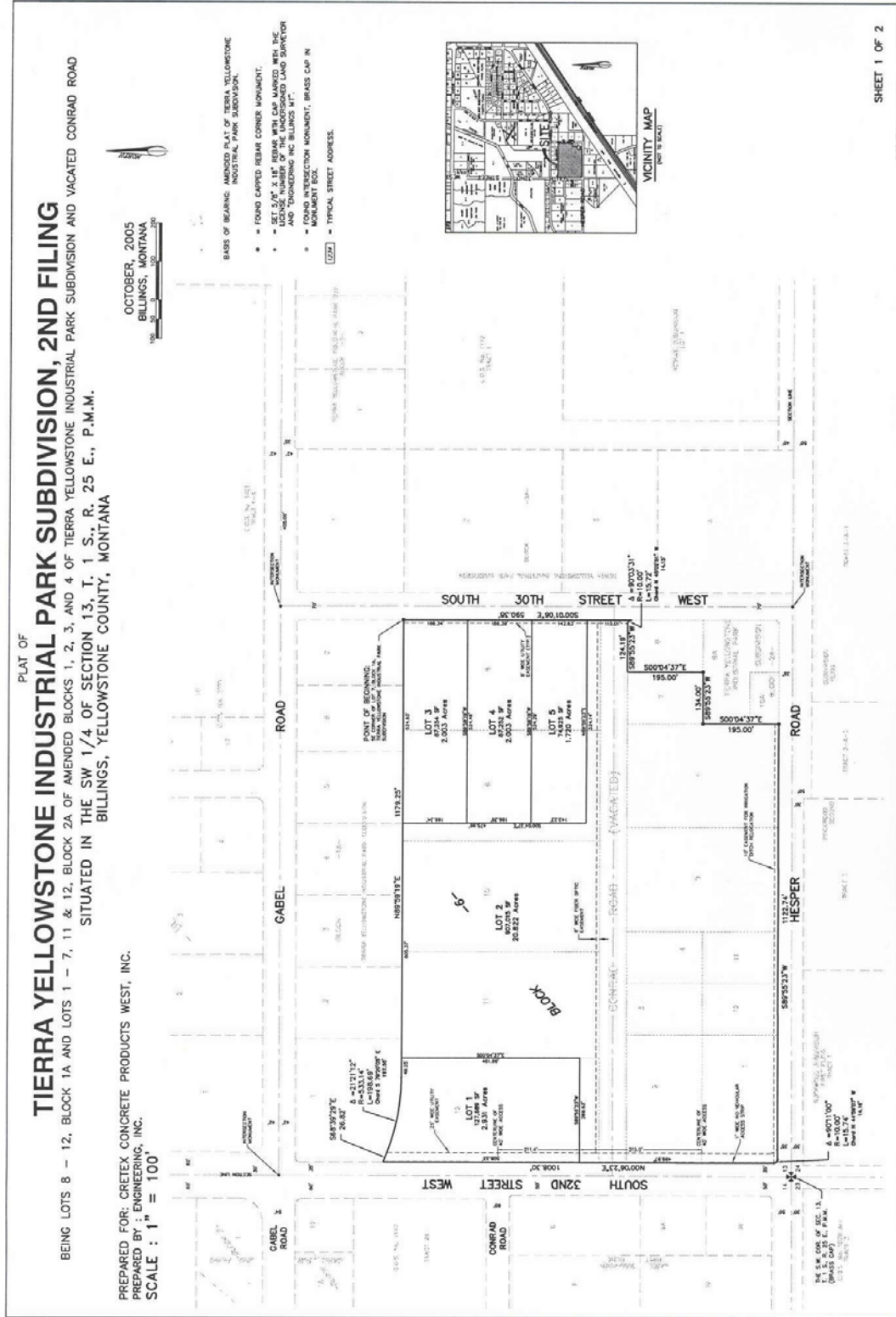
Staff recommends that the City Council approve the final plat of Tierra Yellowstone Industrial Park Subdivision, 2nd Filing.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Final Plat

ATTACHMENT A – Final Plat



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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 23, 2006

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$2,281,329.36 have been audited and are presented for your approval for payment. A complete listing of the claims dated December 22, 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, January 23, 2006

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,798,515.98 have been audited and are presented for your approval for payment. A complete listing of the claims dated December 30, 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

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 23, 2006

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$151,400.90 have been audited and are presented for your approval for payment. A complete listing of the claims dated December 1, 2005 to December 31, 2005 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A – Check register 12/01/2005 – 12/31/2005

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: Public Hearing and Resolution to Adopt the Billings Heights Neighborhood Plan

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

PRESENTED BY: Lora Mattox, Neighborhood Planner, Planner II

PROBLEM/ISSUE STATEMENT: The Billings Heights Neighborhood Plan is a guide for land use and community development and will serve as a guiding document for making decisions that will affect the future of the Heights. Extensive research, public input and local government review ensures that this Neighborhood Plan sets forth attainable goals based on current public values. The strategies to achieve these goals rely on commonly-accepted planning, engineering and organizational practices, as well as, state-of-the-art approaches to contemporary issues.

The Billings City Council at a work session on December 5, 2005, heard a report from the Planning & Community Services Department discussing the Heights Neighborhood Plan. At the December 19, 2005, council meeting, the Council passed a Resolution of Intent to Adopt the Billings Heights Neighborhood Plan. The action to be taken today is to hold a public hearing and adopt the Neighborhood Plan by resolution.

ALTERNATIVES ANALYZED: The City Council may:

1. Adopt
2. Modify
3. Do not adopt
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: A primary objective of community planning is to reduce the cost of services by assessing future public needs and establishing cost-effective methods to address those needs. This Neighborhood Plan sets out a rational course for managing City resources wisely. Examples of cost-effective policies and strategies include:

- Promote infill through development incentives
- Foster partnerships to leverage public funds

RECOMMENDATION

The Yellowstone County Board of Planning recommends that City Council approve the Resolution to Adopt the Billings Heights Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy. A copy of the plan is on file in the City Clerk's Office.

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

ATTACHMENTS

- A. Resolution to Adopt the Billings Heights Neighborhood Plan

ATTACHMENT A

RESOLUTION 06-_____

RESOLUTION TO ADOPT THE BILLINGS HEIGHTS NEIGHBORHOOD PLAN AS PART OF THE YELLOWSTONE COUNTY - CITY OF BILLINGS 2003 GROWTH POLICY.

WHEREAS, pursuant to Title 76, Chapter 1, PART 601, Montana Codes Annotated, the Billings City Council, desire to adopt a Neighborhood Plan consistent with the 2003 Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction:

WHEREAS, on the 22nd day of November, 2005, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Neighborhood Plan:

WHEREAS, The Yellowstone County Board of Planning by Resolution 05-01, recommends the Board of County Commissioners adopt the proposed Neighborhood Plan and any ordinances and resolution for its implementation:

WHEREAS, on the 19th day of December, 2005, the Billings City Council passed a Resolution of Intent to Adopt the Billings Heights Neighborhood Plan:

NOW, THEREFORE, BE IT HEREBY RESOLVED that it is the intent of the Billings City Council to adopt the Billings Heights Neighborhood Plan as part of the Yellowstone County – City of Billings 2003 Growth Policy.

APPROVED AND PASSED by the City Council of the City of Billings this 23rd day of January, 2006.

THE CITY OF BILLINGS:

BY:_____
Ron Tussing, MAYOR

ATTEST:

BY:_____
Marita Herold, CMCCITY CLERK

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JANUARY 23, 2006

TITLE: Public Hearing for Special Review #800
DEPARTMENT: Planning & Community Services
PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a Special Review to allow the construction of a 4-plex apartment building and operate a Community Residential Facility in a Residential 6000 zone on Tract A of Certificate of Survey 2237 at 1721 8th Avenue North. The subject property is located on the northwest corner of the intersection of North 17th Street and 8th Avenue North and currently supports a single family home and a duplex dwelling. Rimrock Foundation is the owner and Design Lab Architects is the agent. The Zoning Commission conducted a public hearing on January 3, 2006, and is forwarding a recommendation of conditional approval to the City Council.

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

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

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

RECOMMENDATION

The Zoning Commission is recommending that the City Council conditionally approve Special Review #800.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

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

INTRODUCTION

The applicant is requesting a Special Review to allow the construction of one 4-plex apartment building to be used as a Community Residential Facility in an R-6,000 zone on Tract A of C/S 2237. The subject property is located at 1721 8th Avenue North and currently has a single family home and a duplex located on the property. Both structures were renovated in 1993 and are currently occupied. The property is approximately 1.57 acres in size and has frontage on 8th Avenue North and North 17th Street. The 8th Avenue Apartments are directly east and these buildings were constructed in 1996, prior to the change in the Residential-6,000 regulations that now require a special review for multi-family homes in this district. The remaining area around the subject site is primarily single and two-family dwellings. The Zoning Commission voted 4-0 to recommend conditional approval of the special review request.

PROCEDURAL HISTORY

- A special review application to allow a 4-plex apartment and a Community Residential Facility was received on December 5, 2005.
- The City Zoning Commission voted 4-0 at its public hearing on January 3, 2006, to recommend conditional approval of the special review.
- The City Council will conduct a public hearing and consider this application on January 23, 2006.

BACKGROUND

The owner, Rimrock Foundation, is proposing to initially build one 4-plex apartment building on this property and operate a residential facility for adults who are in need of housing due to drug addiction. The residents will be referred through the Adult Misdemeanor Drug Court and will be supervised on a 24-hour basis. On-site counseling will be available as well as communal cooking facilities. A special review is required for both the multi-family structure and the Community Residential Facility use because the proposed 4-plex will serve more than eight (8) residents. The site plan shows two (2) future 4-plex units on the property. The Zoning Commission is recommending this review apply only to the first proposed 4-plex Community Residential Facility.

The Planning staff considered the application and recommended conditional approval to the Zoning Commission. The North Park Neighborhood Plan identifies this area as an area for in-fill and development of high quality low and moderate income housing. The existing 8th Avenue Apartments will complement this proposed new multi-family complex. This is a generally appropriate use on this site with the recommended conditions. Single family homes are present to the north and west of the property. The recommended conditions attempt to limit the impact of the proposed use on the adjoining residences.

The City Zoning Commission has considered the application and is recommending conditional approval of the special review request based on its concurrence with the Planning staff recommendation with the addition of one condition to address the parking lot lighting.

ALTERNATIVES ANALYSIS

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

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

This application does comply with the requirements of the zoning regulations.

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

This application is generally consistent with the purposes of Chapter 27, the 2003 Growth Policy and the North Park Neighborhood Plan.

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

The proposed use is compatible with the adjoining land uses and conditions are being recommended that will ensure compatibility.

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

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

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

CONDITIONS OF APPROVAL

The applicant shall comply with the following conditions of approval:

1. The special review approval is limited to one (1) 4-plex apartment building to be operated as a Community Residential Facility for more than eight (8) persons on Tract A of C/S 2237.
2. The proposed location of the 4-plex apartment building shall be as shown on the submitted site plan (adjacent to the northern property line). Additional multi-family structures for either private residences or for use as Community Residential Facilities shall require additional special review approval of the Billings City Council.
3. Prior to the occupation of any multi-family structure, a 6-foot tall sight obscuring fence or wall shall be installed along the west property line beginning at a point not more than 56 feet north of the property corner at the intersection of the alley and 8th Avenue North and ending at the northwest property corner. A continuous evergreen hedge may be substituted for the required fence if the evergreen trees or shrubs are at least 4 feet in height when planted, reach a mature height of at least 8 feet, a mature width of at least 6 feet and are planted no greater than 7 feet on center. Any sight obscuring fence must be constructed of wood, stone, vinyl, brick or block or other conventional fencing materials. No chain-link or wire fencing is allowed in this application.
4. The applicant shall maintain as many of the existing healthy trees within the subject site. Prior to the occupation of any multi-family structure, the applicant must install, or

financially guarantee the installation of at least four (4) canopy trees, of a 2-inch caliper and 8-foot tall minimum. These four (4) trees shall be evenly spaced within the front yard setback along the northern 200 feet of property frontage on North 17th Street. The remaining landscaping of the subject property shall comply with the landscaping standards in BMCC 27-1105; 27-1106; 27-1107 and 27-1110.

5. The applicant and any subsequent owner or operator shall provide 24-hour supervision of the residents in the approved 4-plex apartment, the number of residents shall not exceed sixteen (16) on any given day and the facility shall be duly licensed by the State of Montana.
6. Any lighting within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property.

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

STAKEHOLDERS

The public hearing held on January 3, 2006 before the City Zoning Commission was attended by Mr. Craig Frohlich of Design Lab Architects on behalf of the Rimrock Foundation as well as Mona Sumner, Chief Operations Officer of Rimrock Foundation, Bill Lambden, Board President of Rimrock Foundation, Dave Cunningham, Chief Executive Officer of Rimrock Foundation, and Scott Sanders, Board member of the Rimrock Foundation. Mr. Frohlich, Ms. Sumner and Messrs Lambden, Cunningham and Sanders all offered testimony in support of this application. The Rimrock Foundation has operated community residential homes for up to eight (8) indigent persons referred by the Adult Misdemeanor Drug Court in the two existing homes on the property since 2003. There have been no problems or issues with the operation. There is a dire local need for these safe and sober living arrangements particularly for addicts in early recovery. Ms. Catherine Woodward, Director of Special Populations for the Yellowstone City/County Health Department, also offered testimony in support of the application. Ms. Woodward has worked with many different groups and local initiatives in the area for homeless populations. On a typical day there are between 800 and 1,000 homeless people in Billings and Yellowstone County and many of those individuals are struggling with mental health problems and drug addictions. Judge Mary Jane Knisley offered written testimony presented by Nikki Schaubel, Court Administrator. Judge Knisley stated that her work with the Adult Misdemeanor Drug Court has shown that given a chance many of the people in drug court can and will break the cycle of addiction and go on to become productive members of society. Safe and sober housing is a critical component of their recovery. Sheriff Chuck Maxwell also offered written testimony in favor of the application that was presented by Dave Cunningham of the Rimrock Foundation. Sheriff Maxwell encourages the development of this local housing for treatment of adult drug addicts because it will alleviate the population overload in the County Detention Facility. Many people who are eligible for this type of treatment and housing wait for months for a place to open in the Butte facility. Local beds and treatment options will shorten the time these individuals must wait. Mr. Charles Hamwey, a resident of North Park, spoke in favor of the application. Mr. Hamwey is a member of the North Park Task Force and the Rimrock Foundation has done an

excellent job addressing their concerns and this will help build the neighborhood. Mr. Hamwey pointed out this is also a good in-fill development opportunity. Mr. Charles Tooley, a supporter of the Rimrock Foundation, offered testimony in favor of the application. Mr. Tooley is a long time observer and supporter of the Rimrock Foundation's work. He urged the commission to give a favorable recommendation of the development to the City Council.

Ed Stevenson and Curt Zygmund of Vuecrest Drive and residents of the area offered testimony in opposition to the application. Mr. Stevenson was concerned about the effect on surrounding property values, the intended use of the alley on the west of the property and whether the housing would include sex offenders. Mr. Zygmund pointed out to the commission that all the supporters of the project with the exception of Mr. Hamwey do not live in the area and that Rimrock Foundation is running a business in a residential area.

Ms. Sumner and Mr. Frohlich rebutted the concerns by testifying that no more 16 individuals would be living in the 4-plex unit and that Rimrock Foundation does not under any circumstances treat sex offenders. Ms. Sumner testified that no police calls have been made to the current location for the two years they have owned and operated the smaller residential facilities that front on 8th Avenue North. Mr. Frohlich pointed out that the building code that will apply to the 4-plex is not a commercial building code and will be considered an "R2" occupancy, a residential occupancy under the adopted building code.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

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

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

RECOMMENDATION

The Zoning Commission is recommending that the City Council conditionally approve Special Review #800.

ATTACHMENTS

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

Zoning Map – Special Review #800



Subject Property at 1721 8th Avenue North

ATTACHMENT B
Site Photographs for Special Review #800



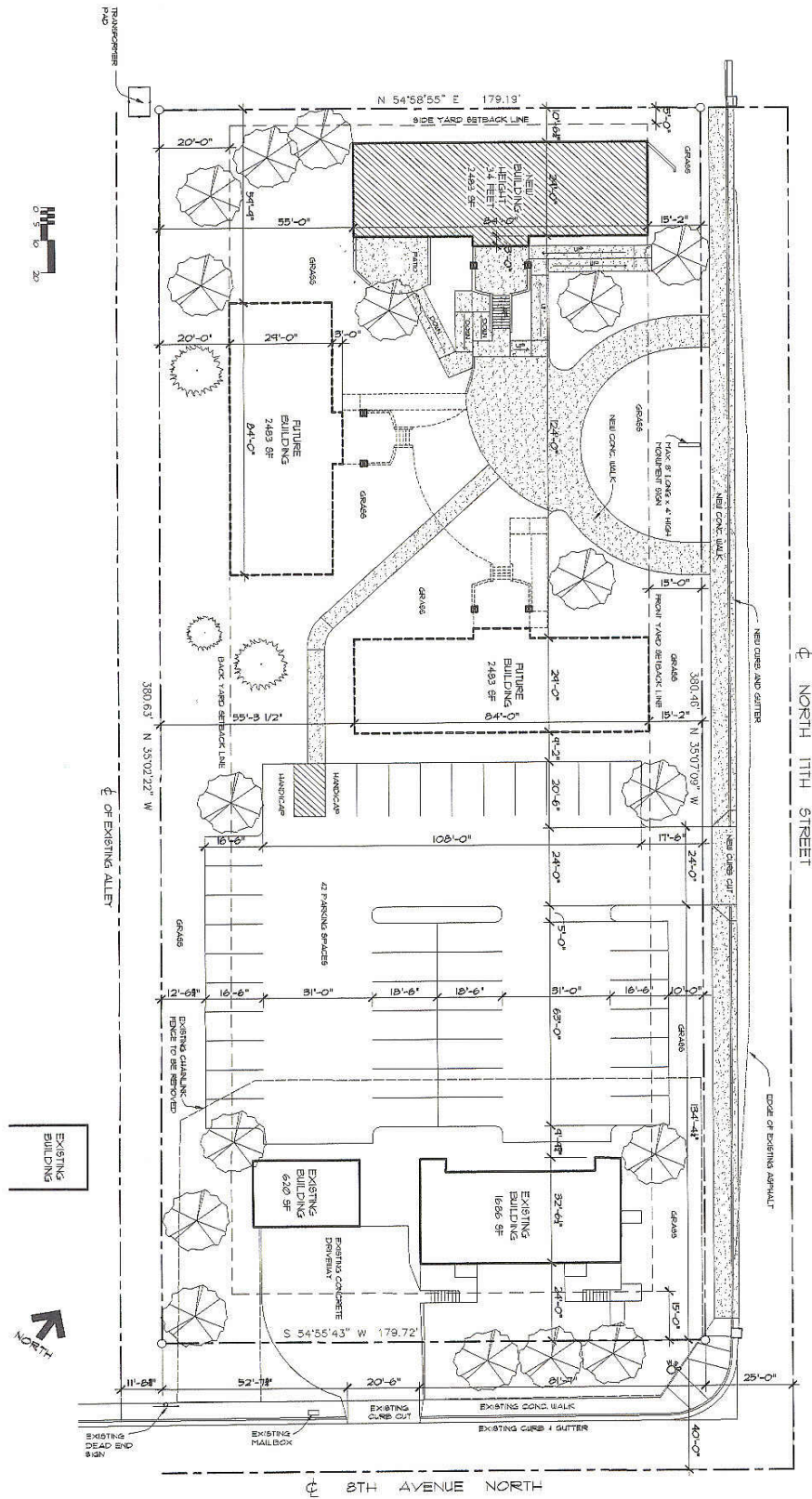
Subject Property at 1721 8th Avenue North view northwest



Subject Property from south side of 8th Avenue North - view northeast

ATTACHMENT C

Site Plan – Special Review #800



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, JANUARY 23, 2006

TITLE: Public Hearing for Special Review #801

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

PRESENTED BY: Wyeth Friday, Planner II

PROBLEM/ISSUE STATEMENT: This is a request for a special review to allow the construction of a 72-unit assisted living facility and 7 independent living cottages on Tract C of Certificate of Survey 1011. The property is addressed as 3345 Grand Avenue. The property owners are Bob and Cindy Cover and the representing agent is Lowell Springer, Springer Group Architects, PC. The Zoning Commission conducted a public hearing on January 3, 2006, and is forwarding a recommendation of **conditional approval** to the City Council on a 4-0 vote.

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

The Zoning Commission is recommending that the City Council **conditionally approve** Special Review #801.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A: Zoning Map
- B: Site Plans
- C: Site Photographs
- D: Letter in Opposition

INTRODUCTION

This is a special review to allow the construction of a 72-unit assisted living facility and seven independent living cottages on Tract C of Certificate of Survey 1011. Springer Group Architects, PC is the applicant and is working in conjunction with the owners of this parcel, Bob and Cindy Cover, to develop this project. Springer Group Architects has completed several of this type of assisted living facility in Billings and Bozeman. The property is located at the southeast corner of the intersection of Zimmerman Trail and Avenue E. The complex will be built with 72 units in one multi-wing building and seven single family cottage-style structures on the north end of the property. While there are agricultural operations being conducted on property to the west and south of this property, high-density single-family and duplex-patio home development is now located on the east and north sides of this property. While there is property located in the County across Zimmerman Trail to the west of this property, it is expected that this property will eventually be surrounded by the City and by high-density urban-style development.

The property is 179,031-square-feet in size. If this square footage is applied to the standard R-60 zoning district, 150,500 square feet would be required for the proposed 79 units. The proposed density is less than the maximum density allowed in the standard R-60 zoning district. While this property is zoned R-60R, which limits development to single family units, assisted living facilities are allowed by Special Review in the R-60 Restricted district. Using the R-60 density allowances for this assisted living special review appears to be a good measure of how much density should be allowed for this type of facility in this zoning district.

The property has existing approved accesses to Zimmerman Trail and Avenue E that may be utilized for the development configuration. Zimmerman Trail is classified as a principal arterial and has recently been constructed on the east side of this subdivision to handle additional traffic generated from this development. The proposed facility also will have vehicular access around the entire perimeter of the main building for public safety and service access. The developer also is currently proposing an emergency access only to Avenue E where the internal road serving the cottages terminates on the north edge of the property. The developer is proposing to retain several of the large existing trees on the northern portion of the property and to provide new landscaping around the main building, the outlying cottages and along the eastern boundary of the property where it abuts existing residential development. The developer plans a combination of fencing and living landscaping to buffer the properties to the east of the development. The location of the main building and the cottages on the property creates several large areas of open park-like grounds on the property and room to provide landscaped buffer areas to the surrounding streets and residential properties.

STAKEHOLDERS AND ZONING COMMISSION DISCUSSION

The Zoning Commission heard public comment on this application at its meeting on January 3rd. The applicant's agent, Lowell Springer, spoke in favor of the Special Review and four members of the public voiced concerns about the application, but did not speak in total opposition to the proposal. The major concerns from the neighboring residents included the type of fence and landscape buffering that would be placed along the eastern edge of the property, the proximity of the eastern portions of the building to adjacent properties to the east, the type of lighting that would be used on the site, and the access to Avenue E. One letter was provided to the Commission in opposition of the Special Review request. The letter was received by the Planning Department and the author did not speak at the public hearing (**See Attachment D**).

Several neighbors said they were concerned about the type of fencing and landscaping along the eastern edge of the facility that would be facing their back yards. The application had indicated that a mix of fence and shrubs would be placed along the eastern edge of the property to buffer the neighbors. One resident recommended that a six foot high solid fence be constructed along the eastern property boundary. She said this would prevent vehicle lights from shining into the back of homes and would provide privacy between the residents of the assisted living facility and the homes in the neighborhood.

Another neighbor said the size of the building was a concern. She said that a two-story building up to 34 feet high and about 25 feet from the property line would be a large structure when viewed from the houses to the east of the property. She asked if there was a way to shift the building closer to Zimmerman Trail.

One neighbor said he did not want to see any sort of access, including an emergency access, onto Avenue E. He said a cul-de-sac could be placed at the end of the road serving the cottages and all access could be to Zimmerman Trail.

After the public comments, the Zoning Commission asked Mr. Springer to address the neighbors' comments. Springer said that he would be fine with installing a cul-de-sac to serve the cottages if the City Fire Department would accept such a proposal. He said the Fire Department would make the final decision on the emergency access to Avenue E. Zoning Commission Vice Chairman Ed Workman added that the Zoning Commission also would defer to the Fire Department regarding any requirements for emergency access. Springer said he intended to construct a six foot fence along portions of the eastern boundary, but he also planned to alternate the fence with some solid vegetation. He said he wanted to alternate the fencing and landscaping to create a more aesthetically pleasing buffer for both the residents of the assisted living facility and the neighbors. He said he would be happy to work with the neighbors on how the fencing and landscaping was installed. Springer said that while the maximum building height could be 34 feet, the building would only be 17 feet to the eaves on the portions of the building that were closest to the eastern property boundary and the hip roof would slope up and away from the corners. He said reconfiguring the building would be difficult and that the current orientation of the building was done in an effort to reduce the perception of the mass of the building on the lot. Lighting on the property would be limited to avoid bright lights shining into the windows of the assisted living facility and the neighbors.

The Zoning Commission discussed the neighborhood concerns about buffering the facility from the properties to the east. The Commission decided to add language to Condition #3 to specify that a six-foot-high site obscuring fence shall be constructed along the entire eastern property boundary. The Commission also added language that landscaping should be provided with the fence along the eastern boundary of the property. The Commission also expressed concern about the type of lighting that would be used in the parking lots in the assisted living facility and how it would affect the neighbors. The Commission added Condition #5 to require that the lighting for the parking lot must have full cut off shields to prevent light from shining into neighboring properties. The Commission voted 4-0 to recommend the City Council conditionally approve the special review request for the assisted living facility.

APPLICABLE ZONING HISTORY

This property was annexed into the City of Billings on July 12, 2004.

Zone Change #743: Approved September 27, 2004. This was a zone change request to rezone the subject property from Residential-9600(R-96) to R-60R.

Zone Change #561: Withdrawn June 23, 2003. This was a county zone change request to rezone the subject property from Agricultural-Open Space to Residential Multi-Family-Restricted. The County Zoning Commission recommended denial of the zone change request and the applicant withdrew the application. There was significant opposition to the request from neighboring property owners.

Zone Change #629: Approved on February 9, 1998. This was a request for a zone change from R-96 to Residential-8000 (R-80) on two parcels of ground totaling about 3 acres in size. The property had been recently annexed into the City as R-96 and the applicant wished to rezone the property to allow single-family and multi-family homes. The parcel was approximately 3 acres and is located north of the subject property on the north side of Avenue E.

Variance #818: Conditionally approved on July 5, 2000. This was a variance request to reduce the required minimum lot size for 19 single-family homes in the R-80 zoning district from 152,000-square-feet to 135,541-square-feet on Lot 4, Block 1 of Autumn Subdivision. This parcel is the same one that received approval of Zone Change #629 above.

PROCEDURAL HISTORY

- The request for a Special Review was received on December 5, 2005.
- On January 3, 2006, the City Zoning Commission conducted a public hearing on the Special Review and voted 4-0 to recommend conditional approval of this application.
- The City Council will conduct a public hearing for consideration of this application on January 23, 2006.

ALTERNATIVES ANALYSIS

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

1. Complies with all requirements of this chapter.

This application complies with the requirements of the zoning regulations.

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy. This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.

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

This use is generally compatible with the surrounding neighborhood and the recommended conditions will ensure increased compatibility with and separation from the adjoining land uses.

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

1. Deny the application for a special review use.
2. Grant the application for a special review use.

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

Based on the above criteria, the Zoning Commission has recommended **conditional approval** of this Special Review. The following conditions of approval are recommended by the Zoning Commission:

7. The special review approval shall be limited to Tract C of Certificate of Survey 1011 as shown on the site plans submitted with this application.
8. Any expansion of the buildings, parking area or number of living units greater than 10 percent will require an additional special review approval as per BMCC 27-613(c).
9. The landscaping, parking, buffering and accesses shall be designed as submitted on the site plan included with the application for this Special Review unless City access requirements or City Fire Department regulations require adjustments. A six-foot-high site obscuring fence shall be constructed along the entire eastern edge of the property with landscaping provided on both sides of the fence. No chain link or wire fencing will be allowed on this site.
10. Any neighborhood identification signs shall submit for a sign permit from the Planning and Community Services Department and be no greater than 32 square feet in sign area. {BMCC-27-705(a)(6)}
11. Any lighting within the parking lot areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property.

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

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

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

- The proposal provides infill development within an existing commercial and residential corridor.
- The proposal provides contiguous development focused in and around an existing population center.
- The proposal provides more housing choices within the neighborhood, creating a more mixed-use neighborhood environment.

RECOMMENDATION

The Zoning Commission is recommending that the City Council **conditionally approve** Special Review #801.

ATTACHMENTS

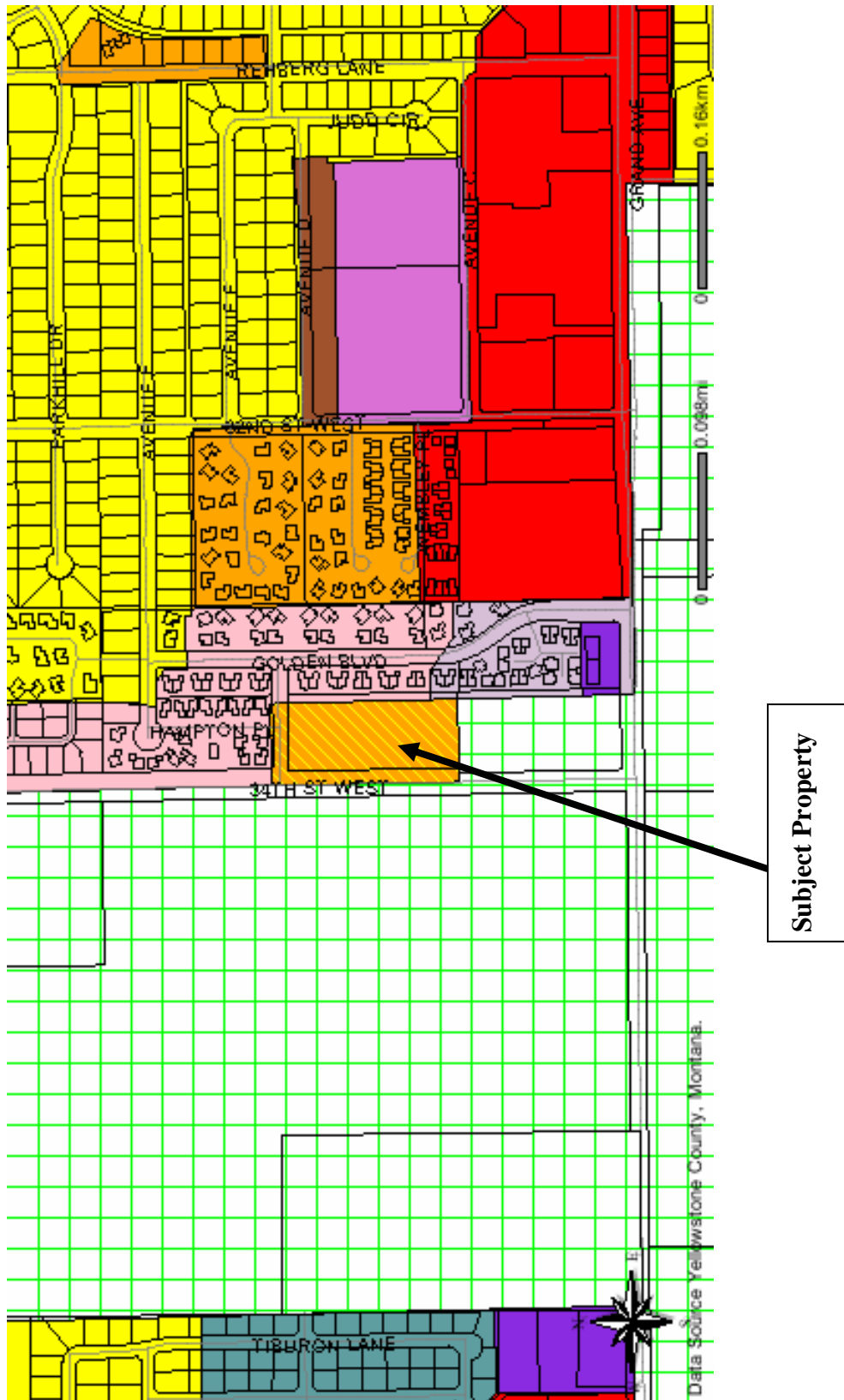
A: Zoning Map

B: Site Plan

C: Site Photographs

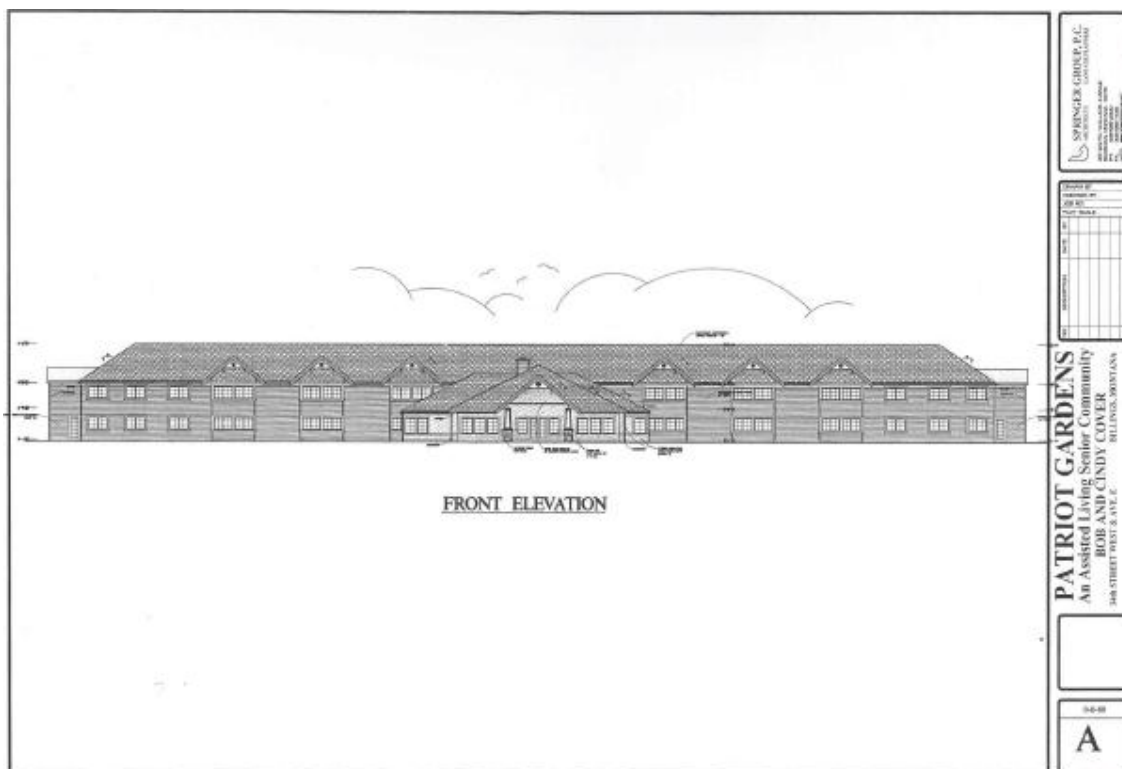
D: Letter in Opposition

ATTACHMENT A
Zoning/Location Map



ATTACHMENT B

Site Plans



ATTACHMENT C
Site Photographs



Figure 1. Looking southeast at the subject property from the intersection of Zimmerman Trail and Avenue E.



Figure 2. Looking east at the subject property from across Zimmerman Trail. Existing residents on Golden Boulevard are visible in the background.



Figure 3. Looking northwest from the subject property at residences across Avenue E.



Figure 4. Looking southeast at residential development east of the subject property along Avenue E. The northeast corner of the subject property is visible in the right of the photo.

To: Planning Department Staff
Planning Commission--Angela Cimmino, Ed Workman, Leonard Daily,
Mike Boyett, and Thomas Grimm

C/c: Mayor and City Council

From: Chuck Willkom
1548 Golden Blvd.
Billings, Mt. 59102

Subject: Special Review #801

Please **DENY** request for Special Review for owner to increase the density and value of one of only two undeveloped lots in our neighborhood. When 34th Street was developed owner tried to get zoning for a 150 unit apartment building. The Commission, at the time, wisely saw that this was wrong to put such a structure in the middle of an area that is mainly retired people. All buildings in neighborhood are for single families with the exception of the property facing Grand Ave. The neighborhood went along with planning departments recommendation to allow R6000 zoning instead of R8000, which is what surrounds this lot, so owner could receive a higher value for his property. This would allow him to increase the density to 22 units.

Owner is again trying to increase density from 22 to 79. This consists of a two story 72 unit assisted living facility with 7 cottages. This density doesn't include the extra traffic from 24 hour staffing employees, commercial deliveries since it is self contained, or visitors to the 79 units.

Please do not devalue the property of all resident taxpaying retired voters that are living in this subdivision to increase the value for one non resident owner.
Thank you for your consideration.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: Public Hearing and Resolution to Approve the Tom Romine Property Urban Planning Study and Expand the Urban Planning Area

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Engineering, Inc., on behalf of Thomas E. Romine, is requesting expansion of the Billings Urban Planning Area to include Lots 25, 26, 27, 38, 39, and 40 of Sunnycove Fruit Farms, consisting of approximately 60 acres. Mr. Romine owns Lots 26, 27 and 40, while Mr. Brian Monahan owns Lot 25, Mr. James Scott owns Lot 39, and Mr. Paul Hoyer owns Lot 38. Mr. Romine and Mr. Hoyer have also submitted an annexation petition for Lots 5, 6, 26, 27, 28, 38, and 40. Lots 5, 6, 28 and 60 currently lie within the Urban Planning Area. The property is located on the south side of Rimrock Road between 58th and 62nd Streets West. The expansion of the Urban Planning Area is required prior to annexation and provision of City services. The Yellowstone County Board of Planning has reviewed the request and has forwarded its recommendation to the City Council. Upon receiving the Planning Board recommendation, the City Council must hold a public hearing to receive comments and make the final determination as to the inclusion of this property in the Urban Planning Area.

ALTERNATIVES ANALYZED: The City Council may approve or deny the request to expand the Urban Planning Area. If the request is denied and the Council determines the area cannot be served by the City, the property will not be eligible for annexation.

FINANCIAL IMPACT: Approval of the Urban Planning Area Expansion has no financial impact on the City. The expansion only qualifies the property for future annexation. After annexation, the City is obligated to provide services.

RECOMMENDATION

The Yellowstone County Board of Planning recommends that Council approve the request to expand the Urban Planning Area to include Lots 25, 26, 27, 38, 39, and 40 of Sunnycove Fruit Farms, consisting of approximately 60 acres.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A.** Vicinity Map and Aerial Photograph
- B.** Study Area Map
- C.** Site Photographs
- D.** Resolution

INTRODUCTION

The Urban Planning Area is defined as “That area established by the City of Billings for the purpose of planning for future growth of the City of Billings within approximately a ten-year period. No City services will be provided outside the Urban Planning Area.” The subject area lies just outside the current Urban Planning Area. The applicant for the expansion, Engineering, Inc. has prepared an Urban Planning Study as the basis for reviewing the feasibility of providing City service to this area. City staff has reviewed this report and has found it acceptable and forwarded a recommendation of approval to the Planning Board.

PROCEDURAL HISTORY

- December 1, 2005 – Engineering, Inc. submits Urban Planning Study and request for Urban Planning Area expansion.
- December 1, 2005 – Thomas Romine and Paul Hoyer submit Petition for Annexation
- January 9, 2006 – City Council acknowledges Petition for Annexation
- January 10, 2006 – Planning Board reviews and recommends approval of the Urban Planning Area Expansion.

BACKGROUND

The Urban Planning Study for Lots 25, 26, 27, 38, 39, and 40, Sunnycove Fruit Farms was submitted to the Planning Department for review and approval as a prerequisite to expanding the Urban Planning Area boundary and subsequent annexation. The Urban Planning Study incorrectly lists Lots 5, 6, 28, 37B and 60 as part of this study. These Lots were previously included in the Northwest Urban Planning Study approved in 2002 and are not required to be part of this Study. An Urban Planning Area is the area established by the City for the purpose of planning for future growth of the City within a ten-year period. The study identifies the impacts to City services and the natural environment, and the feasibility of extending services within the area. Article 20-305, BMCC gives City Council authority to expand the boundaries of the Urban Planning Area after receiving a recommendation from the Planning Board and holding a public hearing. Engineering, Inc. requested the expansion of the Urban Planning Area on behalf of Mr. Thomas Romine. Three of the six lots, however, include properties under separate ownership. The study area includes 60 acres located on the south side of Rimrock Road between 58th and 62nd Streets West. The area is noncontiguous with the City limits but adjoins the existing Urban Planning Area to the north and on the east.

The Urban Planning Study was submitted on December 1, 2005 along with a petition for annexation. Subsequent applications for a zone change and subdivision are expected.

Population and Land Use

The study area is currently used for agricultural purposes. A development conceptual plan for the property was not submitted, but the Study indicates future development would be zoned Residential 7,000 and Residential 9,600 for a combination of single family homes and duplexes. The population of the future development, inclusive of all lots listed in the Study (approximately 99 acres), is expected to be about 753 people upon full buildout.

Streets, Transportation, Traffic Circulation and Generation

The study area adjoins Rimrock Road to the north, 58th Street West to the east, and 62nd Street West to the west. The 2005 Billings Urban Transportation Plan Update classifies Rimrock Road and 62nd Street as principal arterials, and 58th Street West is classified as a collector. Each of these roads will provide access to the future development of the property. Rimrock Road and 62nd Street West are both paved County roads. Fifty-eighth Street West is a gravel road. Internal streets serving this property will be constructed to local street standards. Impacts on the surrounding street network will be evaluated at the subdivision stage. Subdividers are required to pay their proportionate share of off-site street improvements identified in a Traffic Accessibility Study.

Based on the development of 99 acres described in the Urban Planning Study, it is estimated that during the peak morning period, 53 vehicles would enter the future subdivision, while 155 vehicles would exit. In the evening peak period, the number of vehicles entering the subdivision would increase to 192, while 109 vehicles would exit the development. On average, approximately 2,669 vehicle trips are expected to be generated per weekday. The Study indicates that about 96% of these trips would travel to or from the greater Billings area, with roughly half of them traveling on Rimrock Road and the half on Grand Avenue.

The primary mode of transportation to and from this development would be passenger vehicles. MET Transit does not currently serve this area.

Storm Water Management, Sewer, and Water

There are no City storm water facilities in the vicinity. Nearby subdivision developments have been required to retain storm water drainage onsite, or if permissible, discharge into a local irrigation facility.

Water and sewer service may be extended from Rimrock Road, and/or 58th Street West. The Study incorrectly identifies an existing 12" water main in Rimrock Road. This water main is actually 20" in diameter. A 12" water main may be required internal to the future subdivision. There is a 24" sanitary sewer main in 58th Street West and an 18" sanitary sewer main in Rimrock Road. Both of these mains could be used to serve the future subdivision.

Solid Waste, Public Safety, Parks, and Recreation

The property currently receives no solid waste service. The City would provide solid waste service upon annexation and development.

The study area is within the Billings Urban Fire Service Area and currently served by the Billings Fire Department. Interim fire protection will be provided to this property after annexation from Fire Station No. 3 at Parkhill and 17th Street West and Fire Station No. 5 at 24th Street and Rosebud prior to the construction of a new station. Land has been purchased for a new fire station at the intersection of Grand and 54th Street West. The station is scheduled for construction in 2008 and will service this area at that time. Based on 2002 statistics, the Fire Department responded to approximately 85 incidents per 1000 people. At this level of impact, the development could generate approximately 58 incidents per year at full buildout.

Emergency medical services are provided by Deaconess Hospital, approximately 8.69 miles from the area at 2813 9th Avenue North, and St. Vincent's Hospital, approximately 8.48 miles from the area at 1233 North 30th Street. There are also emergency outpatient and walk-in treatment facilities on 24th Street West.

Ambulance service is contracted with American Medical Response (AMR). AMR is required to provide to respond to emergency calls to all locations within the corporate limits of the City within eight minutes or less on at least ninety percent of such calls. As the City limits stretch further westward, the ability of AMR to meet this requirement becomes increasingly difficult. Currently, AMR has no difficulty in meeting this requirement as it applies to this area.

Police protection will be provided by the City of Billings Police Department. The Police Department has indicated that expansion of City limits negatively affects staffing and budget.

No detailed plans were provided on the future provision for parks and recreation. The City Parks, Recreation and Public Lands Department commented that the property lies within the "Benefited Area" of Cottonwood Park. If the future subdivision contributes cash-in-lieu of parkland, the cash will be used for the development and maintenance of Cottonwood Park. Regardless, the future subdivision will be required to participate in the Park Maintenance District of Cottonwood Park. As stated in the Urban Planning Study, the future subdivision is expected to contain significant greenspace, waterways, and park features. A separate park maintenance district would be set up for the maintenance of these features.

Schools

Elementary students would attend Arrowhead Elementary School with a current enrollment of 466 students. Middle school students would attend Will James Middle School with an enrollment of 561 students and an ideal capacity of 690 students. High school students would attend Billings West High. West High has an enrollment of 2,101 but has an ideal capacity of only 1,400 students. School District #2 was notified of this application but has submitted no comment regarding the impacts to local schools or school transportation.

Effects of Urbanization on Existing Environment and Agriculture

The study area contains a single residence and the remainder is currently being used for agricultural purposes. Future development would convert roughly 99 acres of agricultural property to moderate density residential land use.

The City Annexation Policy and accompanying Limits of Annexation map provides some guidance to the Planning Board and City Council when reviewing requests for annexation in this area. The overriding intent of the policy was to limit annexation to areas that can be immediately served by existing services without added costs to the City. In the absence of a development plan, it can only be presumed that the request to expand the Urban Planning Area is consistent with this policy in the following ways:

1. The property is located within the Limits of Annexation.
2. The proposed improvements meet City standards.
3. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.

4. Upon approval of the final subdivision plat, the owners will form a Park Maintenance District.
5. Residential densities will be at least 4 dwelling units per acre.
6. With the exception of being partially contiguous to existing City limits, the proposed annexation meets the goals of the City-County Growth Policy.

Soil, Geology, Topography and Flood Hazard

The soils in the study area are known to be problematic based on the 1973 Yellowstone County Soil Survey. The Survey found the area soil consists of silty clay loam and loam. Silty clay loam has been identified as being susceptible to erosion and exhibits fair to low bearing capacity. The loam soil exhibits moderate bearing capacity and low shear strength. The area is generally flat but slopes slightly towards the southeast.

In 2004, an Approximate Flood Study was conducted for Cove Creek drainage south of Rimrock Road and Little Cove Creek. The study determined that most of the area covered in the Urban Planning Study lies within Zone B, or the 500-year floodplain. Approximately ten acres (Lot 40) lies within the 100-year floodplain (Zone A). Development of property within the 100-year floodplain is subject to the City Floodplain Regulations and is considered unsuitable for development pursuant to the City Subdivision Regulations (Sec 23-106, BMCC).

Historic Sites and Wildlife

The Urban Planning Study did not identify any existing historic assets in the vicinity.

Development Timetables

The timetable for the development of the study area began with the submission of the Urban Planning Study and concurrent petition for annexation. The Planning Board will make a recommendation on the Urban Planning Area expansion on January 10, 2006 and the City Council will hold a public hearing and make a final determination on January 23. It is unknown when the subdivision and rezoning request will be submitted.

Method of Funding Public Improvements and Sources

Future on-site improvements will be constructed and paid for by the developer. The developer is also responsible for paying all applicable water and wastewater connection fees and charges. The actual mechanism for payment and financial guarantee of offsite public improvements associated with the future development will be determined during subdivision review. Prior to any development, the Subdivision Improvements Agreement (SIA) shall be approved and recorded with the subdivision plat. The SIA will stipulate specific infrastructure improvements and provide for financial security for such infrastructure improvements.

Taxes generated by the future development of this property will go towards support of all local government functions such as parks schools, police and fire protection, street maintenance, and City administration. Studies have demonstrated that tax revenue generated from residential subdivisions generally do not pay for the cost of providing services.

STAKEHOLDERS

Neither landowner notification nor a public hearing before the Planning Board is required for an Urban Planning Area expansion request. However, because there are two properties within the

expansion area that are not owned by the applicant, the owners of these properties were notified of the public hearing to be held before City Council on January 23. One of these property owners, Debra Monahan, contacted the Planning Division to confirm that being in the Urban Planning Area did not obligate her or the City to annex her property. The Planning Division confirmed that this was true.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The property is also within the area covered by the West Billings Plan and the recently adopted Northwest Shiloh Land Use Plan. The proposed development is consistent with the applicable land use goals of these Plans in the following manner:

West Billings Plan

1. Establish Development Patterns that Use Land More Efficiently. *The future development will utilize available infrastructure that can service higher densities than those that currently exist.*
2. Plan for the Orderly and Efficient Urbanization of Agricultural Lands. *The property is currently zoned a mix of Residential-9600, Residential-15000 and Agricultural Open-Space. While the existing land use is agricultural, the zoning anticipates higher densities in this area. The higher density residential development is consistent with developments occurring to the north, northwest, south and east of this property.*

Northwest Shiloh Area Plan

1. Encourage new development that is compatible with and complements existing City neighborhoods and County townsites. *The west Rimrock Road area is developing as a major City neighborhoods with densities of 4 dwelling units per acre or more. Recently approved zone changes will also allow for commercial development at the intersection of 62nd Street West and Rimrock Road providing retail business and services to the residential developments. This proposed development is compatible with the current trends and existing uses in this area.*
2. Provide more housing and business choices within each neighborhood. Provide affordable housing for all income levels dispersed throughout the City and County. *The proposed land use for this area is for single family and duplex-style homes.*
3. Plan for the cost-efficient extension and delivery of public services. *The existing infrastructure is capable of providing services to the expansion area.*

The proposed development conflicts with some of the goals from these plans as follows:

1. Reduce sprawl and development pressure on agricultural land. *The entire expansion area is currently used for agricultural purposes.*
2. Reduce commuting and the number and length of daily vehicle trips. *The area to be developed is located at least 8.5 miles from the major downtown and west end work centers.*
3. Ensure the continued functionality of natural systems. *The expansion area lies within a flood prone area as identified by the Cove Creek – Little Cove Creek Approximate Flood Study prepared in 2004.*

The Urban Planning Area expansion is consistent with the following Growth Policy goals:

1. Affordable housing for all income levels dispersed throughout the City and County (Land Use Element Goal, page 6).

2. More housing and business choices within each neighborhood (Land Use Element Goal, page 6)

The Urban Planning area expansion conflicts with the following goal:

1. Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6). *The study area is not contiguous to City territory.*

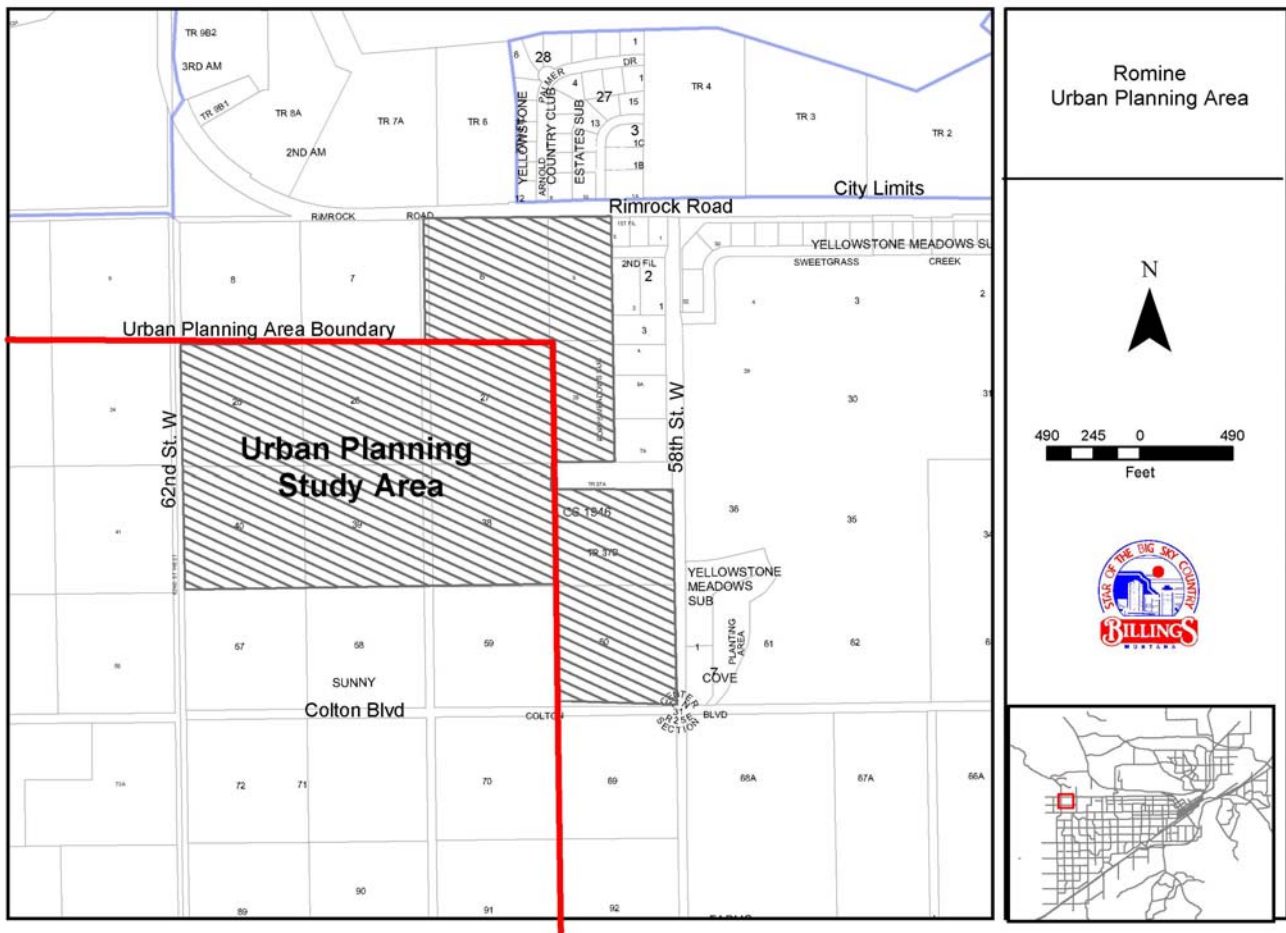
RECOMMENDATION

The Yellowstone County Board of Planning recommends that Council approve the request to expand the Urban Planning Area to include Lots 25, 26, 27, 38, 39, and 40 of Sunnycove Fruit Farms, consisting of approximately 60 acres.

ATTACHMENTS

- A. Vicinity Map and Aerial Photograph
- B. Study Area Map
- C. Site Photographs
- D. Resolution

Attachment A
Vicinity Map and Aerial Photograph



ENGINEERING, INC.
Consulting Engineers and Land Surveyors
1100 North Tower Way
Bozeman, Montana 59717
(406) 552-5255

ANNEXATION EXHIBIT
SUNNY COVE FRUIT FARM ANNEXATION
BRING LOTS 5, 6, 25, 26, 27, 28, 37A, 38, 39, 40, & 60 OF SUNNY COVE
FRUIT FARMS AND TRACT 37B OF CERTIFICATE OF SURVEY No. 1946
YELLOWSTONE COUNTY, MONTANA

LEGAL DESCRIPTION:
A tract of land situated in the NW 1/4 of Section 31, T. 1 N., R. 25 E., P.M.M., Yellowstone County, Montana, said tract being more particularly described as follows, to-wit:

Beginning at a point which is the southwest corner of Lot 7A of Amended Plat of Lots 5, 6, & 7, Block 2 of Popp's Meadow Subdivision, 2nd Filing; thence, along northerly line of Tract 37A of Certificate of Survey No. 1946, S 89°41'47" W a distance of 333.03 feet to the northwest corner of said Tract 37A; thence S 00°04'26" E a distance of 666.23 feet to the southeast corner of Lot 38 of Sunny Cove Fruit Farms; thence, along the southerly line of said Lot 38, S 89°46'45" W a distance of 686.44 feet to the southeast corner of Lot 39 of said Sunny Cove Fruit Farms; thence, along the easterly line of said Lot 39, N 00°10'20" W a distance of 665.57 feet to the northeast corner of said Lot 39; thence, along the northerly line of said Lot 39, S 89°41'33" W a distance of 642.18 feet to the northwest corner of said Lot 39; thence, along the westerly line of said Lot 39, S 00°03'11" E a distance of 665.17 feet to the southeast corner of Lot 40 of said Sunny Cove Fruit Farms; thence, along the southerly line of said Lot 40, S 89°43'51" W a distance of 694.52 feet to a point on the westerly right-of-way line of 62nd Street West; thence, along said right-of-way line, N 00°04'53" W a distance of 664.70 feet; thence, leaving said right-of-way line, N 89°41'33" E a distance of 694.85 feet to the southwest corner of Lot 26, Sunny Cove Fruit Farms; thence, along the westerly line of said Lot 26, N 00°03'11" W a distance of 665.17 feet to the northwest corner of said Lot 26; thence, along the northerly line of said Lot 26, N 89°39'16" E a distance of 665.80 feet to a point on the centerline of 60th Street West; thence, along said centerline, N 00°10'20" W a distance of 725.62 feet to a point on the northerly right-of-way line of Rimrock Road; thence, along said northerly right-of-way line, N 89°36'40" E a distance of 997.46 feet; thence, leaving said northerly right-of-way line, thence, along the westerly line of said Popp's Meadows Subdivision, 2nd Filing, S 00°05'01" E a distance of 931.10 feet to the northwest corner of Lot 5A of Amended Plat of Lots 5, 6, & 7, Block 2 of Popp's Meadow Subdivision, 2nd Filing; thence S 00°07'24" E a distance of 461.96 feet to the point of beginning; said described tract having a gross area of 63.1336 acres.

LEGAL DESCRIPTION:

A tract of land situated in the NW1/4 of Section 31, T. 1 N., R. 25 E., P.M.M., Yellowstone County, Montana, said tract being more particularly described as follows, to-wit:

Beginning at a point which is the southwest corner of Lot 7A of Amended Plat of Lots 5, 6, & 7, Block 2, of Poppy's Meadow Subdivision, 2nd Filing, along northerly line of said Tract 37A of Certificate of Survey No. 1946, E 89°41'47" W, a distance of 333.03 feet to the northwest corner of said Tract 37A, thence S 00°04'26" E, a distance of 566.23 feet to the southeast corner of Lot 38 of Sunny Cove Fruit Farm, thence along the southerly line of said Lot 38, E 89°46'45" W, a distance of 688.44 feet, the southeast corner of Lot 39 of said Sunny Cove Fruit Farm; thence, along the easterly line of said Lot 39, N 00°10'20" W, a distance of 565.57 feet to the northwest corner of said Lot 39, thence, along the northerly line of said Lot 39, E 89°41'33" W, a distance of 642.18 feet to the northwest corner of said Lot 39; thence, along the westerly line of said Lot 39, E 00°03'11" E, a distance of 665.17 feet to the southeast corner of Lot 40 of said Sunny Cove Fruit Farm; thence, along the southerly line of said Lot 40, E 89°43'51" W, a distance of 694.52 feet to a point on the westerly right-of-way line of 62nd Street; West; thence, along said right-of-way line, N 00°04'53" W, a distance of 664.70 feet; thence, leaving said right-of-way line, N 89°41'33" E, a distance of 694.85 feet to the southwest corner of Lot 26, Sunny Cove Fruit Farm; thence, along the westerly line of said Lot 26, N 00°03'11" W, a distance of 665.17 feet to the northwest corner of said Lot 26; N 89°39'16" E, the northerly line of said Lot 26; N 89°39'16" E, a distance of 665.80 feet; thence, along the centerline of 60th Street; West; thence, along said centerline, N 00°10'20" W, a distance of 725.62 feet to a point on the northerly right-of-way line of Rimrock Road; thence, along said northerly right-of-way line, N 89°36'40" E, a distance of 997.46 feet; thence, leaving said northerly right-of-way line, thence, along the westerly line of said Poppy's Meadows Subdivision, 2nd Filing, S 00°05'01" E, a distance of 931.10 feet to the northwest corner of Lot 5A of Amended Plat of Lots 5, 6, & 7, Block 2, of Poppy's Meadow Subdivision, 2nd Filing; thence S 00°07'22" E, a distance of 461.96 feet to the point of beginning, said described tract having a gross area of 63.1336 acres.

Attachment C
Site Photographs

View of property looking south from Rimrock Road. Foreground is located within existing Urban Planning Area. Middle ground, consisting of tilled crop land is within expansion area.



View of expansion area looking east from 62nd Street West.

View of expansion area looking northwest from 58th Street West.



RESOLUTION NO. 06-_____

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA,
APPROVING THE URBAN PLANNING STUDY AND
EXPANDING THE BOUNDARIES OF THE BILLINGS URBAN
PLANNING AREA TO INCLUDE LOTS 25, 26, 27, 38, 39, AND
40, SUNNYCOVE FRUIT FARMS.

WHEREAS, an Urban Planning Study was conducted on Lots 25, 26, 27, 38, 39, and 40 of Sunnycove Fruit Farms, and was submitted to the City for review and approval, and

WHEREAS, the Billings Urban Planning Area is the area established by the City, for the purpose of planning for future growth of the City, and

WHEREAS, the purpose of the study is to determine impacts on city services, the natural environment, and the feasibility of extending City services within the proposed area, and

WHEREAS, the study area encompasses the property generally located at the northeast corner of Grand Avenue and 60th Street West intersection. More particularly described as:

A tract of land situated in the NW1/4 of Section 31, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as all of Lots 25, 26, 27, 38, 39 and 40, Sunnycove Fruit Farms. Containing 60 gross acres, more or less. See Exhibit "A" Attached.

WHEREAS, the Yellowstone County Board of Planning reviewed the Urban Planning Study on this property, also known as the Tom Romine Property Urban Planning Study at its regular meeting on January 10, 2006, and

WHEREAS, the Yellowstone County Board of Planning has recommended approval of inclusion of the property described above in the Billings Urban Planning Area, finding that municipal services can safely and efficiently be extended to this area and the projected growth is consistent with existing and proposed land use and transportation plans, and

WHEREAS, a public hearing was properly noticed and held by the Billings City Council as required by law.

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

1. URBAN PLANNING STUDY. The Urban Planning Study for the Tom Romine Property is hereby approved by the Billings City Council.
2. URBAN PLANNING AREA. The boundaries of the Billings Urban Planning Area are hereby extended to include Lots 25, 26, 27, 38, 39 and 40, Sunnycove Fruit Farms.

PASSED AND APPROVED by the City Council this 23rd day of January, 2006.

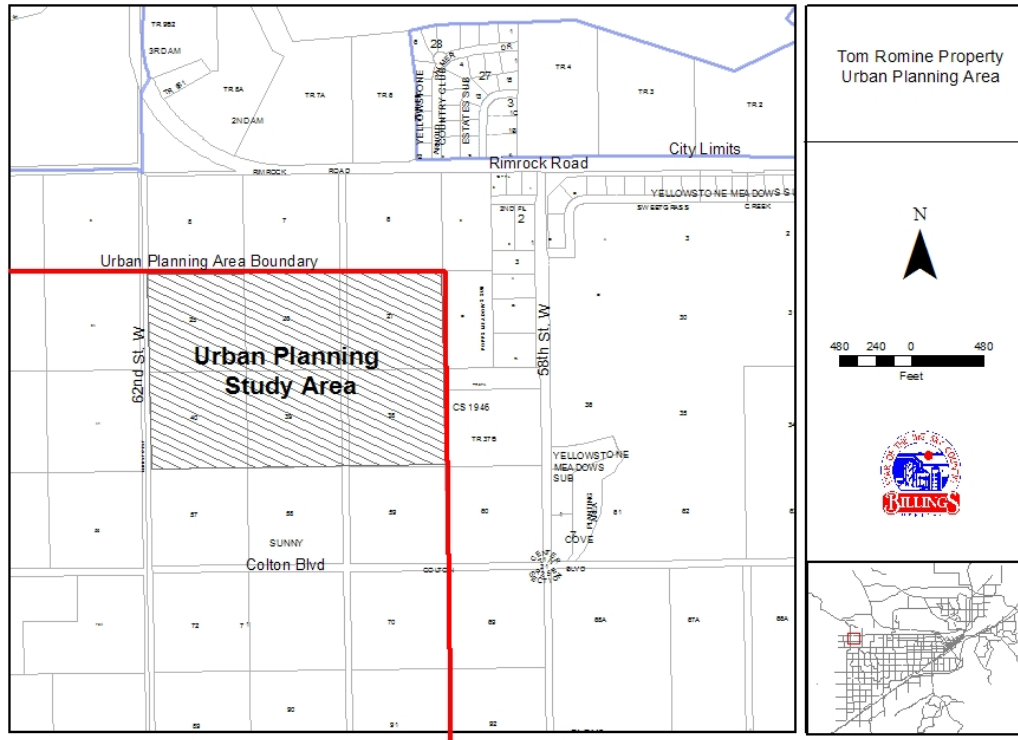
THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE City Clerk

EXHIBIT A



(Back to Regular Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, January 23, 2006

TITLE: Public Service Report, Public Hearing and Resolution for Annexation 06-01, Romine/Hoyer Properties

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Thomas Romine and Paul Hoyer are requesting approval of the petition to annex Lots 5, 6, 26, 27, 28, 38, and 39 of Sunnycove Fruit Farms. The 58.041-acre property is located on the south side of Rimrock Road between 58th and 62nd Streets West. The owners are requesting annexation in order to obtain municipal sewer and water for a proposed residential subdivision in accordance with 7-2-4601 et. seq., MCA. This public service report describes the City's capacity to serve the proposed development.

ALTERNATIVES ANALYZED: The City Council may approve or disapprove a petition submitted by owners of 50% of the real property in the area to be annexed (7-2-4601 (3)(b), MCA).

FINANCIAL IMPACT: The City can provide service to this property. While the annexation will increase the City's tax base, in general, the costs of providing service to residential properties exceed the revenues generated from property tax.

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation with the following conditions:

1. That 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. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

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

ATTACHMENT

A. Resolution

INTRODUCTION

The owner submitted a petition for annexation for a 58.041-acre property located south of Rimrock Road between 58th and 62nd Streets West on December 1, 2005. The owners also intend to submit preliminary subdivision plat application in the near future. The property is currently zoned Residential-9,600, Residential-15,000 and Agricultural-Open Space. However, the owners plan to rezone this property to Residential-9,600 and Residential 7,000 for a mix of single family and duplex residences. Upon approval of the Tom Romine Urban Planning Study and the Urban Planning Area expansion, this property is eligible for annexation

PROCEDURAL HISTORY

- December 1, 2005 – Engineering, Inc. submits Urban Planning Study and request for Urban Planning Area expansion.
- December 1, 2005 – Thomas Romine and Paul Hoyer submit Petition for Annexation
- January 9, 2006 – City Council acknowledges Petition for Annexation
- January 10, 2006 – Planning Board reviews and recommends approval of the Urban Planning Area Expansion.
- January 23, 2006 – City Council holds public hearing for Urban Planning Area expansion and Annexation Petition.

BACKGROUND

The Urban Planning Study that incorporates this property will come before Council at the same meeting as this petition for annexation. The approval of the Study and expansion of the Urban Planning Area is required prior to annexation of any property to the City of Billings.

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. The proposed annexation *complies* with the recently adopted Annexation Policy criteria as follows:

7. The area is located within the Limits of Annexation and within the Urban Planning Area.
8. The City is able to provide adequate services.
9. The proposed improvements meet City standards.
10. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
11. Upon approval of the final subdivision plat, the owners will form a Park Maintenance District.
12. Residential densities will be approximately 4 dwelling units per acre.
13. With the exception of being contiguous to existing City limits, the proposed annexation meets the goals of the City-County Growth Policy.

Although MCA 7-2-4600 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. School District #2 and Yellowstone County were also notified of this annexation. All City departments responded favorably, with the exception of the Police Department. No comments were received from School District #2 or Yellowstone County.

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

Water: Water service will be extended from Rimrock Road from an existing 20" water main.

Sewer: There is a 24" sanitary sewer main in 58th Street West and an 18" sanitary sewer main in Rimrock Road. Both of these mains could be used to serve the future subdivision

Stormwater: There are no City storm water facilities in the vicinity. Nearby subdivision developments have been required to retain storm water drainage onsite, or if permissible, discharge into a local irrigation facility.

Transportation: The study area adjoins Rimrock Road to the north, 58th Street West to the east, and 62nd Street West to the west. The 2005 Billings Urban Transportation Plan Update classifies Rimrock Road and 62nd Street as principal arterials, and 58th Street West is classified as a collector. Each of these roads will provide access to the future development of the property. Rimrock Road and 62nd Street West are both paved County roads. Fifty-eighth Street West is a gravel road. Internal streets serving this property will be constructed to local street standards. Impacts on the surrounding street network will be evaluated at the subdivision stage. Subdividers are required to pay their proportionate share of off-site street improvements identified in a Traffic Accessibility Study.

Based on the development of 99 acres described in the Urban Planning Study, it is estimated that during the peak morning period, 53 vehicles would enter the future subdivision, while 155 vehicles would exit. In the evening peak period, the number of vehicles entering the subdivision would increase to 192, while 109 vehicles would exit the development. On average, approximately 2,669 vehicle trips are expected to be generated per weekday. The Study indicates that about 96% of these trips would travel to or from the greater Billings area, with roughly half of them traveling on Rimrock Road and the half on Grand Avenue.

Fire Station: The study area is within the Billings Urban Fire Service Area and currently served by the Billings Fire Department. Interim fire protection will be provided to this property after annexation from Fire Station No. 3 at Parkhill and 17th Street West and Fire Station No. 5 at 24th Street and Rosebud prior to the construction of a new station. Land has been purchased for a new fire station at the intersection of Grand and 54th Street West. The station is scheduled for construction in 2008 and will service this area at that time. Based on 2002 statistics, the Fire Department responded to approximately 85 incidents per 1000 people. At this level of impact, the development could generate approximately 6 incidents per year at full buildout.

Parks: No detailed plans were provided on the future provision for parks and recreation. The City Parks, Recreation and Public Lands Department commented that the property lies within the “Benefited Area” of Cottonwood Park. If the future subdivision contributes cash-in-lieu of parkland, the cash will be used for the development and maintenance of Cottonwood Park. Regardless, the future subdivision will be required to participate in the Park Maintenance District of Cottonwood Park. As stated in the Urban Planning Study, the future subdivision is expected to contain significant greenspace, waterways, and park features. A separate park maintenance district would be set up for the maintenance of these features.

Bicycle and pedestrian facilities: The area proposed for annexation is not affected by the Heritage Trail Plan.

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. MET had no problem with the petition to annex.

Fire: The property is currently within the Billings Urban Fire Service Area (BUFSA) and is served by the Billings Fire Department. After annexation, the Billings Fire Department will continue to serve this area. The Fire Department did not object to this annexation.

Police: The Police Department responded that any annexation could adversely affect calls for service and require an increase in police service.

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 property is also within the area covered by the West Billings Plan and the recently adopted Northwest Shiloh Land Use Plan. The proposed development is consistent with the applicable land use goals of these Plans in the following manner:

West Billings Plan

3. Establish Development Patterns that Use Land More Efficiently. *The future development will utilize available infrastructure that can service higher densities than those that currently exist.*
4. Plan for the Orderly and Efficient Urbanization of Agricultural Lands. *The property is currently zoned a mix of Residential-9600, Residential-15000 and Agricultural Open-Space. While the existing land use is agricultural, the zoning anticipates higher densities in this area. The higher density residential development is consistent with developments occurring to the north, northwest, south and east of this property.*

Northwest Shiloh Area Plan

4. Encourage new development that is compatible with and complements existing City neighborhoods and County townsites. *The west Rimrock Road area is developing as a major City neighborhoods with densities of 4 dwelling units per acre or more. Recently approved zone changes will also allow for commercial development at the intersection of 62nd Street West and Rimrock Road providing retail business and services to the residential developments. This proposed development is compatible with the current trends and existing uses in this area.*
5. Provide more housing and business choices within each neighborhood. Provide affordable housing for all income levels dispersed throughout the City and County. *The proposed land use for this area is for single family and duplex-style homes.*
6. Plan for the cost-efficient extension and delivery of public services. *The existing infrastructure is capable of providing services to the expansion area.*

The proposed development conflicts with some of the goals from these plans as follows:

4. Reduce sprawl and development pressure on agricultural land. *The entire expansion area is currently used for agricultural purposes.*
5. Reduce commuting and the number and length of daily vehicle trips. *The area to be developed is located at least 8.5 miles from the major downtown and west end work centers.*
6. Ensure the continued functionality of natural systems. *The expansion area lies within a flood prone area as identified by the Cove Creek – Little Cove Creek Approximate Flood Study prepared in 2004.*

The Urban Planning Area expansion is consistent with the following Growth Policy goals:

3. Affordable housing for all income levels dispersed throughout the City and County (Land Use Element Goal, page 6).
4. More housing and business choices within each neighborhood (Land Use Element Goal, page 6)

The Urban Planning area expansion conflicts with the following goal:

Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6). *The study area is not contiguous to City territory.*

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation with the following conditions:

1. That 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. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

ATTACHMENT

- A. Resolution

RESOLUTION NO. 06-

**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 NE1/4 of Section 36, T.1N., R.24E., and the NW1/4 of Section 31, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: Sunny Cove Fruit Farms, the West ½ of Lots 5 and 28 and all of Lots 6, 26, 27, 38 and 40, Recorded April 27, 1910, Under Document No. 21540, Records of Yellowstone County, Montana; including all adjacent right-of-way of Rimrock Road, 60th Street West and 62nd Street West. Containing 63.543 gross and 58.041 net acres, more or less.

(# 06-01) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved subject to the following conditions:

That 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. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.
3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 23rd day of January, 2006.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

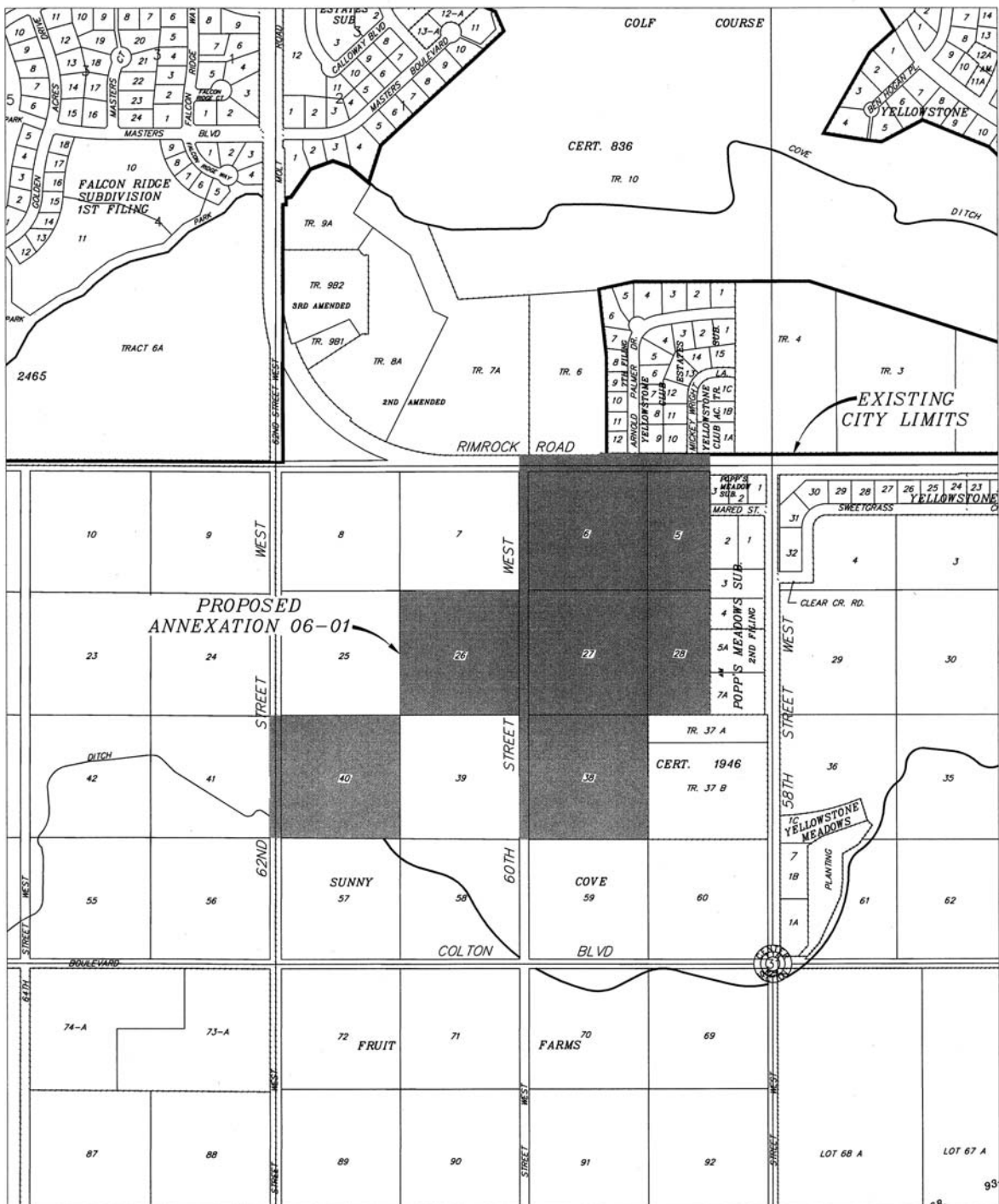
ATTEST:

BY: _____

Marita Herold, CMC/AAE CITY CLERK

(AN 06-01)

EXHIBIT "A"



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, January 23, 2006**

SUBJECT: City Special Review #799 – Cretex Concrete Products West, Inc.**DEPARTMENT:** Planning and Community Services through Ramona Mattix, AICP,
Planning Director**PRESENTED BY:** Cynthia Wilson, Planner I

REQUEST: A special request has been made to allow the applicant, Cretex Concrete Products West, Inc. (dba Elk River Concrete Products), to perform outside production and storage of hydraulic concrete products in a Controlled Industrial zoning district, as required Article 27-306 of the Unified Code Regulations. This special review request will provide additional working space to Cretex Concrete Products West, Inc., allowing the company to expand its business operation. The subject property is legally described as Lot 2, Block 6 of the Tierra Yellowstone Industrial Park Subdivision, 2nd Filing, and is generally located adjacent to the north of Hesper Road between South 30th Street West and South 32nd Street West. The Zoning Commission conducted a public hearing on December 6, 2005, and is forwarding a recommendation of conditional approval to the City Council by a 4-1 vote.

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

The Zoning Commission is recommending that the City Council conditionally approve Special Review #799.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A: Zoning Map

B: Site Plan

C: Site Photographs

D: Information provided by Applicant

E: Submissions from Opponents

INTRODUCTION

A special request has been made to allow the applicant, Cretex Concrete Products West, Inc. (dba Elk River Concrete Products), to perform outside production and storage of hydraulic concrete products in a Controlled Industrial zoning district, as required Article 27-306 of the Unified Code Regulations. This special review request will provide additional working space to Cretex Concrete Products West, Inc., allowing the company to expand its business operation. The subject property is legally described as Lot 2, Block 6 of the Tierra Yellowstone Industrial Park Subdivision, 2nd Filing, and is generally located adjacent to the north of Hesper Road between South 30th Street West and South 32nd Street West.

The subject of Special Review #799, Lot 2, Block 6 of the Tierra Yellowstone Industrial Park Subdivision, 2nd Filing, is located within the southwestern region of Billings. This area is predominantly zoned as Controlled Industrial and is one of the largest industrially-zoned areas within Yellowstone County. The subject property contains the existing concrete business (Cretex) on the southwest corner of the site (current Lot 2) and a tree nursery on the eastern portion of the property (current Lot 3); current Lot 1, the northern portion of current Lot 2, and current Lots 4-5 are vacant. The subject property is bordered on the west by a powder coating business, on the south by vacant land and a vacant warehouse structure and on the east and north by vacant and developing land. Although this area is pre-designated as being suitable for light and heavy industrial uses, the production and storage of “hydraulic cement, structural clay products; concrete, gypsum, and plaster products,” is regulated through the special review process (Article 27-3000, Sections 32-324, 325 and 327). Additionally, this subdivision, caters to a variety of light industrial amenities, including highway and public works projects.

The Tierra Yellowstone Industrial Park Subdivision was created as a planned commercial and industrial complex, within a Controlled Industrial zoning district. The applicant, Cretex Concrete Products West, Inc., is requesting a special review to allow outside production and storage of hydraulic concrete products on Lot 2, Block 6 of the Tierra Yellowstone Industrial Park Subdivision, 2nd Filing. This special review would aggregate 11 lots within the previously filed, first and amended filings of Tierra Yellowstone Industrial Park. The resulting aggregation would consist of Lots 1-7 and 11-12 of Block 2A and Lots 10-11 of Block 1A into a proposed Lot 2. Previous actions taken by the City Zoning Commission and the City Council include conditional approval of a special review in 1990, to allow a precast concrete product plant in a Controlled Industrial zoning district; and, two conditionally approved special reviews requested in March and October of 1992, to allow outside manufacturing and outside storage of precast concrete products and related uses. This special review request, upon approval, would allow additional area for Cretex Concrete Products West, Inc., to expand its operation.

Planning staff considered the application and recommended conditional approval. The proposed property use is consistent with regional land uses and neighborhood zoning characteristics (Yellowstone County and City of Billings 2003 Growth Policy Plan, Land Use Element Goal 1). The proposed property use contains the existing concrete facility and its operations, would utilize onsite vacant land, and existing public facilities, rather than developing this expansion on nearby otherwise vacant land in adjacent city neighborhoods and county town sites (Land Use Goal 2). In addition Special Review #799 will not be different in land use, as the existing facility and land

use is currently used for the same purposes. Hours of operation will be the same. Onsite land use will be the same (Article 2700-1500).

APPLICABLE ZONING HISTORY

Special Review #398 – A special review in a Controlled Industrial zone was conditionally approved February 26, 1990, to allow a precast concrete product plant on Lots 1 thru 4, and Lots 11 and 12, Block 2A, of the Tierra Yellowstone Industrial Park Subdivision generally located at the northeast corner of Hesper Road and South 32nd Street. The condition of approval was that all applicable requirements of the Subdivision Improvements Agreement be met before any permits were issued.

Special Review #461 – A special review in a Controlled Industrial zone was conditionally approved March 13, 1992, to allow outside manufacturing and outside storage of precast concrete products and related uses on Lots 5 and 6, Block 2A, of the Tierra Yellowstone Industrial Park Subdivision generally located at 3101 Hesper Road. The condition of approval was that the use and development of the property be limited to outside storage and manufacturing of precast concrete products only.

Special Review #470 – A special review in a Controlled Industrial zone was conditionally approved October 19, 1992, to allow outside manufacturing and outside storage of precast concrete products and related uses on Lots 7 and 8, Block 2A, of the Tierra Yellowstone Industrial Park Subdivision generally located at the southwest corner of South 30th Street West and Conrad Road. The condition of approval was that the applicant sign a *waiver of protest* to ensure future participation in street improvements along South 30th Street West and Conrad Road, adjacent to the subject property.

Street Vacation - Conrad Road, previously located through the center of the subject property, was vacated at the September 12, 2005, City Council meeting.

PROCEDURAL HISTORY

- The request for a Special Review was received on November 7, 2005.
- On December 6, 2005, the City Zoning Commission conducted a public hearing on Special Review #799, and voted 4-1 to forward conditional approval to the Billings City Council.
- A public hearing for consideration of this application was scheduled for the January 9, 2006, Billings City Council meeting.
- The applicant requested an extension of the January 9, 2006 public hearing to the Billings City Council meeting of January 23, 2006.
- The Billings City Council opened and closed, thereby conducting the required public hearing, on January 9, 2006; and, granted the applicant's request for extension of the public hearing until January 23, 2006.
- The Billings City Council will conduct a public hearing for consideration of this application on January 23, 2006.

ALTERNATIVES ANALYSIS

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

4. Complies with all requirements of this chapter.
This application complies with the requirements of the zoning regulations.

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

CONDITIONS OF APPROVAL

The applicant shall comply with the following conditions of approval:

12. Screen materials stored outside. All materials, parts, equipment and similar items shall be placed and stored outside in a neat and orderly fashion and screened from public view and neighboring property with fences or landscape screening built in conformity with set back requirements.
13. Remove garage and waste weekly. Garage and waste removal shall be accomplished at least once a week, or more often, if necessary, to maintain the premises and keep clean and free of refuse.
14. Provide landscaping, mowing of weeds, and keep the new expansion area of Lot 2, Block 6 of the Tierra Yellowstone Industrial Park Subdivision, 2nd Filing, clean and free of refuse.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit, or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level.

STAKEHOLDERS

One individual, the Agent, spoke in support of the Special Review, and four spoke in opposition. Agent Marshall Phil provided testimony and answered questions from the Zoning Commission. Although no city departmental comments were received regarding this application, the applicant provided additional information regarding Cretex's business operations (see Attachment D).

One concern was that there would be dust from the additional storage onsite. Another stated that this area was a high-end campus park, designed for quality factories, and business headquarters, maybe a fiber optic high tech data center, but not for "dusty concrete." The opponent stated that Cretex detracted from property values, and provided a letter to this end (see Attachment E). The opponent "has purchased land around and is circling inward...the purchases will provide jobs and value for taxation." This opponent stated the area's long-term goal was to redevelop. The next opponent stated he was not opposed to the business, just the location and that would assist "in moving the lumber company out also." The fourth opponent is interested in developing a daycare center for the high-end campus park that would be developed and provided a site plan of such (see Attachment D).

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

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

- The proposal provides development within an existing commercial corridor.

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

ATTACHMENTS

Attachment A: Zoning Map

Attachment B: Site Plan

Attachment C: Site Photographs

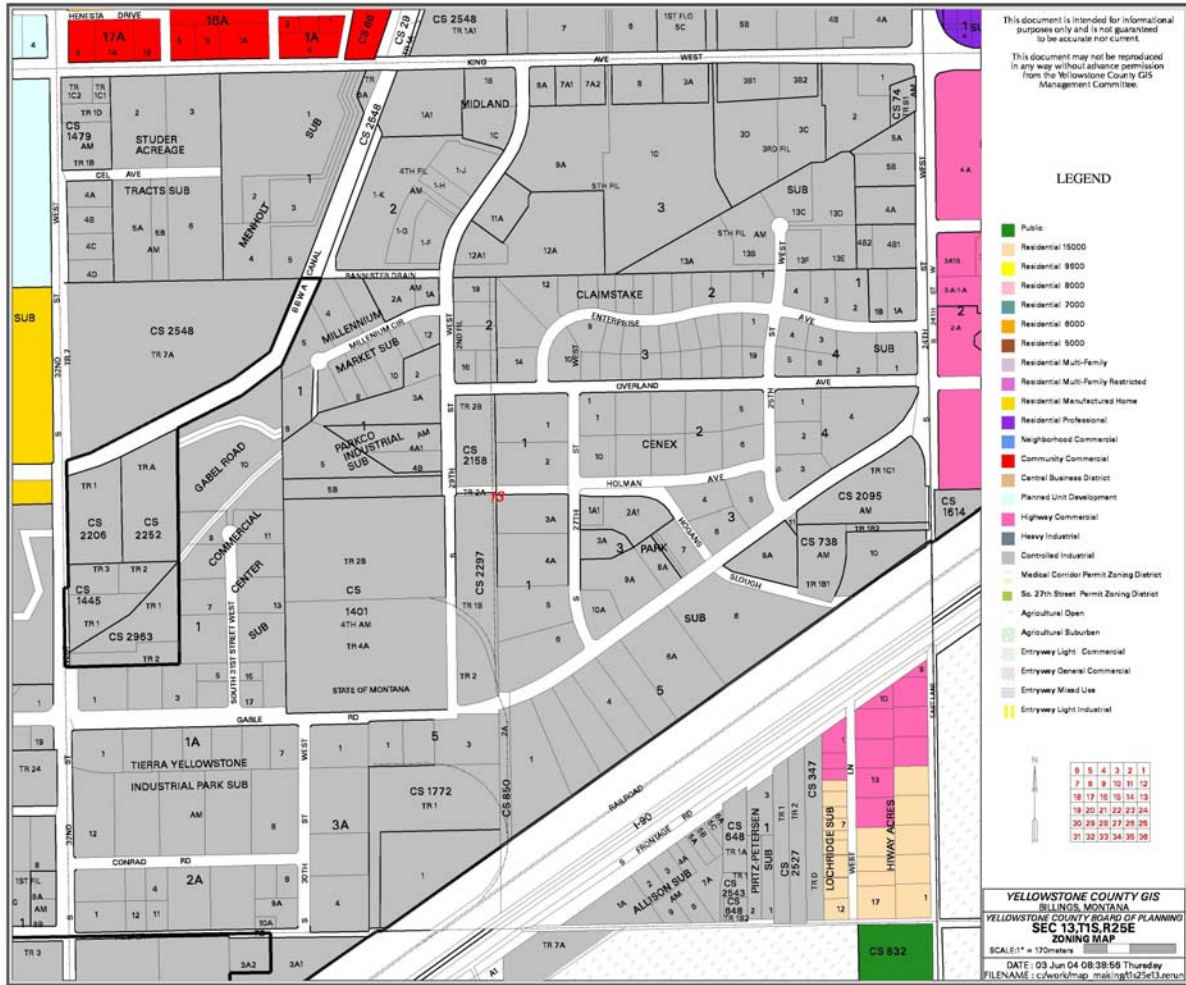
Attachment D: Information provided by

Applicant

Attachment E: Submissions from Opponents

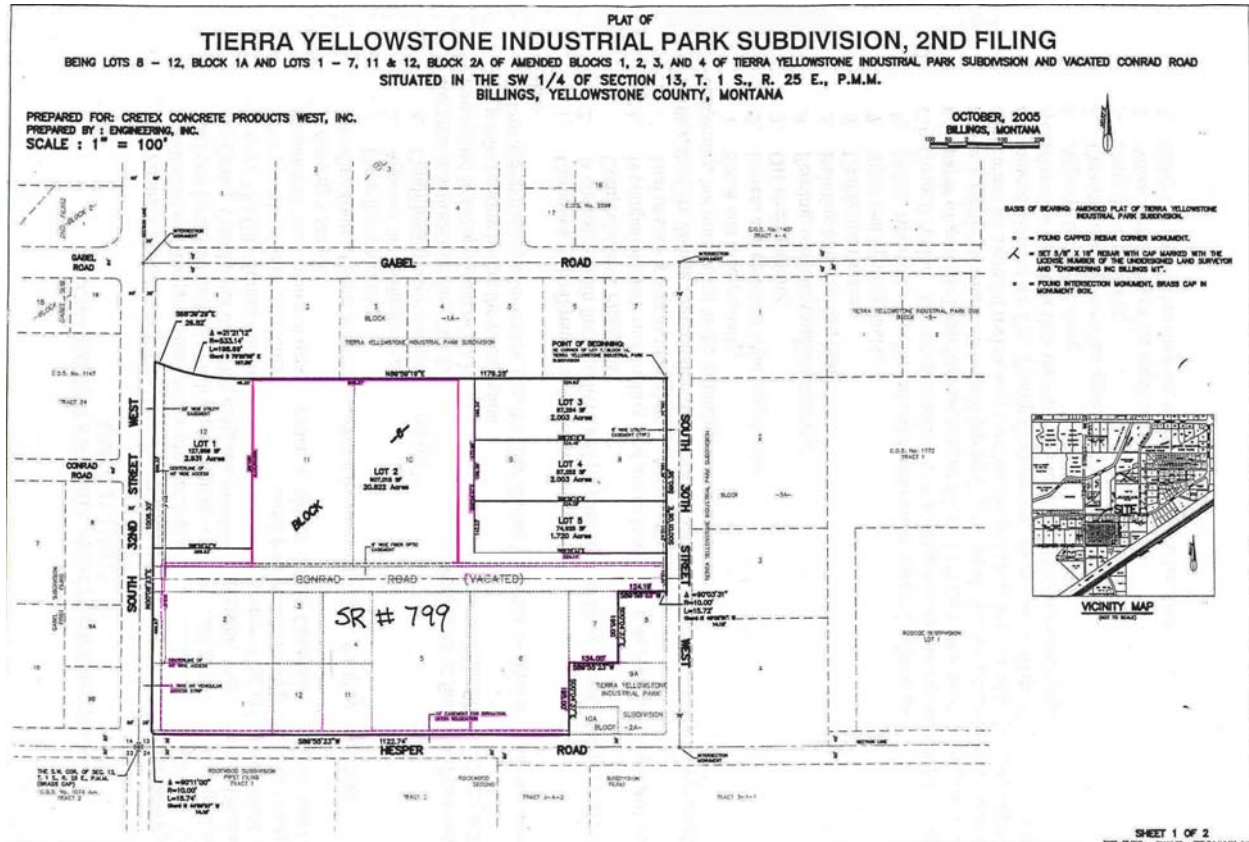
CITY SPECIAL REVIEW #799
LOT 2, BLOCK 6
TIERRA YELLOWSTONE INDUSTRIAL PARK SUBDIVISION, 2ND FILING

ATTACHMENT A
ZONING MAP



CITY SPECIAL REVIEW #799
TIERRA YELLOWSTONE INDUSTRIAL PARK SUBDIVISION, 2ND FILING

ATTACHMENT B
SITE PLAN



**CITY SPECIAL REVIEW #799
LOT 2, BLOCK 6
TIERRA YELLOWSTONE INDUSTRIAL PARK SUBDIVISION, 2ND FILING**

**ATTACHMENT C
SITE PHOTOGRAPHS**



Photo 1. Facing east, looking at existing Cretex Concrete Products West, Inc., western access.



Photo 2. Facing north along South 32nd Street West, which borders the subject property on the west. Bosco Powder Coating is shown on the west.



Photo 3. Facing south, looking at the additional area Concrete Products West, Inc. intends to utilize upon Special Review #799 approval.



Photos 4 and 5. Looking at current storage area.



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2005

TITLE: Exchange City Golf Corporation 2006 Annual Budget

DEPARTMENT: Parks, Recreation and Public Lands

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

PROBLEM/ISSUE STATEMENT: Every year the Exchange City Golf Corporation (ECGC) is required to submit its annual budget to the City Council for approval in December or around the 1st of the year. The 2006 proposed budget was reviewed at the January 3rd, 2006, City Council Work Session and is being submitted by the ECGC Board of Directors for your review and approval. The proposed budget includes a \$1.00 increase for the 9 hole Daily Fee that changes it from \$9.00 for 9 holes to \$10.00 for 9 holes. The 18 hole Daily Fee remains unchanged at \$13.00. At the Work Session the council requested changes to the proposed budget format to include the cash reserve amount as a percentage of the Operating and Maintenance budget.

ALTERNATIVES ANALYZED: Staff has analyzed the following alternatives.

1. Approve the ECGC 2006 annual budget. (recommended)
2. Approve the proposed budget with requested changes.

FINANCIAL IMPACT: The 2005 net cash proceeds were projected at \$93,514. The 2006 net cash proceeds are projected at \$60,350 and include the proposed \$1.00 fee increase for 9 holes. The annual distribution of net profit is declared by the ECGC Board of Directors based on: 1st meeting the expenses of the operation; 2nd paying for debt retirement; 3rd providing reserves for the operational expenses; 4th to provide a reserve for the proposed capital expenditures included in the proposed budget; and, 5th providing the net profit distribution to the City and the Downtown Exchange Club on a 2/3-1/3 basis. This method is outlined in the management contract between the City of Billings and the Downtown Exchange Club. The 2006 proposed revenues would be much less than the 2005 actual revenues at Par 3 without the \$1.00 per 9 hole fee increase which is expected to generate \$13,000 in additional revenue. Maintaining an adequate reserve is essential because ideal golf weather cannot be expected every year and unforeseen repairs to aging infrastructure must be anticipated, so to be conservative the ECGC

Board of Directors is recommending the fee increase to maintain that required cash reserve. The proposed budget includes \$33,900 for equipment replacement and course improvements.

RECOMMENDATION

Staff recommends that Council approve the 2006 Exchange City Golf Course budget as presented.

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

ATTACHMENTS

A: ECGC 2006 Budget, 10 YR CIP, and related financial statements – (8 pages)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
January 23, 2006

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

RECONSIDERATION OF AGENDA ITEM: During the December 12, 2005 meeting, the City Council amended the motion to include in the contract public consideration of Option 1 and 2 and any other options the public may come forward with. This amended motion is reflected in the contract extension (see Attachment A). During the December 19, 2005, meeting, the City Council voted to reconsider this agenda item at the January 23, 2006, Council Meeting.

In the January 10, 2006 Cobb Field Steering Committee meeting, the Committee reaffirmed there recommendation to approve the contract amendment with HNTB Montana Inc.

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 conceptual plan and cost estimate and submit findings and recommendation to the City Council which has been completed. This amendment (see Attachment A), will extend the contract to June 15th, 2006. The Consultant will develop and conduct a series of community meetings with Citizens, community leaders and civic organizations in the late spring, to elicit feedback 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 these 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 by mid June, 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

Total:	<hr/> \$80,000
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ALTERNATIVES ANALYZED:

- 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

AMENDMENT NO. 1

TO

**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**

FOR

PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT made and entered into on _____, 2006, by and
between the following:

CITY OF BILLINGS, a Municipal Corporation,
Billings, Montana 59103,
Hereinafter designated the City

and

HNTB Montana, Inc.
715 Kirk Drive,
Kansas City, Missouri 65105
Hereinafter designated the Consultant

WITNESSETH:

WHEREAS, the City and Consultant have entered into a contract dated August 8, 2005, for Consultant to provide a stadium feasibility study, conceptual design and cost estimate services to the City, and;

WHEREAS, the City has need for additional consulting services, and;

WHEREAS, the City has authority to contract for consulting services, and;

WHEREAS, the Consultant represents that he is qualified to perform such services, is in compliance with Montana Statutes and is willing to furnish such services to the City;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated herein, the Parties hereto agree as follows:

Increase in Scope of Work

Amended motion made by the City Council in the December 12, 2005 Council Meeting to include in this contract the following:

- **CONSULTANT** shall provide for public consideration of Options 1 and 2 (as outlined in the feasibility study titled; Billings Ballpark Study an Evaluation of Replacing Cobb Field) and any other options the public may come forward with.

Part 1, Part one – Preliminary Design Services and Feasibility Study. The Scope-of-Work is hereby modified to include the following items:

- A contract extension ending on or about June 15, 2006, 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 with respect to features and amenities they would be most likely to support.
- **CONSULTANT** shall develop and conduct no fewer than 10 and no more than 14 community events at various locations throughout the city. **CONSULTANT** will work with the Cobb Field Steering Committee to determine the locations and the groups that will be part of the above-described outreach program. At a minimum one (1) forum will be held in each of the five wards and one city wide forum. These forums will begin on or about April 15th, 2006 and should be completed on or about June 15th, 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 coordinate the work with the Cobb Field Steering Committee and various community leaders to develop the strategies necessary for pursuing a bond levy to provide funding for the new ballpark.

Part 1, Part one – Preliminary Design Services and Feasibility Study, Section H. Deliverables are hereby modified to include the following items:

- At the conclusion of the above described scope of services **CONSULTANT** shall (1) provide to the **CITY** a report that summarizes and analyzes the feedback received

from the community meetings, (2) discuss the efforts at developing campaign strategy, (3) provide insight as to the type of ballpark the community is willing to support and the amount of any bond levy that will be needed to achieve that goal, (4) provide revised cost estimates for the ballpark based upon the information gathered during the outreach tour and as a result of the time lag created by the November rather than June ballot and (5) provide the graphics through a Power Point presentation and a color rendering to be used by the Steering Committee and/or a campaign committee to develop support for the passage of the bond levy.

- **CONSULTANT** shall provide thirty (30) hard copies and one (1) electronic copy in PDF format of the report.

Part 5, Section A. and Attachment A is amended as follows:

- The total fee for services as described in Attachment A is hereby increased from \$60,000.00 to \$80,000.00. The additional \$20,000.00 will be paid by the CITY in two (2) equal payments of \$10,000.00 each with the first payment to be invoiced on or about April 30, 2006 and the final payment to be invoiced with the delivery of the summary and analysis report on or about June 15th, 2006 as described in **Increase in Scope of Work** described above subject to the Consultant's satisfactory performance.

All other terms and conditions of the contract to which this amendment applies shall remain in full effect.

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

HNTB MONTANA INC.

By: _____

Title: _____

Date: _____

CITY OF BILLINGS

By: _____
Mayor

Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 23, 2006

TITLE: Change Order #2 with Associated Employers of Montana and Employers Association Inc. for Classification and Compensation Study Contract

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: On September 26, 2005, the City Council approved a contract with Associated Employers of Montana (AEM) and Employers Association, Inc. (EAI) to prepare a classification and compensation plan for the City. The approved contract was for \$31,700 and the Council approved Change Order #1 for \$6,600. Change Order #2 is for modifying the Fox-Lawson job descriptions and performance evaluation forms so that they more closely resemble the current system descriptions and forms.

FINANCIAL IMPACT: The maximum cost is \$17,550. One half of the cost will be paid from the General Fund and specifically from salary savings in the HR Division and half will be split between the Airport/Transit and Public Works Departments. These two departments have the greatest number of job descriptions. The Human Resources budget may need to be amended near the end of the fiscal year to accommodate the original contract amount and the change orders. Staff disclosed that a budget amendment might be needed when it presented the original contract to Council in September.

RECOMMENDATION

Staff recommends that Council approve Change Order #2 to the contract with AEM and EAI for the classification and compensation plan in an amount not to exceed \$17,550.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Change order #2

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