

CITY OF BILLINGS

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

AGENDA

COUNCIL CHAMBERS

March 27, 2006

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Ed Ulledalen

ROLL CALL

MINUTES – March 13, 2006

COURTESIES

PROCLAMATIONS

- Fair Housing Month – Month of April
- Donate Life Month – Month of April

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #6 & #7 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.	Steven Tucker*	Library Board	3/27/06	12/31/07
2.	Dr. John Kominsky	EMS Commission	3/27/06	12/31/09

*Unexpired term of Sharon Zahn
([Corresponding Staff Memo A](#))

B. Bid Awards:

(1) **W.O. 03-23: Turn Lane Construction for Yellowstone River Road and Hawthorne Lane.** (Opened 2/28/06). (Delayed from 3/13/06). Recommend JEM Contracting, Inc., \$333,395.55.
([Corresponding Staff Memo B1](#))

(2) **SID 1372 – Summerhill Subdivision.** (Opened 2/28/06). (Delayed from 3/13/06). Recommend rejecting all bids.
([Corresponding Staff Memo B2](#))

C. Change Order #1 – Airport Restaurant Kitchen Floor Replacement, Fisher Construction, \$12,291.00.
([Corresponding Staff Memo C](#))

D. Amendment #2, W.O. 01-06: Arlene Corridor Improvements, Professional Services Contract, Kadrmas, Lee & Jackson, Inc., \$79,700.00.
([Corresponding Staff Memo D](#))

E. Contract with State of Montana Historic Preservation Office for Certified Local Government Program, \$5,500.00.
([Corresponding Staff Memo E](#))

F. Agreement with Billings Housing Authority to fund one officer, term: 7/1/05 through 6/30/06.
([Corresponding Staff Memo F](#))

G. Declaring surplus property and authorizing the Police Dept. to release one Marantz Model 225 body wire to the Chippewa Cree Tribal Law Enforcement.
([Corresponding Staff Memo G](#))

H. Acknowledging receipt of petition to annex #06-02: the north 19 acres of Tract 1, C/S 2776, generally located west of Highway 87N, north of intersection of Highways 87N & 312, 4A's, LLC – Dean Luptak, Secretary, petitioner, and setting a public hearing date for 4/10/06.
([Corresponding Staff Memo H](#))

I. Street Closures:

(1) March of Dimes *Walk America* Event: 2nd Ave. N and 3rd Ave. N from N. 15th St. to N. 34th St., on 4/29/06.

([Corresponding Staff Memo I1](#))

(2) St. Vincent Healthcare *Heart and Sole Race*, 12th Ave. N and N. 30th St.; 11th Ave. N and N. 30th St.; N 32nd. St and Locust; Grandview and Ash; Poly and University; Poly and Medical Center; Elevation and N. 29th St.; Elevation and N. 30th

St., Avenue F and Virginia Ln; Beverly Hills Blvd and Virginia Ln; N. 32nd St. and Parkhill; and 10th Ave. N and N. 30th St. on 6/10/06.

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

(3) Chase Hawks Association *Burn the Point Parade and Street Dance*. Parade: established downtown parade route. Street Dance: N. 27th St. to N. 29th St. from 1st Ave. N to 3rd Ave. N. on 9/1/06.

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

J. Resolution of Intent to Annex #06-04: contiguous land known as Tract 2B of Amended Tract 2, C/S 727 and located on Alkali Creek Rd., City of Billings, owner, and setting a public hearing on 4/24/06.

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

K. Resolution of Intent to Create PMD #4033: Falcon Ridge Estates, First Filing and Falcon Ridge Subdivision, First Filing and setting a public hearing for 4/24/06.

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

L. Second/final reading ordinance providing that the BMCC Section 24-411 be amended to limit RV parking on commercial lots.

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

M. Preliminary Plat of Reflections at Copper Ridge, generally located one-quarter mile northwest of the intersection of Molt Rd. and Rimrock Rd., conditional approval of the preliminary plat, approval of the variances and adoption of the Findings of Fact.

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

N. Preliminary Plat of Falcon Ridge Estates Subdivision, 2nd Filing, generally located one-quarter mile northwest of the intersection of Molt Rd. and Rimrock Rd., conditional approval of the preliminary plat, approval of the variances and adoption of the Findings of Fact.

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

O. Preliminary Plat of Amended Lot 5, Block 10, Parkland West Subdivision, 6th Filing, generally located on the west side of S. 32nd St. West, midway between Central Ave. and Banff Ave., conditional approval of the preliminary plat, approval of the variances and adoption of the Findings of Fact.

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

P. Final Plat of Copper-Falcon Subdivision.

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

Q. Bills and Payroll.

(1) February 24, 2006

[\(Corresponding Staff Memo Q1\)](#)

(2) March 3, 2006

[\(Corresponding Staff Memo Q2\)](#)

(3) February 1 – 28, 2006 (Municipal Court)
([Corresponding Staff Memo Q3](#))

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

REGULAR AGENDA:

2. **PUBLIC HEARING AND ZONE CHANGE #774:** A zone change from Residential-9,600 to Residential-7,000 on Lot 123 of Sunny Cove Fruit Farms in the proposed Foxtail Village Subdivision, 2nd Filing. Kenmark Corporation, applicant Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)
([Corresponding Staff Memo 2](#))
3. **PUBLIC HEARING AND ZONE CHANGE #775:** A zone change to allow changes to the regulations pertaining to signage within the Medical Corridor Permit Zoning District. Billings Clinic & St. Vincent Healthcare, applicants; Mary Scrim Dyre and Doug James, agents. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)
([Corresponding Staff Memo 3](#))
4. **PUBLIC HEARING AND SPECIAL REVIEW #807:** A special review to allow an all-beverage liquor license with gaming in a Highway Commercial zone described as Lot 1, Block 1 of Vaquero Subdivision, and located at 5435 Midland Rd. Jerke Real Estate, applicant; Roger Tuhy, agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)
([Corresponding Staff Memo 4](#))
5. **PUBLIC HEARING AND RESOLUTION** adopting amendments to the *2006-2011 Capital Improvement Plan (CIP)*, *Equipment Replacement Plan (ERP)* and *Technology Replacement Plan (TRP)*. Staff recommends approval of the amendments presented by Staff at the 3/6/06 Work Session. (**Action:** approval or disapproval of Staff recommendation.)
([Corresponding Staff Memo 5](#))
6. **FIRST READING ORDINANCE** providing that the BMCC be amended by adding a section 13-505; providing for a procedure whereby city contractors can be debarred from bidding on city contracts, establishing an effective date and providing a severability clause. Staff recommends approval. (Public hearing held and closed on 2/13/06. Action delayed from 2/13/06). (**Action:** approval or disapproval of Staff recommendation.)
([Corresponding Staff Memo 6](#))

7. **RESOLUTION** setting the annual salary for a part-time assistant judge as allowed under Ord. #06-5361. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

8. **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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, MARCH 27, 2006

TITLE: Boards & Commissions –Appointments
DEPARTMENT: City Administrator’s Office
PRESENTED BY: wynnnette Maddox, Administration

PROBLEM/ISSUE STATEMENT: Confirmation of appointments for a vacancy created by the resignation of a member and an unfilled vacancy for a St. Vincent’s Representative.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Steven Tucker*	Library Board	3/27/06	12/31/07
2.	Dr. John Kominsky	EMS Commission	3/27/06	12/31/09

*Unexpired term of Sharon Zahn

Approved By: City Administrator ____ City Attorney ____

Attachments

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 27, 2006

TITLE: Work Order 03-23, Turn Lane for Yellowstone River Road and Hawthorne Lane

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for W.O. 03-23 – Turn Lane Design for Yellowstone River Road and Hawthorne Lane. This project will construct an eastbound turn lane on Yellowstone River Road at Hawthorne Lane. Bids were opened February 28th, 2006. The low bid exceeded the available budget and the contract award was delayed so the Engineering Division could reevaluate the project and to get it within the available budget. The Engineering Division has rescoped portions of the project to bring it back with budget.

FINANCIAL IMPACT: Funding for this project will be provided from Arterial Fees, Gas Tax, Storm Drain Funds, and Developer Contributions. We received 2 bids for this project as follows:

	<u>Total</u>
Engineer's Estimate	\$ 287,816.55
JEM Contracting, Inc.	\$ 333,369.55
Winkler Excavating	\$ 449,957.95

CIP Project #ENG64

CIP Budgeted Amount Available	\$279,993
Previous Expenses	(\$39,293)
Home Owner Contributions	\$2,880.75
Contributions added from Paver	\$27,000
Deleted Line Items*	\$61,250.00
Budget Fund Balance (after this award)	(\$1,538.80)

*After Council award a change order reducing the total contract to be within the funding available will be processed. The low bidder has agreed to this change.

RECOMMENDATION

Staff recommends that Council award the bid for W.O. 03-23 – Turn Lane Design for Yellowstone River Road and Hawthorne Lane to JEM Contracting, Inc. in the amount of 333,369.55.

Approved By: City Administrator _____ City Attorney _____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 27, 2006

TITLE: SID 1372 – Summerhill Subdivision
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for SID 1372 – Summerhill Subdivision on February 28, 2006. This project consists of installing sanitary sewer, water, storm drain and street improvements for a portion of Winter Green Drive, West Antelope Trail and Antelope Place located within Summerhill Subdivision. As shown on the March 13 council memo, bids for this project came in over budget. The City of Billings has two years, from the time the SID was created, until the SID expires to re-scope this project. In that time, options will be looked at to determine if this project can be built without recreating the SID.

FINANCIAL IMPACT: The costs of the Improvements are to be paid from the following sources: (1) \$242,000.00 of Special Improvement District bonds; and (2) \$225,315.67 of cash contribution by Jeff Essman, the owner of 12 of the 23 lots in the District. We received four bids for this project as follows:

	<u>Bids</u>
Engineer's Estimate	\$ 383,875.16
H.L. Ostermiller Const. Inc	\$ 443,729.25
Western Municipal Const. Inc.	\$ 486, 178.00
A.M.E., Inc.	\$ 498, 111.65
Chief Construction	\$ 520, 555.00

RECOMMENDATION

Staff recommends that Council reject all bids for SID 1372 – Summerhill Subdivision.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: Approval of Change Order One for the Airport Restaurant Kitchen Floor Replacement Project

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: This project removed the existing 50-year-old quarry tile flooring, in the Airport's restaurant kitchen and replaced it with a new epoxy flooring system. After all of the kitchen equipment had been removed and the contractor began removing the tile flooring and grout beds, several conditions were found that required changes to the contract. The major changes are as follows:

- Removed, capped off, and patched four drains and four water lines that had been underneath existing coolers that were no longer being used.
- Replaced two grease traps that had deteriorated due to age.
- Replaced the existing ceramic wall tile that was no longer adhered to the wall surface with fiberglass reinforced panels.
- Jackhammered out and replaced five cubic yards of concrete to provide an acceptable surface for the new flooring.
- Deleted the installation of the epoxy flooring in the break area and restrooms.
- Deleted the built up drainage floor in the dishwashing area.
- Deleted the ceramic wall tile patching.

The cost of each of these items has been reviewed by staff and are acceptable for the work involved.

FINANCIAL IMPACT: The total cost of this Change Order is \$12,291. The total cost of the contract including this Change Order is \$92,091. We have sufficient funds available in the Airport's Capital fund to cover the cost of this Change Order.

RECOMMENDATION

Staff recommends that the City Council approve Change Order One for the amount of \$12,291, for the Airport Restaurant Kitchen Floor Replacement Project completed by Fisher Construction.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: W.O. 01-6 Arlene Corridor Improvements; Amendment No. II - Professional Services Contract with Kadrmas, Lee & Jackson, Inc.

DEPARTMENT: Public Works Department – Engineering Division

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

PROBLEM/ISSUE STATEMENT: The City of Billings has recommended an amendment No. II to the Professional Service Contract with Kadrmas, Lee & Jackson, Inc. for the above reference project. The Amendment will increase the amount of the original Contract by \$79,700.00. This Amendment will provide construction surveying (Staking) required to lay out project design. This service, construction surveying, is usually provided through the construction administration / inspection contract let after the design contract. During this project City of Billings staff will be acting as the construction administrator / inspector in order to keep cost down. Surveying services are still needed to facilitate the construction surveying.

FINANCIAL IMPACT: Amendment No. II represents a increase in the amount of the contract by \$79,700.00.

Original Construction Contract	\$302,807.00	<u>% Of Contract</u>	<u>% Of Contract Cumulative</u>
Amendment No. I	\$29,000.00	9.57%	9.57%
Amendment No. II	<u>\$79,700.00</u>	26.09%	37.66%
Total	\$411,507.00		

RECOMMENDATION

Staff recommends that Council approve Amendment No. II to the Professional Service Contract with Kadrmas, Lee & Jackson, Inc., resulting in a net increase of \$79,700.00.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A - Amendment Number II

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AGENDA ITEM:



CITY COUNCIL CONSENT AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: Certified Local Government Program Contract

DEPARTMENT: Candi Beaudry, AICP, Interim Director, Planning and Community Services Department

PRESENTED BY: Lora Mattox, Planner II, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: The State of Montana Historic Preservation Office has designated the City of Billings as a Certified Local Government (CLG) for historic preservation activities. As a CLG the City is eligible to receive state funding to coordinate historic preservation efforts in our area. In January of 2006, the City of Billings applied for these funds through the CLG Program. On February 10, 2006, the City received approval for this grant cycle of April 1, 2006 through March 31, 2007 and 2 original contracts for the Authorized Representative (Mayor) to sign.

ALTERNATIVES ANALYZED: Agree or decline to participate in State CLG program and accept CLG grant funding to coordinate historic preservation activities.

FINANCIAL IMPACT: City Council approval would provide \$5,500 in State of Montana Certified Local Government funding. The Planning Division will submit a Supplemental Budget Request to cover the matching funds in the amount of \$6,500.

RECOMMENDATION

Staff recommends that the City Council authorize Mayor to sign the Certified Local Government Grant Contracts for a \$5,500 Certified Local Government grant from the Montana State Historic Preservation Office.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Two copies of the Certified Local Government Agreement
- B. FY 2006 Work Plan

STATE OF MONTANA AGREEMENT

This agreement is hereby made between **City of Billings**, PO Box 1178, Billings, Montana, 59103 (The "Subgrantee") and the Montana Historic Preservation Office, Montana Historical Society, 1410 8th Ave, PO Box 201202 Helena, Montana 59620-1202 (The "Grantee"). The two parties, in consideration of mutual covenants and stipulations described below, agree as follows:

SECTION I: SERVICES

The Subgrantee will:

1. Maintain an active Historic Preservation Commission (HPC) that will advocate for preservation, assist the HPO to accomplish preservation goals and fill vacancies on the HPC promptly.
2. Participate in and carry out the responsibilities for Certified Local Government program status as outlined in "The Montana Certified Local Government Manual."
3. Insure historic preservation concerns are considered at all levels of local government planning and are incorporated as goals of other local, state, and federal projects.
4. Administer local preservation ordinances.
5. Have on staff a minimum half-time designated Historic Preservation Officer (HPO) who demonstrably plays an active and consistent role in the conduct of the subgrantee's historic preservation activities. On behalf of the Subgrantee it is the role of HPO to conduct these activities and/or work with the HPC to:
 - a. Regularly report on HPC activities at local government Commission meetings and be available for comment to these groups and other local government offices;
 - b. Monitor Preservation Covenants and Agreements and provide historic preservation information and assistance to property owners;
 - c. Provide technical assistance, direction, literature on historic preservation tax credits, National Register, Federal regulations and Secretary of Interior Standards;
 - d. Inspect and evaluate historic properties for potential and feasible reuse and rehabilitation;
 - e. Coordinate, promote and participate in events such as National Historic Preservation Week and/or other preservation related activities;
 - f. Cooperate and communicate with the Grantee and fellow HPO/HPCs in Montana and elsewhere as appropriate; and
 - g. Submit quarterly reports, meeting minutes and financial reports per deadlines outlined in this agreement. In the Final Progress Report, the HPO will identify benefits the local government has derived as a result of the employment of a HPO, the needs of the local government for future professional preservation efforts, and any additional functions of the HPO carried out which further the understanding and implementation of historic preservation values and objectives in the local government.

All work completed under this funding agreement must meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as interpreted by the Grantee. Final products or services that do not fulfill the requirements of this Agreement and do not comply with the appropriate

Secretary of the Interior's Standards will not be reimbursed and any advance payments made in connection with such products or services must be repaid to the Grantee.

SECTION II: EFFECTIVE DATE, DURATION, AND REMUNERATION

The Agreement shall take effect as of April 1, 2006 and shall terminate March 31, 2007 unless a new termination date is set or the agreement is terminated pursuant to SECTION IV. Total payments by the "Grantee" for all purposes under this contract shall not exceed: \$5,500. Payment shall be made on a reimbursement basis by request of Subgrantee to the SHPO.

SECTION III: CONSIDERATION AND PROCESS FOR PAYMENT

In consideration of Services rendered in this Agreement, the Grantee agrees to pay the Subgrantee as follows:

1. The Subgrantee agrees to submit Progress Reports, meeting minutes and Requests for Reimbursement quarterly. Reports will be accompanied by the following documentation:
 - a. The Subgrantee's name, address and agreement number **MT-06-21529-012**;
 - b. Report discussing work completed during the quarter. Include meeting agendas and minutes;
 - c. An itemized listing of cash or in-kind donations that comprise the non-federal match;
 - d. An itemized listing of project expenses that are charged to the federal grant;
 - e. The net request for payment; and
 - f. Products produced during the quarter.
2. All Requests for Reimbursement must be approved by the Grantee prior to payment. Payment for work completed under this Agreement may be withheld pending the delivery and acceptance of such items. All Subgrantees must retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of 3 years or until an acceptable audit (accessible by auditors) has been performed and all claims and audit findings involving the records have been resolved. The 3-year retention period starts from the date of the submission of the final report. A final Request for Reimbursement must be submitted within thirty (30) days of the termination of this Agreement if they are to qualify for payment.
3. All Requests for Reimbursement will be reviewed for eligibility and allowability under Chapters 12, 13 and 14 of the National Park Service's Historic Preservation Fund Manual and the State CLG Manual. The Subgrantee may request a copy of the CLG Manual from the SHPO and the Historic Preservation Fund Manual is available for inspection at the SHPO.
4. The Grantee may retain final payment of federal grant funds until such time as the approved project work has been successfully completed and all conditions of this Agreement have been met.

SECTION IV: TERMINATION

1. The Subgrantee understands and agrees the Grantee, as a state agency, is dependent upon federal and state appropriations for its funding and actions by Congress or the Montana Legislature may preclude funding this Agreement completely through the termination date stated in Section II. Should such a contingency occur, the parties agree the Grantee may set a new termination date or terminate the contract immediately, depending upon the funding remaining available for the Agreement, and the

Subgrantee will be compensated for services rendered and expenses incurred to 5:00 p.m. of the revised termination date.

2. In the event of termination, all property (except real estate) and finished or unfinished documents, data, studies, and reports purchased or prepared by the Subgrantee under this Agreement shall, at the option of the Montana Historical Society (MHS), become the property of the MHS and the Subgrantee shall be entitled to compensation for any un-reimbursed expenses necessarily incurred in satisfactory performance of this Agreement. Notwithstanding the above, the Subgrantee will not be relieved of liability to the Grantee for damage sustained by the Grantee by virtue of any breach of the Agreement by the Subgrantee and the Grantee may withhold any reimbursement to the Subgrantee for the purpose of off-set until such time as the exact amount of damages due the Grantee from the Subgrantee is agreed upon or otherwise determined.
3. Except for the provisions of SECTION IV, paragraph 1, and SECTION XII, either party may terminate this Agreement without cause thirty (30) days after delivery of written notice in hand to the other party.
4. The MHS may terminate this Agreement for failure of the Subgrantee to perform any of the services, duties, or conditions in accordance with the time schedule contained in this Agreement. The Grantee will provide the Subgrantee with written notification of the reasons for the Subgrantee's performance failure and allow the Subgrantee a period of not less than ten (10) days nor more than thirty (30) days after receipt of said notification to rectify the identified failure to perform.

SECTION V: GENERAL AND SPECIFIC CONDITIONS

The Subgrantee agrees to follow the General and Specific Conditions according to this Agreement and Chapter 5 of the Historic Preservation Fund Grants Manual.

SECTION VI: ASSIGNMENT AND PROCUREMENT PROCEDURES

1. The Subgrantee agrees that the procurement of services, supplies, equipment, and construction will be obtained efficiently and economically and in compliance with the applicable federal laws, and of OMB Circular A-102, (as further amended, 8/29/97) and Chapter 17 of the Historic Preservation Grants Manual.
2. The process for the selection of subcontractors to perform the services under this Agreement, regardless of whether by competitive bidding or negotiated procurement, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms or individuals in order for them to qualify to do business, (2) non-competitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements.
3. Competitive bidding or negotiated procurement is required for all survey and planning subcontracts. Proposals shall be requested from an adequate number of sources (at least two or three sources) to permit reasonable competition. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable. The Request for Proposals shall identify the survey or planning area, population, number of properties to be inventoried, funds available and volunteer support (if applicable). The Subgrantee shall document in

writing the evaluation criteria used and the results of the technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for subcontract award. Subcontractors shall be selected on the basis of qualification, subject to negotiation of fair and reasonable compensation. Unsuccessful offerors shall be notified promptly. A copy of documentation of the selection process will be submitted to the Grantee prior to the initiation of the project.

4. Noncompetitive negotiation may be used with prior written approval from the Grantee when, after the solicitation in accordance with Section VI, 3. above, competition is determined inadequate.
5. The Subgrantee will notify the SHPO upon the selection of a subcontractor. Subgrantee will verify Subcontractor is not on the debarred list. A copy of this contract will be submitted to the SHPO for review and written or verbal approval prior to its execution.
- ~~6. Prior to the beginning of project work or any grant payment, the Subgrantee must submit to the SHPO the below listed items to demonstrate that the federal procurement requirements have been met in full:~~
 - a. Copies of the letters to qualified sources and public advertisements requesting proposals and/or invitations to bid;
 - b. Copy of the Subgrantee documentation of the selection criteria and process;
 - c. A copy of the successful proposal and a description of the Subgrantee reasons for selection;
 - d. Listing of the unsuccessful offerors;
 - e. Copy of the proposed contract between the Subgrantee and the subcontractor.

Note: SHPO must review and approve all contracts between the Subgrantee and subcontractors prior to their execution. The parties agree that there will be no assignment or transfer of this Agreement or any interest in the Agreement and that no service required under this Agreement may be performed under subcontract unless both parties agree in writing.

SECTION VII: EQUAL EMPLOYMENT OPPORTUNITY

1. Pursuant to Sections 49-2-303 and 49-3-207 of the Montana Code Annotated and the federal Civil Rights Act of 1964, (as amended) and Equal Employment Opportunity statute, in all hiring or employment made possible by or resulting from this Agreement, the Subgrantee 1) will not discriminate against any employee or applicant for employment because of race, color, social condition, religion, sex, age, national origin, marital status, creed, political affiliation, or physical or mental handicap and 2) will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This requirement applies to, but is not limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subgrantee will comply with all applicable statutes and Executive Orders on equal employment opportunity, including enforcement provisions, as implemented by, but not limited to, Department of the Interior policies, published in 43 CFR 17.
2. The Subgrantee will comply with Section 504 of the Rehabilitation Act of 1973 which provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

3. The Subgrantee will comply with The Age Discrimination Act of 1975 prohibit discrimination on the basis of age in programs and activities receiving Federal Financial assistance.

SECTION VIII: FAIR LABOR STANDARDS

The Subgrantee agrees to comply with all Federal and State wage and hour rules, statutes, and regulations, and warrants that all applicable Federal and State fair labor standards and provisions will be complied with both by the Subgrantee and any subcontractors, in the event that subcontracted services are employed to fulfill the terms and conditions of this Agreement are agreed upon by the MHS, SHPO and the Subgrantee.

SECTION IX: PROHIBITION AGAINST LOBBYING

The Subgrantee must conform to provisions of 18 USC 1913:

"No part of the money appropriated by an enactment of Congress shall in the absence of express authorization by Congress be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or any other device intended or designed to influence in any matter a Member of Congress, to favor or oppose, by vote or otherwise, any legislation of appropriation by Congress, whether before or after introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the U.S. or its Departments or agencies from communicating to Members of Congress on the request of any Member of Congress, through the proper channels, requests for legislation or appropriation that they deem necessary for the efficient conduct of the public business." Thus, costs associated with activities to influence legislation pending before Congress, commonly referred-to as "lobbying" is unallowable under this Agreement.

SECTION X: INDEMNIFICATION

The Subgrantee agrees that it will hold harmless and indemnify the MHS from any and all losses that may result to the Grantee because of negligence on the part of the Subgrantee, its agents, representatives, or employees. The Subgrantee shall hold harmless the MHS from any and all claims arising out of the execution of this Agreement for injury to third persons, including their agents, employees, or volunteers, recipients, and to the public at large, for injury to property of persons, which arise out of any Subgrantee's actions.

SECTION XI: WORKERS' COMPENSATION

The Subgrantee and all independent subcontractors earning compensation under this funding agreement must elect to be bound personally and individually by the provisions of compensation plans 1, 2 or 3, but he/she may apply to Montana Workers' Compensation division for an exemption from the Worker's Compensation Act. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When the division approves an application it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

SECTION XII: MODIFICATIONS AND PREVIOUS AGREEMENTS

1. This instrument contains the entire Agreement between the parties, and no previous statements, promises, or inducements made by either party or agent of either party which are not contained in this written agreement shall be valid or binding. This agreement may not be enlarged, modified, or altered except in writing signed by the parties and attached to the original of this Agreement, except as provided under Section IV (1). No change, addition, or erasure of any printed portion of this Agreement shall be valid or binding upon either party.

2. Any changes that substantially alter the scope of work or the cost of the approved project must be submitted as a project amendment. These amendments must have prior written approval from NPS before the change is implemented. Change orders will be treated as amendments. SHPO will be consulted to review the change to determine if it substantially alters the scope of work or the cost of the approved project. If the change is determined to be substantial, the SHPO will process the amendment through NPS. Failure to notify the SHPO of any such changes may be construed as just cause for revocation and/or recovery of the grant funds.

SECTION XIII: CONFLICT OF INTEREST

No officer or employee of the MHS or member of the Society Board or State Preservation Review Board and no member of the Subgrantee's governing body at localities in which the project is situated or being carried out who exercises any functions or responsibilities or who enjoys a position of influence in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his personal or pecuniary interest. The Subgrantee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

SECTION XIV: COPYRIGHT PROHIBITION

1. Except as otherwise provided in the terms and conditions of the grant agreement, the Subgrantee is free to copyright any books, publications, or other copyrightable materials developed as a result of this Agreement. However, any such copyrightable materials will be subject to a royalty-free, nonexclusive, and irrevocable license throughout the work to the Grantee and/or the US Government to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.
2. Any materials produced as a result of this Agreement which are to be publicly distributed, shall include the following statement:

The (activity) that is the subject of this (type of publication) has been financed (in part/entirely) with Federal funds from the National Park Service, U. S. Department of Interior, and administered by the SHPO of Montana. The contents and opinions do not necessarily reflect the views or policies of the U.S. Department of the Interior or the Montana Historic Preservation Office, nor does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior or SHPO.

Publications must include the nondiscrimination statement:

This program receives Federal financial assistance for identification and protection of historic properties. Under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the U.S. Department of the Interior prohibits discrimination on the basis of race, color, national origin, age, or disability in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to:

Office for Equal Opportunity
National Park Service
1849 C Street, N.W.
Washington, D.C. 20240

2. The Subgrantee shall not include in the materials produced as a result of this Agreement any copyrighted matter without the written approval of the copyright owner that provided SHPO and the United States Government with written permission to use the material in the manner provided herein.

SECTION XV: AUDITING

The Subgrantee agrees to allow access to the records of the activities covered by this Agreement as may be necessary for legislative post-audit and analysis purposes in determining compliance with the terms of this Agreement. The Subgrantee shall maintain all administrative and fiscal records relating to this project for three years after the final grant reimbursement is made by the Grantee to the Subgrantee. Notwithstanding the provisions of SECTION IV, this Agreement shall automatically terminate upon any refusal of the Subgrantee to allow access to records necessary to carry out the legislative post-audit and analysis functions set forth in Title 5 Chapter 12 and 13, MCA and the financial and programmatic audit conducted by the Secretary of the Interior and the Comptroller General of the United States provided for in OMB Circular A-102, as amended.

SECTION XVI: SEVERABILITY

It is understood and agreed by the parties hereto that if any term or provision of this contract is by the courts held to be illegal or in conflict with any Montana law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

SECTION XVII: EXECUTION

This Contract consists of this Agreement and pages of attachments; the original copy is to be retained by SHPO. A copy of the original and attachments, if any, has the same force and effect for all purposes as the original.

Each party has full power and authority to enter into and perform this Agreement, and the person signing the Agreement on the behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

To express the parties' intent to be bound by the terms of this Agreement, they have executed this document on the date set out below:

Subgrantee

Date

Administrator, Centralized Services Division
Montana Historical Society

Date

STATE OF MONTANA AGREEMENT

This agreement is hereby made between **City of Billings**, PO Box 1178, Billings, Montana, 59103 (The "Subgrantee") and the Montana Historic Preservation Office, Montana Historical Society, 1410 8th Ave, PO Box 201202 Helena, Montana 59620-1202 (The "Grantee"). The two parties, in consideration of mutual covenants and stipulations described below, agree as follows:

SECTION I: SERVICES

The Subgrantee will:

1. Maintain an active Historic Preservation Commission (HPC) that will advocate for preservation, assist the HPO to accomplish preservation goals and fill vacancies on the HPC promptly.
2. Participate in and carry out the responsibilities for Certified Local Government program status as outlined in "The Montana Certified Local Government Manual."
3. Insure historic preservation concerns are considered at all levels of local government planning and are incorporated as goals of other local, state, and federal projects.
4. Administer local preservation ordinances.
5. Have on staff a minimum half-time designated Historic Preservation Officer (HPO) who demonstrably plays an active and consistent role in the conduct of the subgrantee's historic preservation activities. On behalf of the Subgrantee it is the role of HPO to conduct these activities and/or work with the HPC to:
 - a. Regularly report on HPC activities at local government Commission meetings and be available for comment to these groups and other local government offices;
 - b. Monitor Preservation Covenants and Agreements and provide historic preservation information and assistance to property owners;
 - c. Provide technical assistance, direction, literature on historic preservation tax credits, National Register, Federal regulations and Secretary of Interior Standards;
 - d. Inspect and evaluate historic properties for potential and feasible reuse and rehabilitation;
 - e. Coordinate, promote and participate in events such as National Historic Preservation Week and/or other preservation related activities;
 - f. Cooperate and communicate with the Grantee and fellow HPO/HPCs in Montana and elsewhere as appropriate; and
 - g. Submit quarterly reports, meeting minutes and financial reports per deadlines outlined in this agreement. In the Final Progress Report, the HPO will identify benefits the local government has derived as a result of the employment of a HPO, the needs of the local government for future professional preservation efforts, and any additional functions of the HPO carried out which further the understanding and implementation of historic preservation values and objectives in the local government.

All work completed under this funding agreement must meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as interpreted by the Grantee. Final products or services that do not fulfill the requirements of this Agreement and do not comply with the appropriate

Secretary of the Interior's Standards will not be reimbursed and any advance payments made in connection with such products or services must be repaid to the Grantee.

SECTION II: EFFECTIVE DATE, DURATION, AND REMUNERATION

The Agreement shall take effect as of April 1, 2006 and shall terminate March 31, 2007 unless a new termination date is set or the agreement is terminated pursuant to SECTION IV. Total payments by the "Grantee" for all purposes under this contract shall not exceed: \$5,500. Payment shall be made on a reimbursement basis by request of Subgrantee to the SHPO.

SECTION III: CONSIDERATION AND PROCESS FOR PAYMENT

In consideration of Services rendered in this Agreement, the Grantee agrees to pay the Subgrantee as follows:

1. The Subgrantee agrees to submit Progress Reports, meeting minutes and Requests for Reimbursement quarterly. Reports will be accompanied by the following documentation:
 - a. The Subgrantee's name, address and agreement number **MT-06-21529-012**;
 - b. Report discussing work completed during the quarter. Include meeting agendas and minutes;
 - c. An itemized listing of cash or in-kind donations that comprise the non-federal match;
 - d. An itemized listing of project expenses that are charged to the federal grant;
 - e. The net request for payment; and
 - f. Products produced during the quarter.
2. All Requests for Reimbursement must be approved by the Grantee prior to payment. Payment for work completed under this Agreement may be withheld pending the delivery and acceptance of such items. All Subgrantees must retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of 3 years or until an acceptable audit (accessible by auditors) has been performed and all claims and audit findings involving the records have been resolved. The 3-year retention period starts from the date of the submission of the final report. A final Request for Reimbursement must be submitted within thirty (30) days of the termination of this Agreement if they are to qualify for payment.
3. All Requests for Reimbursement will be reviewed for eligibility and allowability under Chapters 12, 13 and 14 of the National Park Service's Historic Preservation Fund Manual and the State CLG Manual. The Subgrantee may request a copy of the CLG Manual from the SHPO and the Historic Preservation Fund Manual is available for inspection at the SHPO.
4. The Grantee may retain final payment of federal grant funds until such time as the approved project work has been successfully completed and all conditions of this Agreement have been met.

SECTION IV: TERMINATION

1. The Subgrantee understands and agrees the Grantee, as a state agency, is dependent upon federal and state appropriations for its funding and actions by Congress or the Montana Legislature may preclude funding this Agreement completely through the termination date stated in Section II. Should such a contingency occur, the parties agree the Grantee may set a new termination date or terminate the contract immediately, depending upon the funding remaining available for the Agreement, and the

Subgrantee will be compensated for services rendered and expenses incurred to 5:00 p.m. of the revised termination date.

2. In the event of termination, all property (except real estate) and finished or unfinished documents, data, studies, and reports purchased or prepared by the Subgrantee under this Agreement shall, at the option of the Montana Historical Society (MHS), become the property of the MHS and the Subgrantee shall be entitled to compensation for any un-reimbursed expenses necessarily incurred in satisfactory performance of this Agreement. Notwithstanding the above, the Subgrantee will not be relieved of liability to the Grantee for damage sustained by the Grantee by virtue of any breach of the Agreement by the Subgrantee and the Grantee may withhold any reimbursement to the Subgrantee for the purpose of off-set until such time as the exact amount of damages due the Grantee from the Subgrantee is agreed upon or otherwise determined.
3. Except for the provisions of SECTION IV, paragraph 1, and SECTION XII, either party may ~~terminate this Agreement without cause thirty (30) days after delivery of written notice in hand to the~~ other party.
4. The MHS may terminate this Agreement for failure of the Subgrantee to perform any of the services, duties, or conditions in accordance with the time schedule contained in this Agreement. The Grantee will provide the Subgrantee with written notification of the reasons for the Subgrantee's performance failure and allow the Subgrantee a period of not less than ten (10) days nor more than thirty (30) days after receipt of said notification to rectify the identified failure to perform.

SECTION V: GENERAL AND SPECIFIC CONDITIONS

The Subgrantee agrees to follow the General and Specific Conditions according to this Agreement and Chapter 5 of the Historic Preservation Fund Grants Manual.

SECTION VI: ASSIGNMENT AND PROCUREMENT PROCEDURES

1. The Subgrantee agrees that the procurement of services, supplies, equipment, and construction will be obtained efficiently and economically and in compliance with the applicable federal laws, and of OMB Circular A-102, (as further amended, 8/29/97) and Chapter 17 of the Historic Preservation Grants Manual.
2. The process for the selection of subcontractors to perform the services under this Agreement, regardless of whether by competitive bidding or negotiated procurement, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms or individuals in order for them to qualify to do business, (2) non-competitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements.
3. Competitive bidding or negotiated procurement is required for all survey and planning subcontracts. Proposals shall be requested from an adequate number of sources (at least two or three sources) to permit reasonable competition. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable. The Request for Proposals shall identify the survey or planning area, population, number of properties to be inventoried, funds available and volunteer support (if applicable). The Subgrantee shall document in

writing the evaluation criteria used and the results of the technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for subcontract award. Subcontractors shall be selected on the basis of qualification, subject to negotiation of fair and reasonable compensation. Unsuccessful offerors shall be notified promptly. A copy of documentation of the selection process will be submitted to the Grantee prior to the initiation of the project.

4. Noncompetitive negotiation may be used with prior written approval from the Grantee when, after the solicitation in accordance with Section VI, 3. above, competition is determined inadequate.
5. The Subgrantee will notify the SHPO upon the selection of a subcontractor. Subgrantee will verify Subcontractor is not on the debarred list. A copy of this contract will be submitted to the SHPO for review and written or verbal approval prior to its execution.
- ~~6. Prior to the beginning of project work or any grant payment, the Subgrantee must submit to the SHPO the below listed items to demonstrate that the federal procurement requirements have been met in full:~~
 - a. Copies of the letters to qualified sources and public advertisements requesting proposals and/or invitations to bid;
 - b. Copy of the Subgrantee documentation of the selection criteria and process;
 - c. A copy of the successful proposal and a description of the Subgrantee reasons for selection;
 - d. Listing of the unsuccessful offerors;
 - e. Copy of the proposed contract between the Subgrantee and the subcontractor.

Note: SHPO must review and approve all contracts between the Subgrantee and subcontractors prior to their execution. The parties agree that there will be no assignment or transfer of this Agreement or any interest in the Agreement and that no service required under this Agreement may be performed under subcontract unless both parties agree in writing.

SECTION VII: EQUAL EMPLOYMENT OPPORTUNITY

1. Pursuant to Sections 49-2-303 and 49-3-207 of the Montana Code Annotated and the federal Civil Rights Act of 1964, (as amended) and Equal Employment Opportunity statute, in all hiring or employment made possible by or resulting from this Agreement, the Subgrantee 1) will not discriminate against any employee or applicant for employment because of race, color, social condition, religion, sex, age, national origin, marital status, creed, political affiliation, or physical or mental handicap and 2) will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This requirement applies to, but is not limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subgrantee will comply with all applicable statutes and Executive Orders on equal employment opportunity, including enforcement provisions, as implemented by, but not limited to, Department of the Interior policies, published in 43 CFR 17.
2. The Subgrantee will comply with Section 504 of the Rehabilitation Act of 1973 which provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

3. The Subgrantee will comply with The Age Discrimination Act of 1975 prohibit discrimination on the basis of age in programs and activities receiving Federal Financial assistance.

SECTION VIII: FAIR LABOR STANDARDS

The Subgrantee agrees to comply with all Federal and State wage and hour rules, statutes, and regulations, and warrants that all applicable Federal and State fair labor standards and provisions will be complied with both by the Subgrantee and any subcontractors, in the event that subcontracted services are employed to fulfill the terms and conditions of this Agreement are agreed upon by the MHS, SHPO and the Subgrantee.

SECTION IX: PROHIBITION AGAINST LOBBYING

The Subgrantee must conform to provisions of 18 USC 1913:

"No part of the money appropriated by an enactment of Congress shall in the absence of express authorization by Congress be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or any other device intended or designed to influence in any matter a Member of Congress, to favor or oppose, by vote or otherwise, any legislation of appropriation by Congress, whether before or after introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the U.S. or its Departments or agencies from communicating to Members of Congress on the request of any Member of Congress, through the proper channels, requests for legislation or appropriation that they deem necessary for the efficient conduct of the public business." Thus, costs associated with activities to influence legislation pending before Congress, commonly referred-to as "lobbying" is unallowable under this Agreement.

SECTION X: INDEMNIFICATION

The Subgrantee agrees that it will hold harmless and indemnify the MHS from any and all losses that may result to the Grantee because of negligence on the part of the Subgrantee, its agents, representatives, or employees. The Subgrantee shall hold harmless the MHS from any and all claims arising out of the execution of this Agreement for injury to third persons, including their agents, employees, or volunteers, recipients, and to the public at large, for injury to property of persons, which arise out of any Subgrantee's actions.

SECTION XI: WORKERS' COMPENSATION

The Subgrantee and all independent subcontractors earning compensation under this funding agreement must elect to be bound personally and individually by the provisions of compensation plans 1, 2 or 3, but he/she may apply to Montana Workers' Compensation division for an exemption from the Worker's Compensation Act. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When the division approves an application it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

SECTION XII: MODIFICATIONS AND PREVIOUS AGREEMENTS

1. This instrument contains the entire Agreement between the parties, and no previous statements, promises, or inducements made by either party or agent of either party which are not contained in this written agreement shall be valid or binding. This agreement may not be enlarged, modified, or altered except in writing signed by the parties and attached to the original of this Agreement, except as provided under Section IV (1). No change, addition, or erasure of any printed portion of this Agreement shall be valid or binding upon either party.

2. Any changes that substantially alter the scope of work or the cost of the approved project must be submitted as a project amendment. These amendments must have prior written approval from NPS before the change is implemented. Change orders will be treated as amendments. SHPO will be consulted to review the change to determine if it substantially alters the scope of work or the cost of the approved project. If the change is determined to be substantial, the SHPO will process the amendment through NPS. Failure to notify the SHPO of any such changes may be construed as just cause for revocation and/or recovery of the grant funds.

SECTION XIII: CONFLICT OF INTEREST

No officer or employee of the MHS or member of the Society Board or State Preservation Review Board and no member of the Subgrantee's governing body at localities in which the project is situated or being carried out who exercises any functions or responsibilities or who enjoys a position of influence in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his personal or pecuniary interest. The Subgrantee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

SECTION XIV: COPYRIGHT PROHIBITION

1. Except as otherwise provided in the terms and conditions of the grant agreement, the Subgrantee is free to copyright any books, publications, or other copyrightable materials developed as a result of this Agreement. However, any such copyrightable materials will be subject to a royalty-free, nonexclusive, and irrevocable license throughout the work to the Grantee and/or the US Government to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.
2. Any materials produced as a result of this Agreement which are to be publicly distributed, shall include the following statement:

The (activity) that is the subject of this (type of publication) has been financed (in part/entirely) with Federal funds from the National Park Service, U. S. Department of Interior, and administered by the SHPO of Montana. The contents and opinions do not necessarily reflect the views or policies of the U.S. Department of the Interior or the Montana Historic Preservation Office, nor does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior or SHPO.

Publications must include the nondiscrimination statement:

This program receives Federal financial assistance for identification and protection of historic properties. Under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the U.S. Department of the Interior prohibits discrimination on the basis of race, color, national origin, age, or disability in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to:

Office for Equal Opportunity
National Park Service
1849 C Street, N.W.
Washington, D.C. 20240

2. The Subgrantee shall not include in the materials produced as a result of this Agreement any copyrighted matter without the written approval of the copyright owner that provided SHPO and the United States Government with written permission to use the material in the manner provided herein.

SECTION XV: AUDITING

The Subgrantee agrees to allow access to the records of the activities covered by this Agreement as may be necessary for legislative post-audit and analysis purposes in determining compliance with the terms of this Agreement. The Subgrantee shall maintain all administrative and fiscal records relating to this project for three years after the final grant reimbursement is made by the Grantee to the Subgrantee. Notwithstanding the provisions of SECTION IV, this Agreement shall automatically terminate upon any refusal of the Subgrantee to allow access to records necessary to carry out the legislative post-audit and analysis functions set forth in Title 5 Chapter 12 and 13, MCA and the financial and programmatic audit conducted by the Secretary of the Interior and the Comptroller General of the United States provided for in OMB Circular A-102, as amended.

SECTION XVI: SEVERABILITY

It is understood and agreed by the parties hereto that if any term or provision of this contract is by the courts held to be illegal or in conflict with any Montana law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

SECTION XVII: EXECUTION

This Contract consists of this Agreement and pages of attachments; the original copy is to be retained by SHPO. A copy of the original and attachments, if any, has the same force and effect for all purposes as the original.

Each party has full power and authority to enter into and perform this Agreement, and the person signing the Agreement on the behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

To express the parties' intent to be bound by the terms of this Agreement, they have executed this document on the date set out below:

Subgrantee

Date

Administrator, Centralized Services Division
Montana Historical Society

Date

Attachment B
Yellowstone Historic Preservation Board
Work Plan
2006 - 2007

Goals & Objectives

- V. Promote the preservation of historic buildings, sites or neighborhoods.
- VI. Increase community awareness on the benefits of historic preservation activities.
- VII. Promote increased awareness of preservation activities and the work of the YHPB by the four governing bodies represented on the Board.
- VIII. Comply with the duties and responsibilities of historic preservation organizations under the State Certified Local Government program and the requirements of the inter-local agreement.

<i>EXISTING PROJECTS</i>

1. Complete National Register Designation of 2600 Block of Montana Avenue.

Time Frame: Summer & Fall 2005
Who: Committee & HPC/WHC
Status: Review to be conducted January 21, 2006 at the State Historic Preservation Review Board.

2. Complete consideration on the expansion of the historic district to include additional properties on Montana and Minnesota Avenue.

Time Frame: Fall/Winter 2005=06
Who: HPO/WHC
Status: Letter regarding owner support and initiative sent November 2005.

3. Adopt standards for new construction in historic district.

Time Frame: Spring 2006
Who: Committee & HPO/WHC
Status: Investigate course of action to be taken by the board by January 2006 meeting.

4. Complete PowerPoint/web site presentation on historic properties in rural Yellowstone County.

Time Frame: Spring 2006
Who: WHC
Status: Rural Presentations is in progress.

5. Update Walking Tour booklet to include adding eight additional historic properties in the Montana Avenue corridor.

Time Frame: Winter 2005
Who: WHC/Publicity Committee
Status: In progress

<i>NEW PROJECTS</i>

1. Establish new award for work to preserve historic sites or building to compliment existing award for historic preservation work by an individual (Eugene Carroll Award).

Time Frame: Fall 2005
Who: Committee/WHC
Status: Completed – The Yellowstone Historic Preservation Best Practices Achievement Award has been developed and passed consideration in the December 2005 meeting. The first annual awards will be presented at the Roundtable in March 2006.

2. Host Historic Preservation Roundtable on Tuesday, March 21st at the Masonic Temple and present historic preservation awards.

Time Frame: Winter 2006
Who: Board/HPO/WHC
Status: The event will be held in an historic downtown building, the Masonic Temple, in the Broadway III Seminar Room.

3. Complete PowerPoint Presentations before Laurel City Council, Billings City Council and Yellowstone County Commissioners.

Time Frame: Winter 2006
Who: Chair, WHC & Historic Preservation Officer (HPO)
Status: Emails have been sent to the Laurel City Council, Tina Volek (City of Billings City Council), and the Yellowstone County Commissioner's Office to ask for space on their January or February Agenda.

4. Celebrate National Historic Preservation Month – May of 2006. Board committee will decide on program, speaker, and other events.

Time Frame: Spring 2006
Who: Committee & WHC
Status: In progress

5. Review nomination of Swords Park to the National Register of Historic Places

Time Frame: Spring 2006
Who: HPO/WHC
Status: The board will review this goal in Spring 2006

6. Explore partnership with MSU-Bozeman Architecture Program to research & identify historic sites and buildings in rural Yellowstone County.

Time Frame: Spring 2006
Who: WHC

7. Coordinate with the local school districts to promote increased awareness of local historic preservation work; Participate in Celebration of 100th Anniversary of McKinley School.

Time Frame: Fall 2005
Who: WHC
Status: Completed with the McKinley School

<i>ONGOING PROJECTS</i>

1. Review building permits as needed.

Time Frame: Ongoing as needed
Who: Committee & HPO

2. Assure existing YHPB products are disseminated in community (Laurel Walking Tour, Billings Walking Tour, South Side Presentation & Rural Yellowstone County Preservation).

Time Frame: Ongoing
Who: HPO/WHC

3. Complete monthly web site updates on activities and programs.

Time Frame: Ongoing
Who: WHC

4. Continue to improve local library and electronic database on historic properties.

Time Frame: Ongoing
Who: HPO/WHC

5. Promote additional nominations to the National Register. Assure resources are available for property owners, such as literature and technical assistance. Look at possible nomination of school sites in conjunction with local school districts.

Time Frame: Ongoing
Who: WHC/HPO

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: Agreement with Billings Housing Authority to Fund One Officer
From July 1, 2005 through June 30, 2006

DEPARTMENT: Police Department

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

PROBLEM/ISSUE STATEMENT: Since 1991, the Billings Housing Authority has funded one police officer under an agreement with the City of Billings. The funding consists of salary, benefits, and maximum of four (4) hours of overtime per month. Staff is recommending City Council approve this agreement for the funding of the officer through June 30, 2006.

FINANCIAL IMPACT: There is no financial impact to the City since the Billings Housing Authority funds the officer for salary and benefits to a maximum amount of \$62,514 for the twelve month period. This amount is budgeted in the current budget.

RECOMMENDATION

Staff recommends Council approve the agreement with Billings Housing Authority to fund one Police Officer for the period of July 1, 2005 through June 30, 2006.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A-Billings Housing Authority Agreement-2 pages

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: Declaring Surplus Property
 DEPARTMENT: Billings Police Department
 PRESENTED BY: Interim Chief Rich St. John

PROBLEM/ISSUE STATEMENT: The Billings Police Department has an old bodywire (circa 1980) that we do not use since it is not compatible with any of our current technology. It has not been used in quite a few years and is just sitting on a shelf gathering dust. It is not the type of surplus equipment that we could dispose of at the City auction because of its sensitivity and there is no trade in value to the bodywire. We have received a request from Grace Her Manyhorses, Chief Criminal Investigator of Chippewa Cree Tribal Law Enforcement for any unused equipment donations for their newly formed drug unit. We are requesting City Council declare one (1) Marantz made by AID, Model 225 bodywire, serial number 1187, as surplus property and authorize the Billings Police Department to release the bodywire to the Chippewa Cree Tribal Law Enforcement.

FINANCIAL IMPACT: There is no financial impact to the City.

RECOMMENDATION

Staff recommends that Council declare one (1) Marantz made by AID, Model 225 bodywire, serial number 1187, as surplus property and authorize the Billings Police Department to release the bodywire to the Chippewa Cree Tribal Law Enforcement.

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

Attachment

A – Release of all Claims with Chippewa Cree Tribal Law Enforcement (2 pages)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: Annexation petition #06-02: Acknowledge Receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: 4A's, LLC, property owner, Dean Luptak, Secretary, submitted a petition to annex land to the City of Billings under 7-2-4600, MCA. The 19-acre subject property is located on the west side of Highway 87 North, just north of its intersection with Highway 312 in the Heights. The vacant property is a portion of a Tract 1 of Certificate of Survey 2776; the remaining portion of this tract is already in the City limits. The property owners are requesting annexation in order to obtain city water and sewer services to develop the property. The City Council's policy is to consider annexations at two separate Council meetings. At the first meeting, the Council acknowledges receipt of a petition and sets a public hearing date. At the second meeting the Council conducts the hearing and decides if it will annex the property.

ALTERNATIVES ANALYZED: MCA, Section 7-2-4600 allows owners of more than 50% of the property to petition the city for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date.

FINANCIAL IMPACT: A fiscal impact analysis and staff recommendation will be prepared and presented at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for April 10, 2006 to consider annexing this property.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Property data
- B. Annexation petition
- C. Map

ATTACHMENT A

Annexation #06-02 Property Data

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	4A's, LLC; Dean Luptak, Secretary
Purpose of annexation:	Obtain City services
Property included:	North 19 acres of Tract 1, C/S 2776
Location:	West of Highway 87 N.; north of intersection of 87 N & 312
Total area:	approximately 19 acres
Current zoning:	Community Commercial
Current land use:	vacant
Future land use:	unknown

ATTACHMENT B
Annexation Petition #06-02

**PETITION
FOR ANNEXATION
TO THE CITY OF BILLINGS**

NOTICE TO PETITIONER

This is a Petition to the City of Billings requesting the annexation of property to the City, pursuant to MCA Title 7, Chapter 2, Part 46. Procedures for annexation are governed by the Statutes of the State of Montana. This Petition requires the signatures of more than 50% of the Resident Freeholder Electors to be considered for annexation.

INSTRUCTIONS

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.

2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.

The map must show:

4 includes

a. The present and proposed boundaries of the municipality;

b. The present streets, major trunk water mains and sewer mains;

c. The zoning of the property requesting annexation and the property immediately adjacent to it.

3. The Petition should be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parmly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, and Finance Department. If no problems with the Petition have been noted by the departments, the City Clerk will schedule the Petition for City Council action.

4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.

5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
<u>2/13/2006</u>	<u>4A's LLC</u>	<u>Dean Luptak</u>	<u>1215 24TH ST West</u>
	<u>DEAN LUPTAK, SECRETARY</u>		<u>BILLINGS MT 59102</u>

(continued on separate page)



DEAN LUPTAK
President

(406) 656-2001 BUSINESS
(406) 652-3556 RESIDENCE
(406) 652-6165 FAX
(406) 698-1557 MOBILE
luptak@cbthebrokers.com

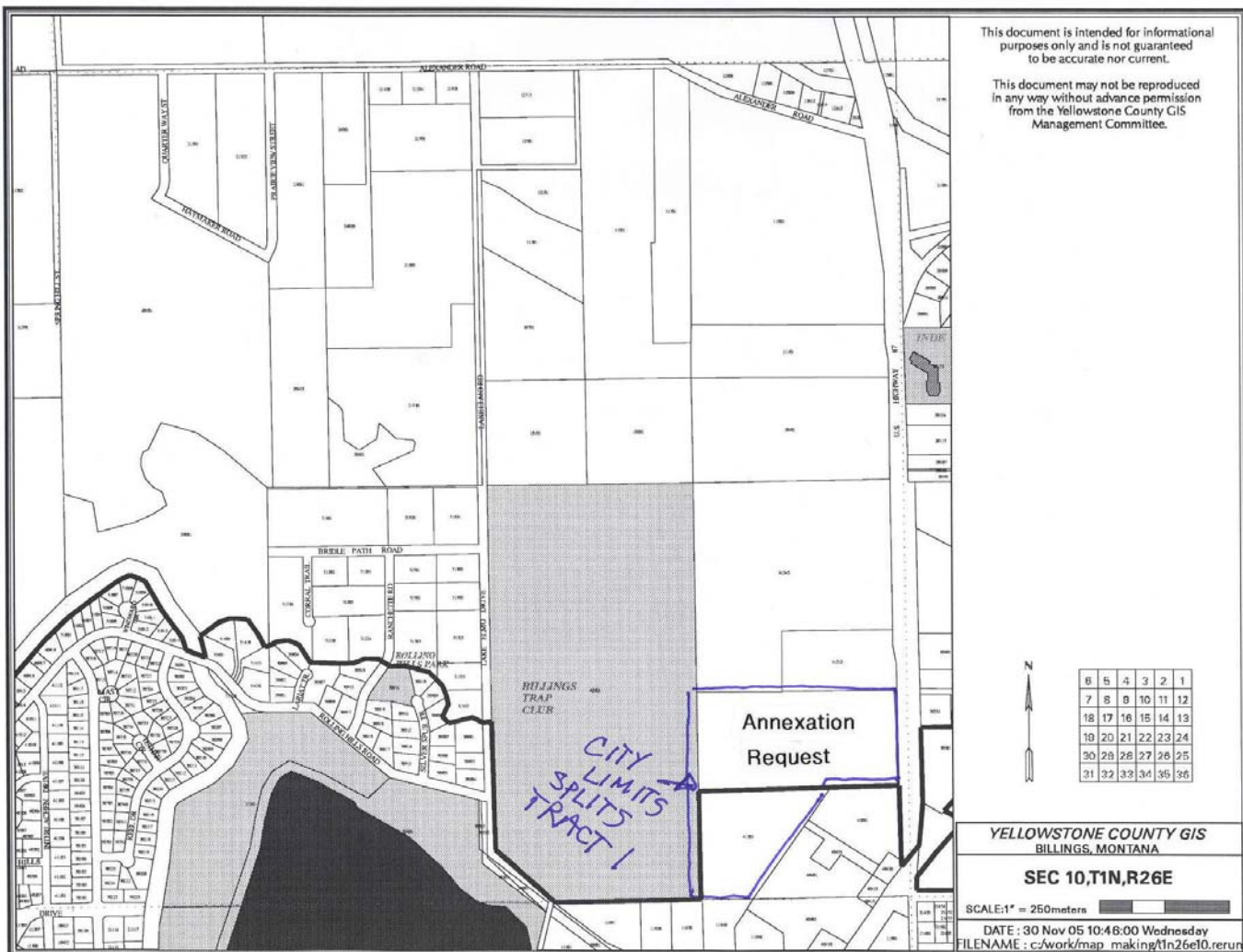
COLDWELL BANKER COMMERCIAL
THE BROKERS
1215 24TH STREET WEST
BILLINGS, MT 59102

revised 8/99

Each Office Is Independently Owned And Operated.

ATTACHMENT C

Annexation Map – Annexation #06-02



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: March of Dimes Walk America Event
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: The March of Dimes requests temporary closure of 2nd Ave. N. and 3rd Ave. N. from N. 15th St. to N. 34th St. from 8:30am to 11:30 am for the Walk America event on Saturday, April 29, 2006.

Recommended conditions of approval include March of Dimes:

1. Have no alcohol consumption in the public right of way
2. Contact all businesses and make them aware of the event as soon as possible
3. Clean the area to be used after the event 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 a certificate of insurance naming City of Billings as additional insured
6. Ensure that all "road guards" have orange vests and stop signs as requested by the Police Department.

ALTERNATIVES ANALYZED:

- Approve request to close streets for the event (recommended)
- Deny the street closures

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

RECOMMENDATION

Staff recommends that Council approve closure named above for the March of Dimes Walk America event.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: St. Vincent's Health Care Heart and Sole Race Street Closures
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: St. Vincent's Health Care requests temporary street closures as outlined in the attached event route maps on Saturday, June 10, 2006, from 6:00 am to 12:30 pm for the annual Heart and Sole Race.

Recommended conditions of approval include St. Vincent's Health Care:

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 by St. Vincent's Health Care.

RECOMMENDATION

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

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Letter from St. Vincent Health Care outlining event (1 page)

- B. Right of Way Special Activity Permit (2 pages)
- C. Course map and supporting document (2 pages)
- D. Certificate of Insurance (1 page)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: Chase Hawks Association Burn the Point Parade and Street Dance

DEPARTMENT: Parks, Recreation and Public Lands

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

PROBLEM/ISSUE STATEMENT: The Chase Hawks Association requests temporary street closures for a parade and street dance on Friday, September 1, 2006. Event times and locations are as follows:

Parade: Established downtown parade route beginning at 6:00 pm.

Street Dance: To be held immediately following parade under the Skypoint and will end at 12:00 pm Friday evening. The street closure will be from N. 27th Street to N. 29th Street and from 1st Ave. North to 3rd Ave. North.

Recommended conditions of approval include Chase Hawks Association:

1. Provide security for the event to insure there is no alcohol consumed in the public right of way during the street dance.
2. Contact all businesses and make them aware of the event 60 days in advance.
3. Clean the area to be used and provide and empty waste cans after the event.
4. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event.
5. Have the Billings Fire Department provide inspections of vendors.
6. Provide a certificate of insurance naming the City of Billings as additional insured.
7. Provide and install adequate traffic barricades and signs directing motorists around closure.
8. Provide a 20' emergency vehicle access lane on one side of street that is free of kiosks, cars, or anything other than pedestrians.
9. Obtain proper noise permit from Billings Police Department.

ALTERNATIVES ANALYZED:

1. Approve request to close streets for the events (recommended)
2. Deny the street closure

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 by the Chase Hawks Association.

RECOMMENDATION

Staff recommends that Council approve closures for the parade and street dance on Friday, September 1, 2006 subject to the conditions of approval.

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

ATTACHMENT

- A. Letter from Chase Hawks Memorial Association outlining event (1 page)
- B. Right of Way Special Activity Permit (2 pages)
- C. Course maps (3 pages)
- D. Certificate of insurance (2 pages)

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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: Resolution of Intent to Annex and Set a Public Hearing – Annexation #06-04
DEPARTMENT: Planning and Community Services Department/Public Works Department
PRESENTED BY: Candi Beaudry, AICP, Interim Director

PROBLEM/ISSUE STATEMENT: In 2005, the City of Billings completed the reconstruction of Alkali Creek Road from Black Pine Street to the Holiday Station. The project was completed within the existing Alkali Creek Road right-of-way. Most of the right-of-way lies within the City limits with the exception of a small section beginning at the east edge of Certificate of Survey 727 and ending near the bend at the Holiday Station. This section was deeded to the City of Billings in 2005, as Tract 2B of Amended Tract 2, Certificate of Survey 727, but remains outside the City limits. If the Council approves the resolution to annex this parcel, a public hearing will be held on the question of annexation on April 24, 2006.

ALTERNATIVES ANALYZED: The City has the authority to annex contiguous government land as granted by state law, 7-2-4401 et. seq., Montana Code Annotated. The existing right-of-way is currently owned by City but was never annexed to the City.

FINANCIAL IMPACT: There will be no financial impact resulting for this annexation as the City currently maintains this portion of Alkali Creek Road.

RECOMMENDATION

Staff recommends that City Council approve a Resolution of Intent to Annex the contiguous City land, known as Tract 2B of Amended Tract 2, Certificate of Survey 727, located on Alkali Creek Road and set a public hearing for April 24, 2006.

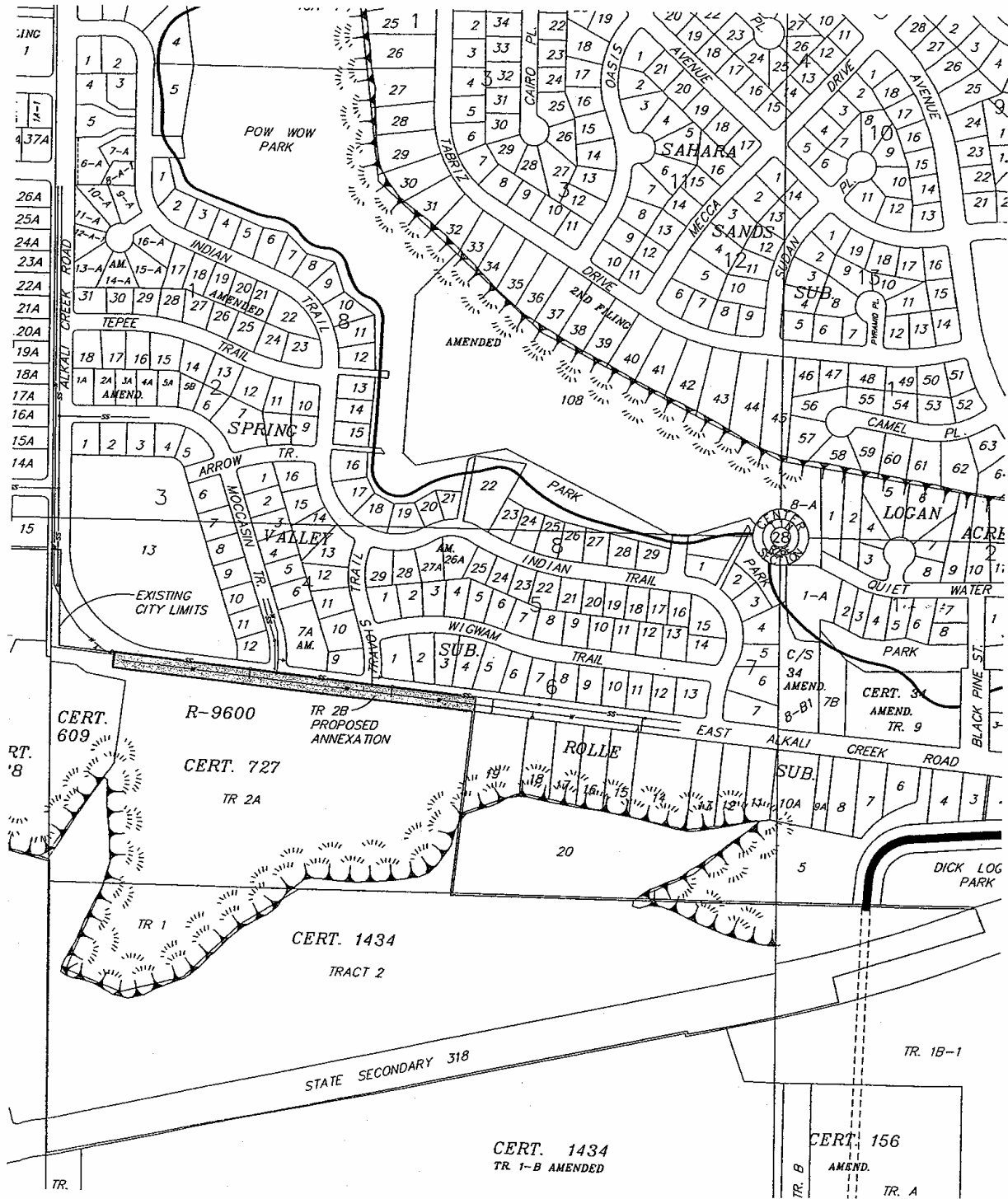
Approved By: **City Administrator** ____ **City Attorney** ____

ATTACHMENT

- A. Map of area to be annexed
- B. Resolution of Intent

ATTACHMENT A
Map of Area to be Annexed

EXHIBIT A



RESOLUTION NO. 06 - _____

A RESOLUTION TO CONSIDER ANNEXING TERRITORY
UNDER THE PROVISIONS OF TITLE 7, CHAPTER 2, PART 44
OF THE MONTANA CODE ANNOTATED.

WHEREAS, the City Council of the City of Billings has determined that annexing said properties is in the best interest of the City of Billings; and

WHEREAS, the Billings City Council intends to consider annexing said territory to the City of Billings pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the Billings City Council intends to consider annexing is particularly described as follows:

A tract of land situated in the SW1/4 of Section 28, T.1N., R.26E., Yellowstone County, Montana, more particularly described as: Certificate of Survey 727, Tract 2B of Amended Tract 2, Recorded August 4, 2005, under Document No. 3342937, Records of Yellowstone County, Montana, containing 1.194 gross and net acres.

AN06-04

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

1. The Billings City Council intends to consider annexing the above described contiguous government land.
2. That the land is owned by the City of Billings, a political subdivision of the state of Montana.
3. Notice of the City Council's intent to annex said territory shall be published as provided in Section 7-1-4127, MCA, with notice that for a period of twenty (20) days after first

publication of the notice, the Billings City Clerk shall accept written comments approving or disapproving the proposed annexation of the above described territory to the City of Billings from registered voters residing in the area proposed to be annexed.

4. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.

5. The City Council shall hear the question of annexation on April 24, 2006.

APPROVED AND PASSED by the City Council of the City of Billings this 24th day of April, 2006.

THE CITY OF BILLINGS

BY: _____

Ron Tussing, MAYOR

ATTEST:

BY: _____

Marita Herold, CMC

CITY CLERK

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

AGENDA ITEM:



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

TITLE: Resolution of Intent to Create - Park Maint. District No. 4033, Falcon Ridge Estates, First Filing and Falcon Ridge Subdivision, First Filing

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Gene Blackwell, Acting Director

PROBLEM/ISSUE STATEMENT: Falcon Ridge Estates, First Filing and Falcon Ridge Subdivision, First Filing contain approximately 4.60 acres of dedicated park and public open space. They include trailway strips, which provide connectivity throughout the subdivisions. The development and improvement of the park will be by the developer through private contract. The Park Maintenance District needs to be created at this time to provide for the maintenance of the public area improvements. As a condition of the Falcon Ridge Estates, First Filing and Falcon Ridge Subdivision, First Filing final plat approvals, the lots must establish a park maintenance district. The Resolution of Intent to Create the District is the first step in the process to include all lots of Falcon Ridge Estates, First Filing and Falcon Ridge Subdivision, First Filing in Park Maintenance District No. 4033.

ALTERNATIVES ANALYZED:

- Create the Park Maintenance District now to assure assessments can be collected in November 2006, to pay costs of maintenance as the park is developed. This is the requirement approved in the Subdivision Improvement Agreement and the staff recommendation.
- Do not create the Park Maintenance District at this time.

FINANCIAL IMPACT: The maintenance costs for the public area improvements are estimated to be \$10,621.00 for the first year. The assessment rate for this amount is \$366.24 per unit in District 4033. The assessment for the lots is shown in "Exhibit D" of the attached PMD documents for the coming year.

RECOMMENDATION

Staff recommends Council approve the Resolution of Intent to Create Park Maintenance District No. 4033 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the April 24, 2006, City Council meeting.

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

ATTACHMENT

A: Resolution of Intent to Create Park Maintenance District No. 4033; and Exhibits A-D thereto attached.

INTRODUCTION

Approval of the Resolution of Intent to Create Park Maintenance District No. 4033 for the maintenance of Falcon Ridge Estates, First Filing and Falcon Ridge Subdivision, First Filing, public areas is the first step in creating the Park Maintenance District by setting a date for the Public Hearing, considering the Resolution to Create the district, and to notifying the property owners included within the district of the intended action.

PROCEDURAL HISTORY

- The Falcon Ridge Subdivision, First Filing plat has been approved and filed. The Falcon Ridge Estates, First Filing is in the process of being approved and filed.
- The Resolution of Intent To Create the Park Maintenance District provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and protest period and setting a date for a Public Hearing and Council consideration of the Resolution to Create the district at the April 24th, 2006, regular City Council meeting.

BACKGROUND

To provide the funding needed to develop and to maintain park areas in new subdivisions, subdivisions annexed and platted since 1982 have been required to develop parks and to create a Park Maintenance District to maintain them. It assures that there are well maintained parks in new areas of Billings without increasing the demand on the expenditures of the city general fund and to relieve the pressures on existing developed parks that adding new subdivisions to the city results in. The Falcon Ridge Estates, First Filing and Falcon Ridge Subdivision, First Filing, Improvement Agreements call for the park improvements to be made and the Park Maintenance District to be created. The proposed maintenance district includes all lots and blocks of Falcon Ridge Estates, First Filing and Falcon Ridge Subdivision, First Filing. Said lots shall not be eligible for assessment until such time as the final plat of the property is filed and the Restrictions on Transfers and Conveyances are lifted. All filings have or will have on file Waivers of Protest for the formation of the park maintenance district for all lots within Falcon Ridge Estates, First Filing and Falcon Ridge Subdivision, First Filing.

Approval of the Resolution of Intent to Create Park Maintenance District No. 4033 for Falcon Ridge Estates, First Filing and Falcon Ridge Subdivision, First Filing, is the first step in the creation process. The Resolution of Intent to Create the district provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures. The Public Hearing and consideration of the Resolution to Create the district will take place at the April 24th, 2006, City Council Meeting.

ALTERNATIVES ANALYSIS

- Create the Park Maintenance District now to assure assessments can be collected in November 2006, to pay costs of maintenance for the spring and summer of 2006 as the public area development commences. The approved Subdivision Improvements Agreements call for development at this time and requires a Park Maintenance District to be created for maintaining it. This is the staff recommendation.
- Do not create the Park Maintenance District at this time.

STAKEHOLDERS

- The developers have agreed to the development and maintenance of the public areas in Falcon Ridge Estates, First Filing and Falcon Ridge Subdivision, First Filing.
- Billings residents would see increasingly heavy use of the existing developed parks and park facilities if not for the requirement that new subdivisions provide developed parks for their residents to mitigate that problem.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

The extension of quality landscape maintenance services to new subdivision parks through the use of Special Improvement Districts and maintaining them through Park Maintenance Districts continues the Parks 20/20 plan recommendations, and conforms to city policy adopted in 1982 regarding new subdivision parks. The use of Park Maintenance Districts has allowed the use of the PRPL Parks grounds keeping staff to provide professional level maintenance to areas of public grounds and landscaping in new subdivisions as they develop and are brought into the city. This has improved the environment, increased the quality of life for Billings' residents, and increased the value of surrounding private property. The revenue provided helps support the overall park operations in all of the general fund supported parks by allowing better trained, more competent staffing and providing added support for state of the art operations and equipment that would be otherwise be limited by General Fund revenue constraints.

Maintaining this subdivision's public area with a maintenance district continues the process of extending maintenance services to the developing areas of Billings, even though the revenue growth of the city general fund has not been adequate to provide for the maintenance of these new parks. Park Maintenance Districts revenue is estimated to be \$548,986 to offset maintenance expenses in the upcoming 2007 FY PRPL Parks Operation and Maintenance budget and is projected to equal over 25% of the total Parks Division Operations & Maintenance budget this year.

RECOMMENDATION

Staff recommends Council approve the Resolution of Intention to Create Park Mntce. District No. 4033 and set April 24, 2006 as the date for the Public Hearing and consideration of the

Resolution to Create Park Maintenance District 4033 for Falcon Ridge Estates, First Filing and Falcon Ridge Subdivision, First Filing.

ATTACHMENT

A: Resolution to Create Park Maintenance District No. 4033; and Exhibits A-D thereto attached.

RESOLUTION NO. 06-_____

A RESOLUTION DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE PARK MAINTENANCE DISTRICT NO. 4033 FOR THE PURPOSE OF MAINTAINING EXISTING AND FUTURE PUBLIC AREA IMPROVEMENTS IN FALCON RIDGE ESTATES, FIRST FILING, AND FALCON RIDGE SUBDIVISION, FIRST FILING, CITY OF BILLINGS, MONTANA

BE IT RESOLVED by the City Council of the City of Billings (the “City”), Montana, as follows:

Section 1. Proposed Park Maintenance District; Intention To Create Park Maintenance District. The City proposes to maintain certain special improvements to benefit certain property located in the City of Billings, Montana. The Improvements consist of landscaping, trails, drainageways, storm water detention facilities, irrigation systems, lighting and other public area improvements that may be identified in the future, as more particularly described in Section 5. It is the intention of the Billings City Council to create and establish in the City under Montana Code annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a special improvement maintenance district (the “Special Improvement Maintenance District”) for the purpose of financing the maintenance costs for the hardscaping, landscaping, drainageways, lighting, weed control, and other portions of the improvements made with the development of Falcon Ridge Estates, First Filing, and Falcon Ridge Subdivision, First Filing. The estimated annual costs for the maintenance of the special improvements to be set by Resolution of the Council each year.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as the Park Maintenance District No.4033 of the City of Billings, Montana.

Section 3. Boundaries of District. The limits and boundaries of the District are depicted on a map attached as "Exhibit A" hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on "Exhibit B" hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on "Exhibit C" hereto.

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits "A" and “C” are hereby declared to be the Park Maintenance District and the territory which will benefit and be benefited by the maintenance of the Falcon Ridge Estates, First Filing, and Falcon Ridge Subdivision, First Filing public area improvements, and will be assessed for a portion of the costs of the maintenance as described in Section 1.

Section 5. General Character of the Improvements to be Maintained. The general character of the Improvements to be maintained is as follows: landscaping, trails, trees, irrigation systems, irrigation system water services, lighting, storm water detention facilities, and other park equipment and public area improvements installed by the developer, Parks Department and/or as part of a future Special Improvement District.

Section 6. Assessment Methods; Property To Be Assessed. All eligible properties within the District are to be assessed for a portion of the costs of maintaining the Falcon Ridge Estates, First Filing, and Falcon Ridge Subdivision, First Filing, public area improvements as specified herein. Said properties shall not be eligible for assessment until such time as the final plat of the property is filed and the Restrictions on Transfers and Conveyances are lifted.

Section 7. Assessable Area. All eligible properties in the District will be assessed for their proportionate share of the costs of maintaining the Falcon Ridge Estates, First Filing, and Falcon Ridge Subdivision, First Filing public area improvements. The total number of assessable units in the District to be assessed for the first year is 29 units. The costs of maintaining the Improvements per unit for the first year shall be \$366.24/unit, as shown in Exhibit "D" (which is hereby incorporated herein and made a part hereof).

Section 8. Payment of Assessments. The assessments for the costs of maintaining the Falcon Ridge Estates, First Filing, and Falcon Ridge Subdivision, First Filing, Public Area Improvements shall be payable, as prescribed in Section 7-12-4162 through 7-12-4165, M.C.A.

Section 9. Public Hearing; Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the proposed District subject to assessment and taxation for the cost and expense of maintaining the Falcon Ridge Estates, First Filing, and Falcon Ridge Subdivision, First Filing public area improvements may make and file with the City Clerk until 5:00 p.m. M.D.T., April 14th, 2006 on the expiration date of said 15-day period, written protest against the proposed Special Improvement Maintenance District No. 4033, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said regular meeting will be held Monday, April 24th, 2006, at 6:30 p.m. M.D.T., in the Council Chambers, located on the Second Floor of the City Hall at 220 North 27th Street, in Billings, Montana.

Section 10. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of this Resolution in the Billings Times, a newspaper of general circulation in the County on March 30th and April 6th, 2006, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said Notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for State, County, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this ____ day of _____, 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Harold, CMC, CITY CLERK

ESTIMATE OF PROBABLE COST							
PARK MAINTENANCE DISTRICT NO. 4033							
FALCON RIDGE ESTATES, FIRST FILING AND FALCON RIDGE SUBDIVISION, FIRST FILING							
CITY OF BILLINGS, MT							
1.	The costs to create the maintenance district are estimated to be <u>\$1,200.</u>						
2.	The City Parks and Recreation Department estimates the maintenance						
		of the improvements for the first year at <u>\$10,621.</u>					
		The first year's assessment is estimated as follows:					
	CITY OF BILLINGS - PARK MAINTENANCE DISTRICT NO. 4033						
	ESTIMATE OF ANNUAL MAINTENANCE COSTS						
	PMD Description: Falcon Ridge Estates, First Filing, and Falcon Ridge Subdivision, First Filing, Parks						
	PMD Number:	4033					
	Date:	3/6/2006					
	BA		SUB			ESTIMATED	
	SUB	ELE	OBJ	ACCOUNT DESCRIPTION		MAINTENANCE	
						COSTS	
				Operations and Supplies			
		34	10	Electricity		\$350.00	
			20	City Water		\$4,199.00	
		35	60	Consultant Services		\$1,200.00	
			50	Ground Maintenance		\$400.00	
		39	65	Other Service/Finance Charges		\$310.00	
			90	Parks Charge for Services		\$2,562.00	
		54	10	Special Assessments		\$1,100.00	
					Total Operations and Supplies, Etc.	\$10,121.00	

						Capital E/I Reserve	\$500.00	
						Total Park O & M Annual Cost Estimate	\$10,621.00	
						Equal Assessment (29 Units)		
						1st year Assessment (Per Unit)	\$366.24138	

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

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

TITLE: Second Reading & Approval-- Amendments to the City's Camping Ordinance

DEPARTMENT: City Administrator's Office

PRESENTED BY: Tina Volek, Interim City Administrator

PROBLEM/ISSUE STATEMENT: The City Council created an Ad-Hoc RV Task Force to review BMCC Sec. 24-411, Parking for Camping Purposes, which limits any parking of motor vehicles for camping in the City to an authorized tourist park. The Task Force recommended that the City Council amend the ordinance to allow 6-hour rest stops for travelers' safety in the lots of commercial businesses that would permit it, but also to require longer-term visitors to continue to use the city's authorized tourist parks. After the public hearing and first reading of the ordinance amendments on March 13, the City Council amended the rest period to 10 hours and asked for a provision that allows an exception to the Ordinance to be made by the Council by resolution for special events.

ALTERNATIVES ANALYZED:

- Approve the Ordinance amendments as Council directed after the first reading and public hearing (recommended);
- Approve the amended Ordinance as originally proposed by the Ad-Hoc RV Task Force; or
- Take no action, resulting in continuing enforcement of the current ordinance on a complaint-driven basis.

FINANCIAL IMPACT: None anticipated.

RECOMMENDATION

Staff recommends that Council approve the ordinance amendments as directed by Council after the public hearing and first reading March 13.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A: Proposed amended ordinance (revised)
- B. Flyer

INTRODUCTION

The City Council created an Ad-Hoc RV Task Force to review BMCC Sec. 24-411, Parking for Camping Purposes, which limits any parking of motor vehicles for camping in the City to an authorized tourist park. The Task Force recommended that the City Council amend the ordinance to allow 6-hour rest stops for travelers' safety in the lots of commercial businesses that would permit it, but would require longer-term visitors to continue to use the city's authorized tourist parks.

PROCEDURAL HISTORY

The current ordinance, BMCC Sec. 24-411, was adopted in 1967. It states: "It is unlawful for any person to park any motor vehicle for camping purposes in the city except in an authorized tourist park." The City has used an emergency ordinance procedure for providing a short-term exemption from the ordinance for special events.

However, the City Council began receiving many comments about the ordinance from the national recreational vehicle (RV) community in summer 2005, when complaint-based enforcement began in commercial parking lots such as those owned by Wal-Mart.

On Sept. 12, 2005, the Council appointed a 7-member committee, consisting of Councilmember Nancy Boyer; Robert Felt, representing RV owners; Kevin Flock and Mike Ray of Wal-Mart, representing retail operators; Mike Gast of Kampgrounds of America (KOA), representing campground owners; Robert Pierce of Pierce RV Center, representing RV suppliers; and Karen Sanford-Gall, Chamber of Commerce president. Staff from the Planning and City Administrator's Office attended the meetings, as did members of the public.

The Task Force recommended amendments to the existing ordinance at a Feb. 22, 2006, Council work session.

After the public hearing and first reading March 13, the Council directed staff to extend the rest period to 10 hours and to add a provision for an exception to the Ordinance by resolution for special events.

BACKGROUND

RV use has soared nationally, and is expected to continue to grow. At least one survey indicates that Montana is the 4th-most-popular destination for RV campers in the country. RV drivers regularly visit local businesses to purchase gas, food and other supplies on their journeys.

Part of the tradition of RV camping includes using the lots of retail outlets, especially Wal-Mart, for overnight parking at no cost. The lots offer lighting, security and 24-hour store operations. RV drivers report that they often pull into Wal-Mart lots to rest for short periods so they can continue on their journeys safely. They say they should not have to pay a campground fee for such limited use.

Wal-Mart managers at the two stores in Billings appreciate the business brought in by RV customers, but sometimes face overcrowding of a limited number of spaces for customers when

extensive camping occurs. One store has commercial covenants that prohibit long-term parking and already hosts a park-and-ride for employees being bussed to a nearby mine; the other Wal-Mart has the capacity to seek a permit for camping on its lot, but has not chosen to do so. Managers of both stores have said they would prefer not to be long-term hosts to campers, which take up several spaces each. In response to a complaint, City Code Enforcement officers counted 27 RVs parked in a lot attached to one of these stores in an early morning check in June 2005. As proposed, the ordinance amendment would allow more travelers the privilege of taking a short rest in Wal-Mart and other retail lots that choose to participate.

Billings also is the headquarters for KOA and several campgrounds that provide water, dump tanks, trash services and other amenities necessary to RV users. The campgrounds pay the state's bed tax for each vehicle accommodated, which in turn supports the state's tourism efforts.

The City of Billings has health- and welfare-related concerns about waste tanks or litter being dumped in the city by drivers who do not use the campground services. As a result of complaints, the City began enforcing the ordinance, asking the stores to post signs and distribute flyers warning RV drivers that they could be subject to a \$500 fine if they camped in the commercial lots. While to the staff's knowledge, no one ever was actually cited for violation, the enforcement resulted in e-mail and letter protests from hundreds of RV users.

In addition to the original ordinance amendments, the Task Force recommended a program in which visitors' packages would be provided to the retail outlets that choose to welcome short-term RV campers. These packages would be distributed by the retailers to RV campers. The Chamber of Commerce would provide bags to include coupons provided by local merchants and a 1-page letter, outlining the amended ordinance and offering information on nearby campgrounds to the visitors.

The Task Force did not consider its charge to include addressing BMCC Sec. 27-601, which regulates the storage of RVs, campers and similar equipment, and prevents occupancy of such vehicles while in storage.

ALTERNATIVES ANALYSIS

- Approve the Ordinance amendments as Council directed after the first reading and public hearing (recommended);
- Approve the amended ordinance as proposed by the Ad-Hoc RV Task Force; or
- Take no action, resulting in continuing enforcement of the current ordinance on a complaint-driven basis.

STAKEHOLDERS

The original amendments were reviewed with Wal-Mart and campground owners, and were agreed upon as a mutually acceptable compromise. The Ad-Hoc Task Force members present at the public hearing stated they were flexible on the number of hours for the rest period.

RECOMMENDATION

Staff recommends that Council approve the ordinance amendments as directed by Council after the

public hearing and first reading March 13.

ATTACHMENTS

- A. Proposed amended ordinance.
- B. Proposed flyer for distribution to visitors

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 24-411; PROVIDING THAT PARKING OR CAMPING IN PRIVATE PARKING LOTS IS ALLOWED FOR NO MORE THAN TEN (10) CONSECUTIVE HOURS

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

Section 1. That Section 24-411 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 24-411. Parking for camping purposes: It is unlawful for any person to park any motor vehicle for camping purposes in the city except in an authorized tourist park.

- (a) Overnight parking or camping in private parking lots within the city limits of Billings is prohibited. However, a rest period of no more than ten (10) hours shall be allowed, providing it is permitted by the owner of the parking lot. The rest period shall consist of 10 (ten) consecutive hours, after which time the vehicle must be removed from the parking lot.
- (b) Upon approval by resolution, the city council may temporarily suspend the requirements and restrictions imposed by Section 24-411 of the City Code in order to accommodate special events held within the City of Billings. The resolution of suspension shall become effective forty-eight (48) hours prior to the official start of the scheduled event and shall terminate forty-eight (48) hours after official conclusion of the event.

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

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

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 13th day of March, 2006.

PASSED, ADOPTED and APPROVED on second reading this __

CITY OF BILLINGS

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Marita Herold, CMC/AAE
City Clerk

PARKING YOUR VEHICLE WHILE VISITING BILLINGS

The City of Billings, along with its great merchants, welcomes you to the Magic City.

We hope you take advantage of all Billings and the Greater Yellowstone Valley area has to offer during your stay with us.

You should be aware that, for public safety reasons and to ensure availability of parking for your fellow shoppers and RV travelers, the City of Billings does not allow overnight parking or camping in any parking lots within the city limits.

However, in an attempt to accommodate owners of recreational vehicles who seek only a “rest stop” of a few hours in Billings, a rest period of no more than 10 hours is allowed, providing it is permitted by the owner of the parking lot. We ask that you honor the 10-hour rest stop limit, so that there will be adequate space for your fellow travelers who may also be in need for a rest break from their travels.

The pertinent portion of the current city ordinance is printed at the bottom of this page.

For those of you planning an extended stay in Billings, two beautiful campgrounds are conveniently located along Garden Avenue, just off Interstate 90 at Exit 450 (see map on next page).

The campgrounds are the Yellowstone River Campground, 309 Garden Avenue, (406) 259-0878; and the Billings KOA Kampground, 547 Garden Avenue, (406) 252-3104.

Both campgrounds offer a full range of services and rates and are both a great “home base” for you and your family as you explore the Billings area.

We’ve also include a number if discount coupons from Billings merchants and restaurants that we hope will help you better enjoy your stay.

We hope you enjoy your stay in Billings, and plan to come again soon!

Sec. 24-411. Parking for camping purposes: It is unlawful for any person to park any motor vehicle for camping purposes in the city except in an authorized tourist park.

- (a) Overnight parking or camping in private parking lots within the city limits of Billings is prohibited. However, a rest period of no more than ten (10) hours shall be allowed, providing it is permitted by the owner of the parking lot. The rest period shall consist of 10 (ten) contiguous hours, after which time the vehicle must be removed from the parking lot.

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

AGENDA ITEM:



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

TITLE: Reflections at Copper Ridge Major Preliminary Plat

DEPARTMENT: Planning and Community Services, through Candi Beaudry, AICP,
Interim Planning Director

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On November 1, 2005, the subdivider applied for preliminary major plat approval for Reflections at Copper Ridge Subdivision, which contains 79 lots on approximately 31.87 acres of land. The subject property is located approximately a quarter of a mile northwest of the intersection of Molt Road and Rimrock Road, is zoned Residential 7000 (R-7000), and is proposed for twin homes. Golden Acres Partners is the owner and Engineering, Inc. is the agent. The Yellowstone County Board of Planning conducted a public hearing for this application on January 10, 2006, and is forwarding a recommendation of conditional approval to the City Council.

The underlying property for this subdivision is Lot 1, Block 1 of Copper-Falcon Subdivision which was not of record when the public hearing was conducted by the Planning Board. On November 7, 2005, Engineering, Inc. provided a letter on behalf of the applicant requesting an extension of the 60-day review period to allow for the final plat of Copper Falcon to be approved by the City Council. The final plat for Copper-Falcon is on the consent agenda for the March 27, 2006, City Council meeting.

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

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

FINANCIAL IMPACT: Upon development of the property, additional tax revenue for the City may be provided. It is unknown if the developed property will generate enough taxes/fees to pay for all of the required services of this subdivision.

RECOMMENDATION

The Yellowstone County Board of Planning recommends that the City Council conditionally approve the preliminary plat of Reflections at Copper Ridge Subdivision, approve the variances and adopt the Findings of Fact as presented in the staff report.

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

ATTACHMENTS

- A: Preliminary Plat
- B: Site Photographs
- C: Mayor's Approval Letter
- D: Findings of Fact
- E: Letter of Extension submitted November 7, 2005

INTRODUCTION

On November 1, 2005, the subdivider applied for preliminary major plat approval for Reflections at Copper Ridge Subdivision, which contains 79 lots on approximately 31.87 acres of land. The subject property is located approximately a quarter of a mile northwest of the intersection of Molt Road and Rimrock Road, is zoned Residential 7000 (R-7000), and is proposed for twin homes.

PROCEDURAL HISTORY

- The subject property was annexed into the City of Billings in May of 2002.
- The subject property was rezoned from Residential 9600 (R-9600) to Residential 7000 (R-7000) in December of 2004 (Zone Change #744).
- The subdivider requested a time extension for the 60-day review period on November 7, 2005.
- Copper Ridge Subdivision, First Filing, located to the west of the subject property, was approved by the City Council on September 12, 2005.
- Copper Ridge Subdivision, Second Filing, also located to the west of the subject property, was approved by the City Council on December 12, 2005.
- Copper-Falcon Subdivision, a minor subdivision that splits the ownership between Reflections at Copper Ridge (on the west) and Falcon Ridge Estates Subdivision, 2nd Filing (on the east), was approved by the City Council on December 12, 2005.
- The final plat for Copper-Falcon Subdivision will be on the City Council consent agenda on March 27, 2006.

BACKGROUND

The subject property is bordered on the north by the Burlington Northern Railroad right-of-way and the Rimrocks, on the south by agricultural land and single family residences within Sunny Cove Fruit Farms Tracts, on the west by developing land within Copper Ridge Subdivision, First and Second Filings, and on the east by developing land within Falcon Ridge Estates and Falcon Ridge Estates, Second Filing.

General location:	One-quarter mile northwest of the intersection of Molt Road and Rimrock Road.
Legal Description:	Lot 1, Block 1, Copper-Falcon Subdivision
Subdivider:	Reflections Development, LLC
Owner:	Same
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	R-7000

Existing land use:	Vacant
Proposed land use:	Twin Homes
Gross area:	31.87 acres
Net area:	23.72 acres
Proposed number of lots:	22
Lot size:	Max: 20,280 square feet Min.: 9,628 square feet
Parkland requirements:	2.61 acres; subdivider is proposing 3.25 acres.

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact:

1. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with a sufficient pullout to accommodate a mailbox carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
2. To ensure the provision of easements for the location and installation of utilities, the subdivider shall provide easements on the plat in accordance with the plat reviews received from the Montana-Dakota Utilities Company. *(Recommended by the Montana-Dakota Utilities Company)*
3. References to the County Public Works Department throughout the Subdivision Improvements Agreement (SIA) shall be replaced with the City Engineering Division, with the exception of references to Rimrock Road, which is a County right-of-way. *(Recommended by the Planning Division)*
4. To ensure compliance with local and state regulations, the final plat for Copper-Falcon Subdivision shall be recorded prior to the submittal of the checkprint for Reflections at

Copper Ridge Subdivision. The transfer of ownership from Golden Acres Partners to Gary Oakland shall be completed prior to the submission of the checkprint. *(Recommended by the Yellowstone County Board of Planning and the Planning Division)*

5. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
6. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

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

A variance to permit 34-feet of back of curb to back of curb width for local residential streets, where Section 23-601(k), BMCC, requires 37-feet. Engineering, Fire, and Planning staff are supportive of this variance, as the proposed width is adequate to accommodate emergency vehicles and vehicular traffic generated for this subdivision. Similar variances have been approved by the City Council, specifically when a reduced right-of-way width is requested. The proposed cove design will promote more of a neighborhood feel by lessening the width of asphalt and in many cases lots will maintain longer driveways, which will limit the need for on-street parking. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformities with the zoning regulations.

STAKEHOLDERS

A public hearing is not scheduled for the City Council meeting; however nearby property/business owners may attend the City Council meeting. There were no public comments received by the Planning Board at the public hearing for this subdivision on January 24, 2006. The Planning Department has received no public comments regarding the proposed subdivision.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Yellowstone County/City of Billings Growth Policy, the 2005 Billings Urban Area Transportation Plan Update, the Heritage Trail Plan, the West Billings Plan and the Northwest Shiloh Area Plan are discussed within the Findings of Fact (Attachment D).

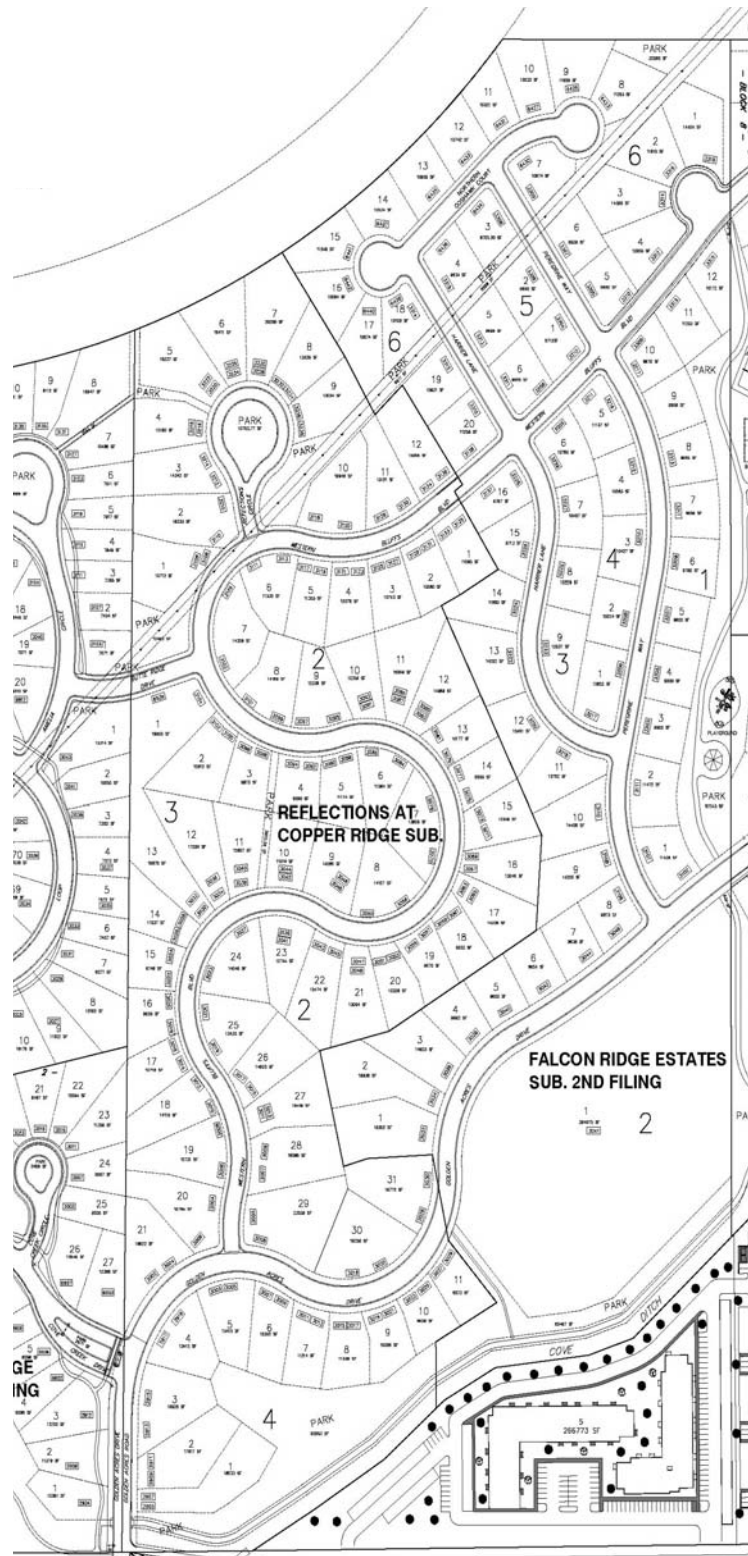
RECOMMENDATION

The Yellowstone County Board of Planning recommends that the City Council conditionally approve the preliminary plat of Reflections at Copper Ridge Subdivision, approve the variances and adopt the Findings of Fact as presented in the staff report.

ATTACHMENTS

- A: Preliminary Plat
- B: Site Photographs
- C: Mayor's Approval Letter
- D: Findings of Fact
- E: Letter of Extension submitted November 7, 2005

ATTACHMENT A
Preliminary Plat of Reflections At Copper Ridge



ATTACHMENT B
Site Photographs



Figure 1: View south toward properties within Sunny Cove Fruit Farms located in the County.



Figure 2: View north toward the subject property. Construction is occurring to the northwest in the photo on Copper Ridge Subdivision, First and Second Filings.



Figure 3: View west along Rimrock Road. To the north (right in the picture) is the proposed location for the subdivision.

ATTACHMENT C
Mayor's Approval Letter

March 27, 2006

Golden Acres Partners
Attn: Don Nansel
P.O. Box 23165
Billings, Montana 59104

Dear Mr. Nansel:

On March 27, 2006, the Billings City Council approved the preliminary plat of Reflections at Copper Ridge Subdivision, subject to the following conditions of approval:

7. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with a sufficient pullout to accommodate a mailbox carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
8. To ensure the provision of easements for the location and installation of utilities, the subdivider shall provide easements on the plat in accordance with the plat reviews received from the Montana-Dakota Utilities Company. *(Recommended by the Montana-Dakota Utilities Company)*
9. References to the County Public Works Department throughout the Subdivision Improvements Agreement (SIA) shall be replaced with the City Engineering Division, with the exception of references to Rimrock Road, which is a County right-of-way. *(Recommended by the Planning Division)*
10. To ensure compliance with local and state regulations, the final plat for Copper-Falcon Subdivision shall be recorded prior to the submittal of the checkprint for Reflections at Copper Ridge Subdivision. The transfer of ownership from Golden Acres Partners to Gary Oakland shall be completed prior to the submission of the checkprint. *(Recommended by the Yellowstone County Board of Planning and the Planning Division)*
11. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
12. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

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

- A variance to permit 50-feet of right-of-way for the internal streets, where Section 23-601(k), BMCC, requires 60-feet of right-of-way for local residential streets.
- A variance to permit 34-feet of back of curb to back of curb width for local residential streets, where Section 23-601(k), BMCC, requires 37-feet.

Should you have questions regarding the conditions of approval, please contact Aura Lindstrand with the Planning and Community Services Department at 247-8663 or by email at lindstranda@ci.billings.mt.us.

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

Sincerely,

Ron Tussing, Mayor

pc: Gary Oakland
Cavin Noddings, Engineering, Inc.

ATTACHMENT D

Findings of Fact

The Findings of Fact for Reflections at Copper Ridge Subdivision have been prepared by the Planning Division for review and approval by the Planning Board. These findings are based on the preliminary plat application and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations.

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

1. Effect on agriculture and agricultural water user facilities

The land to be subdivided has historically been utilized for pasture land. The Cove Ditch is located along the southeastern border of the subject property and will be preserved within a 60-foot ditch easement. No water rights will be transferred with this subdivision.

2. Effect on local services

a. **Utilities** – Water to the subject property will be extended by the subdivider from previously extended lines within Rimrock Road. The Subdivision Improvements Agreement (SIA) does specify that water distribution system pressure may fall below the accepted level for residential fixtures for some lots within the subdivision. The assessment and mitigation of these conditions, including possible installation of a booster pump, shall be the responsibility of the individual lot owner. Sanitary sewer lines will be extended from the main line within Rimrock Road. Both the water and sewer shall be sized and installed in accordance with the City design standards, as specified within the SIA.

b. **Stormwater** – Stormwater detention facilities will be provided within landscaped swales to be piped to the proposed park on the southern portion of the site adjacent to Rimrock Road. As specified within the SIA and submitted *Preliminary Stormwater Design Report*, all drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.

c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

d. **Streets** - Access to the proposed subdivision will be via internal roads from Rimrock Road bordering the southern boundary of the property. Rimrock Road is classified as a collector street by the 2005 Transportation Plan Update and is under the County's jurisdiction. Sixty feet of right-of-way has been previously dedicated for Rimrock Road and the road has been paved to a 24-foot width with 2-foot gravel shoulders on

each side in accordance with County road standards. Condition #3 requires that all references within the SIA to the County Public Works Department be replaced with the City Engineering Division, with the exception of references to Rimrock Road, which is a county right-of-way.

Within the subdivision, Golden Acres Road will be 60-feet wide with 37-feet back of curb to back of curb width that will eventually provide a connection within the future filing of Falcon Ridge Estates to the east and will provide a connection with Cove Creek Drive within Copper Ridge, First Filing to the west. Western Bluffs Way, Butte Ridge Drive, and Reflections Circle will maintain 50-foot right-of-ways with 34-foot back of curb to back of curb widths. Butte Ridge Drive will provide an additional connection into Copper Ridge, Second Filing to the west and Western Bluffs Way will provide a connection into the future filing of Falcon Ridge Estates to the east. Though the proposed pavement widths satisfy the standards necessary for emergency vehicle access and traffic circulation, the subdivider has requested a variance to permit 50-feet of right-of-way where 60-feet is required and a variance to permit 34-feet of pavement width for these streets. Engineering, Fire, and Planning staff are supportive of this variance, as 5-foot easements have been depicted on each side of the street to accommodate sidewalks, street lights, and fire hydrants. Four feet wide boulevard sidewalks are proposed throughout the subdivision.

The subject property is to be developed in two (2) phases. The first phase includes lots located on the southern portion of the property and will include street improvements for Golden Acres Road to its temporary cul-de-sac to the west and Western Bluffs Way north to a temporary cul-de-sac. Phase 2 will include the lots located on the northern portion of the property and the completion of Western Bluffs Way to its terminus with the future filing of Falcon Ridge Estates to the east, the construction of Reflections Circle, and the connection of Butte Ridge Drive to Copper Ridge, Second Filing to the west. As required by the Fire Department and specified within the SIA, "Road Closed" signs shall be installed at the temporary turnarounds of Golden Acres Road and Western Bluffs Way through the completion of Phase I. Additional fire accesses for the first phase will be provided via 14-foot wide sidewalks through the linear park provided between Lots 3, 4, 11, and 12, Block 3. The proposed sidewalks will be constructed to adequately support fire equipment with breakaway bollards at each entrance to prevent vehicular access along the sidewalks.

A Traffic Accessibility Study (TAS) was submitted with this application to the Engineering Department for review and approval. The TAS determined that the following improvements are necessary:

- A westbound right turn lane shall be installed at the intersection of Rimrock Road and Golden Acres Road during Phase I.

- The subdivider shall furnish all necessary traffic control devices within and adjacent to the subdivision in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) and the City of Billings.
 - A cash contribution of \$7,340.00 will be required at the time of final plat for future intersection improvements at 62nd Street West and Rimrock Road
 - "Road Closed" signs shall be installed at the temporary turnarounds, at the terminus of Golden Acres Road and Western Bluffs Way during Phase I.
- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1928 17th Street West (Station #3), approximately 5.5 miles east of the subject property. The subdivision is located within the ambulance service area of American Medical Response (AMR).
- f. **Schools** – The subdivision is located within School District #2. No comments have been received from School District #2.
- g. **Parks and Recreation** – As part of this major plat, the subdivider is required to provide 2.61 acres of dedicated parkland. The subdivider is proposing to dedicate 3.25 acres of parkland, which is interspersed throughout the subdivision with a majority of the land (2.14 acres) located along the southern boundary of the property. As stated within the SIA, a Park Master Plan will be developed and approved by the City Parks and Recreation Department prior to final plat approval.
- h. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #1. The location of the mail box shall be reviewed and approved by the post office.

3. Effect on the natural environment

A geotechnical report was submitted with this application and indicates that there are variable soil conditions throughout the subdivision with a potential for collapsible soils. Due to the soils, there may be construction restrictions for the lots within the subdivision. As specified in the SIA, lot specific geotechnical reports may be required with building permits and will be the responsibility of the individual lot owner.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. As indicated within the General Conditions the Run with the Land section of the submitted SIA, future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner.

5. Effect on the public health and safety

There are five (5) conditions that exist on the subject property that may potentially create problems for future landowners. All of the following potential effects on public health and safety have been noted within the “Conditions that Run with the Land” section of the submitted SIA:

- The subdivision contains collapsible soils, which may require a geotechnical study prior to construction.
- The subdivision is being located within close proximity to prime wildlife habitat and a possible migratory route; therefore conflicts with wildlife are likely to occur.
- There is a high pressure gas pipeline located along the northern portion of the site. Future lot owners should be aware that it may be necessary for the pipeline company inspect, test, maintain, and possibly replace the pipeline at times.
- The Burlington Northern Railroad right-of-way is located along the northern boundary of the site, which is in active operation. The noise from the moving trains is clearly audible within the subdivision. Furthermore, the right-of-way is private property and lot owners, visitors, and children within Reflections at Copper Ridge Subdivision shall be required to respect the property lines.

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

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

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the 2005 Transportation Plan Update, and the Heritage Trail Plan? (23-304 (c)(3), BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

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

- a. **Goal: More housing and business choices within each neighborhood (Land Use Element Goal, Page 6).**

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

- b. **Goal: Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10).**

The proposed subdivision will provide public streets improved to city standards that connect with existing streets, thus creating more efficient transportation connections and ease of traffic flow.

- c. **Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness (Open Space and Recreation Goal, Page 9).**

The subdivider is proposing a trail along the Cove Ditch and boulevard sidewalks within the subdivision connecting to Copper Ridge, First and Second Filings to the west and proposed filings of Falcon Ridge to the east.

The subdivision conflicts with the following goals of the Growth Policy:

- a. **Goal: Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, Page 6).**

The subject property, though annexed, is approximately three (3) miles from urbanized portions of the city.

- b. **Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (Land Use Element Goal, Page 6).**

The subject property is located outside of the urbanized portion of the city. While the subdivision is surrounded on two (2) sides by property being developed within the city, the area is still highly rural in nature.

2. The 2005 Transportation Plan Update

Rimrock Road, bordering the southern boundary of the subject property, is classified as a collector road by the 2005 Transportation Plan Update and would require 80-feet of right-of-way. Prior to the plan update, Rimrock Road at this location was classified as a local residential street, only requiring 60-feet of right-of-way, which was dedicated previously. At this location, Rimrock Road is within the County's jurisdiction and has been improved to the county paved road standard of a 24-foot wide travel way with 2-foot wide gravel shoulders on each side. The City Engineering Department has reviewed the width of this road and finds that additional right-of-way will not be required as a result of the proposed subdivision.

3. Heritage Trail Plan

The proposed subdivision lies within the jurisdiction of the Heritage Trail Plan. A 10-foot wide easement is depicted on the plat adjacent to the north of the Cove Ditch. Additionally, the Heritage Trail Plan identifies the Burlington Northern Railroad right-of-way as a potential trail corridor. As depicted on the plat, the subdivider is providing a pedestrian connection along the northwestern boundary of the property to the railroad

right-of-way. However, due to discussion regarding these connections with Copper Ridge, Second Filing and potential liability for the subdivider, the connections are being fenced at this time in order to prevent people from trespassing onto the railroad property. At such time in the future that railroad activity ceases or the railroad provides for an easement on their property, these fences will be removed to provide for a pedestrian connection to a trail along the railroad.

4. West Billings Plan

The proposed subdivision satisfies the following policies of the West Billings Plan:

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

The proposed subdivision is in conflict with the following goal of the West Billings Plan:

- Medium and high-density residential development should be located nearby and within walking distance to commercial centers, medical facilities, and parks.

5. Northwest Shiloh Area Plan

The proposed subdivision satisfies the following goals and policies of the Northwest Shiloh Area Plan:

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

The proposed subdivision is in conflict with the following goals and policies of the Northwest Shiloh Area Plan:

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

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

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

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

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

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

The subject property is located within the Residential 7000 (R-7000) zoning district and shall comply with the standards set forth in Section 27-308, BMCC. The proposed density of the plat complies with the minimum lot size for twin homes (duplexes), which is 9,600 square feet for the R-7000 zoning district.

H. Does the proposed plat provide easements for the location and installation of any utilities? (76-3-608 (3)(c), MCA) (23-304 9 (c) (7), BMCC)

As required by Condition #2, the subdivider shall provide utility easements, where indicated on the plat review submitted by the Montana-Dakota Utilities Company and Northwestern Energy.

I. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? (76-3-608 (3)(d), MCA) (23-304 9 (c) (8), BMCC)

Legal and physical access to the proposed subdivision will be provided through an internal road system from Rimrock Road along the southern border of the property.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Reflections at Copper Ridge Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.

- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council on March 27, 2006

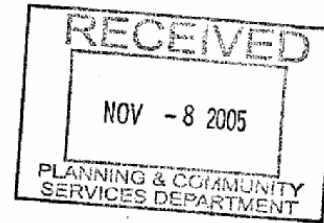
Ron Tussing, Mayor

ATTACHMENT E

60 Day Review Period Extension Letter



ENGINEERING, INC.
Consulting Engineers and Land Surveyors



November 7, 2005

Ms. Aura Lindstrand
City of Billings
Planning and Community Services Department
510 North Broadway, Fourth Floor
Billings MT 59101

Reference: Request for Extension of 60-Day Review Period
Reflections at Copper Ridge Subdivision Preliminary Major Plat
E.I. No. 96012.06

Dear Ms. Lindstrand:

On behalf of Reflections at Copper Ridge, LLC, we formally request an extension of the 60-day review period for the preliminary major plat of Reflections at Copper Ridge Subdivision due to scheduling conflicts with the city.

Please update and forward a new review and meeting schedule resulting from this extension request.

Sincerely,

Cavin Noddings, PE
Associate Principal/Senior Engineer

/ceg

c: Reflections at Copper Ridge, LLC
John Stewart, Engineering, Inc.
Matt Waite, Engineering, Inc.

P:96012_06_Lindstrand_Ltr_110705

AGENDA ITEM:



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

TITLE: Falcon Ridge Estates Subdivision, 2nd Filing, Preliminary Plat

DEPARTMENT: Planning and Community Services, through Candi Beaudry, AICP,
Interim Planning Director

PRESENTED BY: Wyeth Friday, Planner II

PROBLEM/ISSUE STATEMENT: On December 1, 2005, subdivider Falcon Ridge Estates, LLC, applied for preliminary major plat approval for the Falcon Ridge Estates Subdivision, 2nd Filing. The property is located north of Rimrock Road and about one quarter of a mile west of Molt Road. The property is currently under the ownership of Golden Acres Partners and transfer of ownership will occur prior to recording of the final plat. The proposed subdivision contains 64 lots on approximately 31.87 acres of land. The property is zoned Residential 9600 (R-96), Residential 7000 (R-70) and Residential Multi-Family (RMF). The proposed use is single family and multifamily development. The Yellowstone County Board of Planning conducted a public hearing for this application on January 24, 2006.

The underlying property for this subdivision is Lot 2 of Copper-Falcon Subdivision. This underlying plat was not of record when this subdivision went through the public hearing process with the Planning Board. Falcon Ridge Estates, LLC's engineer, Engineering, Inc. provided a letter on behalf of the applicant requesting an extension of the 60-day review period for this subdivision after the Planning Board public hearing to allow the final platting of Copper-Falcon Subdivision (See Attachment E). The final plat for Copper-Falcon Subdivision is being approved by the City Council at the same meeting that this preliminary plat is to be approved.

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

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

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

RECOMMENDATION

The Yellowstone County Board of Planning on a 7-0 vote recommends that the City Council conditionally approve the Preliminary Plat of Falcon Ridge Estates Subdivision, 2nd Filing, the variances and adopt the Findings of Fact as presented in Attachment D.

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

ATTACHMENTS

- A: Plat
- B: Site Photographs
- C: Mayor's Approval Letter
- D: Findings of Fact
- E: Applicant extension request letter

INTRODUCTION

On December 1, 2005, subdivider Falcon Ridge Estates, LLC, applied for preliminary major plat approval for the Falcon Ridge Estates Subdivision, 2nd Filing. The property is located north of Rimrock Road and west of Molt Road. The proposed subdivision contains 64 lots on approximately 31.87 acres of land. The property is currently zoned R-96, R-70 and RMF.

PROCEDURAL HISTORY

- The subject property was annexed into the City of Billings in May of 2002.
- The subject property was rezoned from R-96 to R-96, R-70 and RMF in November of 2005 (Zone Change #768).
- Copper-Falcon Subdivision, a minor subdivision that splits the ownership between Reflections at Copper Ridge (on the west) and Falcon Ridge Estates Subdivision, 2nd Filing (on the east), received preliminary approval by the City Council on December 12, 2005. It has not yet been recorded and current owner, Golden Acres Partners, intends to transfer ownership of the subject property to Falcon Ridge Estates, LLC prior to filing the final plat of this subdivision.
- The preliminary plat application was submitted to the Planning Department on December 1, 2005
- Staff reviewed the application with the subdivider on December 22, 2005
- The Planning Board reviewed the plat on January 10, 2006
- The Planning Board conducted a public hearing on January 24, 2006 and made its recommendation to the Billings City Council.
- The Planning and Community Services Department received a letter requesting extension of the 60-day review period for this subdivision on February 6, 2006. The letter specified that the extension was to allow the final plat of Copper-Falcon Subdivision to be approved by the City Council prior to the approval of the preliminary plat for Falcon Ridge Estates, 2nd Filing.
- The City Council will consider the preliminary plat application on March 27, 2006

BACKGROUND

General location:	One-quarter mile northwest of the intersection of Molt Road and Rimrock Road.
Legal Description:	Lot 2, Block 1, Copper-Falcon Subdivision
Subdivider:	Falcon Ridge Estates, LLC
Owner:	Golden Acres Partners
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	R-96, R-70 and RMF
Existing land use:	Vacant

Proposed land use:	Single family and multi-family development
Gross area:	31.87 acres
Net area:	16.164 acres
Proposed number of lots:	64
Lot size:	Max: 264,075 square feet Min.: 9,600 square feet
Parkland requirements:	1.77 acres required; subdivider is proposing 3.53 acres.

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS

2. To minimize effects on local services, prior to final plat approval the subdivider shall provide written documentation from the US Postal Service that the centralized delivery boxes have a sufficient pullout to accommodate a mailbox carrier vehicle. The location of the boxes shall also be reviewed and approved by the post office. *(Recommended by the Planning Division)*
3. To ensure compliance with local and state regulations, the final plat of the Copper-Falcon Subdivision, the underlying subdivision for Falcon Ridge Estates Subdivision, 2nd Filing, must be of record prior to the submittal of check print materials for the Falcon Ridge Estates Subdivision, 2nd Filing. The transfer of ownership of the property from Golden Acres Partners to Falcon Ridge Estates, LLC, also must be completed prior to submission of the check print materials. *(Recommended by the Planning Division)*
4. To minimize effects on local services, prior to final plat approval the subdivider shall specify the exact locations of any stormwater retention areas in the parks, show any easements for storm drainage, and include language in the park maintenance district to maintain these storm drainage areas. *(Recommended by the City Engineering Division)*
5. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

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

VARIANCES REQUESTED

1. A variance to permit 50-feet of right-of-way for Northern Goshawk Court, Harrier Lane, Peregrine Way and Western Bluffs Boulevard, where Section 23-601(k), BMCC, requires 60-feet of right-of-way for local residential streets. Engineering staff is supportive of this variance, as a 50-foot width is adequate to accommodate the proposed traffic generation for the subdivision. Similar variances have been approved by the City Council in adjacent subdivisions. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformity with the zoning regulations.
2. A variance to permit 34-feet of back of curb to back of curb width for Northern Goshawk Court, Harrier Lane, Peregrine Way and Western Bluffs Boulevard, where Section 23-601(k), BMCC, requires 37-feet. Engineering, fire, and planning staff are supportive of this variance, as the proposed width is adequate to accommodate emergency vehicles and vehicular traffic generated for this subdivision. Similar variances have been approved by the City Council, specifically when a reduced right-of-way width is requested, on adjacent subdivisions. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformity with the zoning regulations.

STAKEHOLDERS

A public hearing is not scheduled for the City Council meeting; however nearby property/business owners may attend the City Council meeting. There were no public comments received by the Planning Board at the public hearing for this subdivision on January 24, 2006. The Planning Department has received no public comments regarding the proposed subdivision.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

RECOMMENDATION

The Yellowstone County Board of Planning on a 7-0 vote recommends that the City Council conditionally approve the Preliminary Plat of Falcon Ridge Estates Subdivision, 2nd Filing, and adopt the Findings of Fact as presented in Attachment D.

ATTACHMENTS

A: Preliminary Plat

B: Site Photographs

C: Mayor's approval letter

D: Findings of Fact

E: Applicant extension request letter

PRELIMINARY PLAT OF
FALCON RIDGE ESTATES, 2ND FILING
 BEING LOT 2, BLOCK 1 OF COPPER-FALCON SUBDIVISION
 SITUATED IN THE SE 1/4 OF SECTION 25, T. 1 N., R. 24 E., P.M.M.
 BILLINGS, YELLOWSTONE COUNTY, MONTANA

NORTH

DECEMBER, 2005
BILLINGS, MONTANA



SITE DATA

GROSS AREA = 31.98 ACRES
NET AREA = 15.18 ACRES
NUMBER OF LOTS = 84
MAXIMUM LOT SIZE = 284,075 S.F.
MINIMUM LOT SIZE = 9,600 S.F.
PRESENT USE = VACANT RESIDENTIAL
PROPOSED USE = RESIDENTIAL
PARK REQUIREMENT = 1.78 ACRES
PARK DEDICATION = 3.82 ACRES
CURRENT ZONING = R7000, RMF, RW800
= RW800, R13200
SOUTH = H18000, COUNTY
EAST = H8000, RMF, RW800
WEST = R7000-B



VERITY MAIL

TR 6A

10/23/2012 10:00 AM 10/23/2012 10:00 AM

ATTACHMENT B
Site Photographs



Figure 1:
Looking north at the subject property from Rimrock Road. The Cove Ditch is visible as a thin line across the middle of the photo. The subdivision is located north of the Cove Ditch.



Figure 2:
Looking east down Rimrock Road from in front of the subject property. Rimrock Road has been paved all the way to 62nd Street West to the east of this subdivision.



Figure 3:
Looking southwest across Rimrock Road from in front of the subject property.

ATTACHMENT C

Mayor's approval letter
Falcon Ridge Estates Subdivision, 2nd Filing

March 27, 2006

Falcon Ridge Estates, LLC
c/o Dennis Buscher
3671 Spalding Avenue
Billings, Montana 59102

Dear Property Owner:

On March 27, 2006, the Billings City Council approved the preliminary plat of Falcon Ridge Estates Subdivision, 2nd Filing and two variances, subject to the following conditions of approval:

CONDITIONS OF APPROVAL

1. To minimize effects on local services, prior to final plat approval the subdivider shall provide written documentation from the US Postal Service that the centralized delivery boxes have a sufficient pullout to accommodate a mailbox carrier vehicle. The location of the boxes shall also be reviewed and approved by the post office. *(Recommended by the Planning Division)*
2. To ensure compliance with local and state regulations, the final plat of the Copper-Falcon Subdivision, the underlying subdivision for Falcon Ridge Estates Subdivision, 2nd Filing, must be of record prior to the submittal of check print materials for the Falcon Ridge Estates Subdivision, 2nd Filing. The transfer of ownership of the property from Golden Acres Partners to Falcon Ridge Estates, LLC, also must be completed prior to submission of the check print materials. *(Recommended by the Planning Division)*
3. To minimize effects on local services, prior to final plat approval the subdivider shall specify the exact locations of any storm water retention areas in the parks, show any easements for storm drainage, and include language in the park maintenance district to maintain these storm drainage areas. *(Recommended by the City Engineering Division)*
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

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

VARIANCES

1. A variance to permit 50-feet of right-of-way for Northern Goshawk Court, Harrier Lane, Peregrine Way and Western Bluffs Boulevard, where Section 23-601(k), BMCC, requires 60-feet of right-of-way for local residential streets. Engineering staff is supportive of this variance, as a 50-foot width is adequate to accommodate the proposed traffic generation for the subdivision. Similar variances have been approved by the City Council in adjacent subdivisions. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformity with the zoning regulations.
2. A variance to permit 34-feet of back of curb to back of curb width for Northern Goshawk Court, Harrier Lane, Peregrine Way and Western Bluffs Boulevard, where Section 23-601(k), BMCC, requires 37-feet. Engineering, fire, and planning staff are supportive of this variance, as the proposed width is adequate to accommodate emergency vehicles and vehicular traffic generated for this subdivision. Similar variances have been approved by the City Council, specifically when a reduced right-of-way width is requested, on adjacent subdivisions. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformity with the zoning regulations.

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

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

Sincerely,

Ron Tussing, Mayor

pc: Matt Waite, Engineering, Inc.

ATTACHMENT D

Findings of Fact

Falcon Ridge Estates Subdivision, 2nd Filing

The Findings of Fact for Falcon Ridge Estates Subdivision, 2nd Filing, have been prepared by the Planning Division for review and approval by the City Council. These findings are based on the preliminary plat application and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations.

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

1. Effect on agriculture and agricultural water user facilities

The land to be subdivided has historically been utilized for pasture land. The Cove Ditch is located along the southern border of the subject property and will be preserved within a 60-foot ditch easement. No water rights will be transferred with this subdivision.

2. Effect on local services

e. **Utilities** – Water to the subject property will be extended by the subdivider from previously extended lines within Rimrock Road. The Subdivision Improvements Agreement (SIA) does specify that water distribution system pressure may fall below the accepted level for residential fixtures for some lots within the subdivision. The assessment and mitigation of these conditions, including possible installation of a booster pump, shall be the responsibility of the individual lot owner. Sanitary sewer lines will be extended from the main line within Rimrock Road. Both the water and sewer shall be sized and installed in accordance with City design standards, as specified within the SIA.

The subdivider has identified the utility easements on the preliminary plat as required by the Montana-Dakota Utilities Company. Qwest has stated that it will share the same easements as other utilities to serve the subdivision and will coordinate its installations at the time of construction.

f. **Stormwater** – Stormwater detention facilities will be provided by berming, ponding or boulder pit discharge within the proposed parks. City Engineering has asked that the subdivider specify the exact locations of any retention areas in the parks, show any easements for storm drainage and include language in the park maintenance district to maintain the storm drainage areas (**See Condition 3**). As specified within the SIA and submitted *Preliminary Stormwater Design Report*, all drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.

- g. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** - Access to the proposed subdivision will be via internal roads from Rimrock Road that are serving Reflections at Copper Ridge Subdivision to the west and Falcon Ridge Estates Subdivision to the east. The subdivider has stated that the roads serving this subdivision, Western Bluffs Boulevard and Golden Acres Drive, will be constructed in the adjacent subdivisions prior to construction in this subdivision to provide adequate access to the subdivision as it is developed. There is further discussion of this issue regarding emergency access below in Part e. Emergency Services of this report.

Rimrock Road is classified as a collector street by the 2005 Transportation Plan Update and is under the County's jurisdiction. Sixty feet of right-of-way has been previously dedicated for Rimrock Road and the road has been paved to a 24-foot width with 2-foot gravel shoulders on each side in accordance with County road standards.

Within the subdivision, Golden Acres Drive will be 60-feet wide with 37-feet back of curb to back of curb width that will provide a connection from this subdivision to Falcon Ridge Estates Subdivision to the east and with Reflections at Copper Ridge Subdivision to the west. Western Bluffs Boulevard will maintain 50-foot right-of-way widths with 34-feet back of curb to back of curb widths. Western Bluffs Boulevard will provide a connection into Falcon Ridge Estates Subdivision to the east and Reflections at Copper Ridge Subdivision to the west.

The subdivider has requested a variance to permit 50-feet of right-of-way where 60-feet is required and a variance to permit 34-feet of pavement width for Western Bluffs Boulevard, Northern Goshawk Court, Harrier Lane and Peregrine Way. Engineering, fire, and planning staff are supportive of this variance. Four-foot-wide boulevard sidewalks are proposed throughout the subdivision.

The subject property is to be developed in four phases. The first phase includes lots located on the southern portion of the property and will include street improvements for Golden Acres Drive, connecting it through to the portions of the road in Reflections at Copper Ridge Subdivision to the west and Falcon Ridge Estates Subdivision to the east. Phase 2 will include lots located on the eastern central portion of the property, as well as part of the large park area planned for the eastern edge of the subdivision. Peregrine Way and a portion of Western Bluffs Boulevard also will be constructed. Phase 3 will include lots on the northwestern portion of the subdivision, the linear park area along the Conoco Pipeline easement, a portion of Western Bluffs Boulevard and Harrier Lane. Phase 4 includes lots on the northern portion of the subdivision, Northern Goshawk Court and a portion of Harrier Lane.

A Traffic Accessibility Study (TAS) update to an earlier TAS submitted for several of the subdivision in this area was submitted with this application to the Engineering

Department for review and approval. The TAS determined that the following improvements are either necessary or should be reviewed with the application for this preliminary plat:

- A westbound right turn lane shall be considered at the intersection of Rimrock Road and Golden Acres Drive.
 - The subdivider shall furnish all necessary traffic control devices within and adjacent to the subdivision in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) and the City of Billings.
 - A cash contribution of \$9,160.00, or not more than 4.58% of the cost of the improvements, will be required at the time of final plat for intersection improvements at 62nd Street West and Rimrock Road.
 - Stop signs should be installed at the intersection of Golden Acres Drive and Rimrock Road and at the intersection of Western Bluffs Way and Molt Road.
- e. **Emergency services** – The Billings Police and Fire Department will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1928 17th Street West (Station #3), approximately 5.5 miles east of the subject property. The subdivision is located within the ambulance service area of American Medical Response (AMR). To clarify emergency access during the initial construction and phasing of the subdivision, the subdivider has provided a schematic of the phasing of road improvements to the City Fire Department. This helps to clarify concerns about emergency access to the subdivision since the property does not directly access Rimrock Road, but relies on roads from adjacent subdivisions for access to the subdivision. It appears that the City Fire Department is satisfied with the proposed construction of roads and the access the roads will provide during the phasing of this subdivision.
- f. **Schools** – The subdivision is located within School District #2. No comments have been received from School District #2.
- f. **Parks and Recreation** – As part of this major plat, the subdivider is required to provide 1.77 acres of dedicated parkland. The subdivider is proposing to dedicate 3.53 acres of parkland, which is interspersed throughout the subdivision with a majority of the land located along the eastern boundary of the property. The SIA for this subdivision states that the existing park maintenance district for Falcon Ridge Subdivision and Falcon Ridge Estates Subdivision will be amended to include the park land in this subdivision. The SIA also explains in Section VII that the parks in the subdivision within each phase will be developed at the time the phase is completed.
- g. **Mail Delivery** - The subdivider is following the same mail delivery layout that has been requested by the United States Postal Service in adjacent subdivisions. The

subdivider is proposing centralized delivery for the proposed subdivision with clusters of 8 to 16 mailboxes per location. There is a concern that adequate room be provided for a mail delivery vehicle to pull off the road for mail distribution and access. The subdivider has moved several of the proposed centralized delivery locations back from intersections in the subdivision to address concerns about traffic safety. City Engineering staff has stated that it intends to have a meeting with the US Postal Service soon regarding the requirements for central delivery facilities in new subdivisions. To ensure proper installation and placement of the centralized mail facilities, staff is recommending that the US Postal Service review and approve the layout for the delivery locations prior to final plat approval (**See Condition 1**).

3. Effect on the natural environment

A geotechnical study conducted for the subdivider by Terracon Consultants, Inc. found that potentially collapsible soils may exist within the subdivision. Language has been added to Section II (F) of the SIA stating that the City may require lot owners to conduct further geotechnical investigation prior to construction.

4. Effect on wildlife and wildlife habitat

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

5. Effect on the public health and safety

There are five conditions that exist on the subject property that may potentially create problems for future landowners. All of the following potential effects on public health and safety have been noted within Section III of the SIA:

- The subdivision contains collapsible soils, which may require a geotechnical study prior to construction.
- The subdivision is being located within close proximity to prime wildlife habitat and conflicts with wildlife may occur.
- There is a high pressure gas pipeline located along the north central portion of the site. Future lot owners should be aware that it may be necessary for the pipeline company inspect, test, maintain, and possibly replace the pipeline at times.
- The Burlington Northern Railroad right-of-way is located along the northern boundary of the site and active train operations occur on the rails in this right-of-way. The noise from the moving trains is clearly audible within the subdivision. Furthermore, the right-of-way is private property and lot owners, visitors, and children within Falcon Ridge Estates Subdivision, 2nd Filing are required to not trespass on the railroad right-of-way.

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

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

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the 2005 Transportation Plan Update, The West Billings Plan, The Northwest Shiloh Area Plan, and The Heritage Trail Plan? (23-304 (c)(3), BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

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

- Goal: More housing and business choices within each neighborhood (Land Use Element Goal, Page 6). *The proposed subdivision would provide for more housing choices within this portion of the city.*
- Goal: Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10). *The proposed subdivision will provide public streets improved to city standards that connect with existing streets, thus creating more efficient transportation connections and ease of traffic flow.*
- Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness (Open Space and Recreation Goal, Page 9). *The subdivider is proposing a trail along the Cove Ditch and boulevard sidewalks within the subdivision connecting to Copper Ridge, First and Second Filings to the west and proposed filings of Falcon Ridge to the east.*

The subdivision conflicts with the following goals of the Growth Policy:

- Goal: Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, Page 6). *The subject property, though annexed, is approximately three (3) miles from urbanized portions of the city.*
- Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (Land Use Element Goal, Page 6). *The subject property is located outside of the urbanized portion of the city. While the subdivision is surrounded on two (2) sides by property being developed within the city, the area is still mostly rural in nature.*

2. The 2005 Transportation Plan Update

Rimrock Road is classified as a collector road by the 2005 Transportation Plan Update and would require 80-feet of right-of-way. Prior to the plan update, Rimrock Road at this location was classified as a local residential street, only requiring 60-feet of right-of-way, which was dedicated previously. At this location, Rimrock Road is within the County's jurisdiction and has been improved to the county paved road standard of a 24-foot wide travel way with 2-foot wide gravel shoulders on each side. The City Engineering

Department has reviewed the width of this road and finds that additional right-of-way will not be required as a result of the proposed subdivision.

1. **Heritage Trail Plan**

The proposed subdivision lies within the jurisdiction of the Heritage Trail Plan. A 20-foot wide easement is depicted on the plat adjacent to the north of the Cove Ditch for a trail. Additionally, a linear park has been provided along the Conoco Pipeline that runs southwest to northeast across the northern portion of the subdivision. The subdivider is proposing grass pathways along this park corridor that will connect with parks to the west and east of this subdivision. The Heritage Trail Plan identifies the Burlington Northern Railroad right-of-way as a potential trail corridor. However, concerns about access to the right-of-way in the near future for a trail have limited the consideration of accesses from the subdivisions in this area. Access to the railroad corridor is provided to the west of this subdivision in Copper Ridge Subdivision, 2nd Filing. No access is proposed in this subdivision.

4. **West Billings Plan**

The proposed subdivision satisfies the following policies of the West Billings Plan:

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

The proposed subdivision is in conflict with the following goal of the West Billings Plan:

- Medium and high-density residential development should be located nearby and within walking distance to commercial centers, medical facilities, and parks. *This goal poses some difficulty in interpretation since a recent zone change was approved to allow a very large commercial center in the future at the northwest corner of the intersection of Rimrock Road and 62nd Street West. However, at the present time the subdivision is several miles from any commercial or medical facilities.*

5. **Northwest Shiloh Area Plan**

The proposed subdivision satisfies the following goals and policies of the Northwest Shiloh Area Plan:

- Require public/community water and sewer for all development on parcels one acre or smaller.
- Promote connectivity among subdivisions with multiple points of access.

- Create neighborhood parks designed to meet the needs of the neighborhood and, to the extent possible, the overall community park and linear open space system.
- Create park areas linking neighborhoods through a linear open-space network.

The proposed subdivision is in conflict with the following goals and policies of the Northwest Shiloh Area Plan:

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

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

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations. **Condition 2** specifies that the plat of the underlying Copper-Falcon Subdivision must be of record prior to the submission of final plat check print documents for this subdivision. Transfer of ownership of the property from Golden Acres Partners to Falcon Ridge Estates, LLC, also must be completed prior to submission of the check print materials. This is to ensure that the underlying subdivision is recorded and the ownership is transferred as indicated by this subdivision application before this subdivision is recorded. The underlying plat must be recorded first.

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

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

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

The subject property is located within the R-70 and RMF zoning districts and shall comply with the standards set forth in Section 27-308, BMCC.

H. Does the proposed plat provide easements for the location and installation of any utilities? (76-3-608 (3)(c), MCA) (23-304 9 (c) (7), BMCC)

The subdivider has identified the required utility easements as required by the Montana-Dakota Utilities Company on the preliminary plat. Qwest has stated that it will share the same easements as other utilities to serve the subdivision and will coordinate its installations at the time of construction.

I. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? (76-3-608 (3)(d), MCA) (23-304 9 (c) (8), BMCC)

Legal and physical access to the proposed subdivision will be provided through an internal road system from Rimrock Road that connects on the northern and southern portions of the subdivision from adjacent subdivisions on the east and west.

CONCLUSIONS OF FINDING OF FACT

The preliminary plat of Falcon Ridge Estates Subdivision, 2nd Filing does not create any adverse impacts that warrant denial of the subdivision. The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and conflicts with several goals. The subdivision also conforms with some goals of the West Billings Plan and Northwest Shiloh Area Plan and conflicts with several goals in both of these planning documents as well. The proposed subdivision does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan. The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot. Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council on March 27, 2006

Ron Tussing, Mayor

ATTACHMENT E



ENGINEERING, INC.
Consulting Engineers and Land Surveyors



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

February 2, 2006

Mr. Wyeth Friday
City of Billings
Planning and Community Services Department
510 North Broadway, Fourth Floor
Billings MT 59101

Reference: Request for Extension of 60-Day Review Period
Falcon Ridge Estates Subdivision, Second Filing, Preliminary Major Plat
E.I. No. 96012.09

Dear Mr. Friday:

On behalf of Falcon Ridge, LLC, we formally request an extension of the 60-day review period for the preliminary major plat of Falcon Ridge Estates Subdivision, Second Filing, due to scheduling conflicts with the underlying plat.

Please update and forward a new review and meeting schedule resulting from this extension request.

Sincerely,

Matthew Waite, PE
Senior Engineer

/dml

c: Falcon Ridge, LLC
P:96012_09_Friday_Ltr_020206



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: Preliminary Plat of Amended Lot 5, Block 10, Parkland West Subdivision, 6th Filing

DEPARTMENT: Planning and Community Services, Candi Beaudry, AICP, Interim Planning Director

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On February 1, 2006, the subdivider applied for preliminary minor plat approval for Amended Lot 5, Block 10, Parkland West Subdivision, 6th Filing, which contains four (4) lots on approximately 3.71 acres of land for commercial development. The subject property is located on the west side of South 32nd Street West, midway between Central Avenue and Banff Avenue and is within the Parkland West Planned Unit Development (PUD). The owner is MLZ, LLP and the representing agent is Engineering, Inc.

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

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

RECOMMENDATION

Staff recommends conditional approval of the preliminary plat of Amended Lot 5, Block 10, Parkland West Subdivision, 6th Filing, approval of the variances, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

ATTACHMENTS

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

INTRODUCTION

On February 15, 2006, the subdivider applied for preliminary minor plat approval for Amended Lot 5, Block 10, Parkland West Subdivision, 6th Filing, which contains four (4) lots on approximately 3.71 acres of land for commercial development. The subject property is located on the west side of South 32nd Street West, midway between Central Avenue and Banff Avenue and is within the Parkland West Planned Unit Development (PUD).

PROCEDURAL HISTORY

- The final plat for Parkland West Subdivision, 6th Filing, which includes the subject property, was filed on April 12, 2004.
- The preliminary plat application for this subdivision was submitted to the Planning Department on February 15, 2006.
- The City Council will consider the preliminary plat application on March 27, 2006.

BACKGROUND

General location:	On the west side of South 32 nd Street West, midway between Central Avenue and Banff Avenue
Legal Description:	Lot 5, Block 10, Parkland West Subdivision, 6th Filing
Subdivider:	MLZ, LLP
Owner:	Same
Engineer and Surveyor:	Engineering Inc.
Existing Zoning:	PUD (Community Commercial)
Existing land use:	Vacant Land
Proposed land use:	Commercial (Office Structures)
Gross area:	3.71 acres
Net area:	3.71 acres
Proposed number of lots:	4
Lot size:	Max: 44,710 square feet (1.03 acres) Min.: 32,531 square feet (0.75 acres)
Parkland requirements:	The parkland has been met by previous and future dedications for the entire Parkland West subdivision.

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact:

7. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
8. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

A variance from Section 23-602(a), BMCC, which specifies that an alley shall be provided in commercial and industrial districts. The City Council and/or Planning Board may waive this requirement, provided that other definite and assured provisions are made for adequate service access. Due to the restricted access onto South 32nd Street West, the applicant is permitted only one (1) access point for each street frontage, which precludes the construction of additional service roads or alleys for the development. Staff finds that adequate service access has been provided for the site through the reciprocal access easement, which allows for one (1) controlled access point from South 32nd Street West and Central Avenue. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformities with the zoning regulations.

A variance from Section 23-605(a), BMCC, which specifies that lots in commercial and industrial districts shall have a minimum lot width frontage of 25-feet and Section 23-605(h), which specifies that all lots shall abut a public dedicated street. The purpose and intent of this regulation is to provide access to those lots that do not have public street frontage. In this case, access to the site is restricted to one (1) access point along the 32nd Street frontage and an internal private road provides for adequate site circulation to proposed Lots 5C and 5D. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformities with the zoning regulations.

STAKEHOLDERS

A public hearing is not scheduled for the City Council meeting; however nearby property/business owners may attend the City Council meeting. The Planning Department has received no public comments or questions regarding the proposed subdivision.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, the 2005 Transportation Plan Update, and Heritage Trail Plan are discussed within the Findings of Fact.

RECOMMENDATION

Staff recommends conditional approval of the preliminary plat of Amended Lot 5, Block 10, Parkland West Subdivision, 6th Filing, approval of the variances, and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

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

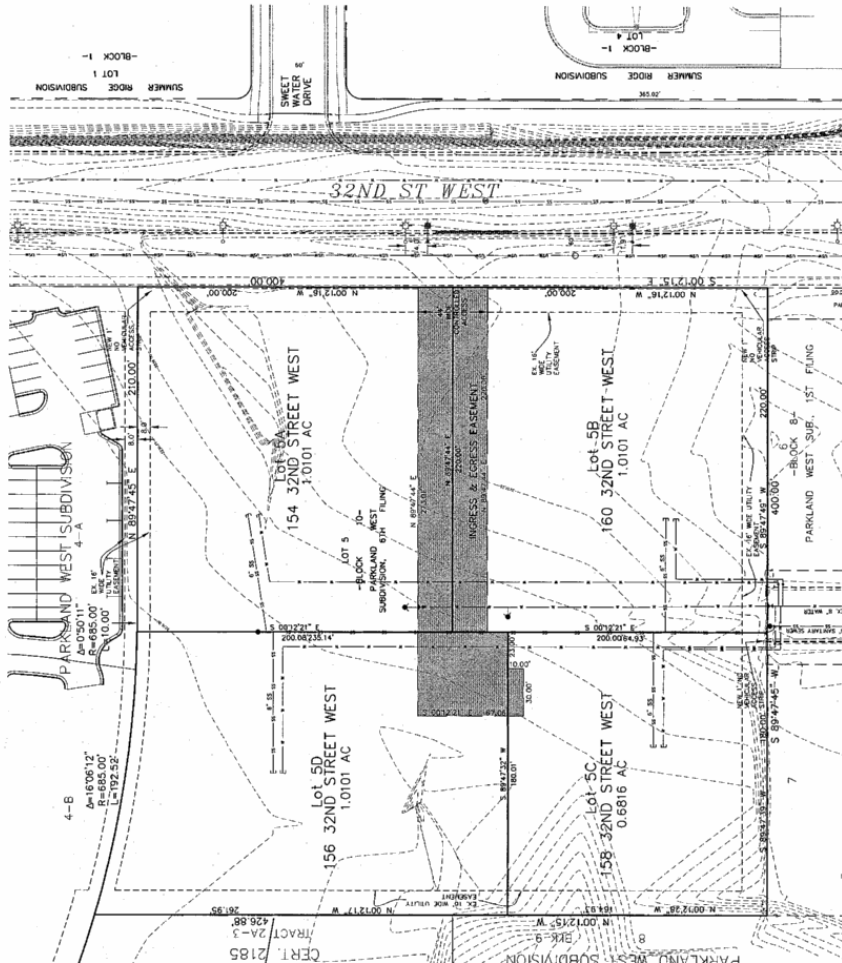
ATTACHMENT A

Preliminary Plat of Amended Lot 5, Block 10, Parkland West Subdivision, 6th

PRELIMINARY AMENDED PLAT OF LOT 5, BLOCK 10 PARKLAND WEST SUBDIVISION, SIXTH FILING SITUATED IN THE NE 1/4 OF SECTION 11, T. 1 S., R. 25 E., P.M.M. BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : MLZ, LLC
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 30'

FEBRUARY, 2006
BILLINGS, MONTANA



ADJACENT OWNER'S LIST

LOT 154, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902	LOT 156, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902	LOT 158, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902	LOT 160, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902
LOT 154, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902	LOT 156, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902	LOT 158, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902	LOT 160, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902
LOT 154, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902	LOT 156, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902	LOT 158, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902	LOT 160, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902
LOT 154, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902	LOT 156, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902	LOT 158, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902	LOT 160, BLOCK 10, PARKLAND WEST SUBDIVISION, 6TH FILING, BILLINGS, MT. 1902

PLAT DATA

GROSS AREA	161,689 SF
NUMBER OF LOTS	4
MINIMUM LOT SIZE	32,531 SF
LOCALITY	4,470 SF
PARKLAND REQUIREMENT	N/A
PARKLAND DEDICATION	
SURROUNDING ZONING	
EXISTING LAND USE	PLANNED UNIT DEVELOPMENT
PROPOSED LAND USE	PLANNED UNIT DEVELOPMENT



ATTACHMENT B

Site Photographs



Figure 1: View north along the sidewalk adjacent to South 32nd Street West toward the existing dental office (Bennion Dental).



Figure 2: View northwest across the subject property toward existing multi-family residential uses.



Figure 3: View east across South 32nd Street West toward existing multi-family residential uses.

ATTACHMENT C

Findings of Fact

Staff is forwarding the recommended Findings of Fact for Amended Lot 5, Block 10, Parkland West Subdivision, 6th Filing for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Sections 23-304(c), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The proposed subdivision should have no effect on agriculture or agricultural water users' facilities. The subject property is not currently used for agriculture and no irrigation facilities are apparent on the subject property.

2. Effect on local services

- a. **Utilities** – Water and sanitary sewer lines will be extended from the 42-inch sanitary sewer main and 24-inch water main within South 32nd Street West.
- b. **Stormwater** – As specified in the submitted SIA, storm drainage improvements including curbs, gutters, and subsurface discharge have been constructed within South 32nd Street West per the private contract. Any additional drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** - Access to the proposed lots will be via a 40-foot private drive located along the common boundary of Lots 5A and 5B from South 32nd Street West, which will also provide a shared access to Lots 5C and 5D. A reciprocal access easement for the proposed lots has been submitted with this application.

As part of the final plat for Parkland West Subdivision, 6th Filing, the subdivider was required to submit a Traffic Accessibility Study. Based upon the information contained within that study, necessary street improvements were identified and are currently under construction through a private contract. These improvements include the construction of South 32nd Street West along the western boundary of the proposed subdivision, modifications to the existing traffic signal at the intersection of South 32nd Street West and Central Avenue, and required boulevard sidewalks along the 32nd Street frontage.

- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24th Street West Drive (Station #5). The subdivision is located within the ambulance service area of American Medical Response.
- f. **Schools** - The proposed subdivision is located within School District #2. There will be no impact to schools as a result of this subdivision, as the intended use is commercial.
- g. **Parks and Recreation** - There is no parkland dedication requirement, as this is a minor plat. However, parkland dedications for the entire Parkland West Subdivision were identified in the Master Plan and those areas have been reserved for future parks.
- h. **MET Transit** – The subject property is serviced by MET transit (routes 6P and 7D). The proposed commercial development on this property and surrounding properties will positively impact MET service by increasing ridership.

3. Effect on the natural environment

The proposed subdivision should have only minor effects on the natural environment, as there will be short term air and noise pollution associated with construction on the property. However, the property is within an urbanized portion of the city and these effects should be minimal.

4. Effect on wildlife and wildlife habitat

The proposed subdivision should not affect wildlife or habitat. There are no known endangered or threatened species on the property.

5. Effect on the public health, safety and welfare

The subdivision should not negatively affect public health or safety. The subject property is not within a mapped floodway or flood zone. There are no obvious threats to public health, safety or welfare.

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

An Environmental Assessment is not required, as this is a minor plat.

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

1. Yellowstone County-City of Billings 2003 Growth Policy

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

- b. Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, Page 6)

The proposed subdivision is consistent with the Parkland West Master Plan and previous filings of the subdivision.

- c. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element Goal, Page 6)

The proposed subdivision is bordered on three (3) sides by properties located within the Parkland West PUD, which is intended for commercial and multi-family uses. The proposed medical office structures are compatible with the commercial uses to the north and the multi-family residential development to the west and south.

- d. Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, Page 6)

The proposed subdivision extends previously planned development and will utilize existing infrastructure. The subdivision may be considered infill and does not contribute to urban sprawl. There are no open space buffers planned as part of this subdivision; however there is an open space/parkland requirement for the entire Master Plan of Parkland West.

2. Urban Area 2000 Transportation Plan Update

South 32nd Street West and Central Avenue are principal arterial streets, which are undergoing substantial improvements under private contract at this time in order to accommodate increased traffic in this area with the proposed and existing construction. These improvements include the improvements to South 32nd Street West.

3. Heritage Trail Plan

The Heritage Trail Plan identifies South 32nd Street West as an arterial trail. A connection for the trail system has been included within the private contract and will be included in the current construction for South 32nd Street West.

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

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

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

The property is served by municipal water, sewer, storm drain and solid waste services, which will be extended from South 32nd Street West to the proposed Lots.

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

The subject property is located within the Planned Unit Development zoning district with an underlying zoning of Community Commercial and conforms to the requirements set forth by the Parkland West Master Plan.

G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMCC 23-304 9 (c) (7)]

There is a 16-foot wide utility easement located around the perimeter of the subject property, which is sufficient per comments received by the Montana Dakota Utilities Company and Northwestern Energy.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and BMCC 23-304 9 (c) (8)]

Access to the proposed lots will be via a 40-foot wide private drive centered along the common boundary of Lots 5A and 5B, which also provides access to Lots 5C and 5D. A reciprocal access easement document to permit the shared access to all lots within this subdivision has been provided and will be recorded with the final plat.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Amended Lot 5, Block 10, Parkland West Subdivision, 6th Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, March 27, 2006

Ron Tussing, Mayor

ATTACHMENT D
Mayor's Approval Letter

March 27, 2006

MLZ, LLP
2619 St. Johns Avenue, Suite A
Billings, Montana 59102

Dear Applicant:

On March 27, 2006, the Billings City Council conditionally approved the preliminary plat of Amended Lot 5, Block 10, Parkland West Subdivision, 6th Filing, subject to the following conditions of approval:

1. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
2. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

- A variance from Section 23-602(a), BMCC, which specifies that an alley shall be provided in commercial and industrial districts.
- A variance from Section 23-605(a), BMCC, which specifies that lots in commercial and industrial districts shall have a minimum lot width frontage of 25-feet and Section 23-605(h), which specifies that all lots shall abut a public dedicated street.

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

Sincerely,

Ron Tussing, Mayor

pc: John Stewart, P.E, Engineering, Inc.

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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, March 27, 2006

TITLE: Final Plat of Copper-Falcon Subdivision

DEPARTMENT: Planning and Community Services, Candi Beaudry, AICP, Interim Planning Director

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat of Copper-Falcon Subdivision is being presented to the City Council for approval. On December 12, 2005, the City Council conditionally approved the 2-lot preliminary minor plat containing 63.75 acres on a property legally described as Tract 5A of Certificate of Survey No. 2465. The subject property was annexed into the City in May of 2002, is zoned Residential 9600, Residential 7000 and Residential Multi-Family and is generally located West of Molt Road, south of Phipps Park, on the north side of Rimrock Road, between 64th and 66th Streets West. The owner is Golden Acres Partners and the agent is Engineering, Inc. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Copper-Falcon Subdivision.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Final Plat

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

Q1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 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 \$600,039.00 have been audited and are presented for your approval for payment. A complete listing of the claims dated February 24, 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

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

Q2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 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 \$955,910.45 have been audited and are presented for your approval for payment. A complete listing of the claims dated March 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

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 27, 2006

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$8,152.62 have been audited and are presented for your approval for payment. A complete listing of the claims dated February 1, 2006 to February 28, 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 02/01/2006 – 02/28/2006

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: Zone Change #774 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services, Candi Beaudry, AICP, Interim Planning Director

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting to rezone Tract 123 of Sunny Cove Fruit Farm (Foxtail Village, 2nd Filing) from Residential 9600 (R-9600) to Residential 7000 (R-7000). The subject property is located at the northeast intersection of Grand and 60th Street West and is currently vacant. The owner is Kenmark Corporation and the representing agent is Engineering, Inc. The Zoning Commission conducted a public hearing on March 7, 2006, and voted unanimously to recommend approval to the City Council.

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

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

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

RECOMMENDATION

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #774 and adopt the determinations of the 12 criteria, as discussed within this report.

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

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Preliminary Plat of Foxtail Village, 2nd Filing
- D: Ordinance

INTRODUCTION

The applicant is requesting to rezone Tract 123 of Sunny Cove Fruit Farm (Foxtail Village, 2nd Filing) from Residential 9600 (R-9600) to Residential 7000 (R-7000). The subject property is located at the northeast intersection of Grand and 60th Street West and is currently vacant. The subject property is located at the northeast intersection of Grand and 60th Street West and is currently vacant.

PROCEDURAL HISTORY

- On February 1, 2006, the Planning Department received an application for a zone change on the subject property.
- The Zoning Commission conducted a public hearing for this item on March 7, 2006, and recommended approval to the City Council by a unanimous vote.
- The City Council will conduct a public hearing and first reading on March 27, 2006, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on April 10, 2006.

APPLICABLE ZONING AND SUBDIVISION HISTORY

- Zone Change #729 - On April 26, 2004, a rezone from R-9600 to R-7000 was approved by the City Council for Foxtail Village Subdivision, First Filing, located to the east of the subject property.
- Annexation #05-04 - On July 11, 2005, the subject property was annexed into the City and automatically rezoned from Agricultural-Open Space (A-1) to R-9600.
- Zone Change #764 - On August 2, 2005, the Zoning Commission recommended denial of a proposed zone change from R-9600 to R-7000 and R-6000 for the subject property.
- On August 11, 2005, the rezone request was withdrawn by the applicant due to neighbor concerns expressed at the public hearing regarding the proposed R-6000 zoning.
- On September 12, 2005, the preliminary plat for Foxtail Village, 2nd Filing, was approved by the City Council. As a condition of final plat approval, the subdivider is required to rezone the property to R-7000 in order to comply with the Unified Zoning Regulations.

BACKGROUND

The applicant is requesting to rezone Tract 123 of Sunny Cove Fruit Farm (Foxtail Village, 2nd Filing) from Residential 9600 (R-9600) to Residential 7000 (R-7000). The proposed rezone is for proposed Blocks 2 and 3 of Foxtail Village, 2nd Filing only; the R-9600 zoning along the northern border (proposed Block 1) of the subject property will remain for single-family residences only. The proposed R-7000 zoning will permit single-family residences and duplexes. If the property were developed with the same layout and lot sizes depicted on the preliminary plat for Foxtail Village Subdivision, 2nd Filing, approximately 16 single-family residences would be permitted on Block 2 (centrally located in the subdivision) and the proposed large lots located along Grand Avenue could potentially contain approximately nine (9) duplexes or 13 single-family residences.

The proposed rezoning is consistent with the uses and densities permitted in the Foxtail Village Subdivision, 1st Filing, adjacent to the east of the subject property.

ALTERNATIVES ANALYSIS

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

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

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

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*

The proposed zoning would permit residential uses comparable to the densities within Foxtail Village, 1st Filing located to the east of the subject property.

- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

With the extension of the City limits and as surrounding properties develop with similar densities along this portion of Grand Avenue, the proposed rezone is compatible with the character of the neighborhood. However, there are still agricultural lands and low density housing located to the south, west, and north of this property.

- *More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)*

The proposed zoning will permit single-family residential uses and duplexes within this neighborhood.

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

The proposed subdivision, with R-7000 zoning, could add approximately 360 trips per day to the local street network (10 trips per unit). The traffic accessibility study conducted for the Foxtail Village Subdivision, 2nd Filing identified the off-site street improvements required to accommodate a proposed traffic generation of 400 trips per day of increased traffic.

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

There are two (2) accesses from 60th Street West to the proposed subdivision, which were reviewed with the preliminary plat and found to be adequate for emergency services to the property.

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

The proposed zoning will permit single-family residences and duplexes. The Unified Zoning Regulations specify minimum setbacks and lot coverage requirements, as well as height restrictions for the proposed zoning district.

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

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

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

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. Both the R-9600 and R-7000 zoning districts permit a maximum lot coverage of 30%; this requirement will help prevent overcrowding of land.

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

The proposed R-7000 zoning district permits detached single-family residential units and duplexes; the R-9600 zoning district permits only detached single-family residences. The only duplexes that will be permitted on the subject property are located within proposed Block 3, along Grand Avenue, as the minimum lot size required for duplexes is 9,600 square feet.

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

<i>Transportation:</i>	The proposed zoning will not affect the adjacent streets or traffic patterns. Any proposed roads or improvements were reviewed during the subdivision process.
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<i>Water and Sewer:</i>	The property was recently annexed to the City of Billings. The City will provide water and sewer to the property through existing lines from Foxtail Village Subdivision, First Filing.
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Schools and Parks: The proposed zoning could result in an overcrowding of West High School which is currently over capacity. The middle and elementary schools that serve this property have capacity for additional students.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate emergency service were reviewed with the subdivision application.

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

The proposed zoning will be alike in character with the adjacent single-family residences and duplexes within Foxtail Village, 1st Filing to the east.

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

The subject property is suitable for the requested zoning district.

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

Because the existing 10-acre residential lots are separated from the proposed R-7000 zoning by the R-9600 zoning, the proposed zoning is not expected to appreciably alter the value of structures within the area.

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

The proposed zoning will permit more dense development than what currently exists in the area. However, the higher density development (R-7000 zoning) will be located along Grand Avenue.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

The Zoning Commission conducted a public hearing on March 27, 2006, and forwarded a positive recommendation to the City Council by a unanimous vote.

RECOMMENDATION

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #774 and adopt the determinations of the 12 criteria, as discussed within this report.

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Preliminary Plat of Foxtail Village, 2nd Filing
- D: Ordinance

ATTACHMENT A
Site Photographs



Figure 1: View southwest across Grand Avenue toward agricultural land.



Figure 2: View north toward adjacent developed properties within Sunny Cove Fruit Farms.



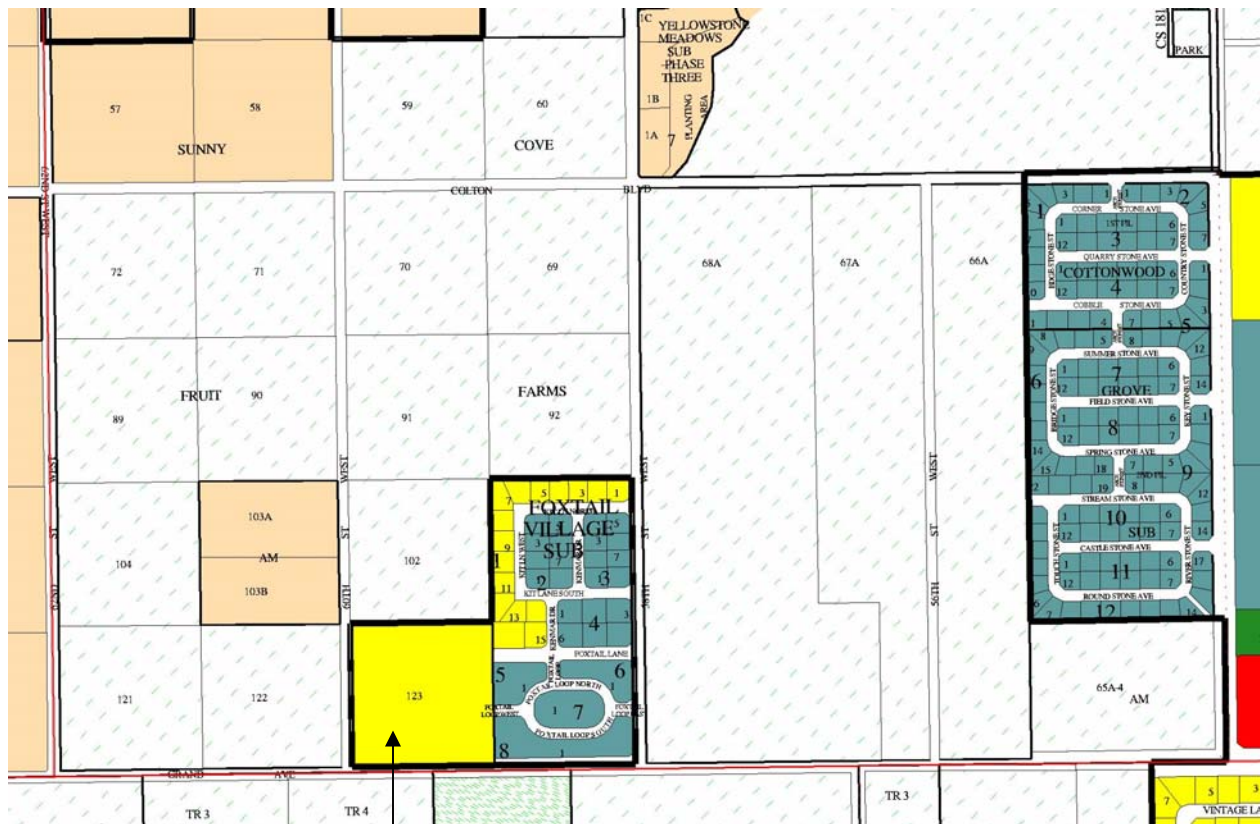
Figure 3: View west along Grand Avenue and the southern boundary of the subject property.



Figure 4: View northeast toward existing residences and residences under construction within Foxtail Village, 1st Filing.

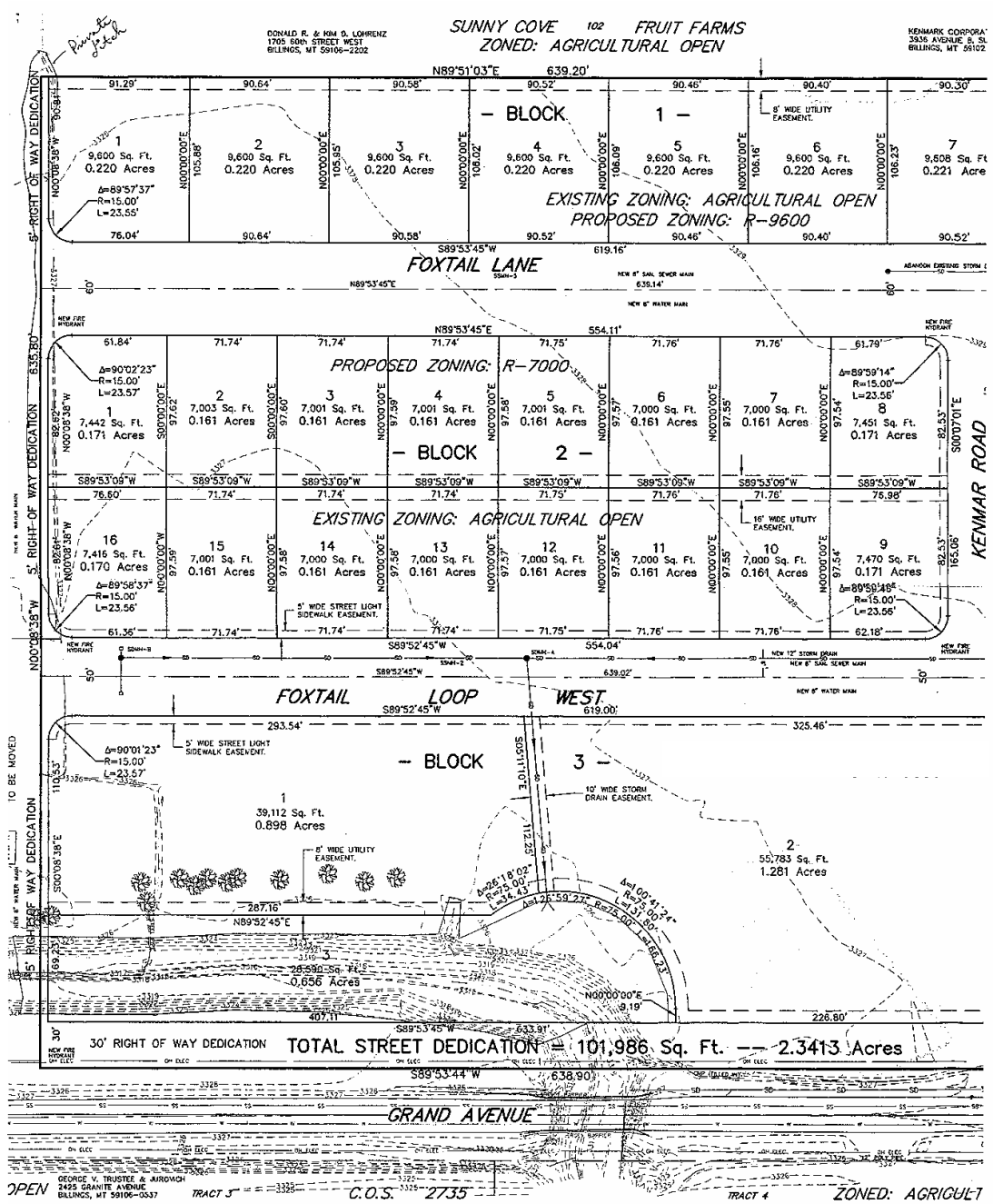
ATTACHMENT B

Surrounding Zoning



Subject Property

ATTACHMENT C
Preliminary Plat of Foxtail Village, 2nd Filing



ATTACHMENT D
ORDINANCE NO. 05-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Tract 123 of Sunny Cove Fruit Farm, containing
approximately 7.79 acres (including only Blocks 2 and 3 of the
proposed Foxtail Village Subdivision, 2nd Filing).

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

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC,* provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the twelve (12) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the twelve (12) criteria required by state law.

2. DESCRIPTION. A tract of land known as Tract 123, Sunny Cove Fruit Farm (including only Blocks 2 and 3 of the proposed Foxtail Village Subdivision, 2nd Filing) containing approximately 7.79 acres and is presently zoned Residential 9600 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9600** to **Residential 7000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 7000** zones as set out in the Billings, Montana City Code.

4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading March 27, 2006.

PASSED, ADOPTED AND APPROVED on second reading April 10, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#774

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: Zone Change #775 Public Hearing and 1st Reading of Ordinance –Text Amendment to Section 27-706(d) of the City Sign Code Special Circumstance Signs Medical Corridor

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: St. Vincent Healthcare and Billings Clinic have been working for over six months with property owners within the Medical Corridor Permit Zoning District and the neighborhood to develop changes to the City Sign Code Section 27-706(d) that meet the current and future signage needs of the medical facilities in the corridor. On January 24, 2006, the Planning Board initiated this text amendment to the sign code. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on March 7, 2006, and voted 4-0 to recommend approval to the City Council.

ALTERNATIVES ANALYZED: The City Zoning Commission held a public hearing on the proposed text amendment on March 7, 2006. The Commission heard testimony before recommending approval of these changes. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendments.

FINANCIAL IMPACT: There should be no direct financial impact to the City as a result of the interim zoning regulation.

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #775.

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

ATTACHMENTS:

A: Ordinance

INTRODUCTION

St Vincent Healthcare and Billings Clinic continue to expand health care services within the Medical Corridor Permit Zoning District. As city blocks and land are consolidated and developed it has become apparent the current signage limitation for each “developed parcel” within the district is too small to provide sufficient direction to patients, visitors and employees. The purpose of the district is to provide a defined area close to downtown that does not further encroach in the residential areas to the west but still provides enough area for current and future medical services to Billings and the metropolitan area.

PROCEDURAL HISTORY

- On January 24, 2006, the City/County Planning Board initiated the process to amend the City Sign Code related to Medical Corridor signage.
- On January 26, 2006, St. Vincent Healthcare and Billings Clinic sponsored a neighborhood meeting to discuss the proposed amendments to the City Sign Code.
- On February 6, 2006, St. Vincent Healthcare and Billings Clinic submitted the application to amend the City Sign Code for Medical Corridor signage.
- On February 16th and February 23rd, 2006, the legal advertisement for the Zoning Commission public hearing was published in the Billings Times.
- On February 17, 2006, 112 property owners were notified of the proposed changes to the City Sign Code. Those notified consist of all owners within the Medical Corridor and all owners within 300 feet of the Medical Corridor.
- On Tuesday, March 7, 2006, the City Zoning Commission conducted the public hearing for the change to the City Sign Code. The Commission voted 4-0 to forward a recommendation of approval to the City Council.
- On Thursday, March 9, 2006, the Zoning Commission recommendation to the City Council was published in the Billings Times.
- The City Council will hold a public hearing and 1st reading of the ordinance on March 27, 2006, and make a decision on the change to the City Sign Code.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on April 10, 2006.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, or delay the adoption of the changes to the City Sign Code. Planning Staff has reviewed and worked with St Vincent Healthcare and Billings Clinic to propose changes to the code that will accommodate their patient and visitor way-finding needs without intrusion into the surrounding neighborhoods. The Planning staff did have concern with the proposed unlimited number of healthcare purpose signs and with the proposed height of signs along North 30th Street and 7th Avenue North. St Vincent Healthcare and Billings Clinic and their agents, Doug James and Mary Dyre, made corrections to the proposal to eliminate 30 foot tall signs on all streets except for North 27th Street and other modifications to address those concerns. St. Vincent Healthcare and Billings Clinic have assured the neighborhood and the department they do not intend to create a cluttered appearance or confusing array of new signs within the corridor. Freestanding signs in other areas of the Medical Corridor will be limited to 20 feet in height except for non-health care related signs and signs along the west side of North

30th Street which will be limited to 12 feet in height. This provides a “step-down” approach that accommodates the North Elevation neighborhood directly west of the Medical Corridor. The Planning Department and the applicants did attempt to devise a formula to limit the number of freestanding signs for health care purposes within the Medical Corridor. The current restriction, a maximum of two (2) signs per developed parcel, is too restrictive for efficient and necessary way-finding. Other formulas considered were either too complicated to administer and enforce or un-suited for medical campuses. Therefore, the Zoning Commission is recommending to allow an unlimited number of healthcare related signs in the Medical Corridor with the exception of lots on the west side of North 30th Street. Non-healthcare related uses in the Medical Corridor will also be limited to two (2) freestanding signs per developed parcel.

STAKEHOLDERS

The Zoning Commission held a public hearing on November 2, 2005 on the proposed changes to the City Sign Code. Rod Schaffer of Billings Clinic and Dan Poling of St. Vincent Healthcare testified in favor of the proposed changes. Messrs Schaffer and Poling explained the development process of the proposed changes. Doug James, agent for the applicants, explained how many signs in the Medical Corridor had been granted variances to the current regulations and the difficulty of developing a regulation that is different from a “normal” commercial sign code regulation. Mr. James explained that other medical facilities and campuses were visited and research conducted to find examples of regulations.

Mike Tuss, Chair of the North Elevation Task Force, Gene Jarussi, and Marilyn Floberg, residents of the North Elevation neighborhood testified against the proposed changes. The North Elevation Task Force reviewed and submitted comments on the proposed changes. The primary concern of the Task Force is the increased height and size of health care purpose signs and the proposed unlimited amount of healthcare purpose signage within the corridor. The Task Force proposed two modifications to the proposed regulations. The first proposed modification would limit the number of healthcare related signs based on the size of developed parcel in single ownership. The Task Force proposal would not allow an unlimited number of healthcare related signs but would increase the number allowed over the current code. The second proposed modification was to limit the proposed sign height to 20 feet and require pylon or monument style construction (no “lollipop” style construction) along North 27th Street. Mr. Tuss testified that allowing an unlimited number of healthcare related signs would inevitably lead to sign clutter and that it is reasonable to limit the number of signs based on the street frontage and lot area. Mr. Jarussi testified that he supports the North Elevation Task Force position on the proposed changes and appreciates the effort the applicants have made to work with the neighborhood. Mr. Jarussi favors limiting the height of signs to 12 feet except for the North 27th Street frontage where 30 foot signs might be appropriate. Mrs. Floberg agreed with the proposed modifications from the North Elevation Task Force. She also testified that a 12 foot sign height is appropriate for the other streets in the Medical Corridor except for North 27th Street where 30 foot signs might be appropriate.

Dan Poling and Rod Schaffer offered rebuttal testimony. Messrs Schaffer and Poling testified that 20 foot signs might be necessary in some areas but the hospitals wouldn’t use them indiscriminately. Mr. Poling testified the hospitals should have earned a measure of trust by this

time with the neighborhood. They have developed aesthetically pleasing campuses and buildings. Mr. Schaffer testified that despite months of revisions a limitation on the number of signs was just not feasible and might even be an enforcement problem for the Planning Department.

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #775.

A: Ordinance

**ATTACHMENT A
ORDINANCE NO. 06-**

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-706 (d); CITY SIGN CODE SPECIAL CIRCUMSTANCE SIGNS, ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

Section 1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC, provide for amendment to the City Zoning Regulations from time to time. The Board of Planning initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the proposed amendments to the City Zoning Regulations.*

Section 2. DESCRIPTION. *The zoning regulation shall apply to all land within Medical Corridor and South 27th Street Corridor as described in Section 27-801 and Section 27-905 in the Billings, Montana City Code.*

Section 3. *That the Billings, Montana City Code be amended by revising Section 27-706(d) to delete certain language and add new language definition to read as follows:*

SEC. 27-706. SPECIAL CIRCUMSTANCE SIGNS.

(d) *Medical corridor and South 27th Street corridor signs.*

1) ~~Statement of special purpose. This section acknowledges the architectural visual concerns associated with the Billings Medical Corridor Permit Zoning District as set forth in Article 27-900, as well as the South 27th Street Corridor Zoning District as set forth in Article 27-800. This section further recognizes the needs and benefits of limited sign standards that will adequately serve the uses in these zoning districts and those who utilize their services, and at the same time, recognizes the need to protect the remaining residential areas within, adjacent and surrounding these zoning districts from the intrusion of unsightly, excessive and confusing sign usage. In addition, this section further acknowledges that the development trends in the Billings Medical Corridor Permit Zoning District are to build, develop and expand into "campus" like patterns, thereby developing in definable areas beyond the normal city block and it recognizes the uniqueness of this extended arrangement and location of medical~~

~~services provided in a multitude of buildings, or one building encompassing two (2) or more block area.~~

a. Medical Corridor. The Billings Medical Corridor Permit Zoning District as set forth in Article 27-900 (the "Medical Corridor") is a unique, distinct and separately identifiable area of the City of Billings. Over time, a majority of the Medical Corridor has developed a campus environment that is separate and distinct from the surrounding area. The large scale buildings, the complexities of the medical campuses, the needs and abilities of those seeking medical and emergency services, and the diversification of services offered within the Medical Corridor create a need for flexibility in establishing clear way-finding and informational signage. Accordingly, this special Medical Corridor sign code is adopted to facilitate, enhance, encourage and promote the following purposes:

- (i) To facilitate and foster complementary uses servicing the healthcare community, including hospitals, clinics, medical office buildings, laboratories, and related or supporting uses;
- (ii) To promote a unique, attractive and distinctive healthcare campus environment with limited retail uses;
- (iii) To encourage creativity and continuity in design, quality, and the character of new signage;
- (iv) To anticipate and recognize the needs of patients and visitors in the Medical Corridor;
- (v) To safeguard and enhance property values, and to protect public and private investment in the Medical Corridor;
- (vi) To promote those qualities in the visual environment which bring economic value to the community;
- (vii) To encourage the design of signs that are in harmony with the principal activities and structures that they serve and that are compatible with the overall healthcare campus environment;
- (viii) To alleviate the burdens of complex compliance and enforcement responsibilities; and
- (ix) To promote the public safety, welfare, convenience and enjoyment of travel and the free flow of traffic within the Medical Corridor.

The Medical Corridor is primarily occupied by regional healthcare providers that draw patients and visitors from a multi-state region. The Medical Corridor sign code recognizes that patients and visitors to the Medical Corridor need to be able to easily and conveniently locate, identify, and find their way to hospitals, medical

groups, clinics, medial departments, laboratories, physicians, and other healthcare points of interest.

The primary purpose of the Medical Corridor is healthcare, with very limited retail uses. Accordingly, the Medical Corridor sign code recognizes that the primary purpose of signs in the Medical Corridor is not for retail purposes, yet retains historical restrictions for retail establishments within the Medical Corridor.

The caliber of the development of the medical campuses within the Medical Corridor over time has demonstrated a commitment to maintaining architecturally sound and aesthetically pleasing signage, as well as uniform appearance of signage within parcels under common ownership. Healthcare and healthcare providers are constantly evolving and changing. One of the express purposes of the Medical Corridor sign code is to provide healthcare providers with flexibility with respect to both way-finding and informational signage.

b. South 27th Street Corridor. This section acknowledges the architectural visual concerns associated with the South 27th Street Corridor Zoning District as set forth in Article 27-800. This section further recognizes the needs and benefits of limited sign standards that will adequately serve the uses in this zoning district and those who utilize their services, and at the same time, recognizes the need to protect the remaining residential areas within, adjacent and surrounding these zoning districts from the intrusion of unsightly, excessive and confusing sign usage.

(2) Healthcare Purposes Sign Definition. As used within this section, the term *Healthcare Purposes Sign* shall mean any sign located in the Medical Corridor (excluding prohibited signs) that:

- a. identifies a hospital, clinic, medical building, healthcare facility, emergency room, trauma center, healthcare provider or Ancillary Healthcare Service (as defined herein below), and/or associated parking areas located in the Medical Corridor; or
- b. provides direction to a hospital, clinic, medical building, healthcare facility, emergency room, trauma center, healthcare provider or Ancillary Healthcare Service, and/or associated parking areas located in the Medical Corridor.

For the purposes of this definition, the phrase “Ancillary Healthcare Service” shall not include restaurants, hotels, motels, churches, and gas stations.

(3) Except as provided in subsection (4) below, ~~(2)~~ Within the Medical Corridor and the South 27th Street Corridor, signs are permitted per developed parcel as follows:

- a. Two (2) monument type signs, provided the two (2) monument signs are located on separate public street frontages and located at least one hundred (100) lineal frontage feet apart, measured along property line, as follows:
 - i. One (1) main identification free-standing sign not exceeding forty (40) square feet in sign area nor be over twelve (12) feet in height;
 - ii. One (1) secondary identification free-standing sign not exceeding thirty-two (32) square feet in sign area nor be over eight (8) feet in height.
- b. One (1) identification wall sign placed flat against a building or designed as part of an architectural feature for each public street frontage for each developed parcel not to exceed fifty (50) square feet in sign area.
- c. Free-standing directory signs shall not exceed eight (8) square feet in sign area nor be over five (5) feet in height. Wall directory signs shall not exceed eight (8) square feet in sign area.
- d. ~~On-premise medical campus signs for properties located in the medical corridor. All signs related to the medical services located in the same medical campus shall be considered on-premise signs.~~

(4) Healthcare Purposes Signs Permitted

a. Except for those signs specifically prohibited by Section 5 below, all Healthcare Purposes Signs shall be permitted in all portions of the Medical Corridor except for the area west of North 30th Street.

b. Emergency Room and Trauma Center Signs. All Emergency Room and Trauma Center signs shall be permitted in the Medical Corridor as Healthcare Purposes Signs.

(5) Prohibited Signs and Lighting. The following signs and lighting shall be prohibited in the Medical Corridor:

- a. Strobe lights;
- b. Searchlights;
- c. Balloon signs;
- d. Portable signs;
- e. Flashing neon signs;
- f. Third party signs;
- g. Billboards;
- h. Flashing incandescent lamps;

- i. Vehicles used as signs (provided that this provision shall not be construed as prohibiting the identification of a healthcare services entity or provider);
- j. Signs projecting into Rights-of-Way;
- k. Window signs;
- l. Signs exceeding 20 (twenty) feet in height except in the 25 foot strip of land appurtenant to North 27th Street where Healthcare Purposes Signs shall be permitted up to 30 feet in height provided that the 300 foot tall signs are spaced at least 100 feet apart;
- m. Signs exceeding 175 square feet of area;
- n. Signs which by coloring, shape, wording or location resemble or conflict with traffic control signs or devices;
- o. Signs that create a safety hazard for pedestrian or vehicular traffic;
- p. Signs attached to or placed on a motor vehicle or trailer parked on public or private property, provided that this provision shall not be construed as prohibiting the identification of a firm or its product on a vehicle operating during the normal course of business;
- q. Any electronic reader board sign or animated sign that is otherwise prohibited by the City of Billings Sign Code.
- r. Wall signs which, individually or collectively, cover more than 25% of the surface area of any wall. The surface area of a wall shall be determined by measuring the building height and multiplying it by the length of the wall, without deduction for doors and windows.

Section 4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

Section 6. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading March 27, 2006.

PASSED, ADOPTED AND APPROVED on second reading April 10, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
Marita Herold, CMC/AAE, City Clerk

ZC#775 – Amending City Sign Code – Special Circumstance Signs – Medical Corridor
and South 27th Street District

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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, MARCH 27, 2006

TITLE: Public Hearing for Special Review #807
 DEPARTMENT: Planning & Community Services
 PRESENTED BY: Lora Mattox, Neighborhood Planner, Planner II

PROBLEM/ISSUE STATEMENT: This is a Special Review request to allow an all-beverage liquor license with gaming on Lot 1, Block 1 of Vaquero Subdivision. The subject property is located at 5435 Midland Road. Jerke Real Estate is the owner and Roger A. Tuhy is the agent. The Zoning Commission conducted a public hearing on March 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 on a 4-0 vote is recommending that the City Council conditionally approve Special Review #807.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

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

INTRODUCTION

The applicant is requesting a Special Review to permit on an all-beverage liquor license with gaming in a Highway Commercial zone in an existing building located at 5435 Midland Road. The subject property is currently developed as the Los Mayas Restaurant and the Silver Dollar Casino. The Zoning Commission voted 4-0 to recommend conditional approval of the special review request.

PROCEDURAL HISTORY

- A special review application to allow an all-beverage liquor license with gaming was received on February 6, 2006.
- The City Zoning Commission voted 4-0 at its public hearing on March 7, 2006, to recommend conditional approval of the special review.
- The City Council will conduct a public hearing and consider this application on March 27, 2006.

BACKGROUND

The applicant states that the existing use as a casino will continue and that the gaming is regulated and approved by the Montana Department of Justice, Gambling Control Division. The special review request will allow a full beverage option for on premise consumption only. The applicant plans for some minor interior improvements, the exterior building will not be altered. The Planning Department did not receive any comments from city departments regarding this special review request. There are no schools, churches or public parks with playground equipment within 600 feet of this proposed location.

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:

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

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

CONDITIONS OF APPROVAL

The applicant shall comply with the following conditions of approval:

1. The special review approval is limited to Lot 1, Block 1 of Vaquero Subdivision located at 5435 Midland Road.
2. No outdoor seating, outdoor music or outdoor public announcement systems will be allowed with the application.
3. 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 March 7, 2006 before the City Zoning Commission. There was no public comment by the applicant, agent or residents.

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:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns.

RECOMMENDATION

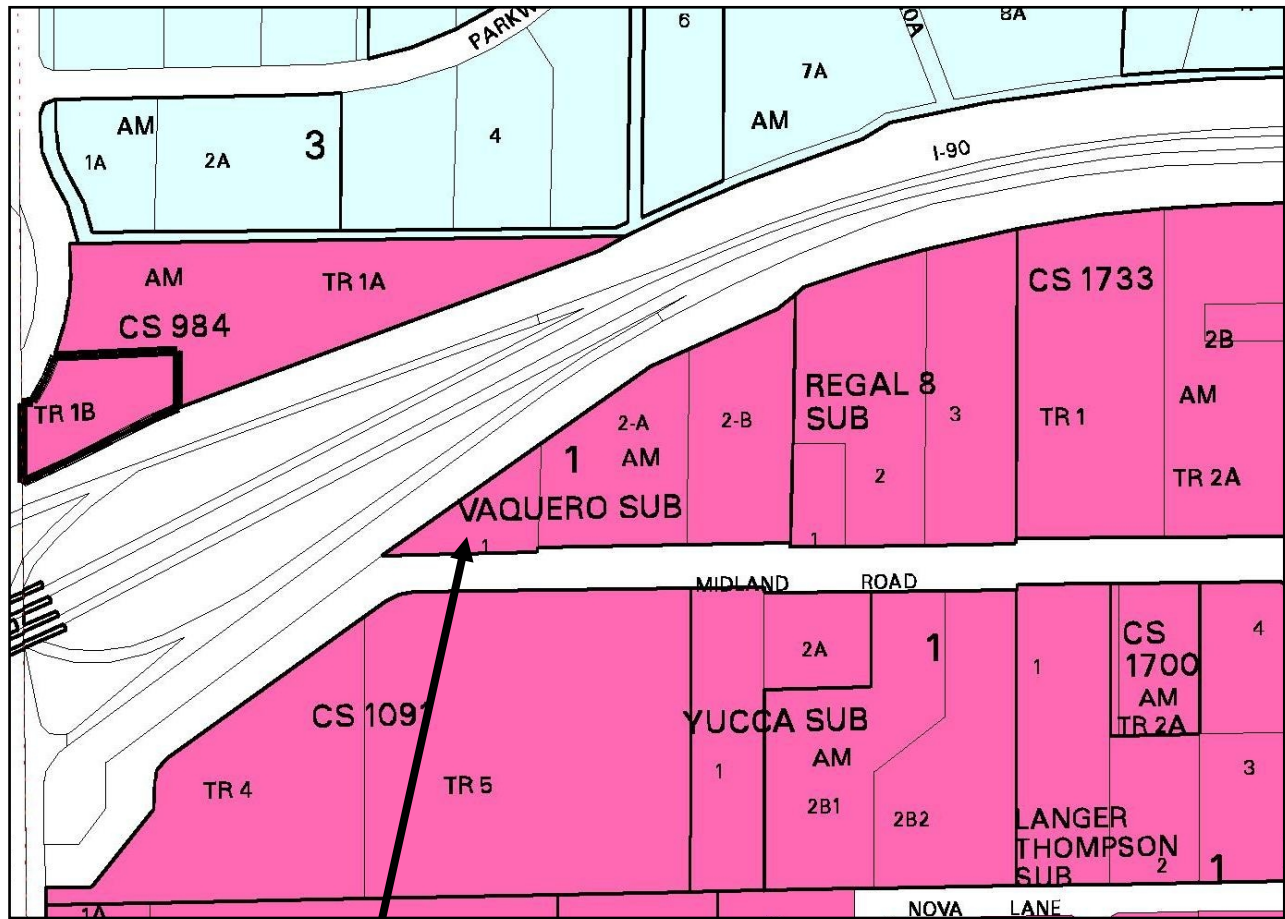
The Zoning Commission is recommending that the City Council conditionally approve Special Review #807.

ATTACHMENTS

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

ATTACHMENT A

Zoning Map – Special Review #807



Subject Property 5435 Midland Road

ATTACHMENT B

Site Photographs for Special Review #807



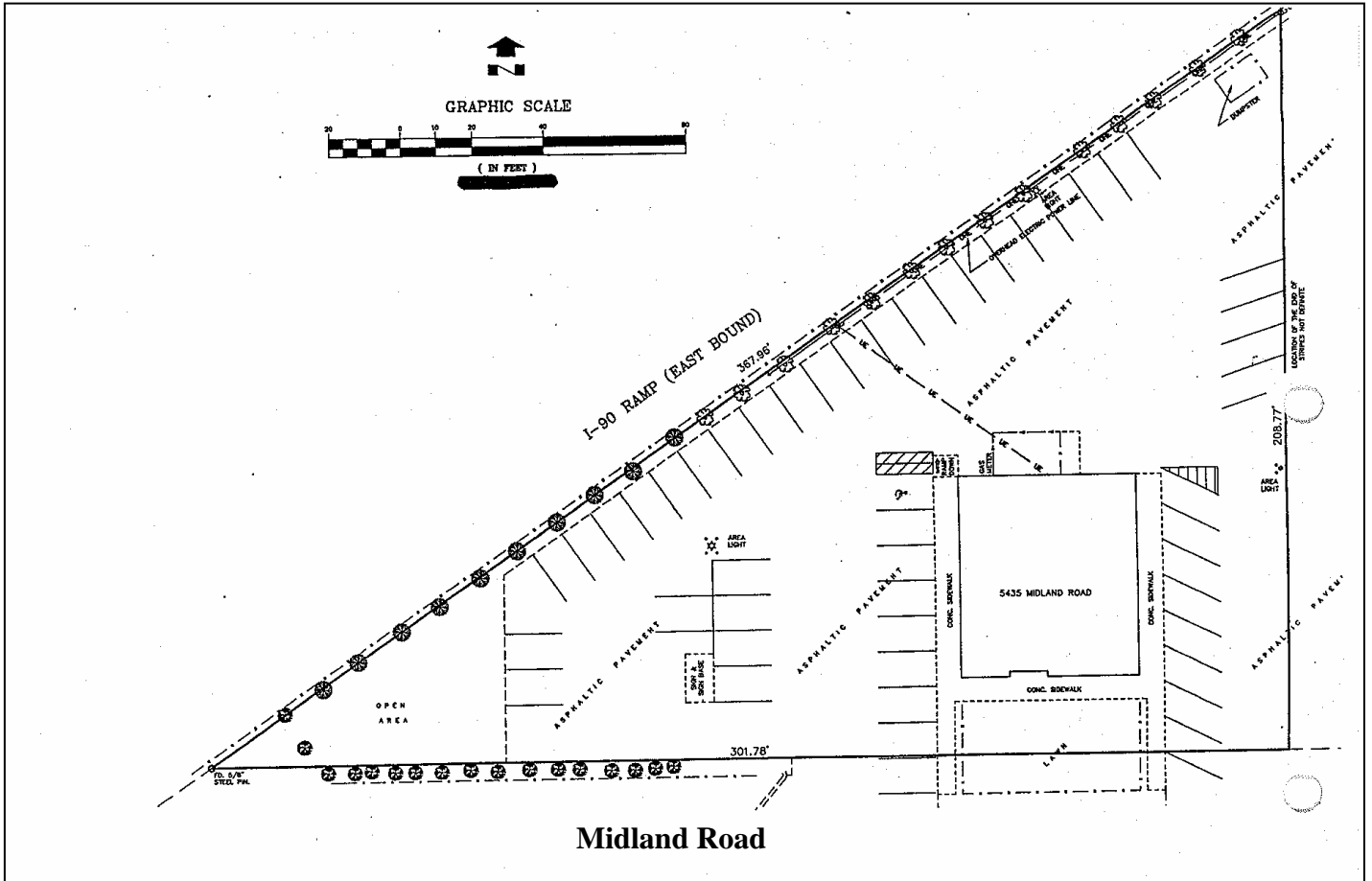
**Midland
Road**

Subject Property – 5435 Midland Road



View across Midland Road towards the Holiday Inn Trade Center

ATTACHMENT C
Site Plan – Special Review #807



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

TITLE: Public Hearing and Resolution Adopting Amendments to the 2006-11 CIP, ERP & TRP

DEPARTMENT: City Administrator's Office & Public Works

PRESENTED BY: Tina Volek, Interim City Administrator & Vern Heisler, City Engineer

PROBLEM/ISSUE STATEMENT: A Resolution adopting amendments to the City of Billings 2006-2011 Capital Improvement Plan (CIP), Equipment Replacement Plan (ERP), and Technology Replacement Plan (TRP) is being presented for City Council consideration. Said amendments presented are attached and include the changes recommended by memo at the City Council Work Session on March 6, 2006.

ALTERNATIVES ANALYZED:

- After the Public Hearing, adopt the Resolution approving the amendments to the 2006-2011 CIP, ERP, and TRP, which includes the changes presented at the March 6, 2006, Work Session.
- After the Public Hearing, do not adopt the Resolution approving the amendments to the 2006-2011 CIP, ERP, and TRP, which includes the changes presented at the March 6, 2006, Work Session.
- Delay action to a future date.

FINANCIAL IMPACT: Each City Department has reviewed its available funding and has determined the appropriate designations, as outlined in Attachment B.

RECOMMENDATION

Staff recommends that Council approve the amendments to the 2006-11 CIP, ERP, and TRP, which also includes the changes recommended by memo presented at the March 6, 2006, Work Session.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Resolution**
- B. CIP Amendment Spreadsheet**

RESOLUTION 06-_____

A RESOLUTION ADOPTING AMENDMENTS TO THE
2006-11 CAPITAL IMPROVEMENT PLAN, EQUIPMENT
REPLACEMENT PLAN, AND TECHNOLOGY REPLACEMENT
PLAN

WHEREAS, the Capital Improvements Plan (CIP), Equipment Replacement Plan (ERP), and the Technology Replacement Plan (TRP) are financial tools adopted by the City Council as an indication of its priorities for funding projects in future budget years; and

WHEREAS, the City Council of the City of Billings was presented on March 27, 2006, with staff recommendations for amendments to the 2006-11 CIP, ERP and TRP; and

WHEREAS, the City Council held a public hearing on the proposed CIP amendments at its March 27, 2006, meeting.

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

Section 1: Amendments to the 2006-11 CIP, ERP, and TRP are hereby adopted as presented by staff on March 27, 2006, and shown as Exhibit 1.

Section 2: City staff is hereby directed to amend the 2006-11 budgets to reflect the priorities as listed in the CIP, ERP, and TRP, to the extent funds are available.

APPROVED AND PASSED by the City Council of the City of Billings this 27th day of March, 2006.

THE CITY OF BILLINGS

By: _____
Ron Tussing, MAYOR

ATTEST:

By: _____
Marita Herold, CMC/AAE
CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March, 27, 2006

TITLE: Ordinance for Debarment of Suppliers
DEPARTMENT: Administration – Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City does not have a method to prevent vendors from bidding on projects due to prior satisfactory performance. State law and Administrative rules allow cities this ability. A City Ordinance has been created whereby contractors can be debarred from bidding on City contracts by the City Administrator based on specific terms within the Ordinance. The Council considered the Ordinance on 2/13/2006, requested changes and delayed action until this date. The corrections have been made and the Ordinance is submitted for Council consideration.

RECOMMENDATION

Staff recommends that Council approves the City Ordinance which allows the City Administrator to debar or suspend vendors based on the terms in the Ordinance.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A- New City Ordinance for Debarment of City Contractors

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY ADDING A SECTION TO BE NUMBERED 13-505; PROVIDING FOR A PROCEDURE WHEREBY CITY CONTRACTORS CAN BE DEBARRED FROM BIDDING ON CITY CONTRACTS, ESTABLISHING AN EFFECTIVE DATE, AND PROVIDING A SEVERABILITY CLAUSE.

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

Section 1. That the Billings, Montana City Code be amended by adding a section to be numbered 13-505, to read as follows:

Section 13-505. Debarment of contractors.

(1) If a person commits an act, as defined in this ordinance, indicating that the person no longer merits the privilege of contracting with the city or participating in city projects, the city may begin proceedings under these rules to debar the person from bidding on or otherwise participating in city contracts or projects. The city will debar or suspend contractors which violate this ordinance, and will not do business with, or allow prime and subcontractors to do business with, on city-related projects, persons debarred or suspended by the federal government, by another state, or by an agency of Montana state government. A contractor who has been debarred by the city, the federal government, by another state, or by an agency of Montana state government may not participate in work, contracts or projects with the City. A person's decision to bid upon or accept contracts with the city, or otherwise participate in city contracts, is a voluntary acceptance of the provisions of these rules and their requirements.

(2) The city administrator has the authority to temporarily suspend a contractor from consideration for further contracts with the city if the city administrator has credible evidence to believe that the contractor has engaged in activities that could lead to debarment from contract

eligibility. Debarment applies both to a firm or an individual. In the case of a firm, it may be applied against any or all businesses in which a firm has involvement or over which it has ownership or control. In the case of an individual, debarment may be applied to and enforced against any and all businesses in which the individual has any level of interest, ownership or control. The causes for debarment include the following:

(a) submission of a false affidavit for Montana residency;

(b) deliberate failure, without good cause, to perform in accordance with the specifications or within the time limit provided in a contract;

(c) contractor does not have a satisfactory record of integrity;

(d) contractor is not qualified legally to contract with the City;

(e) contractor has failed to supply any necessary information in connection with the inquiry concerning the responsibility;

(f) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts;

(g) failure to comply with the provisions of the Unemployment Insurance Law, Title 39, chapter 51, MCA;

(h) failure to comply with the provisions of the Workers' Compensation Act, Title 39, chapter 71, MCA;

(i) failure to pay the prevailing wage to any worker on any contract costing more than \$25,000 let for construction, heavy construction, highway construction or remodeling work; or

(f) any other cause that the city administrator determines to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity.

(3) If there is credible evidence that any of the situations exist as set out in (1), the city administrator shall mail a notice of suspension to the affected contractor or individual. The notice must state that:

(a) the suspension is for the period it takes to complete an investigation into possible debarment;

(b) bids or proposals will not be accepted from the suspended contractor and contracts will not be awarded to the suspended contractor during the period of suspension;

(c) the suspension is effective upon the date of issuance of the notice of suspension and, unless the suspension is terminated by the city administrator or a court, it will remain in effect for a period not to exceed 90 calendar days.

(4) If the city administrator's investigation confirms a cause for debarment, a notice will be served upon the contractor by certified mail, return receipt requested. The notice will include:

(a) the pertinent facts supporting the alleged cause for debarment and the city administrator's intent to remove the contractor from eligibility to contract with the city;

(b) the term of the debarment and to what extent affiliates are affected. The debarment will be for a specific period of time or until certain conditions are met, at the discretion of the city administrator; and

(c) notification of the contractor's right to a hearing on the matter with the city administrator, or designee, as hearing examiner, and of the contractor's right to appeal any adverse determination by the hearing examiner to the full City Council.

(5) A written request for hearing must be received by the city administrator from the contractor within 14 calendar days after the date of the mailing of the notice of debarment. Failure to timely request a hearing will constitute a waiver by the contractor of the opportunity for a contested case hearing and appeal and will result in the city administrator or city administrator's designee entering

an order supporting the contractor's debarment from contracting with the city for a specified period of time or until certain conditions are met.

(6) Upon timely receipt of a written request for a hearing, the city administrator shall appoint a hearing examiner to hear the evidence in the matter and come to a determination as to whether the facts support the decision to debar the contractor from contracting with the city for a specified period of time or until certain conditions are met. A written notice appointing the hearing examiner shall be issued by the city administrator, and sent to the person requesting the hearing.

(7) The person against whom debarment is being considered has the right to be accompanied, represented and advised by counsel, and to appear in person or by or with counsel. Counsel will not be provided by or at the expense of the city.

(8) Service of notice and later documents for the hearing will be complete and effective when made upon a person, or his counsel, if he has counsel.

(9) A notice of hearing shall be sent by the hearing examiner to the person requesting the administrative hearing. The notice shall include:

(a) A statement of the date, time, and location of the hearing;

(b) A reference to the provisions of the violation(s) involved;

(c) A short, understandable statement of the matters asserted; and

(d) A statement advising the party of its right to be represented by legal counsel at the hearing.

(10) The hearing examiner shall not engage in communications with any party or their counsel except upon notice and opportunity for all parties to participate.

(11) For hearings:

(a) The city shall record any hearing conducted and maintain a record of the proceedings. The record shall include:

(i) the initial determination of the city administrator;

(ii) the written request for a hearing;

(iii) the appointment of the hearing examiner;

(iv) the notice of hearing;

(v) the evidence offered to, or considered by, the hearing examiner;

(vi) any objections and rulings thereon;

(vii) all matters placed on the record at the hearing;

(viii) all briefs or memoranda submitted by the parties; and

(ix) any transcript made of the proceedings.

(b) The hearing examiner presiding over the hearing shall have the powers and duties may administer oaths or affirmations; issue subpoenas; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(c) Discovery will be available to the parties in accordance with Rules 26, 28 through 37 (except Rule 37(b)(1) and 37(b)(2)(d)) of the Montana Rules of Civil Procedure in effect as of the date of the adoption of these rules. Provided that: all references in the Montana Rules of Civil Procedure to a "court" are considered to refer to the city; all references to the use of subpoena power are considered to refer to the power in these rules; references to "trial" are considered to refer to the hearing; all references to "plaintiff" are considered to refer to a "party"; all references to "clerk of court" are considered to refer to the hearing examiner.

(i) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the hearing examiner, the refusal to obey the hearing examiner's order shall be enforced as provided by law.

(ii) If a party seeking discovery from the city believes he has been prejudiced by a protective order issued by the hearing examiner under Rule 26(c), Montana Rules of Civil Procedure, or, if the hearing examiner refuses to make discovery, the party may petition the District Court, Thirteenth Judicial District for the County of Yellowstone, for review of the intermediate action of the hearing examiner.

(e) The usual order of presentation at a hearing shall be:

(i) Argument and the submission of evidence and testimony on behalf of the city;

(ii) Argument and the submission of evidence and testimony from the party requesting the hearing;
and

(iii) The introduction of rebuttal evidence and testimony by the city.

(f) The hearing may be continued with recesses as determined by the hearing examiner.

(g) Evidence introduced at the hearing may be received in written form or oral testimony given under oath or affirmation. Parties have a right to cross-examine all persons testifying at a hearing.

(i) The hearing examiner may consider hearsay evidence for the purpose of supplementing or explaining other evidence. A decision should not ordinarily be based wholly upon hearsay evidence, however, circumstances in some cases may require it (i.e., debarment based on a prior debarment in another jurisdiction), at the discretion of the hearing examiner.

(ii) Judicially noticed facts are not hearsay.

(iii) Fraudulent, criminal or other seriously improper conduct of any individual (officer, director, shareholder, partner, employee, or other individual associated with a person) may be imputed to the

person when the conduct occurred in connection with the individual's performance of duties for or on behalf of the person, or with the person's knowledge, approval, or acquiescence. The person's acceptance of the benefits derived from the conduct will be evidence of such knowledge, approval or acquiescence.

(iv) The hearing examiner's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

(v) Exhibits shall be marked and the markings shall identify the party offering the exhibit. Exhibits shall be preserved by the hearing examiner as part of the administrative record.

(h) Objections to offers of evidence must be made at the time of the offer and shall be noted in the administrative record. A hearing examiner may rule on evidentiary objections at the time of the hearing, after receipt of oral or written argument by the parties, or at the time of entry of the proposed decision.

(i) The person must present all potential and available grounds to contest the debarment, and failure to raise an issue before the hearing examiner will waive that issue's consideration on any appeal or potential judicial review.

(j) The city's burden of proof for the hearing will be a preponderance of the admissible evidence presented. That is proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(k) After the hearing and any required post-hearing briefs and submissions, the hearing examiner shall enter a proposed decision, which shall be served on all parties by certified mail, return receipt requested, to their designated agent. The proposed decision shall contain findings of fact and

conclusions of law supported by the administrative record, and recommend a proposed action to the city administrator.

(12) The city administrator shall within 30 days review the proposed decision and enter the hearing examiner's final decision. The city administrator may accept, reject or modify the proposed decision. The city administrator's final decision shall contain findings of fact and conclusions of law, and shall be mailed to the parties by certified mail, return receipt requested.

(13) The sole method of appeal of the city administrator's decision is as follows:

(a) The city administrator's decision is final unless appeal is made to the city council. An appeal may only be made if it is submitted to the city administrator in writing, and only if received by the city administrator's office no later than 10 calendar days after date of mailing of the final decision to the designated agent of the appealing party. If delivery of the final decision is refused or for any other reason not able to be delivered to the designated agent (i.e., returned as undeliverable, addressee moved and left no forwarding address, etc.), the decision will be final and the 10-day appeal period will begin to toll on the date the certified letter is returned to the city administrator's office.

(14) The contractor may appeal any adverse determination by the hearing examiner to the full city council which shall review the administrative record of the proceedings and its findings and conclusions only. The council will determine whether or not the findings and conclusions are supported by that record. The council's review will not be a de novo hearing, nor will it receive written briefs from a party except on the issue of whether or not the findings and conclusions are supported by the administrative record. The council will not hear oral argument or testimony, or receive any evidence that was not presented in the hearing. The council may affirm, reject or modify the city administrator's decision. If the council determines that the record does not support the

findings and conclusions, it may refer the matter back to the city administrator for any action the council deems appropriate and directs.

The council's determination shall be final.

(15) Debarment is distinct from a finding of nonresponsibility. The city has the authority and ability in its discretion to find a person nonresponsible for purposes of disallowing a bid on a project or contract, or prohibiting a person from otherwise participating in a project or contract (e.g., as a subcontractor, supplier, etc.) without conducting debarment proceedings.

(16) If debarred by the federal government or any Montana government agency, a person may not bid on or otherwise participate in any city project or contract in any capacity (prime contractor, subcontractor, supplier, etc.), including as a separate contractor for a utility to relocate utilities required by a city project, until after the completion of the entire debarment period, whether or not the city debars the person. Debarment proceedings may proceed even if the person ceases doing business during the proceedings.

(17) If a person is debarred by any agency of the federal government for any period, the city may debar it for a period up to that set by the federal government without need for further debarment proceedings. The only evidence required in a debarment hearing in a case based on an existing debarment will be a certified copy of an order, agency letter or other final action declaring the debarment in the other jurisdiction. That will not prevent the person from presenting evidence to dispute the proposed debarment or its length. If the person is debarred by a branch or agency other than of the Montana or federal government (i.e., another state, a county, etc.), or if the city may wish a debarment period exceeding that set by the other Montana agency or the federal government, the city must hold debarment proceedings before increasing the debarment period.

(18) If debarred by the federal government or any Montana government agency, a person may not bid on or otherwise participate in any city project or contract in any capacity (prime contractor, subcontractor, supplier, etc.), including as a separate contractor for a utility to relocate utilities required by a city project, until after the completion of the entire debarment period, whether or not the city debar the person. Debarment proceedings may proceed even if the person ceases doing business during the proceedings.

(19) If a person is debarred by any agency of the federal government for any period, the city may debar it for a period up to that set by the federal government without need for further debarment proceedings. The only evidence required in a debarment hearing in a case based on an existing debarment will be a certified copy of an order, agency letter or other final action declaring the debarment in the other jurisdiction. That will not prevent the person from presenting evidence to dispute the proposed debarment or its length. If the person is debarred by a branch or agency other than of the Montana or federal government (i.e., another state, a county, etc.), or if the city may wish a debarment period exceeding that set by the other Montana agency or the federal government, the city must hold debarment proceedings before increasing the debarment period.

(20) A person planning to bid on or participate in a city contract or work, or who has already bid on or is participating in a city contract or work, must immediately notify the city administrator in writing of any debarment or suspension against it, or of any debarment or suspension proceedings pending against it in any jurisdiction.

(21) Projects or contracts already awarded to a person at the time it is debarred will not be affected, except that a bid may be rejected, or contract award rescinded, if a person submits the bid or is awarded the contract after the date on which it was debarred.

(22) The city shall maintain a list of debarred contractors on its website at <http://ci.billings.mt.us/>.

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

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

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

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

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

CITY OF BILLINGS

ATTEST:

By _____
MARITA HEROLD, City Clerk

By _____
RON TUSSING, Mayor

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CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 27, 2006

SUBJECT: Municipal Court Judicial Salary
DEPARTMENT: Municipal Court
PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: On December 30, 2006, in Resolution 05-18380, the City Council set the salary of the Billings Municipal Court Judge, including in that resolution the schedule by which salary increases would be given. In March 2006, the Council voted to amend § 10-200 BMCC to provide for a part-time assistant Municipal Court Judge in accordance with M.C.A. § 3-6-201.

Resolution 05-18380 is being repealed. The new resolution establishes the salary of a part-time assistant judge and clarifies the effective date of judicial salary increases. The intent of the Council was not to make Resolution 05-18380 retroactive. Municipal Court judicial salaries are based upon those established for District Court judges by M.C.A. § 3-5-211. To conform to state practices and to benefit City budgeting processes, the new resolution will ensure that judicial salaries will be determined 12 months in advance. The salary increases of Municipal Court judges, both full- and part-time, will therefore occur concurrently with the salary increases of the District Court judges.

Tonight's approval of this amendment will allow the part-time Municipal Judge to attend training and certification at the Supreme Court mandated conference for judges in April 2006.

RECOMMENDATION

Staff recommends that Council repeal Resolution No. 05-18380 and approve the new resolution establishing the salary of a part-time assistant judge and clarifying the effective date of judicial salary increases.

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

ATTACHMENTS

A – Proposed Resolution

RESOLUTION NO. _____

A RESOLUTION SETTING THE SALARY FOR THE PART-TIME ASSISTANT MUNICIPAL COURT JUDGE, REAFFIRMING THE SALARY OF THE FULL-TIME ELECTED JUDGE, AND CLARIFYING SALARY INCREASES; REPEALING RESOLUTION NO 05-18380

WHEREAS, on December 30, 2005, in Resolution No. 05-18380 the Billings City Council set the salary of the Municipal Court Judge including increases.

WHEREAS, the increases were erroneously set in such a manner that they did not coincide with the effective dates of District Court Judges' increases.

WHEREAS, the effective date of the increases should be clarified.

WHEREAS, the salary for the Part-time Assistant Municipal Court Judge, the hiring of whom was authorized by Ordinance 5362 on March 13, 2006, should also be set.

WHEREAS, it is in the best interests of the citizens that the positions of Municipal Court Judge and Part-time Assistant Municipal Court Judge of Billings be sufficiently compensated to attract quality candidates willing to serve in these fundamental positions; and

WHEREAS, the City Council has the authority pursuant to MCA Section 3-6-203(2001) and Billings Montana City Code Section 10-205 to establish the salaries of the Municipal Court judges.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, DOES HEREBY RESOLVE AS FOLLOWS:

1. The salary of a full-time elected Municipal Court Judge serving his or her first term in the City of Billings Municipal Court will be set at 80% of the salary of a District Court Judge as determined by the State of Montana.

2. The salary of a full-time elected Municipal Court Judge serving his or her second term in the City of Billings Municipal Court will be set at 85% of the salary of a District Court Judge as determined by the State of Montana.

3. The salary of a full-time elected Municipal Court Judge serving his or her third or subsequent term in the City of Billings Municipal Court will be set at 90% of the salary of a District Court Judge as determined by the State of Montana.

4. Any increase in the Municipal Court Judge's salary that results from an increase in the State of Montana's compensation to District Court Judges will become effective on July 1 of every odd numbered year pursuant to § 3-5-211 M.C.A.

5. The salary of the part-time Assistant Municipal Court Judge, who shall work no less than (40) hours per pay period, will be set at one-half (1/2) of 75% of the salary of a District Court Judge as determined by the State of Montana.

6. Any increase in the part-time Assistant Municipal Court Judge's salary that results from an increase in the State of Montana's compensation to District Court Judges will become effective on July 1 of every odd numbered year pursuant to § 3-5-211 M.C.A.

7. Resolution No. 05-18380 is hereby repealed.

Passed and approved this _____ day of March, 2006.

THE CITY OF BILLINGS

By: _____

Ron Tussing, Mayor

ATTEST:

By: _____

Marita Herold, CMC/AE, City Clerk

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