

# CITY OF BILLINGS

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

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## AGENDA

COUNCIL CHAMBERS

February 27, 2006

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Vince Ruegamer

ROLL CALL

MINUTES

COURTESIES

PROCLAMATIONS

- February 27, 2006: MSU – Billings TRIO Day
- February 28, 2006: Rocky Mountain College TRIO Day

BOARD & COMMISSION REPORTS

ADMINISTRATOR REPORTS – Tina Volek

### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 & #11 - #15 ONLY. Speaker sign-in required.**

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

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

### **CONSENT AGENDA:**

#### **1. A. Mayor's Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.		Parks/Recreation/Cemetery	2/27/06	12/31/09
2		County Water District of Billings Heights	2/27/06	12/31/09

1. Unexpired term of Michael Erickson

2. Unexpired term of Ryan Walker  
[\(Corresponding Staff Memo A\)](#)

**B. Bid Awards:**

**(1) W.O. 04-18: Expansion and Condition Audit Repair of Park II.** (Opened 1/31/06). (Delayed from 2/13/06). Recommend rejecting all bids and rebidding the project after the design and scope of work is modified.  
[\(Corresponding Staff Memo B1\)](#)

**(2) AIP 30 – Runway 10R-28L Rehabilitation.** (Opened 2/7/06). (Delayed from 2/13/06). Recommend JTL Group, \$695,905.80.  
[\(Corresponding Staff Memo B2\)](#)

**(3) AIP 30 – Runway Incursion Prevention Road Paving & Drainage Improvements.** (Opened 2/7/06). (Delayed from 2/13/06). Recommend JTL Group, \$285,780.60.

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

**(4) Castle Rock Park Spray Ground.** (Opened 2/7/06). (Delayed from 2/13/06). Recommend AME Inc., \$195,373.70.  
[\(Corresponding Staff Memo B4\)](#)

**(5) One New Current Model 2006 Trailer with CC Inspection Equipment.** (Opened 2/7/06). (Delayed from 2/13/06). Recommend rejecting all bids, re-evaluating and changing the bid specifications and readvertising.  
[\(Corresponding Staff Memo B5\)](#)

**(6) (AIP) 30 -- Commercial Ramp Improvements.** (Opened 2/14/06). Recommend delaying to 3/13/06.  
[\(Corresponding Staff Memo B6\)](#)

**(7) W.O. 95-08 Shiloh/Rimrock Road Landscaping Improvements.** (Opened 2/14/06). Recommend A-1 Landscaping, \$137,000.00.  
[\(Corresponding Staff Memo B7\)](#)

**(8) W.O. 06-03, Contract #1: 2006 Street Maintenance.** (Opened 2/14/06). Recommend JTL Group, Inc., \$406,727.60.  
[\(Corresponding Staff Memo B8\)](#)

**C. Professional Services Agreement** for ongoing airport Air Service consulting services, Mean & Hunt, Inc., first year cap: \$75,000.  
[\(Corresponding Staff Memo C\)](#)

**D. Authorization to submit application** for 2006 Justice Assistance Grant (JAG) and acceptance of award, \$51,856.  
[\(Corresponding Staff Memo D\)](#)

**E. Street Closure Requests:**

(1) *Yellowstone Rimrunners for Shamrock Run*: March 19. Beginning at 3<sup>rd</sup> St. W and Daylis Stadium, left on Parkhill Dr. to 17<sup>th</sup>. St W, left on Poly Dr., left on Sunnyview, left on Colton Blvd., right on 17<sup>th</sup> St. W and then left on Parkhill Dr., ending at Pioneer Park.

[\(Corresponding Staff Memo E1\)](#)

(2) *Yellowstone Rimrunners for Montana Women's Run*: May 13. 2<sup>nd</sup> Ave N. from N. 20<sup>th</sup> St. to Division St; Division St between 2<sup>nd</sup> and 3rd Aves N; 3<sup>rd</sup> Ave N between Division St. and N. 20<sup>th</sup> St.; and N. 20<sup>th</sup> St between 3<sup>rd</sup> and 2<sup>nd</sup> Aves N.

[\(Corresponding Staff Memo E2\)](#)

(3) *Big Sky Senior Services for St. Patrick's Day Parade*: March 18. Established downtown parade route.

[\(Corresponding Staff Memo E3\)](#)

(4) *Big Sky Senior Services for St. Patrick's Day Celtic Celebration*: March 18. N. 28<sup>th</sup> between 1<sup>st</sup> and 3<sup>rd</sup> Aves N.

[\(Corresponding Staff Memo E4\)](#)

**F. Revolving Loan Fund:** loan changes for L & L Development Venture, L.P. increasing bank loan amount from \$150,000.00 to \$170,000.00 and providing for a second lien subordinate to a bank loan of \$213,488.00. (re: renovation of former Arcade Bar structure).

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

**G. Resolution** adopting updates to the *Emergency Operations Plan for Billings, Laurel & Broadview and Yellowstone County*.

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

**H. Resolution** establishing a policy identifying the process of soliciting and receiving input from persons with disabilities regarding accessibility of sidewalks in the City of Billings.

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

**I. Bills and Payroll.**

(1) January 27, 2006

[\(Corresponding Staff Memo I1\)](#)

(2) February 3, 2006

[\(Corresponding Staff Memo I2\)](#)

(3) January 1-31, 2006 (Municipal Court)

[\(Corresponding Staff Memo I3\)](#)

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

## **REGULAR AGENDA:**

2. **PUBLIC HEARING AND SPECIAL REVIEW #802:** A special review to allow multi-family dwellings in the South 27<sup>th</sup> Street Corridor zoning district, Lots 13-18, Block 231, O.T. , homeWORD, applicant; Kim Olsen, O<sup>2</sup> Architects, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 2\)](#)
3. **PUBLIC HEARING AND SPECIAL REVIEW #803:** A special review to allow a drive-through window for a Dairy Queen Restaurant in a Community Commercial zone adjacent to a Residential Multifamily-Restricted zone, described as Lots 1-5, Block 1 of Cellan Acre Tracts, and located at 1045 Grand Avenue. Rich Hageman, applicant; Darrell Kreitzberg, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 3\)](#)
4. **PUBLIC HEARING AND SPECIAL REVIEW #804:** A special review to allow a car wash in a Neighborhood Commercial zone described as Tract 1C of C/S 566 and located on the northeast corner of the intersection of Blue Creek Rd. and Santiago Blvd. Jeff Essmann, owner/applicant. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 4\)](#)
5. **PUBLIC HEARING AND SPECIAL REVIEW #805:** A special review to allow an all-beverage liquor license with gaming in a Community Commercial zone described as Lots 5, Block 1 of North Pointe Square Subdivision 1<sup>st</sup> Filing, and located at 2352 Main Street. Ernest and Leanne Dutton, owners/applicants. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 5\)](#)
6. **PUBLIC HEARING AND SPECIAL REVIEW #806:** A special review to allow outside storage of wholesale trade goods – stone and masonry products - in a fenced/screened enclosure in a Planned Unit Development (PUD) – Highway Commercial zone described as Lot 7A, Block 2 of Southgate Subdivision 1<sup>st</sup> Filing, and located at 5201 Southgate Drive. Willie Dowdle, owner/applicant; A.L. Koelzer, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)  
[\(Corresponding Staff Memo 6\)](#)
7. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward IV to include recently annexed property in Annex #06-01 described as: the west half of Lots 5 and 28, and all of Lots 6, 26, 27, 38, and 40 of Sunncove Fruit Farms, 58.041-acres located south of Rimrock Rd. between 58<sup>th</sup> and 62<sup>nd</sup> Sts. W, Thomas E. Romine and Paul V. Hoyer, petitioners. Staff

recommends approval. (Action: approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 7\)](#)

8. **PUBLIC HEARING AND FIRST READING ORDINANCE** providing that the BMCC be amended by revising Article 10-200: Judge allowing an elected municipal court judge, with the approval of the governing body of the city, to appoint a part-time assistant judge as allowed under state law. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 8\)](#)

9. **PUBLIC HEARING CONTINUED AND RESOLUTION FOR ANNEXATION #05-06:** a 116.17 acre parcel located on the north side of Rimrock Road at the intersection of 70<sup>th</sup> Street West and extending to the railroad property on the north and west, known as Tract 1, C/S 1871 and Tract 2A, C/S 2465. Larry Staley and Westward Ho Company, petitioners. (Action delayed from 7/11/05). Staff recommends delaying the continuation of the public hearing and action on the resolution to 4/10/06. (Action: approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 9\)](#)

10. **PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #CC05-03:** a variance from Section 6-1208(h)(3) concerning driveway width and Section 6-1203(j)(2) concerning curb cuts on property located on Lots 7-12, Block 21, O.T. generally located between N. 27<sup>th</sup> St. and N. 26<sup>th</sup> St and between 1<sup>st</sup> Ave N. and 2<sup>nd</sup> Ave N, known as the former Smith Funeral Home site. City of Billings, applicant. Staff recommends delaying action 60 days. (Action: approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 10\)](#)

11. **RESOLUTION** adopting the *Yellowstone County Community Wildfire Protection Plan*. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 11\)](#)

12. **APPROVAL OF A DEVELOPMENT GRANT** for land assemblage in the 2700 block of Montana Avenue, recipient TBA. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 12\)](#)

13. **BID AWARD: W.O. 01-06 Arlene Corridor.** (Opened 2/21/06). Recommendation to be made at meeting. (Action: approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 13\)](#)

14. **W.O. 04-33: LAKE ELMO ROAD** – Hilltop Road to Wicks Lane, selection of street option. Staff recommends approval of Option #2: the Bicycle Lanes Option as the preferred option. (Action: approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 14\)](#)

15. **CREATION OF AD HOC COMMITTEE** for determining selection criteria for a City Administrator and appointment of members. (Councilmember Veis).  
[\(Corresponding Staff Memo 15\)](#)
  
16. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**  
(Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

## **Council Initiatives**

### **ADJOURN**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, FEBRUARY 27, 2006**

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**TITLE:** Boards & Commissions –Appointments

**DEPARTMENT:** City Administrator's Office

**PRESENTED BY:** wynnette Maddox, Administration

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**PROBLEM/ISSUE STATEMENT:** Confirmation of appointments for Board and Commission positions that are vacant due to an unauthorized appointment and resignation.

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

**RECOMMENDATION**

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Margy Bonner	Parks/Recreation/Cemetery	2/27/06	12/31/09
2	Warren Grass	County Water District of Billings Heights	2/27/06	12/31/09
3.	Carol Gibson	City/County Planning	2/27/06	12/31/06

3. Unexpired term of Michael Erickson
4. Unexpired term of Ryan Walker
5. Unexpired term of Mick Ohnstad (Ward IV)

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

Attachment

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**

**Monday, February 27, 2006**

**TITLE:** W.O. 04-18—Park II Expansion and Park I Repair, Reject Bids

**DEPARTMENT:** Public Works

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

**PROBLEM/ISSUE STATEMENT:** This project encompasses expansion and improvements to the Park II parking garage, as well as some additional condition repairs to the Park I parking garage. The work includes vertical and horizontal expansion of Park II, the addition and extension of stairwells and elevators, typical maintenance repairs (fixing cracks, spalling, control joints, sealants, coatings, striping, etc.), and remodeling the façade of the existing and new Park II. The ground level of the horizontal expansion will be constructed to allow Wells Fargo to use the space for drive-through banking, as agreed to in a separate lease with the City. The additional work on Park I includes repair of a section of roof and the replacement of some post-tension tendons (necessary for structural integrity).

The project was designed by Collaborative Design Architects, Inc. in conjunction with parking specialists, Carl Walker, Inc. Bids were opened for the project January 31, 2006. As shown in the FINANCIAL IMPACT, the bids came in much higher than the architect's estimate, which led to action on the bids being delayed at the February 13 Council meeting. By law, some action must now be taken at this meeting. The bids have been reviewed and discussions have taken place with the low bidder (Fisher) to determine the reasoning for the large discrepancy. The resulting opinion is to reject all previous bids and rebid the project after the design and scope of work have been modified.

**FINANCIAL IMPACT:** The project is being funded by the Parking Division. The associated C.I.P. (FY 2006: PK-001, 003, 004, 005; FY 2007: PK-003, 005) was approved by the Mayor and City Council February 28, 2005. These C.I.P funds include the repair work on all garages (Park I, II, III, IV) as well as the expansion of Park II.

The amount spent and obligated to date includes the contracts for design work on all four garages; the repair work on Park I, III, and IV; and the demolition of the Darryl Apartments and Smith Funeral Home where the Park II expansion is to be constructed. All these contracts were approved by Council previously.

**Location of Work:** Park II (primarily) and Park I Parking Structures

**Funding Sources:** User Fees, Revenue Bonds, Parking Reserves

<b>Approved Dollar Amount for Project:</b>	<b>\$ 8,126,830</b>
Spent (and obligated) to date:	\$ 1,632,924
<b>Funding available:</b>	<b>\$ 6,493,906</b>

Bids were opened January 31, 2006, with the following results:

Firm	Fisher Construction	Hardy Construction	<i>Architect's Estimate</i>
<b>Base Bid:</b>	\$9,223,148.52	\$10,006,215.00	
<b>Alternate No. 1</b>	\$16,000.00	\$17,000.00	
<b>TOTAL:</b>	\$9,239,148.52	\$10,023,215.00	\$6,295,295.00

### **RECOMMENDATION**

Staff recommends that Council reject all bids opened January 31, 2006, for W.O. 04-18—Park II Expansion and Condition Audit Repair and rebid the project after the design and scope of work have been modified.

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

## **INTRODUCTION**

This project encompasses expansion and improvements to the Park II parking garage, as well as some additional condition repairs to the Park I parking garage. The work includes vertical and horizontal expansion of Park II, the addition and extension of stairwells and elevators, typical maintenance repairs (fixing cracks, spalling, control joints, sealants, coatings, striping, etc.), and remodeling the façade of the existing and new Park II. The ground level of the horizontal expansion will be constructed to allow Wells Fargo to use the space for drive-through banking, as agreed to in a separate lease with the City.

The project was designed by Collaborative Design Architects, Inc. in conjunction with parking specialists, Carl Walker, Inc. Bids were opened for the project January 31, 2006. As shown in the FINANCIAL IMPACT below, the bids came in much higher than the architect's estimate, which led to action on the bids being delayed at the February 13 Council meeting. By law, some action must now be taken at this meeting. The bids have been reviewed and discussions have taken place with the low bidder (Fisher) to determine the reasoning for the large discrepancy. The resulting opinion is to reject all previous bids and rebid the project after the design and scope of work have been modified.

## **BACKGROUND**

Since the bid opening on January 31, 2006, the bids have been reviewed and discussions have taken place with the low bidder (Fisher) to determine the reasoning for the large discrepancy between the bid and the architect's estimate. The areas showing the largest difference in costs are earthwork, concrete, masonry, and miscellaneous metals. In general, labor costs were also much higher than anticipated.

The destruction caused by all the hurricanes in other parts of the country has resulted in materials prices, especially those for steel and concrete (the primary components of a parking garage), to rise dramatically and become very volatile. Masonry prices have been coming in higher than estimated on most projects in our region for the past year or so. No single variable has been found to cause these higher prices, but they could also be a result of all the rebuilding occurring throughout the country and abroad. Part of the reason for the inflated earthwork may be due to sub-contractors misinterpreting the specs. This section of the specs will be revised and clarified for the rebid in an effort to receive a more realistic bid. Higher labor costs have become common throughout Montana, being found in projects owned by the State, local municipalities, and private entities. One possibility for this is Montana having a limited workforce for some of the specialized tasks required in projects similar to the Park II expansion. If there are very few companies capable of performing certain portions of a project, the competition aspect is lost and the corresponding bids come in higher than anticipated. To help alleviate this problem, the rebid project will be advertised in a greater geographic region in an effort to garner more interest and hopefully result in more competitive bidding. We would like to use as many local laborers and suppliers as possible, but we may not financially be able to stay 100 percent local.

## **ALTERNATIVES ANALYSIS**

State law allows a bid to be negotiated down a maximum of 7% prior to award. However, this statute does not apply to local municipalities. Even if we could try to negotiate the bid with the contractor utilizing State statute, we would be faced with a bid of at least \$8,577,528, which is still more than \$2 million over what has been budgeted. The analysis of the bids and discussions with the contractors and sub-contractors have led to the conclusion that the Park II expansion, as currently designed, cannot be built in Billings, Montana, for the amount of money that has been budgeted. It may be possible to apportion some additional funds, but not enough to cover the existing bid. Therefore, the design and scope of work will be modified to result in a suitable project that falls within the budget. One or more alternates may be included to further reduce the price (if necessary) of the finished product. This is the only viable option with the existing funding. The only other alternative is to completely cancel the project, but this is the hinge point of other important succeeding projects (i.e. the development of the MET Transit Center). It is also necessary to help alleviate some of the City's parking woes, as depicted in a parking study performed by JGA Architects in 2004 that was approved by Council previously. Delaying the Park II expansion further is not feasible.

## **RECOMMENDATION**

Staff recommends that Council reject all bids opened January 31, 2006, for W.O. 04-18—Park II Expansion and Condition Audit Repair and rebid the project after the design and scope of work have been modified.

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

**TITLE:** Approval of the Award of Airport Improvement Program (AIP) 30  
Runway 10R/28L Rehabilitation

**DEPARTMENT:** Aviation and Transit

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

**PROBLEM/ISSUE STATEMENT:** Included in the City's approved Capital Improvement Program is the Runway 10R/28L Rehabilitation project, which is a Federal Aviation Administration (FAA) approved Airport Improvement Program (AIP) project. This runway is primarily used by general aviation and student pilots. The asphalt surface of this runway has deep lateral and longitudinal cracks along its entire length, which creates an uneven surface that, if not replaced, will become unsafe for aircraft operations. Also, the safety areas for this runway have become difficult to maintain due to storm water erosion. This makes compliance with FAA FAR Part 139 requirements difficult. Finally, the existing runway edge lights and associated cabling is over 20 years old and has become unreliable. The scope of work for this project includes removal and replacement of the top three inches of the runway's surface; grading in the safety areas of this runway to prevent erosion damage; and removing and replacing the existing runway edge lights and cabling. This project has been advertised in the *Billings Times* for three weeks and was on the City's Web site. We received the following bid on this project:

<b><u>CONTRACTOR</u></b>	<b><u>BID</u></b>
JTL Group	\$695,905.80
<b>ESTIMATE</b>	<b>\$800,000</b>

**FINANCIAL IMPACT:** The total cost of this project is \$695,905.80, and will be funded through a 95% FAA AIP entitlement grant with a 5% local share match. The FAA's portion will be \$661,110.51, and the City's match is \$34,795.29. The source of the City's match is the Department's Capital fund.

### **RECOMMENDATION**

Staff recommends that the City Council approve the award of AIP 30 Runway 10R/28L Rehabilitation to the sole bidder JTL Group in the amount of \$695,905.80.

**Approved By:**  **City Administrator**  **City Attorney**   
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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**

**Monday, February 27, 2006**

**TITLE:** Approval of the Award of Airport Improvement Program (AIP) 30 Runway Incursion Prevention Road Safety Upgrades and Drainage Improvements

**DEPARTMENT:** Aviation and Transit

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

**PROBLEM/ISSUE STATEMENT:** Included in the City's approved Capital Improvement Program is the Runway Incursion Prevention Road Safety Upgrades and Drainage Improvement project, which is a Federal Aviation Administration (FAA) approved Airport Improvement Program (AIP) project. As you may recall, the Runway Incursion Prevention Road allows vehicle access around the east end of the Airport, thereby reducing the vehicle traffic on the active runway system. A section of the existing road will be widened to allow two vehicles to pass each other safely. Additionally, the heavy rains last year caused erosion damage to this road that requires significant repairs to be made. This project will also construct a drainage ditch to collect the surface storm water, and install underground piping to channel the collected water to our storm water detention ponds. This project has been advertised in the *Billings Times* for three weeks, and was on the City's Web site. We received the following bid on this project:

<b><u>CONTRACTOR</u></b>	<b><u>BID</u></b>
JTL Group	\$285,780.60
<b>ESTIMATE</b>	<b>\$405,000</b>

**FINANCIAL IMPACT:** The total cost of this project is \$285,780.60, and will be funded through a 95% FAA AIP entitlement grant with a 5% local share match. The FAA's portion will be \$271,491.57, and the City's match is \$14,289.03. The source of the City's match is the Department's Capital fund.

### **RECOMMENDATION**

Staff recommends that the City Council approve the award of AIP 30 Runway Incursion Prevention Road Safety Upgrades and Drainage Improvements to the sole bidder JTL Group in the amount of \$285,780.60.

**Approved By:** City Administrator City Attorney   
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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

**TITLE:** Award of Bid for Construction of a Spray Ground at Castle Rock Park  
**DEPARTMENT:** Park, Recreation, and Public Lands  
**PRESENTED BY:** Gene Blackwell, Interim Director, PRPL Department

**PROBLEM/ISSUE STATEMENT:** Bids for the project to construct a spray ground at Castle Rock Park were opened at the regular bid opening on Tuesday, February 7, 2006, at City Hall. Bids were received from 2 Billings area Firms, see attached Bid Tabulation sheets. The apparent low bid submitted had a base bid that exceeds the construction budget of \$185,613.00 by 5.25% (\$9,760.70). The apparent low bid exceeded the engineers estimate of \$159,064.30 by 22.8%. The lowest bid received was from **AME Inc.**, of Billings, Montana, for a total amount of **\$195,373.70**. An additional \$9,755.70 is needed for level funding of the base bid. Also a minimum 5% contingency is highly recommended to cover any unforeseen issues that may come to light during construction. This would be an additional \$9,800.00. A total of **\$19,555.70** in additional funding would be required for the project. It is recommended that the \$9,755.70 needed to level fund the project come from the Park Acquisition and Development Fund 769. It is also recommended that \$9,800.00 for project contingency come from Council Contingency Fund and be used only if needed.

**FINANCIAL IMPACT:** Funding for the project is through regular appropriation in the FY 2006 Capital Improvement Program.

**Location of Work:** Castle Rock Park, Wicks Land and Nutter Boulevard  
**Funding Source:** City of Billings CIP General Fund \$218,000.00

Approved Dollar Amount of Project	\$218,000.00
Architectural and Engineering	\$32,382.00
Funds available for Construction	\$185,618.00

Additional Funding from Park Acquisition and Development	
Fund needed to complete base project as bid	<u>\$9,755.70</u>
TOTAL funding needed for level funding of base bid	\$195,373.70

Additional 5% Contingency from Council Contingency Fund (Will be used only if needed).	\$9,800.00
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## **RECOMMENDATION**

Staff recommends that City Council award the bid to AME Inc. for the amount of \$195,373.70 as the lowest and best bid received.

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

## **ATTACHMENTS**

**A. Bid Proposal and Bid Summary**

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# B5

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

**TITLE:** One (1) New Current Model 2006 Trailer With CCTV Inspection Equipment

**DEPARTMENT:** Public Works Department

**PRESENTED BY:** Dave Mumford, Public Works Director

**PROBLEM/ISSUE STATEMENT:** The Public Works Department received bids for replacement of a trailer with CCTV inspection equipment in accordance with the approved equipment replacement plan and is recommending award.

**FINANCIAL IMPACT:** The bid was advertised on January 26 and February 2, 2006. There is sufficient money in the FY 06 budget for the Construction and Equipment Fund to cover the award. Four bids were received on February 7, 2006, as follows:

<u>VENDOR</u>	<u>Schedule I</u>	<u>Schedule II</u>	<u>Total</u>
Cues.....	\$ 76,000.00 .....	\$ 11,800.00 .....	\$ 87,800.00
Aries Industries .....	\$ 80,000.00 .....	\$ 9,921.00 .....	\$ 89,921.00
Normont Equipment Co. ....	\$ 82,872.00 .....	\$ 13,900.00 .....	\$ 96,772.00
WP Rentals.....	\$131,766.00 .....	\$11,289.00 .....	\$143,055.00

### RECOMMENDATION

Staff recommends that Council reject all bids. The high bid meets bid specifications, but exceeds the ERP budget amount. The three remaining bids do not meet the bid specifications. Staff will re-evaluate and change the bid specifications for re-advertisement.

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

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# B6

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**

**Monday, February 27, 2006**

**TITLE:** Postponement of the Award of Airport Improvement Program (AIP) 30 Project Commercial Ramp Improvements

**DEPARTMENT:** Aviation and Transit

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

**PROBLEM/ISSUE STATEMENT:** Included in the City's approved Capital Improvement Program, is the Commercial Air Carrier Ramp Improvement project, which is a Federal Aviation Administration (FAA) approved Airport Improvement Program (AIP) project. The concrete next to the Terminal Building near the commercial aircraft parking ramps was installed in 1958. The surface is beginning to "spall" or chip off and the control joints are beginning to break away at the edges. This deterioration generates Foreign Objects and Debris (FOD), which must be frequently cleaned to prevent ingestion into jet engines. This project will remove the old concrete and replace it with a new full strength concrete slab. The concrete's thickness varies from 16" underneath the aircraft parking locations to 6" near the Terminal Building. The concrete that is still in good condition will have the expansion joints re-sawn, and a flexible foam rod will be placed into the joints and mastic sealant applied. This project was advertised in the *Billings Times* for three weeks and was on the City's Web site. We received two bids on the project on February 14, 2006. Due to the complexity of this project, staff requires additional time to review the bids submitted.

### **RECOMMENDATION**

Staff recommends that the City Council postpone the award of AIP 30 Commercial Ramp Improvements for Billings Logan International Airport until the March 13, 2006 City Council meeting. This will allow staff sufficient time to review the bids and accompanying bid documents.

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

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AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, February 27, 2006

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**TITLE:** W.O. 95-08, 2005 Shiloh / Rimrock Road Landscape Improvements  
**DEPARTMENT:** Public Works - Engineering  
**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The project will include landscaping improvements from Poly Drive to Rimrock Road. This project will provide landscaping improvements and irrigation piping in various locations along Shiloh Road from Poly Dive to Rimrock Road and on the north side of Rimrock Road.

**FINANCIAL IMPACT:** Based upon the bids received, funding for the project would be available through the following funding sources;

<b>Project Number</b>	<b><u>WO 95-08</u></b>
<b>Amount and Sources of Funds</b>	
City Street Funds	\$91,751.00
Gas Tax Funds	\$45,500.00
<b>Total</b>	<b>\$137,251.00</b>

Bids were opened on February 14, 2006, with the following results:

**WO 95-08 Landscaping**

<b>Firm</b>	<b>Bid</b>
A-1 Landscaping	\$137,000.00
Good Earth Works Co. & Nursery	\$144,272.00
Sylvan Nursery	\$169,000.00
Landscape Architect's Estimate	\$125,000.00

### RECOMMENDATION

Staff recommends that Council award a construction contract for W.O. 95-08, 2005 Shiloh / Rimrock Road Landscape Improvements to A-1 Landscaping in the amount of \$137,000.00.

Approved By:

City Administrator \_\_\_\_\_

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

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

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 27, 2006

**TITLE:** Work Order 06-03, 2006 Street Maintenance Contract No. 1

**DEPARTMENT:** Public Works/Engineering

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

**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for the 2006 Street Maintenance Contract No. 1 on February 14, 2006. This project will chip seal various streets throughout the city. Approximately 19 miles of residential and commercial streets will be chip sealed.

#### ALTERNATIVES ANALYZED:

1. Award Work Order 06-03, Contract No. 1, to JTL Group, Inc. in the amount of \$406,727.60;  
or
2. Not award Work Order 0603, Contract No. 1.

**FINANCIAL IMPACT:** Funding for the 2006 Street Maintenance Program, Contract No. 1, will be provided from Gas Tax and Street Maintenance Funds. We received three for this project as follows:

	<u>Total</u>
Engineer's Estimate	\$ 423,294.30

JTL Group, Inc.	\$ 406,727.60
Pavement Maintenance Solutions, Inc.	\$ 491,790.75
Harddrives Construction, Inc.	\$ 433,523.45

#### CIP Project #ENG98

CIP Budgeted Amount	\$1,325,000.00
Previous Encumbrances	\$873,000.00
Budget Fund Balance (after this award)	\$33,000.00

**RECOMMENDATION**

Staff recommends that Council approve the construction contract for the Street Chip Seal Maintenance Project with JTL Group, Inc. in the amount of \$ 406,727.60.

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

## **INTRODUCTION**

Bids were received for the Street Maintenance Chip Seal Project on February 14, 2006. JTL Group, Inc. is the apparent low bidder.

## **PROCEDURAL HISTORY**

If City Council chooses to award the chip seal contract, the project will move forward and be completed by September 15, 2006.

## **BACKGROUND**

This project is part of the ongoing Street Preventative Maintenance Program supported by the City Council since 1985. Annually, staff identifies streets proposed for preventative maintenance. Staff proposes to bid this work in two contracts. The first contract is for chip sealing, the second contract will be for crack sealing, and the third contract will be for overlay resurfacing. This project will chip seal various streets throughout the city. Approximately 19 miles of residential and commercial streets will be chip sealed.

## **ALTERNATIVES ANALYSIS**

Bids were received on February 14, 2006, with JTL Group, Inc. being the low bidder in the amount of \$ 406,727.60. JTL Group, Inc. was approximately 3.9% below the Engineer's Estimate.

## **RECOMMENDATION**

Staff recommends that Council approve the construction contract for the Street Chip Seal Maintenance Project with JTL Group, Inc. in the amount of \$ 406,727.60.

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# C

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**

**Monday, February 27, 2006**

**TITLE:** Approval of Professional Services Agreement for ongoing Airport Air Service Consulting Services with Mead & Hunt, Inc.

**DEPARTMENT:** Aviation and Transit

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

**PROBLEM/ISSUE STATEMENT:** This past Fall, significant air service cutbacks were announced unexpectedly by multiple airlines serving the City of Billings Logan International Airport. The firm of Mead & Hunt, Inc. was already engaged by the Airport doing an evaluation of air service issues at the time of these announced cutbacks. Out of necessity, their original work scope was expanded and time lines for product deliveries expedited. These air service issues are very important to the users of the Airport and attracted a great deal of attention in the community and our large service area generally. A committee was formed to address these issues and pursue airline cooperation to improve our circumstances. The Chamber of Commerce, BSEDA, the Billings Gazette, the hospitals, and other important business interests in our community are currently participating in these efforts, as well as City, County, and Aviation and Transit Commission staff.

This important, necessary work will continue for some while. Mead & Hunt, Inc. staff serves as the consultants/advisors in these efforts. They have prepared all the necessary documents on air service so vital to our ongoing efforts with the airlines. This broad-based community effort has led to one visit with America West Airlines, and we are currently preparing for additional visits to Northwest Airlines, United Airlines, Frontier Airlines, and Delta Airlines. This work is critical to the success of our joint efforts to stabilize air service in Billings at a very difficult financial time in the airline industry.

Hence, the need to expand the Mead & Hunt, Inc. efforts by virtue of a Professional Services Agreement with them for the future. They have done an excellent job for our community and their continued, timely delivery of substantive work products is essential.

**ALTERNATIVES ANALYZED:** The City Council has two options to consider:

- To approve the Professional Services Agreement with Mead & Hunt, Inc. and be able to stay on the time lines that are necessary to be successful.
- To choose not to approve the Agreement and risk jeopardizing the significant community efforts to improve air service currently underway.

**FINANCIAL IMPACT:** The Aviation Department has adequate funds to accomplish the ongoing work. Fees for their work will be determined on the basis of actual time (agreed to by City staff) and expended based on a mutually agreed to hourly rate schedule, subject to an annual not to exceed cap for each calendar year, as agreed to by the Consultant and the City. The first year cap will be \$75,000. This Agreement terminates on December 31, 2007; but may be terminated by either party anytime on thirty (30) days notice.

**RECOMMENDATION**

Staff recommends that Council approve this Professional Services Agreement to Mead & Hunt, Inc.

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

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D

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, February 27, 2006**

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**TITLE:** REQUEST TO SUBMIT 2006 JUSTICE ASSISTANCE GRANT (JAG) APPLICATION and ACCEPT AWARD - \$51,856

**DEPARTMENT:** Billings Police Department

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

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**PROBLEM/ISSUE STATEMENT:** On January 27, 2006, Council received a Friday memo pertaining to the 2006 JAG Grant in the amount of \$51,856. Part of the grant requirements is to have the application available for review to our governing body for 30 days prior to submission of the application to the Bureau of Justice Assistance. Approval of this agenda item will complete that 30 day period. This grant is a joint application between the Billings Police Department and Yellowstone County Sheriff's office, with the Billings Police Department acting as administrator of the grant. The Police Department was awarded \$36,788 which will be used for replacement of approximately 50% of the current model (which are no longer made and replacement parts are very hard to come by) digital cameras now used by the Police Officers, Taser software which will provide administrative control, and replacement of chairs/tables in the Police Training Facility (PD1) at the Billings Operations Center. The Sheriff's Department was awarded \$15,068. They will continue with the P25 compliance of their portable radios which will allow them to have digital capabilities. The Interlocal Agreement which has been approved by the County Commissioners is attached for the Mayor to approve. This document will need to be part of the application submittal. Staff is requesting Council approval for submission of the application, acceptance of the grant award, and authorize the Mayor to sign the award documents when they are received.

**FINANCIAL IMPACT:** There will be no cost to the City.

**RECOMMENDATION**

Staff recommends that Council approve the 2005 JAG application submission, acceptance of the grant award, and authorize the Mayor to sign the award documents when they are received.

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

**ATTACHMENT**

A – Interlocal Agreement (1 page)  
140.2006 JAG Grant Award Submittal.Award

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

**TITLE:** Yellowstone Rimrunners Street Closures for Shamrock Run

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

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

#### **PROBLEM/ISSUE STATEMENT:**

The Yellowstone Rimrunners request the temporary street closures on Sunday, March 19, 2006, from 12:30 pm to 2:00 pm, for their annual Shamrock Run. The route is as follows: Beginning at 3<sup>rd</sup> Street West and Daylis Stadium, left on Parkhill to 17<sup>th</sup>, left on Poly, left on Sunnyview, left on Colton, right on 17<sup>th</sup> and then left on Parkhill ending at Pioneer Park.

Recommended conditions of approval include Yellowstone Rimrunners:

1. Have no alcohol consumption in the right of way
2. Clean the area to be used and provide and empty waste cans
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide and install adequate traffic barricades and signs directing motorists around closure
5. Provide a certificate of insurance naming City of Billings as additional insured

#### **ALTERNATIVES ANALYZED:**

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

**FINANCIAL IMPACT:** There are no costs to the City of Billings for this event other than administrative time to process the permit. Police, traffic control and litter removal are to be paid for the Yellowstone Rimrunners.

#### **RECOMMENDATION**

Staff recommends that Council approval the temporary closure of the streets named above.

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

**ATTACHMENTS**

- A. Letter from Yellowstone Rim Runners outlining event (2 pages)
- B. Right of Way Special Activity Permit (2 pages)
- C. Course map (1 page)
- D. Certificate of insurance (1 page)

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

**TITLE:** Yellowstone Rimrunners Street Closures for Montana Women's Run  
**DEPARTMENT:** Parks, Recreation and Public Lands  
**PRESENTED BY:** Gene Blackwell, Interim Parks, Recreation and Public Lands Director

#### **PROBLEM/ISSUE STATEMENT:**

The Yellowstone Rimrunners request temporary street closures on Saturday, May 13, 2006, from 6:30 am to 12:00 noon, for their annual Montana Women's Run. Closures are as follows: 2<sup>nd</sup> Ave. from 20<sup>th</sup> St. to Division St.; Division between 2<sup>nd</sup> and 3<sup>rd</sup> Aves.; 3<sup>rd</sup> Ave. between Division and N. 20<sup>th</sup> St; and N. 20<sup>th</sup> St. between 3<sup>rd</sup> and 2<sup>nd</sup> Aves. Map is attached.

Recommended conditions of approval include that the Yellowstone Rimrunners:

6. Have no alcohol consumption in the public right of way
7. Clean area to be used and provide and empty waste cans
8. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
9. Provide and install adequate traffic barricades and signs directing motorists around closure
10. Provide a certificate of insurance naming the City of Billings as additional insured

#### **ALTERNATIVES ANALYZED:**

3. Approve request to close streets for the event (recommended)
4. Deny the street closures

**FINANCIAL IMPACT:** There are no costs to the City of Billings for this event other than administrative time to process the permit. Police, traffic control and litter removal are to be paid for the Yellowstone Rimrunners.

#### **RECOMMENDATION**

Staff recommends that Council approval the temporary closure of the streets named above.

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

**ATTACHMENTS**

- A. Letter from Montana Women's Run Coordinator (1 page)
- B. Right of Way Special Activity Permit (2 pages)
- C. Course map (1 page)
- D. Certificate of insurance (1 page)

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**

**Monday, February 27, 2006**

**TITLE:** St. Patrick's Day Parade

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

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

**PROBLEM/ISSUE STATEMENT:** Big Sky Senior Services requests street closures at 9:00 am using the established downtown parade route for its St. Patrick's Day Parade on Saturday, March 18, 2006. The parade will assemble at 9:00 am, begin at 11:00 am and disband by 2:00 pm.

Recommended conditions of approval include, Big Sky Senior Services:

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

#### **ALTERNATIVES ANALYZED:**

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

**FINANCIAL IMPACT:** Big Sky Senior Services requests the standard police support for the parade with a lead car and follow car and street cleaning if needed due to animals. Police, traffic control and litter removal are to be paid for by Big Sky Senior Services.

#### **RECOMMENDATION**

Staff recommends that Council approve closure of the established downtown parade route on Saturday, March 18, 2006, for the St. Patrick's Day Parade.

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

**ATTACHMENT**

- A. Letter from Big Sky Senior Services (2 pages)
- B. Special Activity Permit application (2 pages)
- C. Map (1 page)
- D. Certificate of insurance (2 pages)

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**

**Monday, February 27, 2006**

**TITLE:** St. Patrick's Day Celtic Celebration

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

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

**PROBLEM/ISSUE STATEMENT:** Big Sky Senior Services requests closures (excluding the intersections) of N. 28<sup>th</sup> between 1st and 3rd (traffic diverted right onto 29th St. and 3<sup>rd</sup> Ave.) from 8:00 am to 3:00 pm on Saturday, March 18, 2006, for its Celtic Celebration block party.

Recommended conditions of approval include, Big Sky Senior Services:

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

#### **ALTERNATIVES ANALYZED:**

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

**FINANCIAL IMPACT:** Police, traffic control and litter removal for the block party are to be paid for by the Big Sky Senior Services.

#### **RECOMMENDATION**

Staff recommends that Council approve the closure of N. 28<sup>th</sup> between 1st Ave. and 3rd Ave. on Saturday, March 18, 2006 from 8:00 am to 3:00 pm for the St. Patrick's Day Celtic Celebration.

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

**ATTACHMENT**

- A. Letter from Big Sky Senior Services (2 pages)
- B. Special Activity Permit application (2 pages)
- C. Map (1 page)
- D. Certificate of insurance (2 pages)

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## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 27, 2006

**TITLE:** Revolving Loan Fund Recommendations for L & L Development Venture, L.P. for Renovation of the old Arcade Bar Building

**DEPARTMENT:** Administration - Finance Division

**PRESENTED BY:** Patrick M Weber, Financial Services Manager

**PROBLEM/ISSUE STATEMENT:** The Downtown Revolving Loan Committee recommended the following loan changes for the L & L Development Venture L.P. renovation of the old Arcade Bar structure:

## L &amp; L Development Venture, L.P.

Previously approved by Council	\$150,000.00
Additional loan approved by committee	<u>20,000.00</u>
Total Loan Request	<u>\$170,000.00</u>

In addition, the terms of the L & L Development Venture L.P. loan previously approved by Council provided for a second lien subordinate to a bank loan of \$150,000. The new terms of this request provide for a second lien subordinate to a bank loan of \$213,488.

The above changes are proposed because actual costs exceeded estimated costs by approximately \$200,000.

**FINANCIAL IMPACT:** The City has an Inter-Creditor Loan Agreement with six banks whereby the banks provide a "line-of-credit" totaling \$3.2 million to the City to loan to qualifying borrowers. Prior to this request, all but \$9,000.00 of the \$3.2 million had been either loaned or committed. The remaining \$11,000 will be loaned from the approximately \$1 million, which has been repaid to the banks.

**RECOMMENDATION**

Staff recommends that council approve the loan.

**Approved By:** City Administrator City Attorney

## **ATTACHMENTS**

A-Loan Description

B-Pro Forma of estimated Annual Net Cash Flows

***Attachment A***

**Revolving Loan Fund Loans**

Monday, February 27, 2006

The L & L Development Venture, L.P. loan will have the following terms:

Loan	\$170,000.00
Interest Rate	4.75% Adjusted annually.
Term	Amortized over 20 years with a ten year balloon payment.
Payments	Minimum Payments based on a 5% rate, which will increase if actual interest rates exceed 5%.
Personal guarantees	The City will have personal guarantees from the three general partners.
Security	The City will secure a second lien on the real estate, subordinate to Western Security Bank in an amount not to exceed \$213,488.

This loan is to finance a portion of the remodeling of a building at 2624 Minnesota Avenue (the old Arcade Bar building) for commercial lease.

**L & L DEVELOPMENT VENTURE, L.P.**

BILLINGS, MONTANA

FEBRUARY 2006

**PRO FORMA**

**INCOME ANALYSIS**

1. Scheduled Gross Annual Income	\$ 51,000
2. Less Vacancy/Credit Loss @ 5%	<u>2,550</u>
<b>TOTAL GROSS OPERATING INCOME</b>	<b>\$ 48,450</b>

**EXPENSE ANALYSIS**

**ANNUAL OPERATING EXPENSES**

1. Advertising	\$ 500
2. Public Area Cleaning	600
3. Public Area Utilities	1,200
4. Building Insurance	1,344 (actual cost 2/06)
5. Accounting	500
6. Property Taxes	1,300 (actual 2005 taxes)
7. General Maintenance Reserve	<u>2,000</u>
<b>EXPENSE SUBTOTAL</b>	<b>\$ 7,444</b>

**DEBT SERVICE**

8. Principal and Interest	
TIF Loan (5.0% average rate)	13,452
Commercial Loan (8.0%)	<u>21,372</u>
<b>DEBT SERVICE TOTAL</b>	<b><u>\$ 34,824</u></b>

<b>NET OPERATING INCOME (Cash Flow)</b>	<b>After Debt Service</b>	<b>\$ 6,182</b>
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**LEASES**

BBBS – 100% basement \$5.00/SF = \$800/mo. = \$9,600/yr. (3 yr. lease with one 3 yr. extension)

Subway – 100% first floor \$10.53/SF = \$1600/mo. = \$19,200/yr. (3 yr. lease with nine 2 yr. extensions)

Ed Thurner – 50% second floor \$9.50/SF\* = \$800/mo. = \$9,600/yr. (3 yr. lease with one 3 yr. extension)

Available to lease – 50% second floor \$12.50/SF\* = \$1050/mo. = \$12,600/yr.

Total Rent = \$4,250/mo = \$51,000/yr.

All leases include escalators for increases in taxes, insurance, utilities, and assessments on an annual basis.

\*Thurner space is less/SF because he paid buildout costs directly. Remaining space has been completed by partnership; therefore, costs of lease are greater.

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday January 13, 2004**

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**TITLE:** A Resolution Adopting the Emergency Operations Plan for Billings, Laurel, Broadview and Yellowstone County

**DEPARTMENT:** Fire Department

**PRESENTED BY:** Marvin L. Jochems, Fire Chief

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**PROBLEM/ISSUE STATEMENT:** The plan was developed through open public meetings of the Yellowstone County Local Emergency Planning Committee (LEPC). Periodically the plan is updated. This is an update that includes:

1. Reference to NIMS as the overall management policy of emergency services of the City and County. Added an ICS Chart.
2. Added the reference to WMD along with Terrorism to fit the federal guidelines.
3. Added the "Preparedness Guide for the Homeland Security Advisory System" (color coded conditions).
4. Changed and updated the personnel roster to reflect new elected officials, department heads, phone numbers, etc.
5. Added a new annex dealing with "Debris Management" which is guidelines for handling major amounts of debris after a disaster.
6. Format of the plan was reorganized somewhat for ease of finding annexes and SOP's.
7. The former Mass Casualty Annex and Mass Fatality Annex were included in a new Annex called Medical and Public Health Services and a new SOP called the "Disaster Medical Health Plan". Public Health and the Hospitals just completed this plan.
8. Updated the Volunteer Annex in coordination with the United Way Volunteer Center.
9. All Department Heads in the City and County review their particular area of responsibility and sign off on an approval.

**ALTERNATIVES ANALYZED:** None

**FINANCIAL IMPACT:** Secures the City's eligibility for future grants and disaster reimbursement.

**RECOMMENDATION**

Staff recommends that Council sign resolution adopting Emergency Operations Plan for Billings, Laurel, Broadview and Yellowstone County

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

**ATTACHMENT**

- a. Yellowstone County Emergency Operations Plan Summary. A copy of the complete plan is available for review at the City Clerks Office.
- b. A Resolution Adopting the Yellowstone County Emergency Operations Plan.

**RESOLUTION NO. 06- \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF BILLINGS LOCATED IN YELLOWSTONE COUNTY, MONTANA DECLARING CITY SUPPORT AND ADOPTION OF THE EMERGENCY OPERATIONS PLAN FOR BILLINGS, LAUREL, BROADVIEW AND YELLOWSTONE COUNTY.

WHEREAS, the City Council of Billings supports the Emergency Operations Plan for Billings, Laurel, Broadview and Yellowstone County; and

WHEREAS, The City Council of Billings has participated in the development of the Emergency Operations Plan for Billings, Laurel, Broadview and Yellowstone County, and

WHEREAS, The Emergency Operations Plan for Billings, Laurel, Broadview and Yellowstone County will be utilized as a guide for planning for and managing all risk emergencies,

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, DOES HEREBY ADOPT, SUPPORT, AND WILL FACILITATE THE IMPLEMENTATION OF THE EMERGENCY OPERATIONS PLAN FOR BILLINGS, LAUREL, BROADVIEW AND YELLOWSTONE COUNTY.

PASSED by the City Council and APPROVED this \_\_\_\_\_ day of February, 2006.

THE CITY OF BILLINGS:

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

ATTEST:

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

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**AGENDA ITEM:****CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

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<b>TITLE:</b>	Approve the Resolution Adopting the Policy Identifying the Process of Soliciting and Receiving Input from Persons With Disabilities Regarding Accessibility of Sidewalks in the City of Billings
<b>DEPARTMENT:</b>	Public Works/Engineering
<b>PRESENTED BY:</b>	David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** At their September 12, 2005, meeting, City Council approved and authorized the Mayor to sign the ADA Settlement Agreement between the City of Billings and the United States Department of Justice. The Settlement Agreement requires the City to correct the facilities identified in the Department of Justice audit as being non-compliant with the Americans with Disabilities Act (ADA). As part of the Settlement Agreement, the City is required to implement a written policy identifying the process it will use for soliciting and receiving input from persons with disabilities regarding the accessibility of its sidewalks.

**ALTERNATIVES ANALYZED:**

1. Approve and authorize the Mayor to sign the Resolution adopting the City's written policy identifying the process for soliciting and receiving input from persons with disabilities regarding the accessibility of its sidewalks.
2. Do not approve or authorize the Mayor to sign the Resolution adopting the City's written policy identifying the process for soliciting and receiving input from persons with disabilities regarding the accessibility of its sidewalks.

**FINANCIAL IMPACT:** There is no financial impact to approve this policy.

**RECOMMENDATION**

Staff recommends that Council approve the Resolution adopting the City of Billings policy for identifying the process the City will use for soliciting and receiving input from persons with disabilities regarding the accessibility of City sidewalks.

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

**ATTACHMENT**

A.      Resolution (with policy attachment – Exhibit A)

**RESOLUTION NO. 06-\_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BILLINGS ADOPTING THE POLICY IDENTIFYING THE  
PROCESS OF SOLICITING AND RECEIVING INPUT  
FROM PERSONS WITH DISABILITIES REGARDING  
ACCESSIBILITY OF SIDEWALKS IN THE CITY OF  
BILLINGS

WHEREAS, the City Council approved the ADA Settlement Agreement between the City of Billings and the United States Department of Justice (DOJ) at their September 12, 2005, meeting requiring the City of Billings to correct its facilities identified in the United States Department of Justice audit as being non-compliant with the Americans with Disabilities Act (ADA).

WHEREAS, in compliance with the United States Department of Justice Settlement Agreement, the City of Billings agreed to establish, implement, and report to the United States Department of Justice its written policy for soliciting and receiving input from persons with disabilities regarding the accessibility of its sidewalks, including curb cuts at particular locations.

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

That the Policy Identifying the Process of Soliciting and Receiving Input from Persons with Disabilities Regarding Accessibility of Sidewalks in the City of Billings, which is attached hereto as Exhibit A, is hereby adopted and approved.

APPROVED AND PASSED by the City Council of the City of Billings, this \_\_\_\_\_ day  
of \_\_\_\_\_, 2006.

## THE CITY OF BILLINGS:

**ATTEST:**

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



I.

OSE:

The City of Billings is required under the Americans with Disabilities Act (ADA) to establish and implement and report to the Department of Justice its written process for soliciting and receiving input from persons with disabilities regarding the accessibility of its sidewalks, including, for example, requests to add curb cuts at particular locations.

## II. RESPONSIBILITY:

Public Works Department; ADA Coordinator; employees involved with public right of way construction, alteration or improvement; employees involved in economic development, redevelopment of private development project approvals.

## III. DEFINITIONS:

**Curb Ramps & Pedestrian Walkways -**

Under the ADA, public entities that have responsibility or authority over streets, roads, or walkways must include in their Transition Plan a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs. Priority must be given to walkways serving state and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street- level pedestrian walkway. Also, newly constructed or altered sidewalks or paths must contain curb ramps or other sloped areas wherever they intersect with streets, roads, or highways.

## IV. POLICY:

In compliance with the Department of Justice (DOJ) Settlement Agreement, entered into on September 12, 2005, the City of Billings is required to implement procedures for receiving input from disabled persons with respect to the accessibility of sidewalks, and street level pedestrian walkways (i.e. crosswalks). The City shall install or correct disabled access curb ramps where pedestrian walks cross curbs. In addition, curb ramps and pedestrian street level walkways are required to be completed within a specific time period defined in the Settlement Agreement. This Policy is intended to establish such procedures, as well as identify some guidelines for

# **Policy Identifying the Process of Soliciting and Receiving Input from Persons with Disabilities Regarding Accessibility of Sidewalks in the City of Billings**

P

**Issue Date:**

**Prepared By: Vern Heisler, Deputy Public Works Director**

**Issued By: City of Billings City Council**

determining how specific curb ramp requests will be considered. Lastly, the Policy shall satisfy compliance components identified under the DOJ Settlement Agreement stating that “*...the City will implement and report to the Department its written process for soliciting and receiving input from persons with disabilities regarding the accessibility of its sidewalks, including requests to add curb cuts at particular locations.*”

V. PROCEDURES:

***Solicitation and Receipt of Sidewalk Accessibility and Curb Ramp Requests:***

The City Of Billings shall solicit and receive input on accessibility of its sidewalks, including requests for curb cuts, as follows:

- a) The city’s ADA Coordinator shall receive, evaluate and respond to written or verbal requests from persons with disabilities for installation of curb ramps.
- b) This solicitation (see attached) will be posted by the City’s ADA coordinator on the City of Billings website and published annually in the City of Billings official newspaper.
- c) Written responses shall be given to members of the public who request sidewalk accessibility improvements or curb ramps.
- d) Responses to this solicitation will be considered for construction and implementation using funding from the city’s new proposed capital improvement program (CIP) annual project budget for constructing ramps and installing landings on those previously constructed ramps that have no landings on projects constructed within the city since 1992. Those requests not able to be completed within that given year due to budget constraints will be moved to the next year and constructed as funding allows.

Signed:

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Ron Tussing, Mayor

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Date

## **Process of Soliciting and Receiving Input from Persons with Disabilities Regarding Accessibility of Sidewalks in the City of Billings**

If any person has concerns about the accessibility of any City sidewalk, it is requested the person notify the City ADA Coordinator by telephone (237-6294), by letter or in person to report such concern in as much detail as possible (see "...Information Needed" below). The City ADA Coordinator will receive, record and track all such requests in writing. The City will make every effort to address the issue and take corrective action in a prompt manner as deemed appropriate by the City and as allowed by the budget. The City ADA Coordinator will advise the person of its initial determination and evaluation and the timeframe for correcting the problem.

Where the request involves substantial reconstruction or replacement of sidewalk areas that is beyond the City's ability to fund and accomplish in the current budget year then the request will remain open and be forwarded to the Public Works Director for consideration for inclusion in the Department's next annual Capital Improvement Plan.

If a person is not satisfied with the action the City ADA Coordinator takes, proposes or plans or the timeliness of the response then that person should initiate a grievance procedure with the Public Works Director.

### **Sidewalk Accessibility Issues and Information Needed**

If you want to report a sidewalk accessibility concern to City ADA coordinator we ask you to provide the city with the following information. The most important piece of information is the exact street address or intersection locating the problem. Then please provide a brief but detailed description of the problem, such as, no curb-cut at an intersection or crossing, sidewalk exceeds maximum slope of 1:12 (8.3%), curb cut lacks minimum 36" width, sidewalk cross-slope exceeds 1:50 (2%), etc. Finally, please provide your name, organization name (if filing on behalf of one), address and telephone number.

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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 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 \$721,831.49 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 27, 2006, 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:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, February 27, 2006**

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TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,589,227.40 have been audited and are presented for your approval for payment. A complete listing of the claims dated February 3, 2006, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

**ATTACHMENT:**

A -- List of claims greater than \$2500

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

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**SUBJECT:** Payment of Claims

**DEPARTMENT:** Municipal Court

**PRESENTED BY:** Nikki R. Schaubel, Municipal Court Administrator

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$173,881.89 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 1, 2006 to January 31, 2006 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 01/01/2006 to 01/31/2006

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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, FEBRUARY 27, 2006**

TITLE: Public Hearing for Special Review #802

DEPARTMENT: Planning &amp; Community Services Department

PRESENTED BY: Lora Mattox, Neighborhood Planner, Planner II

**PROBLEM/ISSUE STATEMENT:** This is a Special Review request to allow multi-family dwellings in the South 27<sup>th</sup> Street zoning district on Lots 13 – 18, Block 231 of Billings Original Town. The property is currently vacant and generally located on the southeast corner of South 28<sup>th</sup> Street and 8<sup>th</sup> Avenue South. homeWORD is the owner; Kim Olsen of O<sup>2</sup> Architects is the agent. The Zoning Commission conducted a public hearing on February 7, 2006, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

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

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

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

**RECOMMENDATION**

The Zoning Commission is recommending that the City Council grant conditional approval for Special Review #802.

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

**ATTACHMENTS**

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

## **INTRODUCTION**

This is a special review to allow multi-family dwellings in the South 27<sup>th</sup> Street Permit Corridor zoning district on Lots 13 – 19, Block 231 Billings Original Town. The subject property is located on the southeast corner of South 28<sup>th</sup> Street and 8<sup>th</sup> Avenue South and is currently vacant. The applicant is proposing to develop a multi-family project which will provide 20 units of mixed 1, 2, 3, and 4-bedroom units. In the South 27<sup>th</sup> Street Permit Corridor zoning district, multi-family dwellings require special review approval. The Zoning Commission voted 5-0 to recommend conditional approval to the City Council.

## **PROCEDURAL HISTORY**

- A special review application to allow multi-family dwellings was received on January 3, 2006.
- The City Zoning Commission voted 5-0 at its public hearing on February 7, 2006, for conditional approval of the special review.
- The City Council will conduct a public hearing and consider this application on February 27, 2006.

## **BACKGROUND**

This location in the past contained 7 housing units that were later demolished. The City of Billings acquired this property through the tax sale process. The City of Billings in July of 2005 granted the property to homeWORD in lieu of delinquent taxes. homeWORD is a nonprofit organization whose mission is to develop affordable housing and asset building strategies for those most in need through innovative, sustainable, and replicable methods. homeWORD has been providing their services since 1995. They currently have 8 projects that provide 108 units of housing to low-income families in Missoula and Billings.

homeWORD is proposing to develop 20 housing units of mixed 1, 2, 3, and 4-bedrooms with 8 of the units fully accessible for disabled residents. They also propose to offer a 1000 square foot community room for residents, the neighborhood and community. Other amenities include the installation of public art; a roof top garden and a courtyard where children can play and families can gather. During the development of this project, homeWORD involved the residents of the neighborhood by hosting public input sessions. Through these sessions, neighbors were able to participate and offer ideas concerning the design of the project. The South Side Task Force has also participated in this process and is in favor of the development.

The South 27<sup>th</sup> Street Permit Corridor Zoning District does allow for the development of multi-family housing through the special review process. The Planning Department has reviewed this application and is recommending conditional approval. The South Side Neighborhood Plan identifies this area for infill housing development of high quality for low and moderate income housing. 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. The applicant has agreed to the conditions of approval.

## **ALTERNATIVES ANALYSIS**

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

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

*This application complies with the requirements of the zoning regulations.*

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

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

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

*The proposed use is compatible with the adjoining land uses.*

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

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

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

1. The special review approval shall be limited to Lots 13 – 18, Block 231 of Billings Original Town and the number of multi-family units shown on the site plan. Additional multi-family structures shall require additional special review approval of the Billings City Council.
2. All landscaping shall be as shown on the submitted site plan and in accordance with Section 27-805 of the BMCC.

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

## **STAKEHOLDERS**

The public hearing held on February 7, 2006 before the City Zoning Commission was attended by Kim Olsen of O<sup>2</sup>Architects. Ms. Olsen answered questions regarding the proposed

development. Ms. Olsen stated that this development will include 3 buildings surrounding a courtyard. No surrounding property owners attended the public hearing or submitted objections to the proposed special review use.

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

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

- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.
- The proposal provides contiguous development focused in and around an existing population center.
- Affordable housing for all income levels dispersed throughout the City and County.

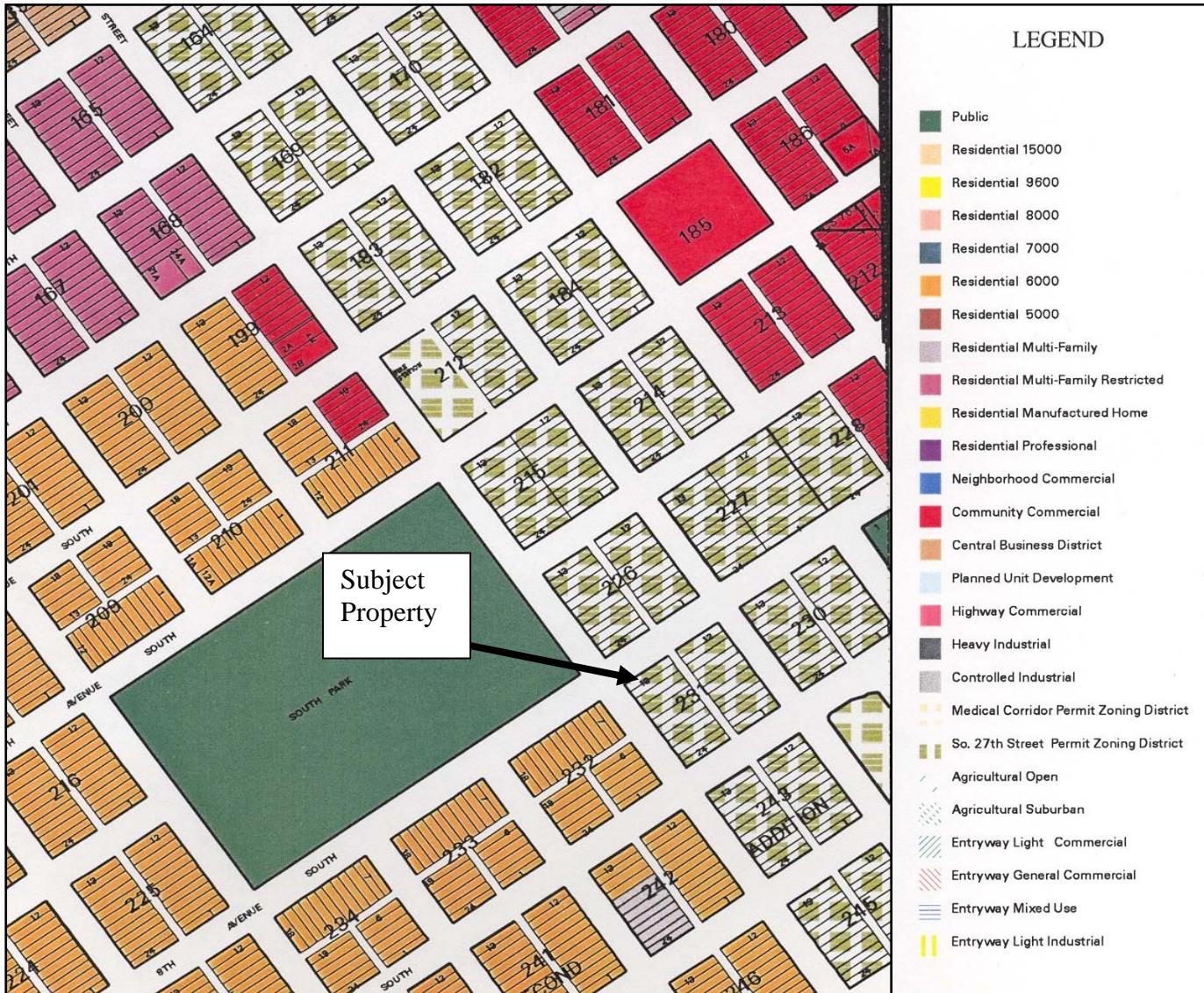
### **RECOMMENDATION**

The Zoning Commission is recommending that the City Council grant conditional approval for Special Review #802.

### **ATTACHMENTS**

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

**ATTACHMENT A**  
**Zoning Map**



Subject Property - Corner of South 28<sup>th</sup> Street & 8<sup>th</sup> Avenue South

**ATTACHMENT B**  
Site Photographs for Special Review #802

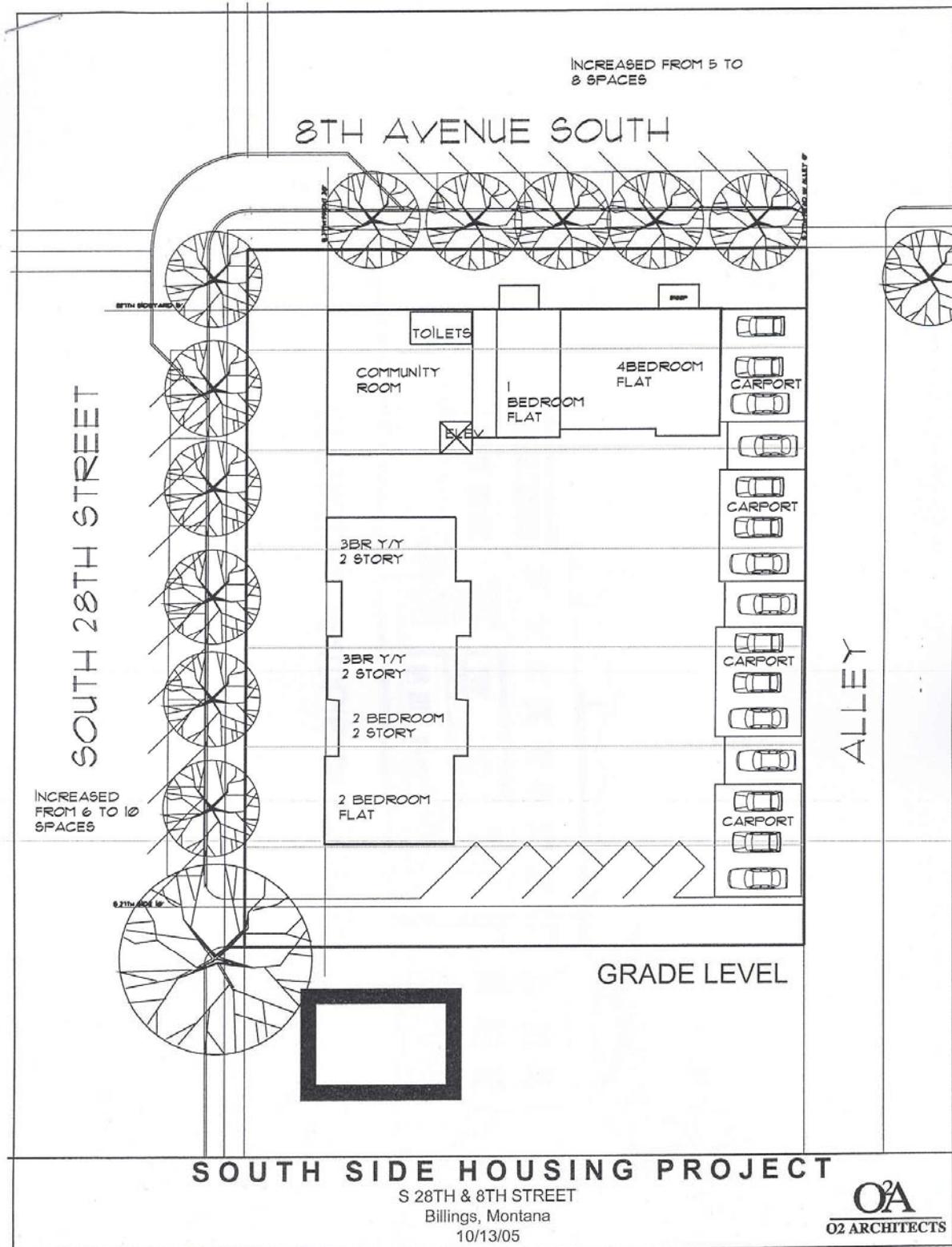


Looking southeast at subject property from intersection of 8<sup>th</sup> Ave South and South 28<sup>th</sup> Street



Looking south from subject property

**ATTACHMENT C**  
Site Plan



## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, FEBRUARY 27, 2006**

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**TITLE:** Public Hearing for Special Review #803**DEPARTMENT:** Planning & Community Services through Candi Beaudry, AICP,  
Interim Planning Director**PRESENTED BY:** Wyeth Friday, Planner II

**PROBLEM/ISSUE STATEMENT:** This is a request for a special review to allow a drive-through window for a Dairy Queen Restaurant in a Community Commercial zone adjacent to a Residential Multifamily-Restricted zone, Lots 1-5, Block 1 of Cellan Acre Tracts. The property is addressed as 1045 Grand Avenue. The property owners are Gary Davis, Marilyn Davis and Le Ann Davis, the applicant is Rich Hageman, and the representing agent is Darrell Kreitzberg. The Zoning Commission conducted a public hearing on February 7, 2006, and is forwarding a recommendation of **conditional approval** to the City Council on a 4-1 vote.

**ALTERNATIVES ANALYZED:**

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

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

The Zoning Commission is recommending that the City Council **conditionally approve** Special Review #803.

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

- A: Zoning Map
- B: Site Plan
- C: Site Photographs
- D: Petition Letter and Petition
- E: Applicant Letter to Neighbors

## **INTRODUCTION**

This is a request for a special review to allow a drive-through window for a Dairy Queen Restaurant in a Community Commercial zone adjacent to a Residential Multifamily-Restricted zone. The property is located at the northeast corner of the intersection of Grand Avenue and 11<sup>th</sup> Street West. The property is addressed as 1045 Grand Avenue. A new Dairy Queen Restaurant will be constructed on the former site of the Happy Diner. The existing Happy Diner building will be demolished. A drive-through window is to be installed with the Dairy Queen. The property for the Dairy Queen includes the property from Grand Avenue back to Avenue B. The front two lots are zoned Community Commercial while the three lots at the back where the existing parking lot is located are zoned Residential Multifamily Restricted. While the Dairy Queen owns the entire property, a Special Review must be approved to have the drive-through use on the commercially zoned property adjacent to the residentially zoned property. The applicant intends to make minimal changes to the parking lot at the back portion of the property. The applicant is proposing a new Dairy Queen Restaurant with a drive-through window on the front portion of the property.

This property is surrounded by high-density urban-style development. There are other fast-food restaurants to the east, west and across Grand Avenue to the south. Many of these have drive-through windows. There is single and multifamily residential development north of the property. Grand Avenue is classified as a principal arterial street and is designed to carry high volumes of traffic through this area of the City.

The applicant plans to relocate the existing Dairy Queen across Grand Avenue to the subject property. The applicant states that there are six restaurants within 300-feet of the subject property that are utilizing drive-through services. Several of the special reviews for these drive-through services are outlined above in the Applicable Zoning History section of this report. The plans call for demolishing the existing Happy Diner structure and building a new Dairy Queen Restaurant further back from Grand Avenue on the site. The applicant is proposing to have the drive-through loop around the front of the new building and plans to eliminate the access on Grand Avenue (See site plan in Attachment D). The existing access on 11<sup>th</sup> Street West would become the main access to the property, according to the applicant.

The Planning Department reviewed this application and is recommended conditional approval. Planning staff found that the proposal appeared to be an appropriate use considering the location of the property, the type of facility proposed, the character of the surrounding properties, and the existing uses in the area with drive-through services. Planning staff recommended eight conditions to the Zoning Commission for this special review based on the approval criteria for special review uses.

## **STAKEHOLDERS AND ZONING COMMISSION DISCUSSION**

The Zoning Commission heard public comment on this application at its meeting on February 7. The Commission also noted that it had received a letter and petition signed by 40 neighboring property owners that were opposed to the site plan as proposed, and the Commission had received a copy of a letter from the Rich and Bev Hageman, the applicants, to the neighbors responding to the neighborhoods concerns (See Attachment D and Attachment E for these documents).

Rich Hageman, who owns the existing Dairy Queen on Grand Avenue and is proposing a new one at the subject property, opened the public hearing. He said that the lot size was a little smaller than what he had hoped for, but the location was great and he and his architects had tried to work out a good site plan and layout for the new Diary Queen. Hageman said he accepted the proposed staff conditions and that the restaurant could be built to meet these conditions. To address neighbors' concerns that were outlined in the petition letter, Hageman provided several site plans showing other access and drive-through configurations that had been ruled out due to problems with parking, traffic flow and traffic safety. He said access only onto Grand Avenue was dangerous and made layout of the drive-through very difficult. He said two accesses on 11<sup>th</sup> Street West with the accesses on Avenue B blocked off, also caused problems with parking on the property. He said prohibiting access to Avenue B from the parking lot would not prevent people from using Avenue B after they left the premises.

Agent for the applicants, Darrell Kreitzberg, said that he was supportive of the application. He said that several businesses had looked at the Happy Diner property and the Dairy Queen was the best fit in his opinion. He said one potential buyer would have left the property essentially as it was, one would have used it for a pawn shop and one was considering a casino on the property. Kreitzberg said the Dairy Queen seemed to be the best business for the property and the neighborhood.

Five people spoke in opposition to the application as proposed. A concern voiced by all of the speakers in opposition was that Avenue B should not be used as an access for the property. Fencing and landscaping should be built across the back portion of the property on Avenue B, all of the neighbors stated. Several people wanted to have access for the property limited only to Grand Avenue as are the accesses for other fast-food restaurants along Grand Avenue in the area. The location of the trash dumpster also was a concern. The site plan shows the dumpster being located at the northwest corner of the parking lot along Avenue B. Several neighbors said the trash and grease trap should be located closer to the restaurant and away from the residents across Avenue B. General traffic flows were a major concern for all of the residents. Speeds of traffic on 11<sup>th</sup> Street West and Avenue B are a problem and the Diary Queen will add more traffic to the area, the residents said. One resident recommended yield signs at the intersection of 11<sup>th</sup> Street West and Avenue B and speed bumps on Avenue B. Another resident proposed that the Dairy Queen consider eliminating the drive-through all together and just having a sit-down restaurant.

Rich Hageman said that the drive-through was essential to the business and required by the Dairy Queen Corporation. He said he was open to having the trash dumpster and grease trap moved closer to the building if the health department would allow it. He said he also would want to make sure the trash was not in a place near the building that would be offensive to the restaurant patrons.

Zoning Commission members Mike Boyett and Ed Workman both asked if access to the property could be limited only to Grand Avenue the same way that Wendy's is configured to the east of the subject property. Hageman said that Wendy's has more street frontage on Grand Avenue that helps in having access on Grand, and he reiterated his early concerns that traffic safety and traffic flows were a problem with access limited to Grand Avenue. Boyett then asked Hageman if there could be two accesses on 11<sup>th</sup> Street West and no access on Avenue B. Hageman reiterated that he had looked at that scenario and that he would go down to 27 parking

spaces when 29 are required by City Code. He also said that creating these two 11<sup>th</sup> Street accesses raises problems of traffic flow internally on the site and would probably not limit traffic on Avenue B.

Zoning Commission member Mike Boyett made a motion to conditionally approve the special review as recommended by staff. The motion was seconded. Zoning Commission member Thomas Grimm then said he would like to offer a substitute motion. Grimm said that given the neighborhood concerns about Avenue B access, he would make the motion to close off both Avenue B accesses entirely and provide a sight-obscuring fence and landscaping along the entire border of the property on Avenue B. Grimm said this would require the applicant to address a potential loss in parking spaces below the number required by City Code. Zoning Coordinator Nicole Cromwell pointed out that any reduction in parking below what is required by City Code could be addressed through a variance process with the City Engineering Office. She said that the Zoning Commission could certainly choose to make a condition that would close off Avenue B and the applicant would then have to consider the parking variance option. Grimm made the amended motion to eliminate any access to the property on Avenue B. The motion died for lack of a second.

The Zoning Commission then returned to the original motion to conditionally approve the special review as recommended by staff. The Commission voted 4-1, with Grimm voting no, to recommend conditional approval of the special review to the City Council.

## **APPLICABLE ZONING HISTORY**

**Special Review #161:** Conditionally approved June 27, 1983, to allow a drive-through window service at 1026 Grand Avenue just south and east of the subject property.

**Special Review #215:** Conditionally approved January 7, 1985, to allow a drive-through service for a Rax Restaurant at 1105 Grand Avenue a few lots west of the subject property across 11<sup>th</sup> Street West.

**Special Review #402:** Conditionally approved March 26, 1990, to allow a drive-through window service for a new Taco Bell Restaurant at 1026 Grand Avenue.

**Special Review #406:** Conditionally approved June 4, 1990, to allow a drive-through window service for a Dairy Queen Restaurant at 1048 Grand Avenue directly across Grand Avenue from the subject property.

**Special Review #501:** Conditionally approved September 13, 1993, to allow a drive-through window service for a McDonald's Restaurant at 1046 Grand Avenue just south and east of the subject property across Grand Avenue.

**Special Review #503:** Conditionally approved September 13, 1993, to allow a drive-through window service for a Windsocks Restaurant at 1005 Grand Avenue east of the subject property.

## **PROCEDURAL HISTORY**

- The request for a Special Review was received on January 3, 2006.
- On February 7, 2006, the City Zoning Commission conducted a public hearing on the Special Review and voted 4-1 to recommend conditional approval of this application.
- The City Council will conduct a public hearing for consideration of this application on February 27, 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 residential land uses located to the north of the subject property across Avenue B and 11<sup>th</sup> Street West.*

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:

3. The special review approval shall be limited to Lots 1 and 2, Block 1 of Cellan Acre Tracts as shown on the site plans submitted with this application.
4. Any expansion of the buildings or parking area greater than 10 percent will require an additional special review approval as per BMCC 27-613(c).
5. 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.
6. The existing curb cut at the northwestern corner of the property that provides an access to Avenue B shall be removed, leaving one access to Avenue B at the northeast corner of the property. Landscaping shall be provided along the property boundary with Avenue B and shall include at least 2 street trees and 6 shrubs that grow to at least 36" at maturity.
7. A Traffic Accessibility Study shall be submitted to the City Engineering Department for review at the time that Building Permits are submitted for the site. Recommendations provided in the TAS shall be implemented by the applicant at the discretion of the City Engineering Department.
8. The drive-through aisle at the front of the property adjacent to Grand Avenue must be buffered from the Grand Avenue right-of-way with a 36" high wall and living landscaping to prevent vehicle lights from blinding drivers and pedestrians westbound on Grand Avenue, or entering Grand Avenue from properties across the road from this property.
9. There shall be no outdoor public address system or outside announcement system of any kind.

10. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, all landscaping requirements specified on Section 27-1101, and all other City regulations that apply.

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

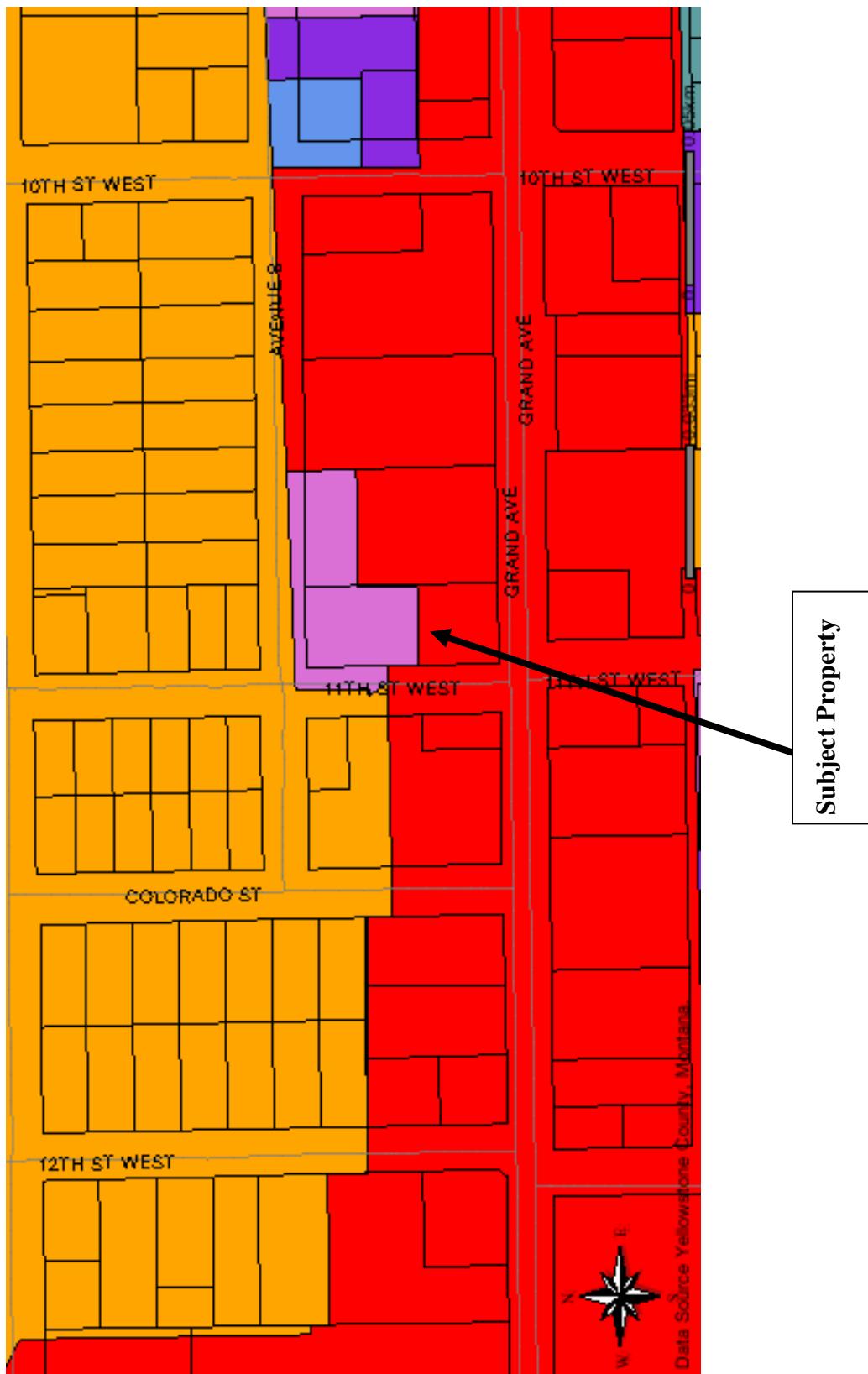
### **RECOMMENDATION**

The Zoning Commission is recommending that the City Council **conditionally approve** Special Review #803.

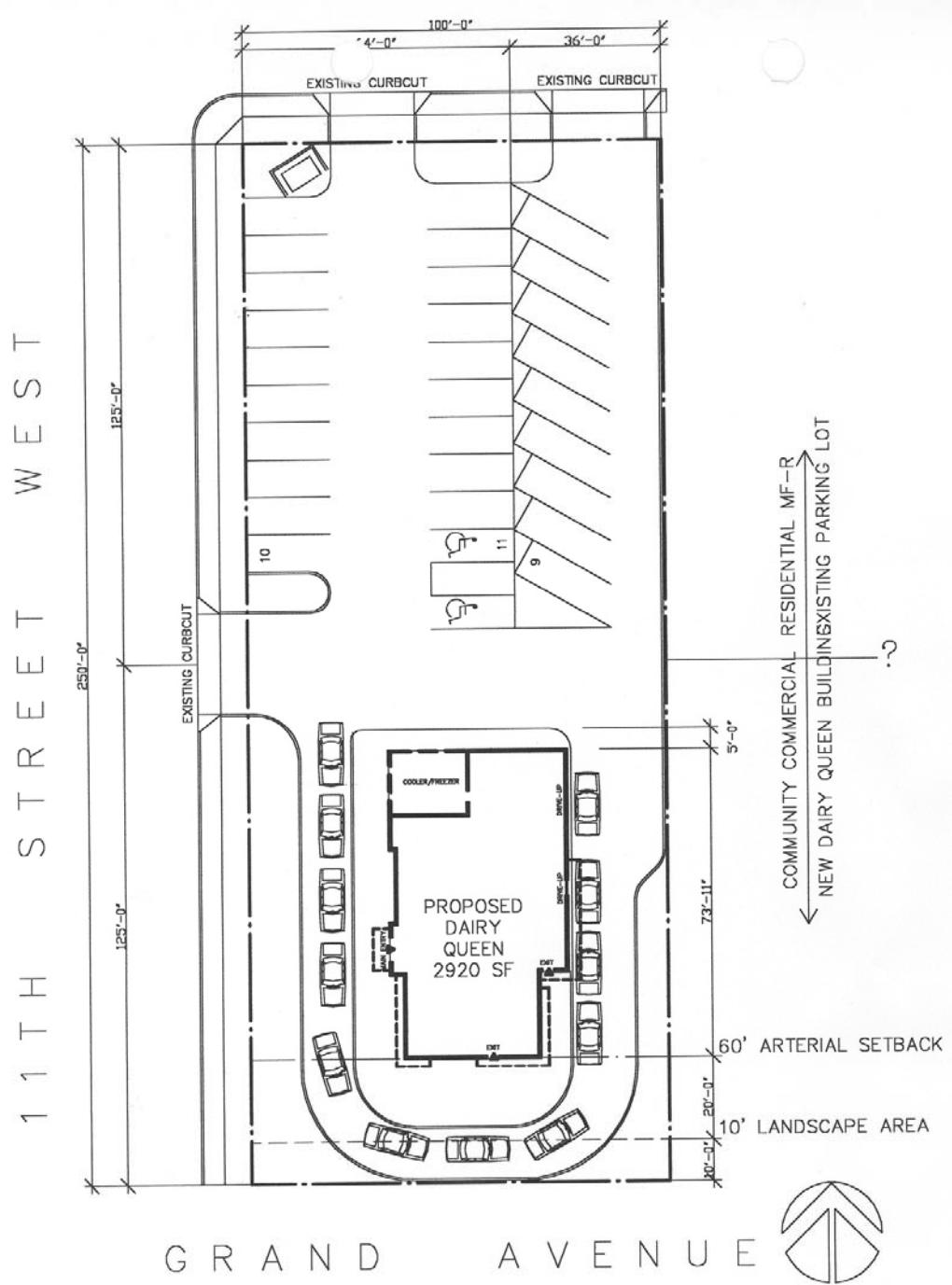
### **ATTACHMENTS**

- A: Zoning Map
- B: Site Plan
- C: Site Photographs
- D: Petition Letter and Petition
- E: Applicant Letter to Neighbors

**ATTACHMENT A**  
**Zoning/Location Map**



**ATTACHMENT B**  
Site Plan



LOT AREA: 25,000 SF  
LOT COVERAGE: 2920 SF  
REQUIRED LANDSCAPING: 2208 SF  
FRONT YARD: 1104 SF REQUIRED  
FRONT YARD: 1708 SF PROVIDED  
TOTAL LANDSCAPED AREA PROVIDED: 2959 SF  
PARKING REQUIRED: 29 SPACES  
PARKING PROVIDED: 30 SPACES

**ATTACHMENT C**  
Site Photographs



**Figure 1.** Looking east at subject property from across 11<sup>th</sup> Street West. The Happy Diner building will be demolished to make room for the new Dairy Queen.







**Figure 5.** Looking west across 11<sup>th</sup> Street West from the subject property at the Taco John's Restaurant and Mountain Mudd coffee kiosk.



**Figure 6.** Looking east from the parking lot behind the Happy Diner building at the Wendy's Restaurant directly east of the subject property. This Wendy's has a drive-through window service.

## ATTACHMENT D

February 1, 2006

To Whom It May Concern:

The neighborhood has several concerns with the Dairy Queen construction and operating plans.

We want the curb cuts on Avenue B and 11<sup>th</sup> Street West closed. The street is a dead end a half block to the west and is very narrow. The difference in cliental between the Happy Diner and Dairy Queen is drastic and the increase in traffic will be horrendous. Entering and exiting from Grand should not be a problem; Wendy's, Arby's, Taco Bell, McDonalds, etc., have been doing it for years. Disrupting the residential area with increased traffic, noise, air pollution and litter certainly isn't necessary.

Screening the parking area from the neighborhood with fencing and landscaping would block the headlights from our homes. It would also give us a bit of a sound barrier and help contain the litter associated with drive through business. Wendy's has fencing and a lilac hedge; Arby's has fencing and needs low growing trees or a hedge (they had fir trees that got too big and had to be cut down); the Four Seas has fencing with no drive through. Planting hedges, bushes, trees and grass will help keep the air a bit cleaner, muffle the traffic noise, and let us live in our homes without headlights constantly flashing through our doors and windows. We shouldn't have to live with our windows sealed and covered twelve months of the year. Six to eight months of the year we should be able to open our windows and enjoy fresh air and some semblance of privacy. Not all of our homes have central air and we are Montanans. We like the fresh air. We don't want to live like prisoners.

Absolutely no dumpsters or grease bins in our front yards. Keeping it close to the building will be helpful for their employees and force them to contain their garbage. The city's garbage route comes early in the morning and won't interfere with their customers.

The parking lot lights have always been a problem and the Happy Diner turned them out at 10 when they closed. The new lights need to be directed at the parking lot, not the neighborhood homes and windows. Wendy's continue to be a problem with their spotlights shining all the way over to Avenue C. If they wish security lights, please be sure the light is directed to their property, not ours. Their building should not have a lighted roof currently used. It should be compatible with a residential area.

Another concern is delivery trucks. The local companies do not present a serious problem but the trucks from their supply depot that arrived at 1 a.m. and sit in their lot running their diesel engines and reefers all night are a problem. With proper management those truckers could stay at the truck stop until it is time to meet the unloading crew.

Contact: Peggie Ligget 252-9115

Petition of concerns for City Special Review # 803 Project Number 06-02

Name

Address

<u>Jeff Probie Street</u>	<u>1033 Ave. B</u>
<u>Beth H. Energy</u>	<u>1503 11<sup>th</sup> St W</u>
<u>Carol J. McCracken</u>	<u>1521 11<sup>th</sup> ST W</u>
<u>Jeffrey Dixon</u>	<u>1525 11<sup>th</sup> ST W</u>
<u>Patricia Dixon</u>	<u>1525-11<sup>th</sup> St. W.</u>
<u>Tommy Boeselken</u>	<u>1031 Ave B</u>
<u>Russell R. Watson</u>	<u>1029 Ave B</u>
<u>Judy Fergs</u>	<u>1027 Ave B</u>
<u>Bonnie Ross</u>	<u>1011 Ave B</u>
<u>Travis Montague</u>	<u>1007 Ave B</u>
<u>John Roberts</u>	<u>1003 Ave B</u>
<u>Karen Roberts</u>	<u>1003 Ave B</u>
<u>Marilyn Dines</u>	<u>1033 Ave C.</u>
<u>Richard J. Deines</u>	<u>1033 Ave C.</u>
<u>Beth A. Zem</u>	<u>1508 11<sup>th</sup> ST W</u>
<u>Wesley P. Finschi</u>	<u>1528 11<sup>th</sup> ST W</u>
<u>Carol J. Finschi</u>	<u>1520 11<sup>th</sup> ST West</u>
<u>Roger Wagman</u>	<u>1516 11<sup>th</sup> ST WEST</u>
<u>John Varnovick</u>	<u>1030 Ave C.</u>
<u>Anne Danover</u>	<u>1030 Ave. C</u>

RECEIVED

FEB -7 2006

PLANNING & COMMUNITY  
SERVICES DEPARTMENT

Diggy Bergsagel 1512 Colorado  
Evelyn E. Denning 1508 Colorado  
Kate Kapple 1516 Colorado  
Lynne L. Zimmerman 1517 Colorado  
Dela Rogers 1515 Colorado Street  
Brandon Fox 1509 Colorado St.  
Bob Hilario 1507 Colo. St.  
Toni Hilario 1507 Colorado St.  
Rinette Mainzer 1028 Avenue C  
Robert Mainzer 1028 Avenue C  
David Tress 1520 Colorado St.  
Delene Swinley 1047 Ave C  
Brandi Long 1024 11<sup>th</sup> C  
Sony Wolf 1420 11<sup>th</sup> St. W.  
L. Camp 1420 11<sup>th</sup> St. W.  
Bunna Stettler 1524 11<sup>th</sup> W.  
Carol Jones 1041 Ave C  
Thelma Jan 1524 11st W  
Anthony G. Linsdell 1420 COLORADO  
John Rose 1517 11<sup>th</sup> W

## **ATTACHMENT E**

February 3, 2006

Dear Concerned Neighbor,

Please allow us to introduce ourselves. We are Rich and Bev Hageman, and we have operated the Dairy Queen on Grand since 1990. Prior to purchasing the Dairy Queen on Central Avenue and moving it to here on Grand, we owned and operated a small fast-food restaurant at 1016 Grand for 11 years called Li'l Peetzas.

For the last 4 years we have been desperately needing to either expand or find a property to move our Dairy Queen on Grand to. When this Happy Diner property became available, it was the answer to a long, hard search for a property here on Grand that has been our business Ahome area@ for almost 30 years.

In addition to the major financial hurdle that we will be facing, we must also conform to some very strict requirements by several different entities. The first of those entities that we must satisfy is a corporate entity known as International Dairy Queen. In addition to their very strong operating requirements, if we wish to renew our almost-expired franchise agreement, we must also remodel or build anew a building that will not only look very much like this picture, and have a drive through, but will follow very closely their architectural drawings and size requirements.



The second set of non-negotiable requirements comes from the various zoning and building ordinances that have been put in place by our representatives on past city councils and that neither we nor the city staff have any abilities to make exceptions to.

For example, the size of the building that is required by International Dairy Queen triggers the number of parking spaces that is required by city ordinances. There are also street set-backs, landscaping requirements, street access restrictions, automobile stacking requirements in our drive-thru lane, distances between parking rows, rainfall containment, and many more. In addition, zoning requirements will allow us to build only on the front 100 feet of the property. We have hired an architect who is knowledgeable of these requirements to design a site plan that endeavors to meet all the requirements that are being imposed on this project.

In all actuality, it took many attempts to find a design that would even work on this property. When we were able to develop a design that would work for this difficult situation, we did submit it to the city for approval. As you know, the city staff has approved the site plan with certain conditions. We received this report from the city staff last Thursday, and do agree with their recommendations. With this information in hand, we then went to visit with you citizens in the neighborhood to discuss our project with you. It was at this time that we learned that a petition had already been circulated in support of a letter written by Peggy Ligget, that had been

taken to the city staff. After contacting the city staff today, we were able to obtain a copy of the letter. We appreciate the thought that went into the letter, and with your permission we would like to try to address the points that were brought up in that letter.

But before we do so, we would like to point out several very significant facts.

First: Dairy Queens are FAMILY restaurants. We are not the typical fast-food store that depends on street traffic-counts or the Ayoung crowd@ for our business. We base our locations on Ahouse tops@ more than cars-per-day, and we cater to the senior citizens just as much as we do to the Akid=s-meal@ group, and everyone in between.

Second: We truly believe that we are one of the best Afits@ for this property in an area that, quite frankly, is a commercial location. We just might be a bit prejudiced, but we believe that our customers are Atruly a cut above@ the other customers that are Aout there on the street@. It needs to be recognized that many other businesses, such as a pawn shop, or 24-hour convenience store could easily move onto this property without **ANY** reviews by the city or anyone else. In fact, the drive thru is the only factor that caused the special review for our restaurant.

We have discussed this letter with several members of the city staff, and agree with them that their recommendations to the zoning commission have adequately addressed those concerns in the letter that are within their abilities to do. Their proposed conditions include shielded lighting, and trees and shrubbery along Avenue B and the removal of the northwest curb cut on Avenue B.

The Grand Avenue access, unfortunately, and contrary to the opinion in the letter stating Ashould not be a problem@, is quite frankly, a major problem. Yes, Wendy=s and the other fast foods do have Grand Avenue access, but they also have at least 125 feet of street frontage, and are not corner lots. (You might note that our present Dairy Queen has only a Aright-turn-only@ exit onto Grand. Our two accesses are from 11<sup>th</sup> Street West.) This Happy Diner property has only 100 feet of frontage (and yes, 25 feet DOES make a difference), it is right next to an intersection, and also has to contend with a fire hydrant and a large power pole on the west side of this frontage. The city staff has also pointed out to us that Grand Avenue is an Aarterial@ street, arterial meaning a purpose of moving larger amounts of traffic and limiting accesses to the street. Top priority here is safety in high volume traffic, and any accesses we might try could create very dangerous situations.

Even so, we have gone back and tried to create a scenario with even one Grand Avenue access, but with all the building-location, stacking, and parking requirements, we could find nothing feasible or even reasonable.

So yes, there is one remaining curb cut on Avenue B, and we have looked at different scenarios that removed it, including putting a second curb cut on 11<sup>th</sup> Street West. Unfortunately, these endeavors either reduced our available parking spaces too far below minimum requirements, or else created more traffic problems, both internal and potentially external, than what we were trying to eliminate. Please remember, there have been two curb cuts there for 35 years, and with any other business they probably will stay there. We acknowledge that there is a possibility of an increase in traffic, but the term Ahorrendous@ seems to be a bit inflammatory and exaggerated,

and we would respectfully dispute the statement that the difference in clientele between the Happy Diner and Dairy Queen as drastic. Since we spend a good share of the year on daylight savings time, we don=t understand the comment about headlights constantly flashing through our doors and windows. (And as the sun goes down earlier through the year, so does our business and our closing times B we close at 10:30 pm in the summer, and 9 pm in the winter.)

With our experience at our present location at 1048 Grand, we don=t understand a need to Alive with our windows sealed and covered twelve months of the year. We aren=t running a truck stop here. We have a problem with our operation being described with Anoise, air pollution, and litter.

As far as the dumpster location is concerned, parking and design requirements do have an influence on that. We do wish to point out that the dumpster location is designed inside a high enclosure, shielding it from the areas around it.

Our main delivery truck currently comes at approximately 8 a.m. on Wednesday mornings, with an additional summer delivery at 8 a.m. on Saturday mornings.

We hope that we have addressed your concerns, and hope that you understand that there are many factors in this plan that are out of our control, either literally or logically. We understand and appreciate the ordinances that were developed over the years for the safety and well being of all the citizens of Billings as a whole, and that the city staff is required to enforce and abide by.

We hope to continue being your local Dairy Queen for excellent food and the best ice cream treats available.

We thank you for your time and understanding, and want you to know that we can be reached at our home phone number 245-5780 for any comments or discussion.

And just a reminder: the zoning commission meeting will be next Tuesday at the council chambers in City Hall at 4:30 pm.

Sincerely,

Rich and Bev Hageman

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, FEBRUARY 27, 2006**

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TITLE: Public Hearing for Special Review #804

DEPARTMENT: Planning &amp; Community Services

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

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**PROBLEM/ISSUE STATEMENT:** This is a Special Review request to allow a car wash in a Neighborhood Commercial zone at the intersection of Blue Creek Road and Santiago Boulevard on Tract 1C of Certificate of Survey 566. The subject property is located on the northeast corner of the intersection of Blue Creek Road and Santiago Boulevard and is currently vacant. Jeff Essman is the owner. The Zoning Commission conducted a public hearing on February 7, 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 #804.

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

**ATTACHMENTS**

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

## **INTRODUCTION**

This applicant is requesting a Special Review to allow a car wash in a Neighborhood Commercial zone on Tract 1C of Certificate of Survey 566, Tract 1 2<sup>nd</sup> Amended. The subject property is located north of the intersection of Blue Creek Road and Santiago Boulevard and just south of the Blue Basket gas station and convenience store. The property is currently vacant.

The site is approximately one (1) acre in size and was recently annexed into the city. City water is available and city sewer services will likely be available in late 2007. The owner intends to market the property based on the special review approval for the car wash and incorporate the use into a larger retail service center to be built at a later time. The applicant has submitted two (2) site plans – A and B – for consideration by the City Council. The site borders a principal arterial street and state highway and is an appropriate location for neighborhood retail services. Santiago Boulevard is the entrance to the Cedar Park neighborhood and site improvements should be compatible with this residential neighborhood entrance. The Zoning Commission voted 5-0 to recommend conditional approval of the special review request.

## **PROCEDURAL HISTORY**

- A special review application to allow a car wash in a Neighborhood Commercial zone was received on January 3, 2006.
- The City Zoning Commission voted 5-0 at its public hearing on February 7, 2006, to recommend conditional approval of the special review.
- The City Council will conduct a public hearing and consider this application on February 27, 2006.

## **BACKGROUND**

Special review uses are uses which may or may not be appropriate in a particular district depending upon all the circumstances of the individual case. The owner, Jeff Essman, is requesting approval of both proposed site plans – Plan A or Plan B – so he will have more marketing choices for the property.

The Planning staff considered the application and recommended conditional approval to the Zoning Commission. The City Zoning Commission has considered the application and is recommending conditional approval of the special review request based on its concurrence with the Planning staff recommendation of conditional approval. The first and second conditions limit the approval to this location and allow the applicant to develop either Plan A or Plan B as submitted with the application. The third recommended condition would limit the hours of operation for unenclosed car wash bays and vacuum cleaners to between 7 a.m. and 10 p.m. This condition is recommended because there are residential dwellings in the general area. The fourth condition would require the installation of a 6 foot sight-obscuring fence on the east property line at the time the car wash is constructed. As an alternative a dense evergreen hedge could be planted. This condition is recommended to provide some screening between this use and the residential neighborhood of Cedar Park. The fifth condition concerns outdoor lighting on the property and the final condition restricts an outdoor public announcement system.

## **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.*

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:

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

Based on the above criteria, the Zoning Commission is recommending 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 this tract of land and no other.
2. The development of the property shall be conformance with the submitted site plans (Plan A or Plan B).
3. The hours of operation for any unenclosed car wash bays and vacuum cleaners shall be limited to between 7 a.m. and 10 p.m.
4. A six-(6) foot sight-obscuring fence shall be located on the east property line at the time the car wash is constructed. As an alternative, the applicant shall install 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.
5. Any lighting within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property.

6. There shall be no outdoor music or public address system on the 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**

Jeff Essman, owner and applicant, attended the Zoning Commission hearing and gave details of the proposed development. There were no other persons present to testify and no letters of objection to the proposal were received by the Planning Department.

### **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.
- More housing and business choices within each neighborhood.

### **RECOMMENDATION**

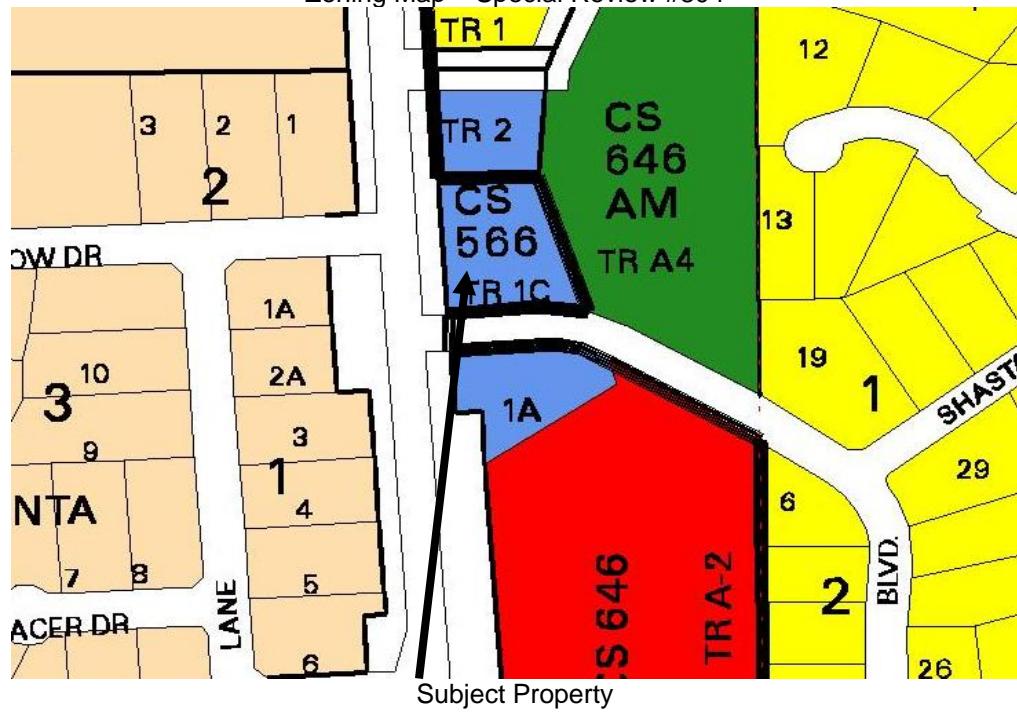
The Zoning Commission is recommending that the City Council conditionally approve Special Review #804.

### **ATTACHMENTS**

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

**ATTACHMENT A**

Zoning Map – Special Review #804



**ATTACHMENT B**  
Site Photographs for Special Review #804

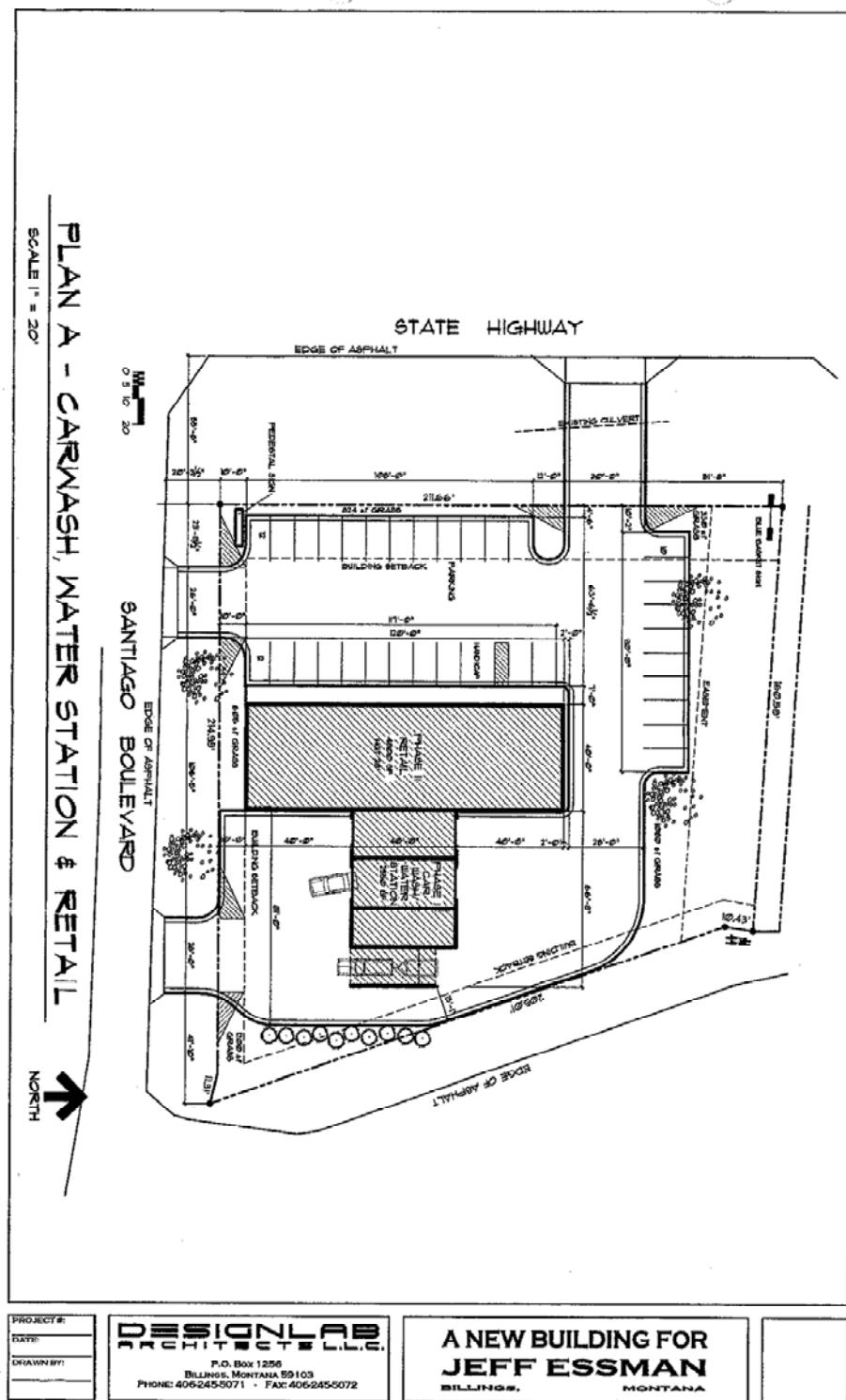


View north from intersection of Santiago Boulevard and Blue Creek Road



View east from subject property to Cedar Park neighborhood

**ATTACHMENT C**  
Site Plan A – Special Review #804

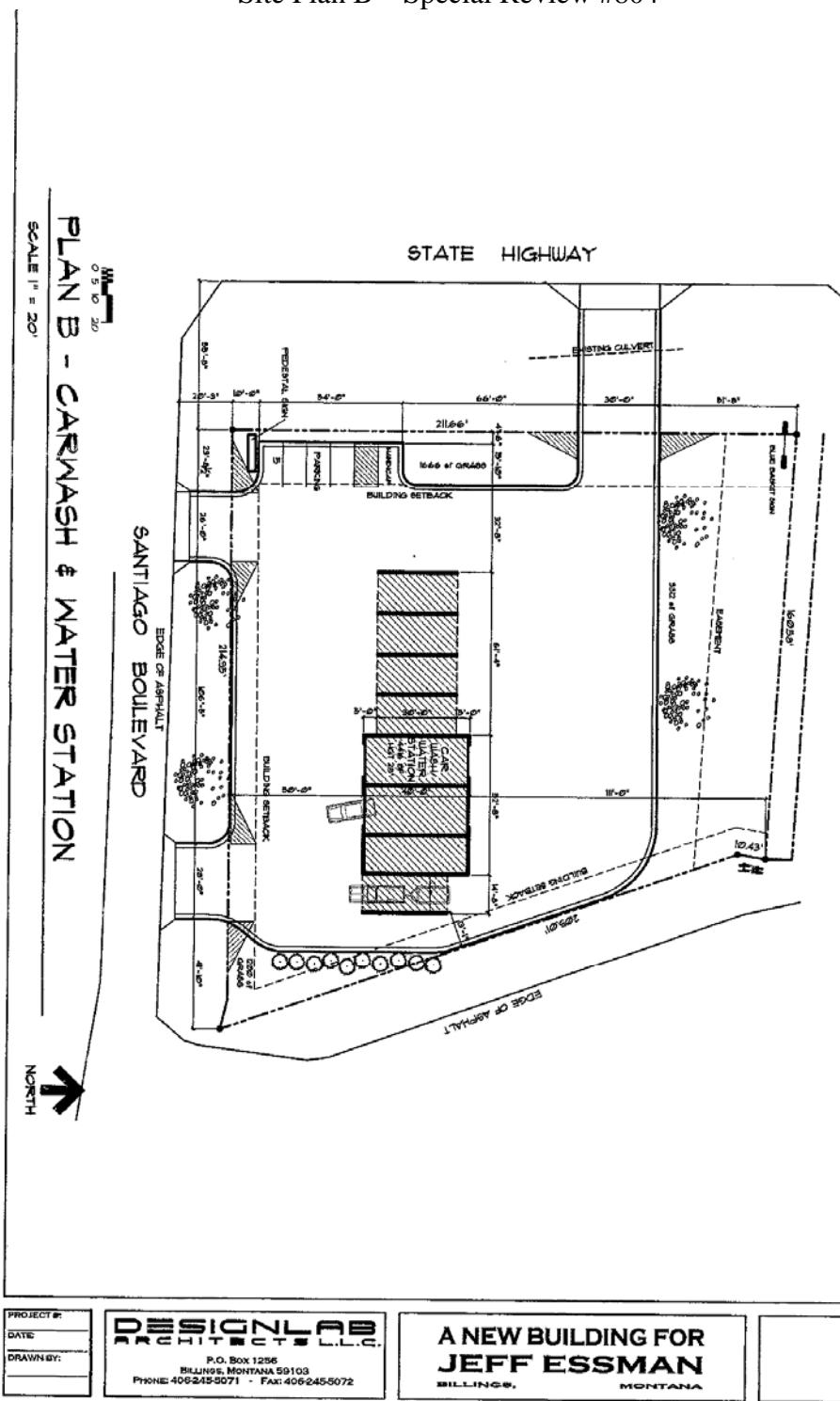


PROJECT #: \_\_\_\_\_  
DATE: \_\_\_\_\_  
DRAWN BY: \_\_\_\_\_

**DESIGNLAB**  
ARCHITECTS, L.L.C.  
P.O. Box 1256  
BILLINGS, MONTANA 59103  
PHONE: 406-245-5071 • FAX: 406-245-5072

**A NEW BUILDING FOR  
JEFF ESSMAN**

**ATTACHMENT C, continued**  
Site Plan B – Special Review #804



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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, FEBRUARY 27, 2006**

TITLE: Public Hearing for Special Review #805

DEPARTMENT: Planning &amp; Community Services

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

**PROBLEM/ISSUE STATEMENT:** This is a Special Review to permit the location of an all beverage license with gaming on Lot 5 of Block 1, North Pointe Square Subdivision at 2352 Main Street in a Community Commercial zone. The subject property is located north of the intersection Main Street and Pemberton Lane in Billings Heights and is vacant. Ernie and Leann Dutton are the owners and Mark Wass, proprietor of Little Nevada Casino, is the prospective owner. The Zoning Commission conducted a public hearing on February 7, 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 increase tax revenue to the City when the property is developed.

**RECOMMENDATION**

The Zoning Commission is recommending that the City Council conditionally approve Special Review #805.

Approved By: City Administrator    City Attorney

**ATTACHMENTS**

- G. Zoning Map
- H. Site Photographs
- I. Site Plan

## **INTRODUCTION**

The applicant is requesting a Special Review to permit on an all beverage liquor license with gaming in a Community Commercial zone on a vacant lot at the intersection of Pemberton Lane and Main Street at 2352 Main Street. The subject property is undeveloped and is north of undeveloped lots zoned Highway Commercial on the south side of Pemberton Lane.

Approximately 100 feet south and west of the subject property is the first residential home on the south side of Pemberton Lane. The applicant states that access will be provided through the existing K-mart parking lot and no new access driveways will be required to develop the site. The Zoning Commission voted 5-0 to recommend conditional approval of the special review request.

## **PROCEDURAL HISTORY**

- A special review application to permit an all beverage liquor license with gaming was received on January 3, 2006.
- The City Zoning Commission voted 5-0 at its public hearing on February 7, 2006, to recommend conditional approval of the special review.
- The City Council will conduct a public hearing and consider this application on February 27, 2006.

## **BACKGROUND**

The owners, Ernie and Leann Dutton, are proposing to sell the property to Mark Wass for the development of another location for Little Nevada Casino. A detailed site plan was submitted to the Zoning Commission at the public hearing showing the proposed location of the new restaurant/casino building. The applicant describes the proposed development as a small building of 3,000 square feet and that Main Street and Pemberton Lane would act as a buffer to all other neighbors. The Planning Department did not receive any comments from city departments or the Heights Neighborhood Task Force. There are no schools, churches or public parks with playground equipment within 600 feet of this proposed location.

The Billings Heights Neighborhood Plan shows this area is intended for commercial development. Main Street is a principal arterial street and a state highway. The current average daily traffic count at this location is approximately 14,600 vehicle trips per day. The average daily traffic at the intersection of Wicks Lane and Main Street is 24,800 vehicle trips per day. Billings Heights is currently served by 14 locations that offer all beverage liquor licenses with gaming facilities. The closest location to this proposed development is Jackpot Casino at 2030 Main Street, about 1/3 mile south of Pemberton Lane. There are also several locations that offer only beer and wine in a restaurant setting without gaming facilities. The current population of Billings Heights is approximately 19,000 people (2000 Census).

The Planning staff considered the application and recommended denial based on the proximity to residential property and the lack of a site plan to evaluate at the time of application in January 2006. The applicant subsequently submitted the site plan to the Zoning Commission and conditions of approval were developed and are being recommended to the City Council. The recommended conditions attempt to limit the impact of the proposed use on the adjoining residences.

## **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.*

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:

17. Street and road capacity;
18. Ingress and egress to adjoining streets;
19. Off-street parking;
20. Fencing, screening and landscaping;
21. Building bulk and location;
22. Usable open space;
23. Signs and lighting; and/or
24. 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:

11. The special review approval shall be limited to Lot 5, Block 1 of North Pointe Square Subdivision.
12. The development of the property shall conform to the submitted site plan with the exception of the side walk connections into the private property from the public sidewalks adjoining Main Street and Pemberton Lane. The sidewalk connections shall be eliminated from the development.
13. No outdoor seating, outdoor music or outdoor public announcement systems will be allowed with this application.
14. Any new lighting within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
15. A dumpster enclosure of sight obscuring material shall be constructed and shall have a closing gate. Acceptable materials are wood, block, stone, brick, vinyl or other similar fencing materials. No chain link or wire fencing is allowed for this application.

16. The applicant shall install a 3-foot decorative fence between the proposed retention area along Pemberton Lane and the public sidewalk.
17. All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code.

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

### **STAKEHOLDERS**

The public hearing held on February 7, 2006, before the City Zoning Commission was attended by Mr. Ernie Dutton and Mr. Mark Wass who provided the Zoning Commission with a site plan and explained the intended development. The Zoning Commission asked several questions concerning the site plan and if the applicant and prospective buyer were comfortable with the conditions developed by the Commission. Mr. Dutton and Mr. Wass agreed to the proposed seven (7) conditions. No other persons attended the public hearing and no letters of objection were received by the Planning Department.

### **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.
- More housing and business choices within existing neighborhoods

### **RECOMMENDATION**

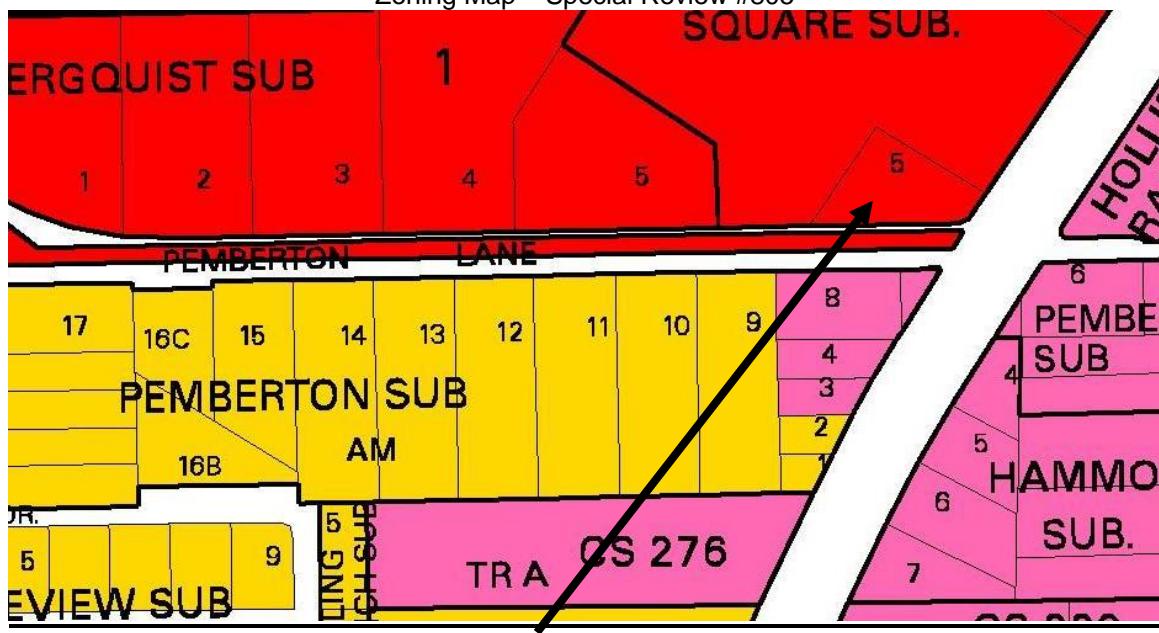
The Zoning Commission is recommending that the City Council conditionally approve Special Review #805.

### **ATTACHMENTS**

- G. Zoning Map
- H. Site Photographs
- I. Site Plan

**ATTACHMENT A**

Zoning Map – Special Review #805



Subject Property 2352 Main Street

**ATTACHMENT B**  
Site Photographs for Special Review #805



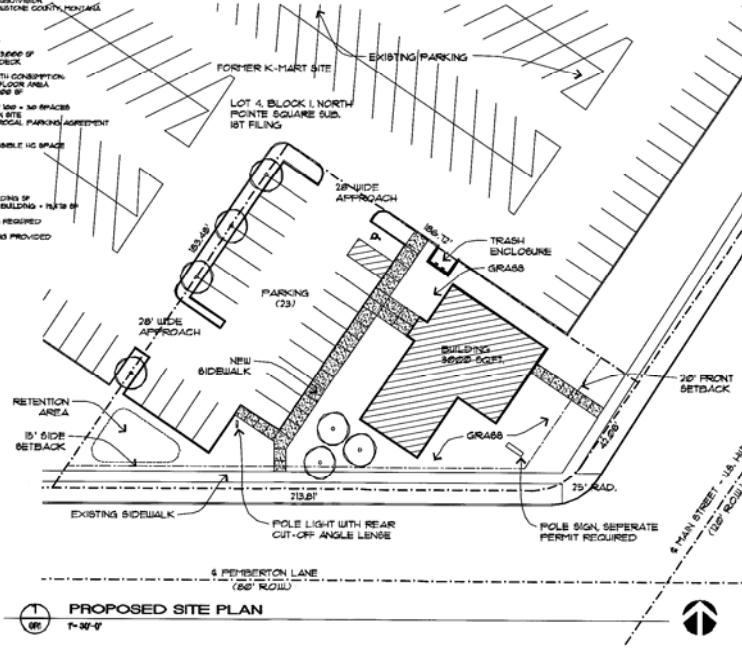
Subject Property at 2352 Main Street



View west on Pemberton Lane

**ATTACHMENT C**  
Site Plan – Special Review #805

### PROJECT DATA



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## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, FEBRUARY 27, 2006**

TITLE: Public Hearing for Special Review #806

DEPARTMENT: Planning &amp; Community Services

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

**PROBLEM/ISSUE STATEMENT:** This is a Special Review to permit outside storage of wholesale trade goods and merchandise including brick, stone, block, tile, and masonry products in a fenced/screened enclosure within the Southgate Planned Development area with an underlying zoning of Highway Commercial. The subject property is located at 5201 Southgate Drive within the Southgate Subdivision and currently supports the former Keebler warehouse. Willie Dowdle is the owner, A.L. Koelzer is the agent and The Masonry Center is the prospective buyer. The Zoning Commission conducted a public hearing on February 7, 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 #806.

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

**ATTACHMENTS**

- J. Zoning Map
- K. Site Photographs
- L. Site Plan

## **INTRODUCTION**

The applicant, Willie M. Dowdle, is requesting a Special Review to allow outside storage of wholesale trade goods and merchandise including brick, stone, block, tile, and masonry products in a fenced/screened enclosure, as required by Article 27-306 of the Unified Code Regulations. Approval of this special review request will allow the Masonry Center, a wholesale building materials business, to engage in the sale and distribution of wholesale building materials, operating facilities, which typically include a showroom, office space and warehouse located inside its building, but with exterior bulk storage of building materials, including stone and masonry products. The Zoning Commission voted 5-0 to recommend conditional approval of the special review request.

## **PROCEDURAL HISTORY**

- A special review application to allow outside storage of wholesale trade goods and merchandise including brick, stone, block, tile, and masonry products in a fenced/screened enclosure was received on January 3, 2006.
- The City Zoning Commission voted 5-0 at its public hearing on February 7, 2006, to recommend conditional approval of the special review.
- The City Council will conduct a public hearing and consider this application on February 27, 2006.

## **BACKGROUND**

The Masonry Center's business operations and activities are proposed to be contained on the approximate 1.87 acres at 5201 Southgate Drive. A 21,666 square foot building built in 1985, and remodeled in 2002, provides 19,480 square feet of warehouse space and 2,186 square feet of office space. Three loading docks are attached to the south side of this building. The bulk masonry products are proposed to be generally palletized and will not be placed onsite without enclosure and/or containment. A chain link fence will secure the subject property boundaries.

The Planning staff considered the application and recommended conditional approval to the Zoning Commission. The City Zoning Commission has considered the application and is recommending conditional approval of the special review request based on its concurrence with the Planning staff recommendation.

## **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..*
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:

25. Street and road capacity;
26. Ingress and egress to adjoining streets;
27. Off-street parking;
28. Fencing, screening and landscaping;
29. Building bulk and location;
30. Usable open space;
31. Signs and lighting; and/or
32. 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 Lot 7A, Block 2 of Amended Plat of Lot 6 and Lot 7, Block 2, Southgate Subdivision, First Filing, located at 5201 Southgate Drive.
2. The development of the property shall be in conformance with the submitted site plan.
3. Any new lighting within the lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
4. There shall be no outdoor public address system on the property.
5. All materials, parts, equipment and similar items shall be stored outside in a fenced enclosure, screened from public view and neighboring property.
6. All other limitations on expansion shall apply in accordance with Section 27-613(c) of the Billings Montana City Code.

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

### **STAKEHOLDERS**

The public hearing held on January 3, 2006 before the City Zoning Commission was attended by Ms. Kristin Omvig on behalf of the prospective buyer, The Masonry Center. Ms. Omvig explained the business plans for re-development of the property and that all materials will be palletized while being stored in the fenced area. No other persons attended the public hearing and no letters in opposition to the application were received by the Planning Department.

### **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.

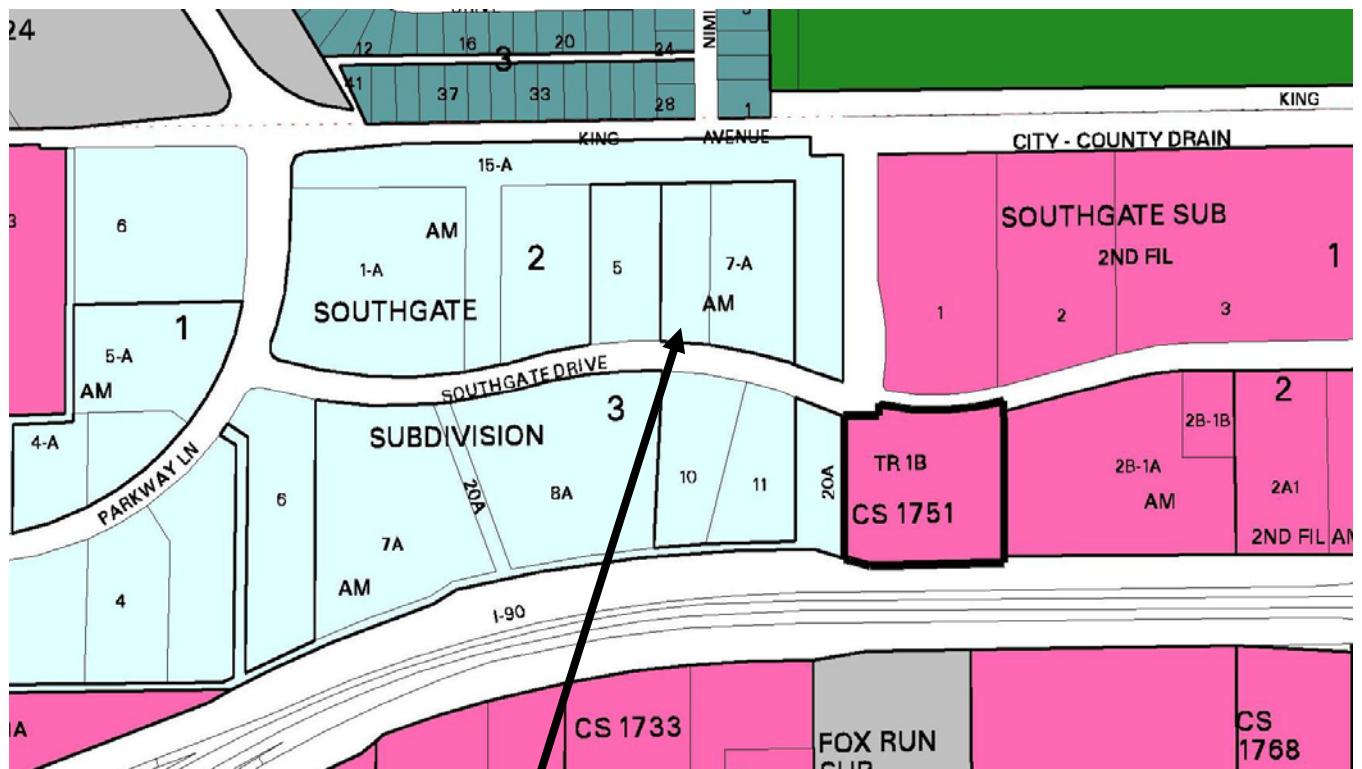
### **RECOMMENDATION**

The Zoning Commission is recommending that the City Council conditionally approve Special Review #806.

### **ATTACHMENTS**

- J. Zoning Map
- K. Site Photographs
- L. Site Plan

**ATTACHMENT A**  
Zoning Map – Special Review #806



**ATTACHMENT B**  
Site Photographs for Special Review #806

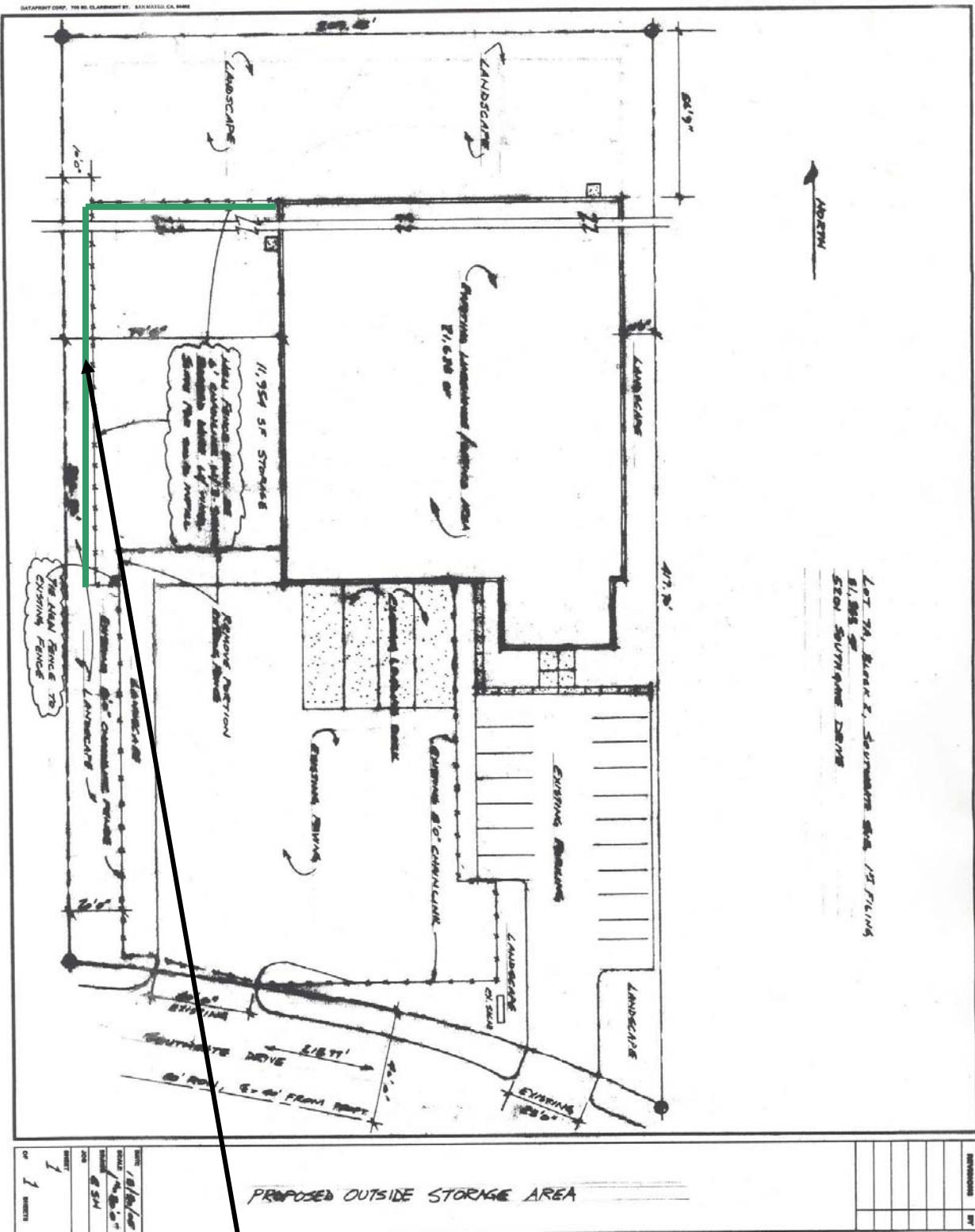


Subject Property at 5201 Southgate Drive



View northwest at subject property from Southgate Drive

**ATTACHMENT C - Site Plan – Special Review #806**



New screened fence line shown in green above

(Back to Regular Agenda)

**AGENDA ITEM:****CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

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**TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward IV

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Candi Beaudry, AICP, Interim Director

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**PROBLEM/ISSUE STATEMENT:** On February 13, 2006, the City Council approved the annexation of the west half of Lots 5 and 28, and all of Lots 6, 26, 27, 38, and 40 of Sunnycove Fruit Farms, totaling 63.543 gross acres including 5.502 acres of adjacent rights-of-way of 60<sup>th</sup> and 62<sup>nd</sup> Streets West and Rimrock Road (Annexation #06-01). The petition for annexation was submitted by Thomas Romine and Paul Hoyer, owners of properties. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward IV will be held on February 27, 2006. The second reading of the ordinance is scheduled for Council action on March 13, 2006.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

A: Ward Ordinance and Exhibit A

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

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

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

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

A tract of land situated in the 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 62<sup>nd</sup> Street West. Containing 63.543 gross and 58.041 net acres, more or less.

(# 06-01) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 27<sup>th</sup> day of February, 2006.

PASSED by the City Council on the second reading this 13<sup>th</sup> day of March, 2006.

THE CITY OF BILLINGS:

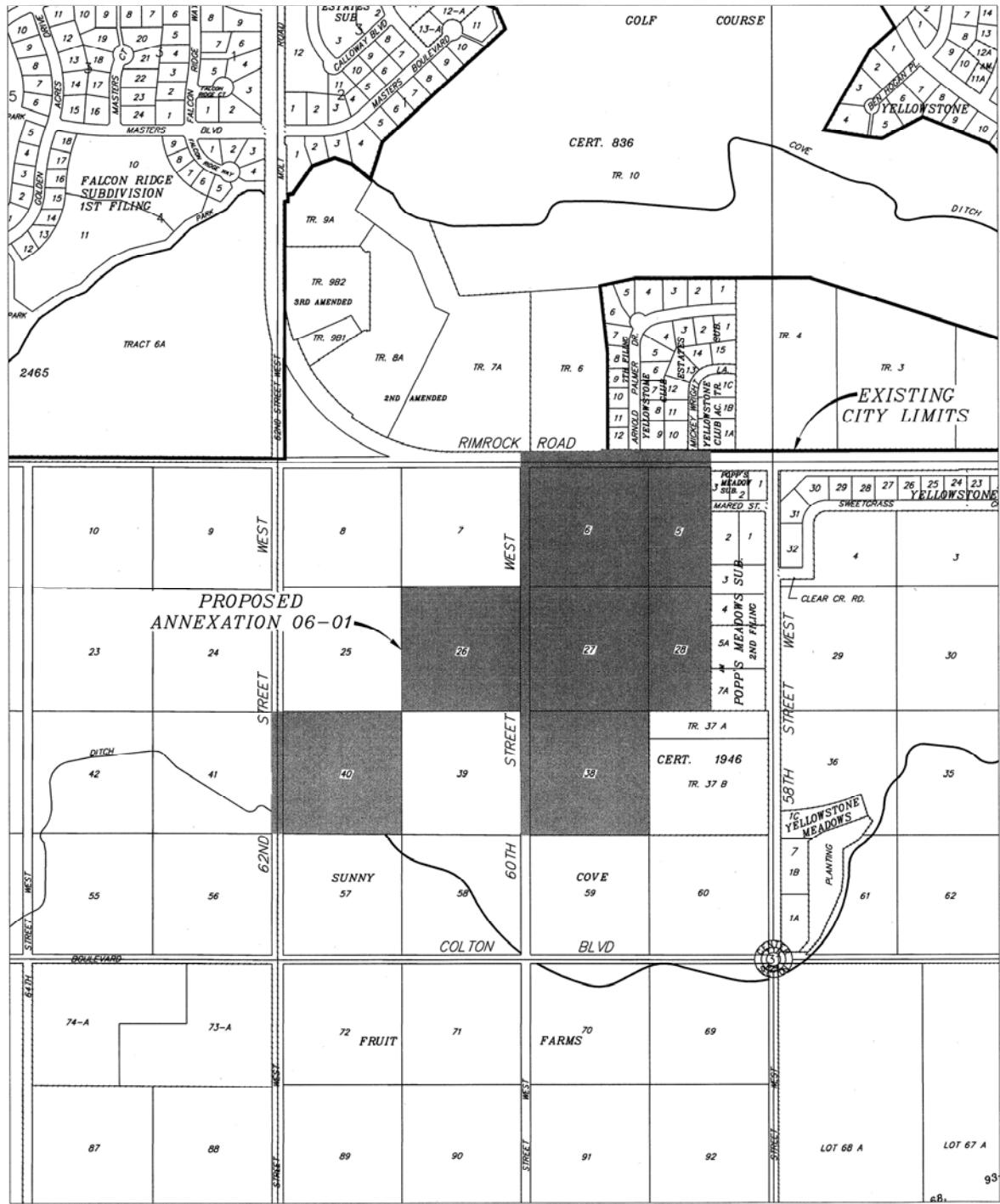
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Ron Tussing, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CITY CLERK

*EXHIBIT "A"*



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## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 27, 2006

TITLE: Part-time Assistant Judge

DEPARTMENT: Billings Municipal Court

PRESENTED BY: Mary Jane Knisely, Municipal Court Judge

**PROBLEM/ISSUE STATEMENT:** Each year, approximately 30,000 cases are filed in Billings Municipal Court. The City of Billings currently has only one elected Municipal Court judge to handle these matters. For over a decade, the City has made the decision to utilize the services of pro tem judges on a regular basis to handle the overflow of cases and to reduce the time citizens must spend waiting to have their case adjudicated. In an effort to codify the City's authority to use part-time judges, the City hired a lobbyist and sponsored legislation in 2005 to allow the appointment of a part-time assistant judge. The purpose behind this legislation was to formalize a procedure allowing municipalities to cover expanding caseloads while growing toward an additional full-time elected judge. This legislation passed with great assistance from the Billings delegation to the Montana Legislature, many of whom had visited Billings Municipal Court. Amending Article 10-200 of the City Code codifies the authority for appointment of a part-time assistant judge consistent with state law. The proposed modifications also update the Code sections governing the municipal court to make them consistent with state law.

**ALTERNATIVES ANALYZED:** 1. Council may APPROVE the ordinance to allow for a part-time assistant judge and offer the first reading. 2. Council may DENY approval of the ordinance to allow for a part-time assistant judge.

**FINANCIAL IMPACT:** The approved appropriation for the part-time assistant judge is \$35,734.40 in the FY06 budget. No additional funding will be required in this fiscal year. In FY07, the part-time assistant judge base salary will remain the same, while an additional \$15,000 will be necessary to fund benefits, training, licensing and equipment. With the implementation of a part-time assistant judge, \$10,000 may be reallocated from the pro tem budget to cover the majority of these expenses. However, it is essential that \$10,000 of the pro tem line item remain intact to employ the services of a pro tem to hear court proceedings when the presiding judge and the part-time assistant attend semi-annual training as mandated by the Supreme Court, in cases of illness or in cases in which either judge has been recused due to conflict. The net increase in budget will be \$5000.00.

**RECOMMENDATION**

Staff recommends that Council approve the ordinance for part-time judge and offer the first reading.

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

## **INTRODUCTION**

Staff recommends that Council approve the ordinance for part-time judge and offer the first reading. Approval during tonight's Council meeting will provide for a second reading and an effective date which will allow the part-time judge to be appointed in time to attend the Commission on Courts of Limited Jurisdiction Training Conference to be held April 24-28, 2006 and to take the mandatory certification test.

Over the last eight years, the Billings Municipal Court has made every effort to streamline and expedite judicial processes to accommodate the citizens of Billings. The use of judges pro tempore has contributed significantly to those efforts. Adding a part-time judge will enable Billings Municipal Court to continue to adjudicate cases in an expedited manner with even greater efficiency.

With more judge hours available, the Court will have the opportunity to schedule added court sessions and offer additional services to a larger number of customers. The result will be a more manageable number of proceedings scheduled during any given session, and citizens will not be required to wait as long prior to being adjudicated. This will also reduce congestion at the customer service window in the Office of the Clerk of Court and the time customers spend waiting to make payments or request criminal justice information. Expedient service to citizens results in payment of fines in a timely manner. Thus, it is likely that revenue will increase as a result of this enhancement, as the many cases will not become accounts receivable.

The change will benefit the court staff members as well. Currently, many staff members do not elect to take the breaks that they are allowed under the terms of the Teamster contract. They attend first to needs of the customers who wait in line, then turn their attention to the cases on the desks which must then be processed and filed. Oftentimes, they choose to work during the lunch hour or after hours to complete the work that they were able to address due to the more urgent tasks associated with waiting on customers. Smaller, more frequent court sessions will allow them the time that they need to devote to the processing of cases, reduce overtime and improve both efficiency and morale.

In addition to the presiding over the many hearings held, the full-time Municipal Court Judge also functions as a department head and is responsible for management of the 12-member staff, budgeting and administrative duties. He or she must also be allowed time to research and write decisions on pending cases and always be available for the issuance of warrants, emergency restraining orders and other unscheduled, judicial matters. The part-time judge will help to ensure that each judicial function may be met in the most efficient and effective manner possible.

As stated in the Montana Supreme Court Annual Report, caseloads are rising in courts of limited jurisdiction. As a result many courts have been required to add judicial staff to adjudicate matters within the guidelines set forth by the American Bar Association:

- Yellowstone County Justice court has two full-time justices of the peace who handled a total of 17,383 cases in 2004, the most recent year for which data is available.
- The City of Missoula Municipal Court received 28,791 case filings in 2004 and has one full-time elected municipal judge and has, since the 2005 legislative amendment became effective, employed a part-time judge. In addition, Missoula County employs the services

of two full-time justices of the peace in its Justice Court, who shared 16,526 cases in that same time frame.

- The Flathead County Justice Court employs one full-time judge and one part-time judge who together presided over 14,502 filings in 2004. Last month, the Flathead County Commissioners created a second full-time Justice of the Peace Department, a position currently up for election.
- In Cascade County, two full-time justices of the peace presided over 10,481 cases in 2004.
- In 2004, 15,147 cases were filed in the City of Bozeman Municipal Court, which has one full-time judge and utilizes the services of judges pro tempore on a routine basis. Gallatin County also has a Justice court with two full-time justices of the peace who handled 13,110 cases in 2004.

Enacting an ordinance to provide for a part-time assistant judge now enables the position to grow until the Council deems it necessary to fund a second full-time elected judge. Considering the Municipal Court caseload as compared to that of other Montana courts of limited jurisdiction, this could be as soon as November 2007. The average in the other large courts in the state is approximately 7,000 case filings per year per judge, approximately 20-25% of the caseload in Billings Municipal Court.

The part-time judge will be required to attend the bi-annual mandatory educational conferences for state judges, as well as take the judicial certification test to obtain licensing. She will participate in the new judge training established by the Montana Magistrates Association. Having a trained and certified part-time judge to preside in Municipal Court is the best alternative to the growing court, as it provides greater consistency than calling in attorneys each time the court is in need of another judge.

## **BACKGROUND**

Billings Municipal Court is one of the five Municipal Courts in Montana. Approximately 30,000 cases are filed in Municipal Court each year. The legislature has continued to expand the jurisdiction of the five municipal court judges to include mental health cases and drug courts. Offenses which were previously felonies have been converted to high misdemeanors, and the civil case settlement limit in these courts has also been increased over the years.

The report from the International Association of Police chiefs has recommended that the Billings Police Department issue even more citations. With the implementation of the Public Safety Mill Levy, hiring of additional officers and further annexations to the City, the number of case filings in Billings Municipal Court will continue to increase.

Other offices in the City organization that impact the Court's caseload have also been expanded. While the City of Billings has one Municipal Judge, the City Attorney's office has been increased to three and one-half full-time prosecuting attorneys and two victim witness specialists. The City has also established a Public Defender's Office with two full-time attorneys, an investigator and a secretary. These increases were essential and modest considering the caseloads of these respective offices; however, these areas cannot increase without impacting the Court.

Furthermore, there are now three probation agencies in the City of Billings who supervise the defendants who appear in Billings Municipal Court. The additional pre-trial supervision and probation officers have been able to closely monitor clients. As a result, revocations sent requesting additional hearings also continue to increase, impacting the Court's caseload.

The Trial Court Performance Standards established by the National Center for State Courts and the American Bar Association state that 90% of misdemeanor cases should reach disposition within an average of thirty (30) days from arrest. The remaining 10% should reach disposition within ninety (90) days of arrest. A defendant's constitutional right to a speedy trial requires that all cases are disposed within 180 days of arraignment. Furthermore, individuals who are arrested and incarcerated have a constitutional right to be brought before a judge within forty-eight hours of arrest or to have a probable cause hearing held.

In order to ensure that each of these requirements is met, Billings Municipal Court holds a minimum of three jail arraignment sessions per week as well as two open court arraignment sessions, two sessions for changes of plea, two sessions for the hearing of restraining orders, one session of omnibus hearings, one session of probation revocation hearings, one session of evidentiary hearings and one session of drug court. Bench trials, calendar call and night court are held on a monthly basis and supplemental open court sessions are held two or more afternoons per month. Jury trials are held during one week of every month with multiple jury trials being held during jury trial week, with more than one jury per day. Probable cause determinations are conducted on Saturday or Sunday mornings and holidays.

Defendants are seen within seven to fourteen days of citation, or within the 48 hours required by law if they are incarcerated. Those who plead guilty at arraignment are immediately sentenced and referred to programs, probation, time payments and/or community service. Those who plead not guilty are given conditions of release, bond is set, referrals to the Public Defender's Office are given if applicable, and they are ordered to appear at an Omnibus Hearing which is set fifteen to twenty-one days later. If no evidentiary motions are filed, trials are held thirty to forty-five days after the Omnibus Hearing. In cases requiring motions hearings, trials are held approximately sixty days after Omnibus. These are very short, expedited trial tracks to adhere to the law and Trial Court Performance Standards.

It is often essential to have two judges presiding in Municipal Court. To do this, the Council budgeted to convert a conference room to a part-time courtroom three years ago. In 2005, an average of 160 individuals were seen at each Open Court session, not including the individuals who "walked in", or came to court unscheduled. As each session lasts for two hours, each person would have the opportunity to speak with the judge for one minute or less if only one courtroom were operating. Therefore, in order to provide a proper level of service to the community and to ensure quality justice to all who appear, two judges preside in two separate courtrooms simultaneously. During Omnibus Hearings, which average 96 weekly, two judges expedite the pre-trial process to reduce the time that individuals are required to sit and wait for their case to be adjudicated. During trial week, one judge must preside at the jury trial while another conducts jail arraignments and other mandatory court hearings. In those instances in which two jury trials proceed on a given day or last several days, a third judge must be called in.

For the past fifteen years, the City of Billings has budgeted for and utilized the services of judges

pro tempore to handle the overflow of the municipal court caseload and to expedite adjudication of matters in individual cases. These "pro tems" are attorneys who meet statutory criteria and who have been sworn as judges pro tempore. These men and women have served well and are to be commended for their hard work.

For the last four years, the City has budgeted for a part-time judge. These monies have been returned to the general fund, as it was only this year that the City received legal authority to appoint such a position.

The appointment of a part-time judge will allow the Court to keep up with the perpetual growth in the Court until the Council feels that a second elected official is necessary.

### **RECOMMENDATION**

Staff recommends that Council approve the ordinance for part-time judge and offer the first reading.

### **ATTACHMENTS**

- [A] 3-6-201 M.C.A.
- [B] PROPOSED ORDINANCE

**3-6-201. Number of judges -- election -- term of office -- chief judge -- duties of chief judge -- assistant judge.** (1) The governing body of a city shall determine by ordinance the number of judges required to operate the municipal court.

(2) A municipal court judge who is not a part-time assistant judge appointed under subsection (6) must be elected at the general election, as provided in [13-1-104](#)(2). The judge's term commences on the first Monday in January following the election. The judge shall hold office for the term of 4 years and until a successor is elected and qualified.

(3) Except as provided in subsection (2), all elections of municipal court judges are governed by the laws applicable to the election of district court judges.

(4) If there is more than one municipal court judge, the judges shall adopt a procedure by which they either select a chief municipal court judge at the beginning of each calendar year or by which the position of chief municipal court judge rotates among the judges in order of seniority at the beginning of each calendar year, with the most senior judge serving during the first year of the rotation.

(5) The chief municipal court judge shall provide for the efficient management of the court, in cooperation with the other judge or judges, if any, and shall:

(a) maintain a central docket of the court's cases;

(b) provide for the distribution of cases from the central docket among the judges, if there is more than one judge, in order to equalize the work of the judges;

(c) request the jurors needed for cases set for jury trial;

(d) if there is more than one judge, temporarily reassign or substitute judges among the departments as necessary to carry out the business of the court; and

(e) supervise and control the court's personnel and the administration of the court.

(6) A municipal court judge may, with the approval of the governing body of the city, appoint a part-time assistant judge, who must have the same qualifications as a judge pro tempore under [3-6-204](#), to serve during the municipal court judge's term of office. An order by a part-time assistant judge has the same force and effect as an order of a municipal court judge.

**History:** En. Sec. 3, Ch. 177, L. 1935; re-en. Sec. 5094.3, R.C.M. 1935; amd. Sec. 2, Ch. 429, L. 1977; R.C.M. 1947, 11-1703; amd. Sec. 376, Ch. 571, L. 1979; amd. Sec. 3, Ch. 99, L. 1991; amd. Sec. 2, Ch. 167, L. 2005.

**ATTACHMENT A**

D - r - a - f - t

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

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 10-201, 10-202, 10-203 AND 10-205; AUTHORIZING A PART-TIME ASSISTANT MUNICIPAL COURT JUDGE; UPDATING QUALIFICATIONS

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

*Section 1.* That Section 10-201 of the Billings, Montana City Code be amended so that such section shall read as follows:

**"Sec. 10-201. Qualifications.**

A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the 1972 Montana constitution, except that a municipal court judge need only be admitted to the practice of law in the state for at least two (2) three (3) years prior to the date of appointment or election. A municipal court judge must ~~be a resident and voter in the City of Billings at the time of election~~ reside in Yellowstone County for one (1) year next preceding his election or appointment

*Section 2.* That Section 10-202 of the Billings, Montana City Code be amended so that such section shall read as follows:

**"Sec. 10-202. ~~Full-time~~ Municipal Court Judges.**

- (1) There shall be one (1) full-time elected municipal court judge. ~~The municipal court judge shall be a full-time judge and shall not be employed in addition to his or her employment as the municipal judge. The judge's term commences on the first Monday in January following the election. The judge shall hold office for the term of four years and until a successor is elected and qualified.~~
- (2) ~~The elected municipal court judge may, with the approval of the City Council, appoint a part-time assistant judge, who must have the same qualifications as a judge pro tempore, to serve during the elected judge's term of office. An order by a part-time assistant judge has the same force and effect as an order of a municipal court judge.~~

**ATTACHMENT B**

*Section 3.* That Section 10-203 of the Billings, Montana City Code be amended so that such section shall read as follows:

**"Sec. 10-203. Qualifications of a judge pro tempore.**

When a judge of the municipal court has been disqualified or is sick or unable to act, the judge shall call in ~~a justice of the peace or some qualified practicing attorney of the county who shall be judge pro tem with the same powers for the purposes of the cause as the judge of the municipal court. a sitting or retired judge of a court of record or an attorney who has been a member of the state bar of Montana for five or more years to act as a judge pro tempore. The judge pro tempore has the same power and authority as the municipal court judge.~~

*Section 4.* That Section 10-205 of the Billings, Montana City Code be amended so that such section shall read as follows:

**"Sec. 10-205. Annual salary; expenses.**

- (a) Pursuant to § 3-6-203 M.C.A., the salary of the Billings Municipal Court Judge and any part-time judge may must be fixed by ordinance or resolution.
- (b) In addition to the foregoing, the Billings Municipal Court Judge shall receive his or her actual and necessary traveling expenses and all other necessary expenses as budgeted in the city's annual budget.

*Section 5. EFFECTIVE DATE.* This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

*Section 6. REPEALER.* All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

*Section 7. SEVERABILITY.* If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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

CITY OF BILLINGS

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

ATTEST:

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

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**AGENDA ITEM:****CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

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**TITLE:** Public Service Report, Public Hearing and Resolution for Annexation 05-06, Staley/Westward Ho Property

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Candi Beaudry, AICP, Interim Planning Department

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**PROBLEM/ISSUE STATEMENT:** Larry Staley and the Westward Ho Company petitioned for annexation of Tract 1 of Certificate of Survey 1871 and Tract 2A of Certificate of Survey 2465 in May, 2005. The property, containing approximately 116.17 acres, is located on the north side of Rimrock Road at the intersection of 70<sup>th</sup> Street West and extends to the railroad property on the north and west. The owners requested annexation in order to obtain municipal sewer and water for a proposed residential subdivision in accordance with 7-2-4601 et. seq., MCA. At the regular meeting held July 11, 2005, City Council voted to continue the public hearing and delay action on the Resolution for Annexation until February 27, 2006. The purpose for the continuation was to allow staff to update the Annexation Policy and map. Revisions to the map would identify whether the annexation eligibility of this property changed. It is currently located outside the limits of annexation.

Staff is in the process of updating the Annexation Map, according to the requirements of the Annexation Policy. The revised map will be brought to the Council at their work session on March 20, and at the regular meeting on March 27, 2006. The petitioners request that the continuation of the public hearing and action on the Resolution for Annexation be delayed until April 10, after Council has acted on the revised map.

**ALTERNATIVES ANALYZED:** The City Council may agree to postpone the continuation of the public hearing and action on this item or continue these actions as previously scheduled. Currently, the property is located outside the limits of annexation, as it was at the time the public hearing was originally scheduled. Revisions to the Annexation Map could change the annexation status of this property.

**FINANCIAL IMPACT:** If the property is annexed and developed, the City will incur additional costs that have not yet been programmed.

**RECOMMENDATION**

Staff recommends that City Council postpone the continuation of the public hearing and Resolution of Annexation of Tract 1 of Certificate of Survey 1871 and Tract 2A of Certificate of Survey 2465 until April 10, 2006. In the event that Council holds the public hearing as scheduled and approves the petition, a resolution of annexation is attached.

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

**ATTACHMENT**

- A. Resolution
- B. Request for Postponement of Council Action

## **INTRODUCTION**

The owner submitted a petition for annexation for a 116.17-acre property located north of the Rimrock Road at the intersection of 70th Street West on May 18, 2005. The owner also intends to submit a preliminary subdivision plat application in the near future. Upon annexation the zoning of the property will automatically convert from Agricultural-Open Space to Residential-9,600. However, the owner plans to rezone this property to Residential-7,000-Restricted and develop the property for single family residences. The City Council denied the request to expand the Urban Planning Area to include this property on June 27, 2005. The Council held the public hearing for the Petition for Annexation but voted to continue the hearing and action on the Resolution until February 27, 2006. This would allow staff to update the Annexation Policy and map and could change the eligibility of this property for annexation. Because the Annexation map is in the process of being updated, and will not be before Council until late March, the petitioners are requesting to extend the continuation until April 10, 2006.

## **PROCEDURAL HISTORY**

- Petition for annexation and subdivision submitted May 18, 2005.
- Request for Urban Planning Area expansion denied June 27, 2005.
- City Council voted to acknowledge receipt of the petition for annexation and set a date for public hearing on June 27, 2005.
- On July 11, 2005, Council voted to continue the public hearing and action on the Resolution for Annexation until February 27, 2006.

## **BACKGROUND**

The Urban Planning Study that incorporated this property was previously approved by City Council in June, 2005. 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. This petition for annexation is for a 116-acre parcel located north of Rimrock Road at the intersection of 70<sup>th</sup> Street West. The property is adjacent to existing City limits that encompass the Copper Ridge Subdivision.

## **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 *does not comply* with the recently adopted Annexation Policy criteria because it is located outside the Limits of Annexation and the City cannot provide adequate services at this time.

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. Most City departments responded that the petition should be

denied because it is outside the City's Limits of Annexation. 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 would be extended within Rimrock Road from where it terminates to serve the Copper Ridge Subdivision. The size of line is yet undetermined. If the City Public Works Department determines that the line would need to be increased in size to serve this development, as well as future development to the south, the City would be responsible for the cost of upsizing that line. The County is reviewing a subdivision directly south of this property that is proposing to install community water and sewer to serve 34 lots.

**Sewer:** Sewer lines would also be extended from a sanitary sewer line located in Rimrock Road. The City has not determined the size of the line or the need for other sewer collection facilities, such as a pump station. As is the case with water, if the City Public Works Department determines that the line would need to be increased in size to serve this development, as well as future development to the south, the City would be responsible for the cost of upsizing that line. The future subdivision would be required to pay the required construction and system development fees. Individual services will be required to pay connection fees.

**Stormwater:** There are no City stormwater facilities in the vicinity. Nearby subdivision developments have retained stormwater drainage onsite.

**Transportation:** The area to be annexed adjoins Rimrock Road at 70<sup>th</sup> Street West. West of 70<sup>th</sup> Street, Rimrock Road does not exist and is not classified because it lies outside the Transportation Urban Planning Area. East of 70<sup>th</sup>, Rimrock Road is classified as a collector to 62<sup>nd</sup> Street West and as a principal arterial east to North 27<sup>th</sup> Street. The proposed loading onto the westward extension of Rimrock Road may require the expansion of the Urban Planning Area and a reclassification of Rimrock Road in this vicinity.

Because there is no conceptual plan for this development, the location of approaches to the principal arterials is unknown, although 70<sup>th</sup> Street West would be one logical location. The development would be required to construct Rimrock Road to local street standards at a minimum. The City may be responsible for upgrading the road in the future to collector standards if traffic volumes warrant. The developer will also be responsible for contributing their proportionate share to any offsite improvements identified through a Traffic Accessibility Study.

**Fire Station:** The area to be annexed 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 17<sup>th</sup> Street West and Fire Station No. 5 at 24<sup>th</sup> 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 54<sup>th</sup> 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 72 incidents per year at full buildout.

**Parks:** No detailed plans were provided on the future provision for parks and recreation. Phipps Ranch Park is located northeast of the property, but there is no direct access. The railroad separates the property from the park. Robert Trent Jones Park is located approximately 1.5 miles east of the subdivision but this park is located in the Yellowstone Country Club Subdivision and is undeveloped. Future development of this property will be required to dedicate either parkland or cash in lieu of parkland.

**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. Some of the service providers objected to the annexation of this property.

**Transit:** MET does not regularly serve this area. 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 indicated that they did not have enough information to determine the impact of this annexation.

**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:** City Legal and Finance Departments both indicated that this area was outside our limits of annexation and should not be annexed.

**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.

City departments that provide some level of service directly to the property, such as waste collection, fire and police protection, code enforcement, street maintenance, and utility meter reading may be negatively affected. The distance required to reach this property, regardless that it is contiguous to the City limits, may mean that service to the existing City residents will be delayed or the level of service may decrease.

## **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 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 proposed improvements meet City standards.
2. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
3. Upon approval of the final subdivision plat, the owners will form a Park Maintenance District.
4. Residential densities will be at least 4 dwelling units per acre.
5. With the exception of being partially contiguous to existing City limits, the proposed annexation meets the goals of the City-County Growth Policy.

The request conflicts with the Annexation Policy in that:

1. None of the property is located within the Limits of Annexation.
2. The City cannot provide adequate services without increasing funding to many City Departments that provide service directly to the property. The annexation may possibly require reprogramming the Capital Improvements Plan to extend sewer and water and construct Rimrock Road to collector standards.

The property is also outside the area covered by the West Billings Plan and the recently adopted Northwest Shiloh Land Use Plan so there is no guidance as to the preferred future development patterns of this area.

### **RECOMMENDATION**

Staff recommends that City Council postpone the continuation of the public hearing and Resolution of Annexation of Tract 1 of Certificate of Survey 1871 and Tract 2A of Certificate of Survey 2465 until April 10, 2006. In the event that Council holds the public hearing as scheduled and approves the petition, a resolution of annexation is attached.

### **ATTACHMENT**

- A. Resolution
- B. Request for Postponement of Council Action

**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 SW1/4 of Section 31, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

A tract of land situated in the SW1/4 of Section 25, T.1N., R.24E., and also in the S1/2 of Section 26, T.1N., R.24E., P.M.M., Yellowstone County, Montana, more particularly described as: Certificate of Survey 1871, Tract 1, Recorded March 14, 1979, Under Document No. 1121922, Records of Yellowstone County, Montana; also Certificate of Survey 2465, Tract 2A of Amended Tracts 2 and 3, Certificate of Survey 2465, Recorded September 16, 1996, Under Document No. 1845641. Containing 116.176 gross and net acres, more or less.

# 05-06 (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 and developing the dedicated park as a condition of subdivision approval.

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 27th day of February, 2006.

THE CITY OF BILLINGS:

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

Ron Tussing, MAYOR

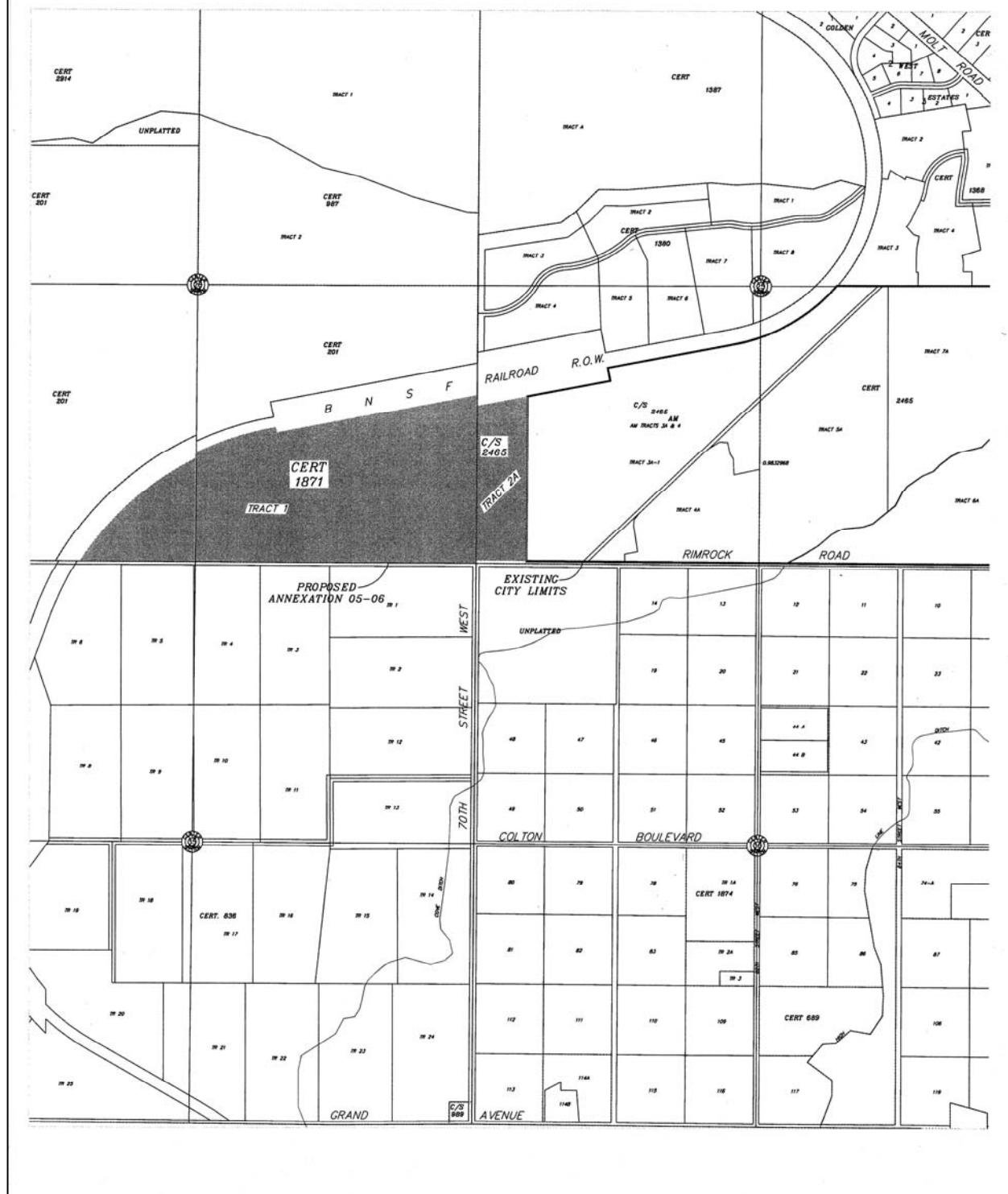
ATTEST:

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

Marita Herold, CMC/AAE CITY CLERK

(AN 05-06)

*EXHIBIT A*





## ENGINEERING, INC.

Consulting Engineers and Land Surveyors

February 13, 2006

Ms. Candi Beaudry  
Planning and Community Services Department  
510 North Broadway, 4th Floor  
Billings MT 59101

Reference: Staley Property Annexation and Urban Boundary Expansion  
E.I. No. 05050

Dear Candi:

On behalf of the owners and in accordance with recent discussions involving the expansion of the urban planning boundary and the annexation of the Larry Staley Property, we are in agreement with the postponement of council action on this property from February 27, 2006, until April 10, 2006. At this time, we should know more about the possible revisions on the City of Billings annexation policy.

Thank you for your time and consideration.

Sincerely,

Rick Leuthold, PE

/dml  
P:05050\_Beaudry\_Ltr\_021306

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

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**TITLE:** Public Hearing & Site Development Ordinance Variance(s) #CC05-03  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** Dave Mumford, P.E., Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The City of Billings plans to demolish the existing Smith's Funeral Home and remodel/expand the existing Park II building in the downtown area. This property is located on Lots 7-12, Block 91 of the Original Townsite of Billings, being generally located between North 27<sup>th</sup> Street and North 26<sup>th</sup> Street and between 1<sup>st</sup> Avenue North and 2<sup>nd</sup> Avenue North. The City of Billings is requesting variances from the Site Development Ordinance, Section 6-1208(h)(3), and Section 6-1203(j)(2).

**ALTERNATIVES ANALYZED:**

1. After the Public Hearing, approve the variance allowing a curb cut of 32 feet instead of the standard 30 feet.
2. After the Public Hearing, do not approve the variance allowing a curb cut of 32 feet instead of the standard 30 feet.
3. After the Public Hearing, approve the variance allowing curb cuts serving the same property to be separated by 15 feet instead of the standard 25 feet of full height curb.
4. After the Public Hearing, do not approve the variance allowing curb cuts serving the same property to be separated by 15 feet instead of the standard 25 feet of full height curb.

**FINANCIAL IMPACT:** There is no financial impact associated with these variances.

**RECOMMENDATION**

Staff recommends that Council delay approval of this variance for 60 days.

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

**ATTACHMENT**

- A. Proposed Site Plan (2 pages)

## **INTRODUCTION**

The City of Billings is demolishing the existing Smith's Funeral Home and remodeling and expanding the existing Park II Parking Garage located at 2651 1<sup>st</sup> Avenue North. The new parking facility will be generally located between North 27<sup>th</sup> Street and North 26<sup>th</sup> Street and between 1<sup>st</sup> Avenue North and 2<sup>nd</sup> Avenue North. The City of Billings is requesting variances from the Site Development Ordinance, Section 6-1208(h)(3), and Section 6-1208(j)(2). Section 6-1208(h)(3) pertains to the maximum allowable driveway widths, and Section 6-1208(j)(2) pertains to the distance separating drive approaches serving the same property.

## **BACKGROUND**

The first variance the City of Billings is seeking concerns the curb cut for the 2<sup>nd</sup> Avenue North entrance. The variance is to allow a curb cut of 32 feet instead of the standard 30 feet. For curb cuts, the Site Development Ordinance reads as follows:

### *Section 6-1208(h)(3)*

In any commercial and industrial zoned districts, the maximum driveway width shall be thirty (30) feet except driveway widths for service stations and trucking businesses may be up to forty (40) feet when approved by the city, and shall be located in accordance with city specifications and drawings. The minimum distance between curb cuts shall be twenty-five (25) feet.

The second variance the City of Billings is seeking concerns the distance that separates the entrance drive approach from the exit drive approach. The Site Development Ordinance is as follows:

### *Section 1208(j)(2)*

Two (2) or more curb cuts serving the same property must be separated by islands with full height curb not less than twenty-five (25) feet long.

## **ALTERNATIVES ANALYSIS**

1. Approve the variance allowing a curb cut of 32 feet instead of the standard 30 feet.  
Approval of this variance will allow for improved turning movements for vehicles wishing to use the Wells Fargo drive-through banking facility on the first level of the parking garage.
2. Do not approve the variance allowing a curb cut of 32 feet instead of the standard 30 feet.  
Denying this variance may decrease vehicle mobility.
3. Approve the variance allowing curb cuts serving the same property to be separated by 15 feet instead of the standard 25 feet of full height curb. Approval of this variance will allow for improved turning movements for vehicles wishing to use the Wells Fargo drive-through banking facility on the first level of the parking garage.

4. Do not approve the variance allowing curb cuts serving the same property to be separated by 15 feet instead of the standard 25 feet of full height curb. Denying this variance would require substantial redesign of the site increasing project cost. In addition, if this variance is denied, and the drive approach is moved to the east to allow for 25 feet of full height curb separation, the drive approach will conflict with the existing support column causing multiple mobility issues.

### **RECOMMENDATION**

Staff recommends that Council delay approval of this variance for 60 days.

### **ATTACHMENT**

- A. Proposed Site Plan (2 pages)

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday February 27, 2006**

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**TITLE:** A Resolution Adopting the Yellowstone County Community Wildfire Protection Plan

**DEPARTMENT:** Fire Department

**PRESENTED BY:** Marvin L. Jochems, Fire Chief

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**PROBLEM/ISSUE STATEMENT:** Effective November 1, 2004, a Local Hazard Mitigation plan approved by the Federal Emergency Management Agency (FEMA) is required for Hazard Mitigation Grant Program (HMGP) and Pre-Disaster-Mitigation Program (PDM) eligibility. The HMGP and PDM program provide funding, through state emergency management agencies, to support local mitigation planning and projects to reduce potential disaster damages. The goals of the Community Wildfire Protection Plan are to improve fire prevention, reduce hazardous fuels, restore fire-adapted ecosystems and promote community assistance. The plan was developed through open public meetings of the Yellowstone County Emergency Responders and local Policy Bodies. The Billings Fire Chief represented the Mayor at these meetings. The plan provides proposed prioritized recommendations on mitigating wildland/urban interface issues in the City of Billings and Yellowstone County

**ALTERNATIVES ANALYZED:** None

**FINANCIAL IMPACT:** Secures the City's eligibility for future grants and disaster reimbursement.

**RECOMMENDATION**

Staff recommends that Council sign resolution adopting the Yellowstone County Community Wildfire Protection Plan.

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

**ATTACHMENT**

- a.** Yellowstone County Community Wildfire Protection Plan. A copy of the complete plan and Executive Summary are available for review at the City Clerks Office.
- b.** Resolution Adopting the CWPP

**RESOLUTION NO. 06-\_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF BILLINGS LOCATED IN YELLOWSTONE COUNTY, MONTANA DECLARING CITY SUPPORT AND ADOPTION OF THE YELLOWSTONE COUNTY COMMUNITY WILDFIRE PROTECTION PLAN AS AN AMENDMENT TO THE YELLOWSTONE COUNTY PRE-DISASTER MITIGATION PLAN.

WHEREAS, the City Council of Billings supports the Yellowstone County Community Wildfire Protection Plan; and

WHEREAS, The City Council of Billings has participated in the development of the Yellowstone County Community Wildfire Protection Plan, and

WHEREAS, The Yellowstone County Community Wildfire Protection Plan will be utilized as a guide for planning as related to FEMA Pre-Disaster Mitigation, The National Fire Plan, The Healthy Forest Restoration Act, and other purposes as deemed appropriate by the City Council of Billings,

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, DOES HEREBY ADOPT, SUPPORT, AND WILL FACILITATE THE YELLOWSTONE COUNTY COMMUNITY WILDFIRE PROTECTION PLAN'S IMPLEMENTATION.

PASSED by the City Council and APPROVED this \_\_\_\_\_ day of February, 2006.

THE CITY OF BILLINGS:

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

ATTEST:

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

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

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**TITLE:** Montana Avenue Development / Land Assemblage Grant

**DEPARTMENT:** Administration

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

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**PROBLEM/ISSUE STATEMENT:** The Downtown Billings Partnership Board of Directors makes development grants available to downtown property owners that agree to redevelop their properties and increase their property's taxable value. The 2700 block of Montana Avenue is the site of many activities that are contrary to the Downtown Framework Plan and therefore eliminating those activities is a high priority for the Board. The Board has offered a development grant of up to \$145,000 for assembling at least 3 lots in this block and redeveloping the property on an interim or permanent basis. The DBP received two proposals. Since the grant exceeds \$50,000, the City Council must approve or disapprove it.

**ALTERNATIVES ANALYZED:** The City Council may:

- Approve the grant
- Disapprove the grant
- Modify the amount or terms and approve the grant

**FINANCIAL IMPACT:** The Downtown Billings Partnership uses tax increment funds to make development grants. There are \$314,361 in the development incentives account, so there are sufficient funds to make this grant without jeopardizing other programs.

**RECOMMENDATION**

Staff recommends that Council approve a development grant for land assemblage in the 2700 block of Montana Avenue. The grant recipient will be announced at the meeting.

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

**ATTACHMENTS**

A:      Grant program announcement

**Attachment A**  
***Montana Avenue Development Land***  
***Assemblage Grant***

MODIFIED AND RE-ISSUED 1/16/2006

*Information & Application*  
*Fiscal Year 2005-06*

*Updated 24 February 2006 currently Approved by DBP Executive Committee AND Full  
Board of Directors to RE-issue as an RFP. Final approval of any proposal requires  
Full Board review and approval as well as approval by the City Council*

**Downtown Billings**  
**Partnership**  
***Development Incentives Programs***

## MONTANA AVENUE DEVELOPMENT GRANT

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### Purpose:

The purpose of this DEVELOPMENT GRANT is to provide financial assistance for the assemblage of land for potential new development on the north side of the 2700 block of Montana Ave. in downtown Billings. Grant monies are available to an individual or corporate entity owning or purchasing property on the north side of the 2700 block of Montana Ave., immediately ceasing operations of the business activity on the property in preparation for the ultimate demolition and removal of the existing structures. Further, this grant is designed to encourage a *higher level of quality and business climate through new development within the downtown environment. This grant will support the overall goal of the Downtown Framework Plan by enhancing the value of the overall private property tax base within a multiple block radius of the project area based, at least, upon the temporary creation of additional off street parking.*

Applicants are reminded that grant awards made by the Downtown Billings Partnership are discretionary in nature and should not be considered an entitlement by the applicant. All grant criteria contained herein are guidelines for awards and successful applicants may or may not receive an amount up to the maximum award. Should an application meet all grant criteria, a grant may or may not be awarded at the Committee's discretion due to funding limitations, competing applications, and/or competing priorities of the Downtown Billings Partnership. Further, all applicants should note that final approval of the grant award will be subject to approval by the Billings City Council.

### Time Frame:

This is a one-time grant in the amount of up to \$145,000.00 for a SINGLE LAND ASSEMBLAGE/PARKING CONVERSION PROJECT ON AN AVAILABLE PROPERTY FOOTPRINT OF NO LESS THAN THREE CITY LOTS located on the NORTH SIDE OF THE 2700 block of Montana Ave. Qualified applications will be reviewed by the Executive Committee of the Board of the Directors of the Downtown Billings Partnership.

- Applicants are advised to submit a complete application and all supporting materials per the instructions in this packet; the committee will not review incomplete applications.

### Grant Eligibility:

The target project must be of a commercial classification. The applicant must propose to be the recorded property owner, or PENDING LEGAL OWNER under a legally binding buy-sell agreement, of a minimum of THREE lots of private land available for conversion to a private parking lot on the NORTH SIDE of the 2700 block of Montana Ave., conforming to all applicable City codes. **The application must include a business plan or general business-use description showing that the parking lot, when completed, will be made available to the general public, customers, tenants,**

**and/or visitors to downtown Billings in some commercial fashion.** A Project showing a long-term redevelopment plan that would include additional new construction compatible with the Framework Plan, the Urban Design Sketchbook and adjacent businesses **is encouraged.**

**Development Grant Relationship to Framework:**

- The 2700 block of Montana Avenue has been targeted by the Downtown Billings Partnership as an area currently not conducive to the overall goal of the Framework Plan regarding “pedestrian friendly” due to the following:
  - The area was the destination over 298 Police calls in 2005
    - 127 disturbance calls
    - 21 assault call
    - 9 DUI calls
    - 24 suspicious activity calls
    - 8 weapons calls
    - 1 homicide call
    - 1 stabbing call
    - several other assorted calls
  - The area was the destination for over 122 Fire Calls in 2005
- The 2700 Block of Montana Ave. has been identified as a development target area by several project studies conducted by and for the Downtown Billings Partnership
  - Land assemblage would be required for potential future Large Project Development in the area
  - Immediate conversion to **off-street surface parking would be a suitable interim use for assembled properties and a requirement for grant funding**

*Funding for this Development Grant will be allocated as follows:*

- **Following application approval by the DBP Executive Committee and the Billings City Council:**
  - Upon proof of ownership or pending ownership at least three downtown lots, containing no fewer than 7000 sq. ft. of area on privately owned land on the north side of the 2700 block of Montana Ave. in Downtown Billings.
  - Removal and cessation of all current business activity on the property and complete closure of the structures in compliance with

all applicable city codes.

- Upon execution of a Development Agreement that contains an acceptable timeline for ultimate demolition of structures and installation of a private parking lot adhering to all applicable city codes.
- The Development Agreement must show adequate proof of a private investment of no less than \$200,000.00 (cost may include land and building purchase expense).

#### **Release of Funds:**

The approved applicant may request and receive grant funding after the project is completed and all associated costs have been paid. Upon completion of approved work, in order to receive grant payment, the applicant must submit documentation of work completed and proof of payment to the Downtown Billings Partnership. It is the responsibility of the award recipient to maintain proper documentation of funds expended in the course of completing the development project. Release of funds is subject to submission of this documentation to the Downtown Billings Partnership by the award recipient.

**Acceptable documentation is defined as PAID invoices/statements and/or schedule of values from vendors clearly detailing the work done for the development project or copies of the cancelled check showing payment accompanied by a vendor invoice.**

Grant funds will be paid out according to the following criteria:

- 1) All payment documentation must be received no later than June 10, 2007.
- 2) Payment documentation must be submitted to the Downtown Billings Partnership office at 2815 2<sup>nd</sup> Avenue North.
- 3) ***A partial payment will be allowed during the course of the project, based upon no more than 25% of the land acquisition costs or 90% of the total grant award, whichever amount is smaller.***

The City of Billings is required to file informational returns (Form 1099-G) for individuals and entities receiving grants from the Downtown Billings Partnership. *This information is confidential and will only be used for informational return reporting purposes.* Grant recipients must sign and return a Substitute W9 form to the Partnership before funds can be distributed.

#### **Encumbrance Policy:**

**If the funds assigned to this grant are not expended before July 10, 2006, the funds will be encumbered into Fiscal Year 2007 and MUST BE PAID OUT before**

**July 11, 2007 or the funding WILL EXPIRE AND THE GRANT AWARD WILL BE CANCELLED and the City of Billings and the Downtown Billings Partnership will be RELEASED from any actual and/or perceived obligation to the grant recipient.**

**Disclaimer:**

Neither the Downtown Billings Partnership, Inc., nor the Urban Design Committee, nor its affiliates shall be responsible for the planning, design, or construction of improvements to property that is owned by the applicant. No warranties or guarantees are expressed or implied by the description of, application for or participation in the Development Grant Program. The applicant is advised to consult with licensed architects, engineers, or building contractors before proceeding with final plans or construction.

**How To Apply:**

Contact the Downtown Billings Partnership, Inc. office at 294-5060 or [gregk@downtownbillings.com](mailto:gregk@downtownbillings.com). All applications are DUE at the DBP office by 2:00 pm on FRIDAY, February 3, 2006.

**MONTANA AVENUE DEVELOPMENT GRANT  
APPLICATION Fiscal Year 2006**

# \_\_\_\_\_  
(For Office Use Only)

**1. Project Location (must be on the north side of the 2700 block of Montana Ave.)**

Address of Property to be improved:

Assessor Parcel Number(s): \_\_\_\_\_  
Can be found at <http://www.co.yellowstone.mt.us/gis/>

**2. Applicant Information**

Name: \_\_\_\_\_

Mailing Address:

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email:

Do Currently Own subject property? \_\_\_\_\_

If you answered NO to the above question:

When do you expect to CLOSE on the PURCHASE of subject property?

**3. Business Plan or Business-Use Description of Proposed Development: \_\_\_\_\_**

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**4. Please identify ways in which this project supports the Framework Plan and/or Urban Design Sketchbook (note: this information is available at the Downtown Billings Partnership office 2815 2<sup>nd</sup> Ave. N.): \_\_\_\_\_**

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## 5. Submittals

Applications must include the following materials, if applicable, for consideration by the DBP Executive Committee.

**Applications lacking sufficient materials to describe the project will NOT be reviewed.  
Applications are DUE BEFORE 2 PM (MST) on FRIDAY, FEBRUARY 3, 2006.**

- a) rendering or sketch of proposed development improvements*
- b) architectural plans, including dimensions/measurements*
- c) product data for design elements including plant material, Kit of Parts, etc.*
- d) documentation that the parking improvement project exceeds the minimum requirements set by the City of Billings (new surface parking facilities only)*

## 6. Estimated Costs and Timing

Please provide copies of vendor bids/estimates or other documentation of cost estimates for all proposed parking improvements.

**Applications lacking sufficient cost estimates will NOT be reviewed.**

a. _____	\$ _____
b. _____	\$ _____
c. _____	\$ _____
d. _____	\$ _____
e. _____	\$ _____
f. _____	\$ _____
<b>TOTAL ESTIMATED COST</b>	<b>\$ _____</b>

**Estimated Days/Months for Completion** \_\_\_\_\_

## 7. Signatures (CURRENT OWNER SIGNATURE Required, if application is based upon a current or potential buy-sell agreement for purchase of property)

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

**CURRENT** Property Owner(s) Signature(s)

Applicant(s) Signature(s)

## 8. Checklist

Please review the checklist below to ensure all information/materials have been prepared to be submitted with this application. **Applicants are advised to submit a complete application and all supporting materials per the instructions in this packet; the committee will not review incomplete applications.**

- Project location (item 1, page 4)
- Applicant Information (item 2, page 4)
- Description of proposed improvements (item 3, page 4)
- Identification of project's support of the Framework Plan and/or Urban Design Sketchbook (item 4, page 4)
- Rendering or sketch of proposed improvements (item 5a, page 5)
- Architectural plans -- dimensions, measurements, etc. (item 5b, page 5)
- Product data for design elements including plant material, Kit of Parts, etc. (item 5c, page 5)
- Documentation that the parking improvement project exceeds the minimum requirements set by the City of Billings -- new surface parking facilities only (item 5d page 5)
- Documentation of cost estimates -- copies of vendor bids, estimates, etc. (item 6, page 5)
- Property Owner Signature (item 7, page 5)
- Applicant Signature (item 7, page 5)

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## APPROVAL (for office use only)

Amount Approved: \_\_\_\_\_

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

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## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

**TITLE:** W.O. 01-06 - Arlene Corridor

**DEPARTMENT:** Public Works - Engineering

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

**PROBLEM/ISSUE STATEMENT:** The Arlene Corridor project is one of three projects to be constructed with funding from the General Obligation Transportation Bond approved by voters fall of 2003. The project will construct a new arterial street from Poly Drive to 32<sup>nd</sup> Street West at Broadwater Avenue. The project has been split into two phases. This Phase will complete the project from Grand Avenue to Broadwater Avenue, through the Peter Yegen Golf Course.

**FINANCIAL IMPACT:** Based upon the bids received, funding for the project would be available through the following funding sources;

<b>Project Number</b>	<b>WO 01-06</b>
CIP Eng 72 Arlene Corridor / FY05 and FY06 Funding	\$5,020,713.00
Arterial Street Funds and Land Sales	\$483,8000.07
Phase I Construction (Poly to Grand)	(\$2,580,355.00)
Property Acquisition	(\$673,523.00)
Additional Engineering	(\$29,000.00)
<b>Total Funding</b>	<b>\$2,221,635.07</b>

Bids were opened on February 21, 2006, with the following results:

**WO 01-06**

<b>Firm</b>	<b>Bid</b>
JTL Group, Inc.	\$2,221,635.07
Engineers Estimate	\$2,500,000.00

## **RECOMMENDATION**

Staff recommends that Council award a construction contract for W.O. 01-06 / Arlene Corridor (Grand Ave. to Broadwater) Improvements to JTL Group, Inc. in the amount of \$2,221,635.07.

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

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

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**TITLE:** W.O. 04-33, Lake Elmo Road – Hilltop Road to Wicks Lane, Selection of Street Option

**DEPARTMENT:** Public Works

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

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**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, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. Street improvements will include significant changes to the current street. Staff developed three alternative street sections for improvements – Option #1: The On-Street Parking Option, Option #2 The Bicycle Lanes Option (No On-Street Parking), and Option #3 The Multi-Use Path Option (With On-Street Parking) – as shown on the attached graphic. There are three main reasons that direction on a street section is needed at this time: (1) An initial design will be done using the preferred street section as a template in order to acquire the needed right-of-way and construction easements, (2) The residents along this section need to know the type of improvements to the street, and (3) The chosen section may impact the appraised value of the right-of-way tracts to be purchased. Therefore, Staff is asking Council to provide direction about the nature of street improvements to be done.

**ALTERNATIVES ANALYZED:**

- Approve one of three options for improvements for this portion of Lake Elmo Road.
- Approve one option, with changes, for improvements for this portion of Lake Elmo Road
- Direct Staff to develop a new street section option for this portion of Lake Elmo Road

**FINANCIAL IMPACT:** There is no direct cost for selecting a street section. The options have a substantially similar cost because they all have the same amount of pavement width and similar sidewalk width with the exception of Option #3. Option #3 has a multi-use path, which would be more expensive than sidewalks, but the extra cost of the path would be eligible for CTEP funding.

## **RECOMMENDATION**

Staff recommends that Council approve Option #2 The Bicycle Lanes Option (No On-Street Parking) as the preferred option for improvements to Lake Elmo Road between Hilltop Rd. and Wicks Ln.

## **ATTACHMENT**

A. Graphic Depiction of Three Options for Lake Elmo Road Improvements (3 pages)

**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 existing right-of-way between Hilltop and Wicks is too narrow to allow these necessary street improvements. The typical existing right-of-way along this stretch is generally 60 feet wide with some 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. 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. Because the street improvements will include significant changes to the current street, Staff developed three proposed alternative street sections for improvements – Option #1: The On-Street Parking Option, Option #2 The Bicycle Lanes Option (No On-Street Parking), and Option #3 The Multi-Use Path Option (With On-Street Parking).

## **PROCEDURAL HISTORY**

### Completed Items

- November 2005 – Staff presented street section options to the Heights Task Force and asked for feedback. The feedback is summarized in the Stakeholders section of this memo.
- December 2005 – Staff presented street section options to the Traffic Control Board and asked for feedback. The feedback is summarized in the Stakeholders section of this memo.
- December 2005 – Staff presented street section options to residents along Lake Elmo Road between Hilltop and Wicks and asked for feedback. The feedback is summarized in the Stakeholders section of this memo.
- January 9, 2006 – Award of Contract for Professional Services for Right-of-way Acquisition to Right-of-way Acquisition Group, LLC
- January 23, 2006 – Award of Contract for Professional Services for Land Surveying services related to right-of-way acquisition to Engineering, Inc.

### Future Items

- February 27, 2006 – Selection of proposed improvements street section (**this memo**)
- March 10, 2006 – Public meeting with property owners affected by right-of-way acquisition
- January 2007 – Estimated completion of right-of-way acquisition
- 2007-2008 – Design and construction

## **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:

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in 2006.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition ( <a href="#"><b>this memo</b></a> )
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition ( <a href="#"><b>this memo</b></a> )
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

Current traffic counts along the section of Lake Elmo Road between Hilltop and Wicks show approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

The right-of-way width of 70 feet was chosen as a width that would accommodate the necessary improvements with the minimum intrusion onto existing features. A wider right-of-way width (e.g., 76 feet or 80 feet) would almost assuredly require the purchase of several entire parcels due to the proximity of the wider right-of-way to existing houses.

The portion of Lake Elmo Road from Main to Hansen (Phase II), a primarily commercial area, is planned as a three-lane section, and it will include bicycle lanes with no on-street parking (similar to the corresponding option for this section). That project has approved CTEP funding in place to offset the construction cost for the bicycle lanes. The portion of Lake Elmo Road from Wicks to Angel (Phase I), which is primarily residential, was completed in 1999. That portion has on-street parking, no bicycle lanes, and does not have a two-way left turn lane (TWLTL) due to lower traffic volumes. The width would be sufficient to install shared parking and bicycle lanes or separate bicycle lanes with on-street parking, for continuity .

## **ALTERNATIVES ANALYSIS**

All of the street section options contain a three-lane vehicle section (one travel lane in each direction and a TWLTL, curb & gutter, and sidewalks. The TWLTL is considered necessary, due to the large numbers of driveways and street intersections along this stretch. The major difference between the options is in the degree of emphasis on the other elements within the transportation corridor (e.g., a multi-use path emphasizes multi-modal use at the expense of on-street parking). Because the multi-use trail would be eligible for CTEP grant funding, the assessed costs to the property owners along the street of any of the options are essentially similar.

## **STAKEHOLDERS**

Staff requested feedback from several groups to present to Council. Staff presented the options to the Heights Task Force, the Traffic Control Board, and the residents along this stretch of street. Staff made a presentation on this topic to the Heights Task Force meeting on November 22, 2005. Discussion at the task force meeting included the fact that on-street parking is not currently allowed on this part of Lake Elmo and brought up an option for doing an off-street path for “uphill” bike traffic, with downhill bicycle traffic being in an on-street bicycle lane. (Staff explored this option and felt that this separate treatment is not justified by the grade of the street and it would be against general design practice for this type of facility). The Heights Task Force did not make a formal recommendation to Council.

Staff made a presentation on this topic to the Traffic Control Board (TCB) on December 6, 2005. Board members felt that the amount of traffic on Lake Elmo Road and a posted speed limit of 35 mph were not consistent with on-street parking. The TCB made a formal recommendation to Council in favor of The Bicycle Lanes Option (No On-Street Parking).

Staff sent a letter and a graphic depicting the three options to the residents along this section of Lake Elmo Road asking for their feedback. Eighty-five (85) letters were sent, and Staff received 19 responses. A summary of the responses is as follows:

<u>Option</u>	<u>Votes in Favor (Out of 19)</u>
#1 The On-Street Parking Option	8
#2 The Bicycle Lanes Option (No On-Street Parking)	4
#3 The Multi-Use Path Option (With On-Street Parking)	7

The plurality of votes favors the on-street parking option.

## **Advantages and Disadvantages of Each Option**

### ***Option #1: The On-Street Parking Option***

#### **Advantages:**

- Provides on-street parking for residents along the street

#### **Disadvantages:**

- Bicyclists will need to blend with traffic or use the sidewalks
- Vehicles merging into traffic from parking along a busy collector street

### ***Option #2 The Bicycle Lanes Option (No On-Street Parking)***

#### **Advantages:**

- Provides bicycle lanes for advanced cyclists as shown in the Heritage Trail plan
- Provides continuity with bicycle lanes planned for the section of Lake Elmo from Main to Hansen
- Bicycle lanes portion of the street would be eligible for CTEP grant funding

**Disadvantages:**

- No on-street parking for residents along the street
- Increased need for sweeping bicycle lanes to keep them usable

***Option #3 The Multi-Use Path Option (With On-Street Parking)***

**Advantages:**

- Provides transportation corridor for widest range of users
- Path would be eligible for CTEP grant funding
- Provides on-street parking for residents along the street

**Disadvantages:**

- Roadway centerline will need to be offset from the center of the right-of-way
- Path would be adjacent to curb line

Given these advantages and disadvantages of each option, Staff recommends Option #2 The Bicycle Lanes Option (No On-Street Parking) as the preferred option.

**RECOMMENDATION**

Staff recommends that Council approve Option #2 The Bicycle Lanes Option (No On-Street Parking) as the preferred option for improvements to Lake Elmo Road between Hilltop Rd. and Wicks Ln.

**ATTACHMENT**

A. Graphic Depiction of Three Options for Lake Elmo Road Improvements (3 pages)

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 27, 2006**

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**TITLE:** Appoint Members for an Ad Hoc City Administrator Criteria Committee

**DEPARTMENT:** Administration

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

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**PROBLEM/ISSUE STATEMENT:** At its February 13 meeting, the City Council determined that it would create an 11-15 member ad hoc citizen committee to help create a City Administrator profile. Council members were to submit their nominations by Friday, February 17 and the Council indicated that it would create the Committee at its February 27 meeting. Article V of the Charter requires the Mayor, with Council consent, to appoint all Board, Commission and Committee members. The Council may, although it is not required, to define the committee's mission and provide operating guidelines.

**FINANCIAL IMPACT:** There should be no financial impact from this action. The only foreseeable expenses are for any staff time that the Council or committee requests to assist the committee.

**RECOMMENDATION**

Staff recommends that:

- 1) the Council create the Ad Hoc City Administrator Criteria Committee and provide any operating guidelines that it deems appropriate
- 2) the Mayor appoint the members
- 3) Council consent to those appointments

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

**ATTACHMENTS**

A: Proposed Membership List

## **ATTACHMENT A**

### **City of Billings Ad Hoc City Administrator Criteria Committee Membership**

#### **Ward I**

Marion Dozier

Doug Moore

#### **Ward II**

Pete Hansen

Angela Cimmino

#### **Ward III**

Mike Casey

Rick Reid

#### **Ward IV**

Suzanne McKiernan

Wendy Keating

#### **Ward V**

Diane Ruff

John Brewer

#### **Mayor**

Mike Guledge

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