

CITY OF BILLINGS

CITY OF BILLINGS' VISION STATEMENT:

***"THE MAGIC CITY – A VIBRANT, WELCOMING PLACE WHERE
PEOPLE FLOURISH AND BUSINESS THRIVES"***

AGENDA

COUNCIL CHAMBERS

January 14, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing

OATHS OF OFFICE CEREMONY: Newly-elected Councilmembers

ELECTION of Mayor Pro Tem

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Ronquillo

ROLL CALL

MINUTES – December 10, 2007

December 17, 2007

COURTESIES – Finance Department, GFOA Financial Reporting Excellence

PROCLAMATIONS - none

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1 and 9 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

CONSENT AGENDA:

A. Mayor's Appointments:

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
1.	Richard DeVore	Parks/Rec/Cemetery Board	01/14/08	12/31/10

Unexpired term of Denis Pitman

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

(2) **Appointment of two Councilmembers** to the MDOT Shiloh Road Committee.

(3) **Appointment of one Councilmember** to the Montana League of Cities.

B. Bid Awards:

(1) **W.O. 05-20 Aronson Avenue Extension** (Opened 12/18/07)
Recommend COP Construction LLC, \$5,634,212.70.

[\(Corresponding Staff Memo B1\)](#)

(2) **W.O. 07-12 Alkali Creek Water Line Replacement** (Opened 12/18/07) Recommend COP Construction LLC, \$336,441.50.

[\(Corresponding Staff Memo B2\)](#)

C. Professional Services Contract for W.O. 07-22, King Avenue East Improvements, HDR Engineering, \$350,975.00.

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

D. Contract with Penn Credit Corporation for past-due parking violation collection services, minimum 19% withheld from money collected depending on required workload, five years.

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

E. Contract with Northwestern Energy for Special Improvement Lighting Maintenance District 300, Bellville Subdivision, for light district ownership, energy, and maintenance.

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

F. Contract with ABC Maintenance for janitorial services for the City's four parking garages, \$57,600 per year, one year with a one-year option for renewal.

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

G. Rescindment of the IAFF Local 521 Memorandum of Understanding (MOU) permitting firefighters to schedule additional vacation days during July and August.

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

H. Acknowledging receipt of petition to annex #08-02: 54 acres legally described as Tract 2B, Certificate of Survey 1121, generally located west of Washington Street, south of Interstate 90, and north of the Yellowstone River, King Business Park LLC; Richard Dorn, Samuel Rankin, and Hannah Elletson, owners and petitioners, and setting a public hearing date of January 28, 2008.

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

I. Confirmation of probationary police officer, Benjamin Scott.

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

J. Approval and acceptance of boulevard sidewalk easement for Sugar Subdivision, First Amendment.

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

K. Approval and acceptance of warranty deed with MWSH BILLINGS LLC for Tract 1B of Amended Tract 1, Certificate of Survey 1648, located at Central Avenue and Shiloh Road.

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

L. W.O. 04-33: Lake Elmo Drive (Hilltop Road to Wicks Lane) Right-of-Way Acquisition:

(1) Parcel 24: Portion of Lot 15, Josephine Subdivision, Orville M. Kurtz and Lake Elmo Storage LLC, \$21,105.00.

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

M. Acceptance of donation from Steven Kops of EFX Photography, Laurel, MT, to the Billings Animal Shelter, \$740.00.

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

N. Approval of application for a Certified Local Government Grant from the Montana State Historical Preservation Office, \$5,500.00.

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

O. Approval of grant application with the Montana Department of Transportation for paratransit operating assistance and the purchase of two paratransit vans, \$49,004.00 FY 08/09 revenue for paratransit administrative, maintenance, and operating costs; and up to \$106,640.00 for two new vans.

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

P. Acceptance of Municipal Court grant from the National Highway Traffic Safety Administration, Department of Transportation, providing staff training for treatment of DUI offenders, \$8,000.00.

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

Q. Joint Resolution with Yellowstone County for participation in the State-Wide Radio System.

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

R. Resolution temporarily suspending Section 24-411, BMCC, Parking for Camping Purposes, in the Masonic Temple parking lot, 1101 Broadwater Avenue, during the state meeting of the Eastern Star chapters, June 17-22, 2008.

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

S. Second/final reading ordinance expanding the boundaries of Ward III to include recently annexed property in Annexation #07-25: Property described as a 2.457-acre portion of 44th Street West right-of-way south of King Avenue West legally described as Block 5, Lot 1, Long Subdivision, City of Billings, requester.

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

T. Second/final reading ordinance expanding the boundaries of Ward IV to include recently annexed property in Annexation #07-05: Property described as 13.4 acres of a portion of park land along Zimmerman Trail right-of-way and a portion of Zimmerman Trail right-of-way between Highway 3 and Rimrock Road; City of Billings, requester.

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

U. Second/final reading ordinance expanding the boundaries of Ward IV to include recently annexed property in Annexation #07-13: Property described as a 0.92-acre portion of Zimmerman Trail right-of-way; City of Billings, requester.

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

V. Second/final reading ordinance expanding the boundaries of Ward IV to include recently annexed property in Annexation #07-14: Property described as a 4.86-acre portion of Cove Avenue right-of-way between 46th and 50th Streets West; City of Billings, requester.

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

W. Second/final reading ordinance expanding the boundaries of Ward IV to include recently annexed property in Annexation #07-16: Property described as a 0.359-acre portion of Grand Avenue right-of-way east of 56th Street West; City of Billings, requester.

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

X. Second/final reading ordinance expanding the boundaries of Ward V to include recently annexed property in Annexation #07-11: Property described as a 3.74-acre portion of Broadwater Avenue right-of-way west of 30th Street West; City of Billings, requester.

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

Y. Second/final reading ordinance expanding the boundaries of Ward V to include recently annexed property in Annexation #07-12: Property described as a 1.69-acre portion of Bell Avenue right-of-way west of Shiloh Road; City of Billings, requester.

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

Z. Second/final reading ordinance expanding the boundaries of Ward V to include recently annexed property in Annexation #07-18: Property described as a portion of 56th Street West and Broadwater Avenue rights-of-way; City of Billings, requester.

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

AA. Preliminary Subsequent Minor Plat of Amended Lot 1-A, Block 1, McCracken Subdivision, 2nd Filing, generally located just west of the intersection of Lake Elmo Drive and Wicks Lane, conditional approval of the plat and adoption of the Findings of Fact.

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

BB. Final Plats

- (1) Shiloh Crossing Subdivision
([Corresponding Staff Memo BB1](#))
- (2) Amended Lot 1, Block 4, High Sierra Subdivision, 3rd Filing
([Corresponding Staff Memo BB2](#))

CC. Bills and Payroll

- (1) December 3, 2007
([Corresponding Staff Memo CC1](#))
- (2) December 7, 2007
([Corresponding Staff Memo CC2](#))
- (3) December 17, 2007
([Corresponding Staff Memo CC3](#))

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

REGULAR AGENDA:

- 2. **PUBLIC HEARING** on Reallocation of CDBG and HOME Funds. Community Development Board and Staff recommend approval. (**Action:** approval or disapproval of Community Development Board and staff recommendation.)
([Corresponding Staff Memo 2](#))
- 3. **PUBLIC HEARING AND RESOLUTION** to sell a fragment of park property, Block 10, of Rehberg Ranch Subdivision, 2nd Filing. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
([Corresponding Staff Memo 3](#))
- 4. **PUBLIC HEARING AND RESOLUTION** to sell a portion of Lot 15A, Block 2, Southgate Subdivision, 1st Filing, and initiate a zone change. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
([Corresponding Staff Memo 4](#))
- 5. **PUBLIC HEARING AND RESOLUTION** adopting the South Side Neighborhood Plan.
([Corresponding Staff Memo 5](#))
- 6. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #825:** An ordinance amending Sections 27-201, 27-305 and 27-310 of the Unified Zoning Regulations allowing, through special review, the addition of single-bedroom rental units under certain circumstances on single-family, owner-occupied lots within existing residential zoning districts. Zoning Commission recommends denial. (**Action:** approval or disapproval of Zoning Commission recommendation.)
([Corresponding Staff Memo 6](#))
- 7. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #827:** A zone change from Residential 9600 to Residential 7000 on a 44,644 square foot property located north of Saturn Place in the Billings Heights. Dorn

Property LLC, owner; Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (**Action:** approval or disapproval of Zoning Commission recommendation.)

(Corresponding Staff Memo 7)

8. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #828:** A zone change from Residential 9600 to Residential Professional on Lot 3, Block 1, Rocky Village Subdivision, generally located on the northwest corner of Poly Drive and 17th Street West. Ric Heldt, A & E Architects, representative. Zoning Commission recommends approval and adoption of the determinations of the 12 Zoning Commission Determinations. (**Action:** approval or disapproval of Zoning Commission recommendation.)

(Corresponding Staff Memo 8)

9. **DEVELOPMENT AGREEMENT** between the City of Billings and Downtown Billings Partnership; Downtown Development Corporation, Inc.; the White Family, LLC; Big Sky Economic Development Authority; and Yellowstone County for the Federal Courthouse Building.

(Corresponding Staff Memo 9)

10. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** *(Restricted to ONLY items not on this 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

(NOTE: Additional information on any of these items is available in the City Clerk's Office)

**Visit our Web site at:
<http://ci.billings.mt.us>**



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JANUARY 14, 2008

SUBJECT: **Boards & Commissions –Appointment**
DEPARTMENT: **City Administrator’s Office**
PRESENTED BY: **wynnette Maddox, Administration**

PROBLEM/ISSUE STATEMENT: Confirmation of appointment for a Board and Commission position that is open due to a resignation.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
1.	Richard DeVore	Parks/Rec/Cemetery Board	01/14/08	12/31/10

Unexpired term of Denis Pitman

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: W.O. 05-20 – Aronson Avenue
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for W.O. 05-20 on December 18, 2007. This project will extend Aronson Avenue from its current terminus to Alkali Creek Road.

ALTERNATIVES ANALYZED:

1. Award W.O. 05-20 to COP Construction in the amount of \$5,634,212.70; or
2. Reject all bids and do not award W.O. 05-20

FINANCIAL IMPACT: Funding for this project will be provided from arterial fees, sanitary sewer funds, storm drain funds, and developer contributions. Three bids were received for this project:

<u>Bidder</u>	<u>Bid Amount</u>
Engineer's Estimate	\$ 5,034,000.00
COP Construction	\$ 5,634,212.70
Sletten Construction	\$ 5,835,058.20
Riverside Construction	\$ 6,574,742.84

Allocated funding for W.O. 05-20 Aronson Avenue:

Arterial Funds	\$5,100,000.00
Storm Drain Funds	\$ 250,000.00
Sanitary Sewer Replacement Funds	\$ 37,000.00
Developer Contribution	\$ 90,000.00
	<u>\$5,477,000.00</u>

Staff is recommending that funding be added to this project as follows:

FY08 Stormwater Master Plan Implementation project*	\$ 230,000.00
FY09 Midland Road – BOC to Mulowney Road SID project**	\$ 550,000.00
FY09 Intersection Capacity Annual project***	<u>\$ 76,250.00</u>
	\$ 856,250.00

Total project funding will then be **\$6,333,250.00**

<u>Contract Amount (This Memo)</u>	<u>\$(5,634,212.70)</u>
Remaining Funds	\$ 699,037.30

The remaining funds will be used for construction administration, potential change orders, rights-of-way costs, and public works engineering fees.

Funding Notes:

* The Aronson project will utilize storm drain funds from the approved FY08 CIP for the Stormwater Master Plan Implementation project.

** The Aronson project will utilize arterial funds from the approved FY09 CIP for the Midland Road – BOC to Mulowney Road SID project. This project was prompted by a storm drainage issue just west of the Billings Operation Center on Midland Road. Rather than attempting to pass an SID for this road, staff is recommending a future storm drainage project to alleviate the storm drainage issue on Midland.

*** The Aronson project will utilize arterial funds from the approved FY09 CIP for the Intersection Capacity Annual project. Due to funding needs for Aronson, staff is recommending no Intersection Capacity project for FY09.

RECOMMENDATION: Staff recommends that Council award the bid for W.O. 05-20 – Aronson Avenue to COP Construction in the amount of \$5,634,212.70

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, January 14, 2008

TITLE: W.O. 07-12 – Alkali Creek Water Line Replacement
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for W.O. 07-12 Alkali Creek Water Line Replacement on December 18, 2007. This project consists of replacing approximately 1100 LF of 12-inch water line with 20-inch water line.

ALTERNATIVES ANALYZED:

1. Award W.O. 07-12 to COP Construction in the amount of \$336,441.50; or
2. Reject all bids and do not award W.O. 07-12

FINANCIAL IMPACT: Funding for this project will be provided from Water Funds. We received two bids for this project as follows:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 391,978.10
COP Construction LLC	\$ 336,441.50
Western Municipal Construction	\$ 358,610.00

A breakdown of the project funds per the CIP is listed below:

<u>W.O. 07-12 Alkali Creek Water Line Funding</u>	
2008 Water Rehab (Citywide)	\$ 4,000,000.00
<u>Contract Amount (This Memo)</u>	<u>\$ (336,441.50)</u>
Remaining Funds	\$ 3,663,558.50

RECOMMENDATION

Staff recommends that Council award the bid for W.O. 07-12 – Alkali Creek Water Line to COP Construction LLC in the amount of \$ 336,441.50.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Professional Services Contract for WO 07-22 King Avenue East
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Work Order 07-22 will construct King Avenue East to a five-lane section from Orchard Lane to South Billings Boulevard. Included in the construction will be installation of a traffic signal at the intersection of Calhoun Lane and King Avenue East. This construction becomes necessary due to the development along King Avenue East, including construction of a new Cabelas. It is anticipated that construction of King Avenue East will be completed by August 2008. Request for Proposals were sent out in November 2007. Six firms submitted proposals for the project, which included HKM Engineering, Inc., Engineering, Inc., Kadrmas, Lee & Jackson, Morrison-Maierle, WWC Engineering, and HDR Engineering. Through the selection process, the committee chose HDR Engineering for the project.

FINANCIAL IMPACT: The professional services contract with HDR Engineering in the amount of \$350,975.00 will be paid for utilizing TIFD (Tax Increment Finance District) financing.

RECOMMENDATION

Staff recommends that Council approve the professional services contract for WO 07-22 with HDR Engineering in the amount of \$350,975.00.

Approved By: City Administrator ____ City Attorney ____

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CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

SUBJECT: Parking Violation Collection Services Contract
DEPARTMENT: Administrative Services – Parking Division
PRESENTED BY: Chris Mallow, Parking Supervisor

PROBLEM/ISSUE STATEMENT: The City of Billings currently does not contract with a collection agency for past-due parking violation. The Parking Division currently has over \$26,000 in outstanding parking violations due. The City advertised a Request for Proposals (RFP) on November 8 and 15, 2007. The proposals were received by Staff on December 14, 2007, and reviewed by an employee committee on December 20, 2007. The following proposals were received and reviewed by an employee committee:

1. T2 Systems
2. Duncan Solutions
3. Allocated Business Management, LLC.
4. Agency of Credit Control
5. Penn Credit Corporation
6. Mercantile Adjustment Bureau, LLC.

Staff only considered the pricing plan of two proposals, Duncan Solutions, a minimum of twenty-five percent (25%) withheld from money collected depending on collection workload required, and Penn Credit Corporation, a minimum of nineteen percent (19%) withheld from money collected depending on collection workload required. All other proposals were rejected by employee committee for reasons other than their pricing plan, such as perceived ability to meet the City of Billings requirements, experience of supplier with goods/services required by the City of Billings, and capacity to assume new business.

ALTERNATIVES ANALYZED:

- Approve contract with Penn Credit Corporation.
- Approve contract with Duncan Solutions.
- Reject all proposals and request new proposals.
- Provide no parking ticket collection services for the Parking Division.

FINANCIAL IMPACT:

- Unrealized revenue from outstanding parking violations of more than \$26,000.
- City of Billings can expect to realize more than a 50% recovery rate from collection vendor.
- Collection vendor will be paid on contingency with no direct payment from the City of Billings.

RECOMMENDATION

The selection committee recommends awarding a five-year contract to Penn Credit Corporation based on their evaluation of the proposals on December 20, 2007.

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

ATTACHMENT

A – Parking Ticket Collection Services Contract

PARKING VIOLATION COLLECTION AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 200____, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "City," and **RICHARD TEMPLIN, OF PENN CREDIT CORPORATION** hereinafter referred to as "Contractor."

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. Purpose: City agrees to hire Contractor as an independent contractor to perform parking violation collection services described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.

2. Effective Date: This Agreement is effective upon the date of its execution and will terminate on January 31st, 2013. The parties may extend this agreement in writing prior to its termination.

3. Scope of Work: The Contractor shall perform the services outlined in Exhibit "A". In performing these services, the Contractor shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

4. Payment: City agrees to pay Contractor an amount equal to nineteen percent (19%) of monies obtained as a result of contractor's collection efforts, this amount will be withheld from the debtor's payment to the City of Billings, and an amount equal to thirty percent (30%) when collection efforts require formal legal action, for the work described in the Scope of Services. Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

5. Independent Contractor Status: The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation insurance coverage for all

members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Contractor shall furnish City with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

6. Indemnity and Insurance: Contractor agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or its agents or employees. For this purpose, Contractor shall provide City with proof of Commercial General liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$750,000 per claim, and in an amount not less than \$1.5 million per occurrence and naming the City as an additional insured. The insurance must be in a form suitable to City.

7. Warranty: Contractor warrants that all services and work will be performed in a good workman-like manner. Contractor acknowledges that it will be liable for any breach of this warranty for the lesser for a period of one (1) year from the time services are completed or any warranty described in the Scope of Services.

8. Compliance with Laws: Contractor agrees to comply with all federal, state, and local laws, ordinances, rules and regulations. Contractor agrees to purchase a City of Billings business license.

9. Nondiscrimination: Contractor agrees that all hiring by Contractor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

10. Default and Termination: If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

12. Liaison: City's designated liaison with Contractor is Chris Mallow and Contractor's designated liaison with City is Richard Templin.

13. Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

14. Severability: Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

15. Successors and Assigns: Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

16. Ownership of Documents: All documents, data, drawings, specifications, software applications and other products or materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Contractor are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Contractor harmless for such use. All or any portions of materials, products and documents produced under this Agreement may be used by the Contractor upon confirmation from the City that they are subject to disclosure under the Public Disclosure Act. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City. The Contractor shall preserve the confidentiality of all City documents and data accessed for use in Contractor's work product.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

By _____
Ron Tussing, Mayor

APPROVED AS TO FORM:

By _____
Brent Brooks, City Attorney

CONTRACTOR (Print Name Above)

By _____
Print Name _____
Print Title _____

EXHIBIT "A"
SCOPE OF WORK

1. The contractor shall accept accounts placed by the City of Billings under terms of this agreement and will use its best efforts to collect said accounts utilizing means legal, necessary and proper.
2. The City shall provide information needed for collection. Further, the City shall make its own efforts at collection and written demands prior to turnover and will inform the debtor of the consequences of his/her failure to make payments.
3. Contractor understands the City of Billings makes every attempt to collect outstanding parking violations through written demands and other collection efforts prior to turning those accounts over to an outside source. Contractor understands that the violators/debtors will be aware the account will be turned over for collection.
4. The contractor shall provide routine, detailed account information to the City each month and shall provide summary information to the City as required.
5. Contractor will provide the City of Billings with a monthly statement indicating account activity, including payments collected during that period. Contractor can supply the City of Billings with current statistical information at intervals specified by the City of Billings.
6. The City shall provide the contractor with information on payments made directly to it on accounts assigned to the collection agency or contractor, and will pay the collection fee on these accounts.
7. Any payments received directly by the client should be reported to Contractor in a timely manner. The client service representative assigned to the City of Billings will adjust accounts accordingly.
8. The contractor shall not initiate legal proceedings on an account without prior authorization by the City. All attorney fees, court costs, and other expenses incurred with legal collection proceedings authorized by the City shall be borne by the contractor.
9. When a debtor is unwilling to work out reasonable repayment of defaulted debt obligations, Contractor begins an account review for possible litigation. Accounts will be litigated only with written approval from City of Billings prior to lawsuit. Contractor works closely with an attorney network that allows us to litigate throughout the United States and its territories, and understands that no suit may be settled without prior approval from the City.

10. Contractor will bear all attorney fees, court costs, and other expenses incurred with legal collection proceedings authorized by the City of Billings.
11. Accounts may not be compromised by the contractor except pursuant to specific written approval from the City on a case by case basis.
12. Contractor will take necessary measures to safeguard account information received from the City of Billings – including oral information – from any intentional or unintentional use or disclosure that is in violation of the privacy rule. Contractor will take reasonable administrative, technical, and physical safeguards to protect account information entrusted to us for collection purposes.
13. The contractor agrees to maintain the confidentiality of all accounts correspondence, documents and any other such information, which may be obtained from or furnished by the City, relating to these matters for the purpose of collection.
14. Contractor understands the importance of data security and provides an in-house, on-staff MIS Department to help our clients insure data security by accepting, updating, reporting payments and closing accounts in any format that makes our client comfortable.
15. Closing and returning accounts at the client's request or upon completion of collection efforts will be done pursuant to client guidelines and contractual needs. Contractor will return or destroy all account information upon request from the City of Billings or contractual obligations.
16. The contractor agrees to return to the City, at no charge, accounts referred by mistake.
17. If a client requests the return of an account, the account is notated with the name of the individual requesting the recall and the reason for return. If the client makes a verbal request, we ask that all requests be forwarded in writing or electronically. Collection activity is discontinued immediately. The account, along with a cancellation report, and any documentation is returned without charge or penalty.
18. The City shall pay no fee to the contractor when the balance due has been reduced resulting from City action such as application of refund, security deposit or credit adjustment.

19. Contractor charges collection fees based only on the actual amount of money collected. When the City of Billings requests a balance adjustment, the account is notated and adjusted immediately. Collection efforts continue on the new balance and the collection fee is assessed on the updated balance only.
20. Records developed as a result of an agreement are City records and subject to access, scheduling and disposition approved by the City.
21. Contractor agrees that all information relating to records developed as a result of an agreement with the City of Billings are subject to access, scheduling and disposition as approved by the City.

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: SILMD 300 – Bellville Subdivision
DEPARTMENT: Public Works Department
PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: Bellville Subdivision, located off of Kyhl Lane, north of Wicks Lane, wishes to install street lights. The City Council held a public hearing and created SILMD 300 at its September 11, 2006, meeting. Creation of the district requires a contract between the City of Billings and NorthWestern Energy for light district ownership, energy, and maintenance by NorthWestern Energy. The contract is the standard form SILMD contract utilized on all NorthWestern Energy street light districts.

FINANCIAL IMPACT: All maintenance and energy costs for these proposed light districts would be paid for by assessments against properties within the district.

RECOMMENDATION

Staff recommends that Council approve the standard form SILMD contract with NorthWestern Energy for SILMD 300.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A. SILMD 300 Contract

STREET LIGHTING AGREEMENT

THIS AGREEMENT, effective this _____ day of _____, 20____, by and between NorthWestern Energy, a division of NorthWestern Corporation, doing business at 40 East Broadway Street, Butte, Montana 59701, hereinafter called the "Company" and THE CITY OF BILLINGS, a municipal corporation organized under the laws of the State of Montana, whose mailing address is PO Box 1178, Billings, Montana 59103, hereinafter called the "City".

WITNESSETH:

WHEREAS, Special Improvement Lighting Maintenance District No. 300 has been duly and regularly created by the City Council of the City of Billings, Montana for the purpose of providing new 100 Watt high pressure sodium (HPS) street lighting within the boundaries of said District; and

WHEREAS, the Company is willing to supply, install, operate and own the facilities within said lighting district(s), and furnish electrical energy to and maintenance for said lighting district(s), upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties hereto, it is agreed as follows:

SECTION 1. INSTALLATION OF NEW FACILITIES

The Company undertakes and agrees to construct and install the street lighting facilities in said lighting district(s) at its own expense, and such work shall be commenced and completed by March 31, 2008. The said facilities shall be of the type hereinafter specified and shall be installed at the locations and according to the specifications of the City given prior to the commencement of the work.

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(a) Type of facilities: 100w Acorn type III fixtures mounted at 12' on decorative fiberglass poles and served by underground wire.

(b) Locations: There will be 12 units spaced and located in accordance with the map of said lighting district on file in the office of the City Engineer of the City of Billings, Montana. Type of equipment and number of lights may be modified only by the written consent of the parties hereto.

SECTION 2. OWNERSHIP

The facilities to be constructed and installed are, and shall remain, the property of the Company.

SECTION 3. MAINTENANCE, OPERATION AND REPAIR

a. Company agrees to operate and perform ordinary maintenance of the Facilities. Lights shall be turned on at dusk and turned off at dawn each day during the term of this Agreement.

b. The charges specified herein are based on normal conditions and do not cover charges for extraordinary repair and/or replacement costs.

c. Company will make necessary repairs and replacements within a reasonable time after receiving notice of any outage or other damage to the facilities. The Company shall have no obligation to patrol the facilities to determine that they are in operating condition.

SECTION 4. SUPPLY OF ENERGY TO SYSTEM

The Company agrees to supply electrical energy to said street lighting system for the charges hereinafter specified.

SECTION 5. CHARGES

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a. The City undertakes and agrees to pay the Company for furnishing, operating and maintaining, as provided herein, said street lighting system to be constructed and owned by the Company and for supplying electrical energy thereto. The charge for each lighting unit shall be based on the rate schedule approved by the Montana Public Service Commission (PSC) and in effect at the time the lighting unit(s) are installed, subject to amendment or revision with prior PSC approval. The initial rate for each light is \$29.36/month. If additional units are subsequently installed by mutual consent of the parties hereto, the charges for such additional lights shall be in accordance with the rates in effect at the time said installations are made, subject to amendment or revision with prior PSC approval.

b. The Company shall have the right to make additional charges to City for the cost of labor (including applicable overheads) and the actual material cost for repairs to and/or replacement of street lighting facilities that are extraordinary repairs and/or replacement costs.

c. Bills for said services shall be due and payable in cash or valid warrants when rendered each month and will become delinquent thirty (30) days thereafter.

SECTION 6. FORCE MAJEURE

a. The Company shall not be liable for failure to comply with any of the terms and conditions of this Agreement where such failure is caused by acts of God, government regulations or orders, strikes or labor difficulties, fires, floods, droughts, riots, destruction of property, or by any other cause beyond its reasonable control.

b. If the Company is unable to fulfill any obligation by reason of a cause beyond its reasonable control, then it shall notify the City and the Company shall use its best efforts to complete the work in a timely manner.

SECTION 7. TERM

This agreement shall be and remain in full force and effect for a period of two (2) years and eleven (11) months from the date hereof, and shall thereafter continue in force and effect for successive periods of two (2) years and eleven (11) months each, until and unless terminated by

CONFIDENTIAL/PROPRIETARY

either party giving to the other party notice in writing at least sixty (60) days prior to the expiration of the initial term hereof, or any renewal thereof, of its intention to terminate this agreement at the expiration of such initial term or any renewal.

SECTION 8. LIABILITY, RELEASE AND LIMITATION OF LIABILITY

a. The Company, in the construction, maintenance and operation of the street lighting system provided for herein, shall use reasonable care and shall indemnify, hold harmless and defend the City of Billings of and from any and all damages, injuries and expenses of any kind, including attorney's fees, caused by the negligence, acts or omissions of the Company, its agents, representatives, or employees, or by the failure of the Company to comply with the provisions of this Agreement.

b. If this Agreement terminates, City shall under no circumstances be entitled to claim or recover consequential damages of any nature arising, or claimed to have arisen, as a result of said termination.

SECTION 9. INDEPENDENT CONTRACTOR

For any services performed hereunder, Company is an independent contractor, responsible to the City only as to the results to be obtained and to the extent that the services shall be done in accordance with any plans or specifications furnished by the City.

SECTION 10. APPLICABLE LAW

a. This Agreement shall be governed in all respects by the laws of the State of Montana.

b. All hiring by the parties will be on the basis of merit and qualifications. The parties may not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin.

c. Company shall have and maintain complete control over all of its employees, subcontractors, agents and operations, being responsible for any required payroll deductions and providing required benefits, such as, but not limited to, workers' compensation and unemployment insurance.

CONFIDENTIAL/PROPRIETARY

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SECTION 11. TERMINATION

Either party may terminate this Agreement if the other party defaults in performance or breaches any of the terms of this Agreement and fails to cure such default or breach within thirty (30) days after written notice of such default.

SECTION 12. INSURANCE

Without limiting any of the Company's obligations hereunder, Company shall provide and maintain comprehensive general liability and automobile liability insurance adequate to secure its indemnity obligation hereunder. City shall have the right to request proof of such insurance coverage.

SECTION 13. BINDING EFFECT AND ASSIGNMENT

a. This Contract shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

b. Either party may assign this Agreement upon written consent of the other party.

SECTION 14. NO THIRD PARTY BENEFICIARY

This agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

SECTION 15. AUTHORITY

Each party represents that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

SECTION 16. INTEGRATION

This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained in this Agreement shall not be binding upon the parties.

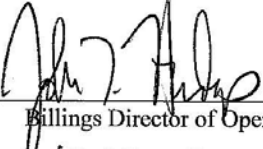
CONFIDENTIAL/PROPRIETARY

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IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their duly authorized officers.

NORTHWESTERN ENERGY L.L.C.

THE CITY OF BILLINGS

By: 
Billings Director of Operations

By: _____
Mayor

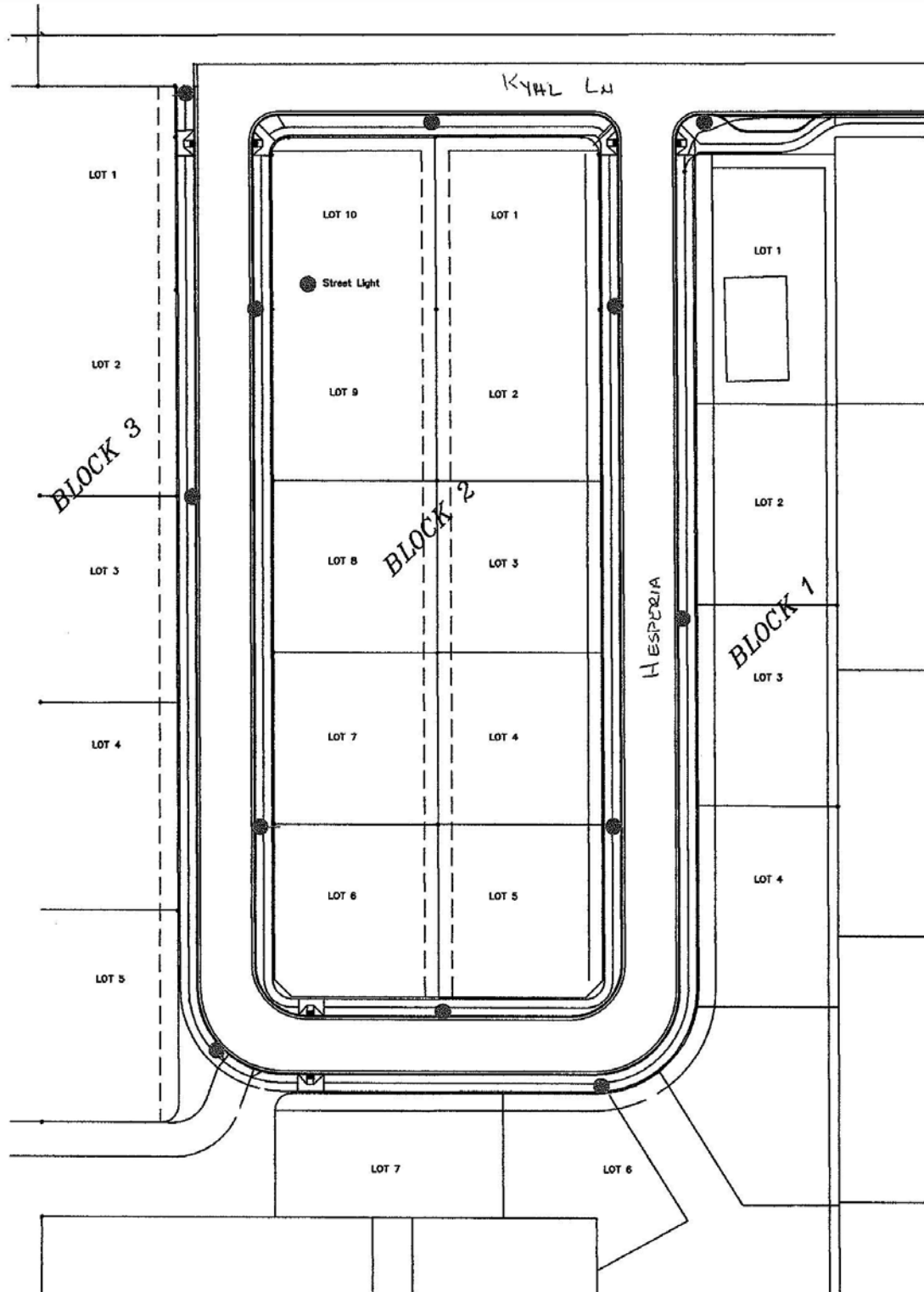
Date: 10-23-07

Date: _____

ATTEST: _____
City Clerk

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Parking Janitorial Contract
 DEPARTMENT: Administrative Services – Parking Division
 PRESENTED BY: Chris Mallow, Parking Supervisor

PROBLEM/ISSUE STATEMENT: The Parking Division provides janitorial services for the four (4) City parking garages. The contract with ABC Maintenance ended on November 30, 2007. The City advertised a Request for Proposals (RFP) on October 11 and 18, 2007. The RFP was for a one-year janitorial contract with a one-year option to renew at the same annual rate. The following proposal was received by Staff on November 2, 2007, and reviewed by an employee committee on November 6, 2007:

7. ABC Maintenance – \$102,000 per year.

This amount represents a \$73,300.00 (or 255%) increase over the expired contract. Staff changed the scope of work to eliminate duties that are outside the typical ones that are performed by custodial services, such as cleaning exterior windows of Sky-bridges and stair/elevator towers. The City re-advertised a Request for Proposals (RFP) on November 22 and 29, 2007. The RFP was for a one-year janitorial contract with a one-year option to renew at the same annual rate. The following proposal was received by Staff on December 14, 2007, and reviewed by an employee committee on December 19, 2007:

1. ABC Maintenance – \$ 57,600 per year.

ALTERNATIVES ANALYZED:

- Approve contract with ABC Maintenance.
- Reject the proposal, change the scope of work and request new proposals.
- Reject the proposal and hire part time or full time staff.
- Provide no janitorial services for the parking garages.

FINANCIAL IMPACT: Only \$24,000 has been budgeted in FY08 for this service, however, the Division will make up the remainder in cost savings from other line items in the budget.

RECOMMENDATION

Staff recommends that Council approve the janitorial contract with ABC Maintenance in the amount of \$57,600 per year.

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

ATTACHMENT:

A. Janitorial Contract

JANITORIAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 1st day of February, 2008, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "City," and Joanne Stevens, of ABC Maintenance, hereinafter referred to as "Contractor."

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. Purpose: City agrees to hire Contractor as an independent contractor to perform Janitorial Services for all City-owned Parking Facilities described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.

2. Effective Date: This Agreement is effective upon the date of its execution and will terminate on January 31st, 2008. The parties may extend this agreement, for one additional year, in writing, prior to its termination.

3. Scope of Work: The Contractor shall perform the services outlined in Exhibit "A". In performing these services, the Contractor shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

4. Payment: City agrees to pay Contractor fifty-seven thousand six-hundred dollars (\$57,600)/year, paid in twelve equal monthly installments, for the work described in the attached Exhibit "A" - Scope of Services. A call-out charge of seventy-five dollars (\$75.00)/hour for the first hour and fifty-nine dollars (\$59.00)/additional hour for additional cleaning, a flat rate call-out charge of seventy-five dollars (\$75.00)/hour for hazardous/human waste, as needed by the City will be paid to the Contractor. Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

5. Independent Contractor Status: The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation insurance coverage for all members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Contractor shall furnish City with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

6. Indemnity and Insurance: Contractor agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or its agents or employees. **For this purpose, Contractor shall provide City with proof of Commercial General liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$750,000 per claim, and in an amount not less than \$1.5 million per occurrence and naming the City as an additional insured. The insurance must be in a form suitable to City.**

7. Warranty: Contractor warrants that all services and work will be performed in a good workman-like manner. Contractor acknowledges that it will be liable for any breach of this warranty for the lesser for a period of one (1) year from the time services are completed or any warranty described in the Scope of Services.

8. Compliance with Laws: Contractor agrees to comply with all federal, state, and local laws, ordinances, rules and regulations. Contractor agrees to purchase a City business license.

9. PREVAILING WAGE REQUIREMENTS
Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of the contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-

432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA, and falls under the category of non-construction services. The booklet containing Montana's 2007 Rates for non-construction services is attached.

10. Contractors' Gross Receipts Tax: Contractor understands that all contractors or subcontractors working on a publicly funded construction project are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.

11. Nondiscrimination: Contractor agrees that all hiring by Contractor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

12. Default and Termination: If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

13. Liaison: City's designated liaison with Contractor is Chris Mallow and Contractor's designated liaison with City is Joanne Stevens.

14. Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

15. Severability: Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

16. Successors and Assigns: Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

17. Ownership of Documents: All documents, data, drawings, specifications, software applications and other products or materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Contractor are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Contractor harmless for such use. All or any portions of materials, products and documents produced under this Agreement may be used by the Contractor upon confirmation from the City that they are subject to disclosure under the Public Disclosure Act. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City. The Contractor shall preserve the confidentiality of all City documents and data accessed for use in Contractor's work product.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

CONTRACTOR (Print Name Above)

By _____
Ron Tussing, Mayor

By _____
Print Name _____
Print Title _____

APPROVED AS TO FORM:

By _____
Brent Brooks, City Attorney

EXHIBIT “A”

CONTRACTOR'S DUTY

In consideration of the payment or payments herein specified and agreed to by **OWNER**, **CONTRACTOR** hereby covenants and agrees to furnish equipment, labor and supplies as specified in the following sections of this Agreement for the CITY OF BILLINGS' four (4) parking garages (Park I, Park II, Park III and Park IV), all attached stairtowers and elevators, and the following skybridges:

- Park I skybridge (from Park I to Hart Albin parking garage)
- Park III skybridge (from Park III to Courthouse)
- Park III skybridge (from Park III to Broadway Place)

JANITORIAL SERVICES

DAILY SERVICES:

Restrooms:

All floors shall be swept and mopped with disinfectant.

Toilet bowls and urinals shall be washed, sanitized and deodorized. No rust or encrustation shall remain. Traps shall be maintained free from odor at all times. Wash basins shall be cleaned.

Mirrors, shelving, dispensers and chromium fixtures shall be wiped with cleaner and dried. All other surfaces shall be cleaned and dusted.

Waste receptacles shall be emptied and contents removed from premises.

Paper towel, soap and toilet paper dispensers shall be serviced.

Office Areas: (Garage Attendants' booths in all four garages):

Cash registers, desks, file cabinets, tables, fans, counters and chairs shall be cleaned and dusted.

Wastebaskets shall be emptied and the wastepaper removed from the premises.

The entire rug area is to be vacuumed daily to remove all dirt, dust and litter.

All floors shall be swept and mopped with disinfectant.

Windowsills in office areas shall be dusted and windows shall be spot cleaned.

Garages, Grounds, Elevators and Stairtowers:

Inspect elevators, access areas, stairtowers, windows, stair rails, and entryways of garages. Pick up debris and clean as needed.

Wipe down interior elevator walls, doors and windows and mop elevator floors with disinfectant. Elevator thresholds must be kept clean to operate doors properly.

Treat and remove all stains throughout stairtowers.

Clean litter, mud, cigarettes and dirt on garage ramp floors and sidewalks.

Skybridges – Park I, Park III (2):

Pick up all trash and spot clean floors. Interior windows and sills shall be spot cleaned.

Waste Collection and Removal:

All refuse, trash and garbage shall be collected and removed from the building. Areas around cans to be cleaned of all stains.

WEEKLY SERVICES (in addition to items listed above):

Storage Areas

Remove all dirt, dust and litter.

Garages, Grounds, Elevators and Stairtowers:

Sweep access areas and all levels of stairtowers.

Wipe off all ticket dispensers, card readers, gate arms and exterior windowsills.

Skybridges – Park I, Park III (2):

Dust all windowsills, vacuum carpeted areas. All other floors shall be swept and mopped with disinfectant.

Waste Collection and Removal:

Cans used for collection of refuse, trash and garbage shall be washed inside and out.

MONTHLY SERVICES (in addition to items listed above):

Office Areas:

All interior and exterior window glass shall be washed.

All wall surfaces shall be cleaned with disinfectant.

Garages, Grounds, Elevators and Stairtowers:

Clean elevator ceiling light panels.

Restrooms:

The full surface area of walls, doors, window frames and sills shall be wiped down with disinfectant.

TWICE A YEAR SERVICES:

Restrooms:

Metal door thresholds shall be scrubbed clean. All floors shall be stripped and waxed.

Office Areas:

Clean light globes on office ceilings.

Metal door thresholds shall be scrubbed clean. All floors, other than carpeted floors, shall be stripped and waxed.

Garages, Grounds, Elevators and Stairtowers:

High-pressure wash all stairwells, railings, steps, landing, entries and trash can areas shall be cleaned.

Metal door thresholds shall be scrubbed clean.

Skybridges:

All carpeted areas will be shampooed and steam cleaned.

Wash interior windows of all Skybridges.

Metal door thresholds shall be scrubbed clean. All floors, other than carpeted floors, shall be stripped and waxed.

Each month, there will be an inspection of one of the parking garages with the owner and the contractor. A rating sheet will be completed by the owner during inspection and a copy will be provided to the contractor.

SUPPLIES AND MATERIALS

CONTRACTOR shall provide for all supplies, materials and labor necessary and incident to the performance of all services required by this Agreement, except paper products and soap used in the restrooms and trash receptacle liners.

CONTRACTOR shall comply with all State and Federal regulations and City codes, including OSHA.

OTHER PROVISIONS

LEVEL OF SERVICE:

A high level of maintenance of all components of this contract is mandatory. The **CONTRACTOR** shall be allowed to use any materials, equipment, methods, etc., he desires to furnish this level of maintenance, provided that strict adherence to Federal, State and Local codes are maintained.

CONTRACTOR will provide the **OWNER** with a **daily checklist** indicating completed items and shall be signed by cleaning personnel. **CONTRACTOR** shall provide **OWNER** with **written maintenance schedules** for all other items, other than daily services, and **notify OWNER upon completion** of scheduled maintenance.

CONTRACTOR will communicate daily with the **OWNER** concerning immediate maintenance needs.

Garage maintenance will be completed during the following days:

Park I	Sunday-Friday
Park II	Sunday-Friday
Park III	Sunday-Friday
Park IV	Monday-Friday

Office Hours are as follows:

Park I	10:30 a.m. – 6:30 p.m.	(Monday-Friday)
Park II	7:15 a.m. – 11:00 p.m.	(Monday-Saturday)
Park III	10:30 a.m. – 6:30 p.m.	(Monday-Friday)
Park IV	5:30 a.m. – 9:30 p.m.	(Monday-Friday)

All areas may be cleaned at any time; however, garage and employee traffic is reduced in the evenings. Contractor will be available to respond to cleanups of an emergency nature that cannot wait for scheduled cleaning.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Rescind IAFF Local 521 Memorandum of Understanding on Vacation Day Selection

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The 2005-2008 IAFF Local 521 contract contains a Memorandum of Understanding (MOU) that allows one (1) more firefighter than the usual number to schedule vacations during July and August. The firefighters will soon be bidding for 2008 vacations. When Station 7 is operating and since the department cannot fill all vacant positions due to budget reductions, this MOU will potentially cause short staffing during these two summer months. According to the MOU, either party to the agreement may terminate or rescind it with 30 days notice. The Council approved the original agreement, therefore, it needs to approve this rescission.

ALTERNATIVES ANALYZED: The Council can approve or disapprove this recommendation. Disapproving it will result in firefighters being able to schedule additional vacation days in July and August. If an extra vacation day results in short staffing, it costs an average of \$905 per shift to hire a firefighter to fill the shortage.

FINANCIAL IMPACT: See above.

RECOMMENDATION

Staff recommends that Council approve rescinding the IAFF Local 521 MOU that permits extra vacation day selections in July and August.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A: Memorandum of Understanding

ATTACHMENT A

MEMORANDUM OF UNDERSTANDING

The City of Billings and Local 521 International Association of Fire Fighters do enter into a Memorandum of Understanding as outlined hereto:

During the months of July and August, the vacation scheduled shall be opened for three (3) slots per shift. No more than two (2) Captains or two (2) Engineers shall be off at the same time.

This Memorandum of Understanding expires upon thirty (30) days notice from either party.

CITY OF BILLINGS

INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS - LOCAL 521

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Annexation Petition #08-02: Acknowledge Receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: Owners and petitioners, King Business Park, LLC, Richard Dorn, Samuel Rankin, and Hannah Elletson, are requesting annexation of a property legally described as Tract 2B, Certificate of Survey 1121, located in Section 16, Range 26E, Township 1S, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located west of Washington Street, south of Interstate 90 and north of the Yellowstone River. The petitioner is requesting annexation in order to obtain city water and sewer services for completion of a minor commercial subdivision. The subject property is currently an historical homestead that was recently rezoned to Controlled Industrial in the county. At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for January 28, 2008; the Council will vote on the petition at that public hearing.

ALTERNATIVES ANALYZED: Section 7-2-4600, MCA, permits owners of more than 50% of a 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. The subject property is bordered on the north across Interstate 90 by properties within the City limits and is depicted on the adopted Limits of Annexations Map in an area proposed to be annexed within the next five (5) years.

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 January 28, 2008, to consider annexing this property.

Approved by: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Property Data
- B. Annexation Petition
- C. Annexation Map

ATTACHMENT A
Property Data

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	King Business Park, LLC, Richard Dorn, Samuel Rankin, and Hannah Elletson
Purpose of annexation:	To obtain City Services
Property included:	Tract 2B, Certificate of Survey 1121
Location:	West of Washington Street, south of Interstate 90 and north of the Yellowstone River
Total area:	54 acres
Current zoning:	Controlled Industrial
Current land use:	Historical Homestead
Future zoning:	Same
Future land use:	Industrial Uses

ATTACHMENT B

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:

- 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, Parks and Recreation Department, and the Finance Department. If the departments find no problems with the Petition, 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
6-5-2007	A.A.D. KAHN, III	A.A.D. Kahn, III	P.O. Box 75 Billings, MT 59103
6/18/2007	Richard Dorn	Richard Dorn	1645 Parkhill #3
6/20/2007	Samuel D Rankin	Samuel D Rankin	1645 Parkhill #3 59102
6/20/2007	Hannah Elstrom	Hannah Elstrom	1645 Parkhill #3

(continued on separate page)

AN 0725-973
Revised 10/03

(Should be completed prior to obtaining signatures of resident freeholder electors)

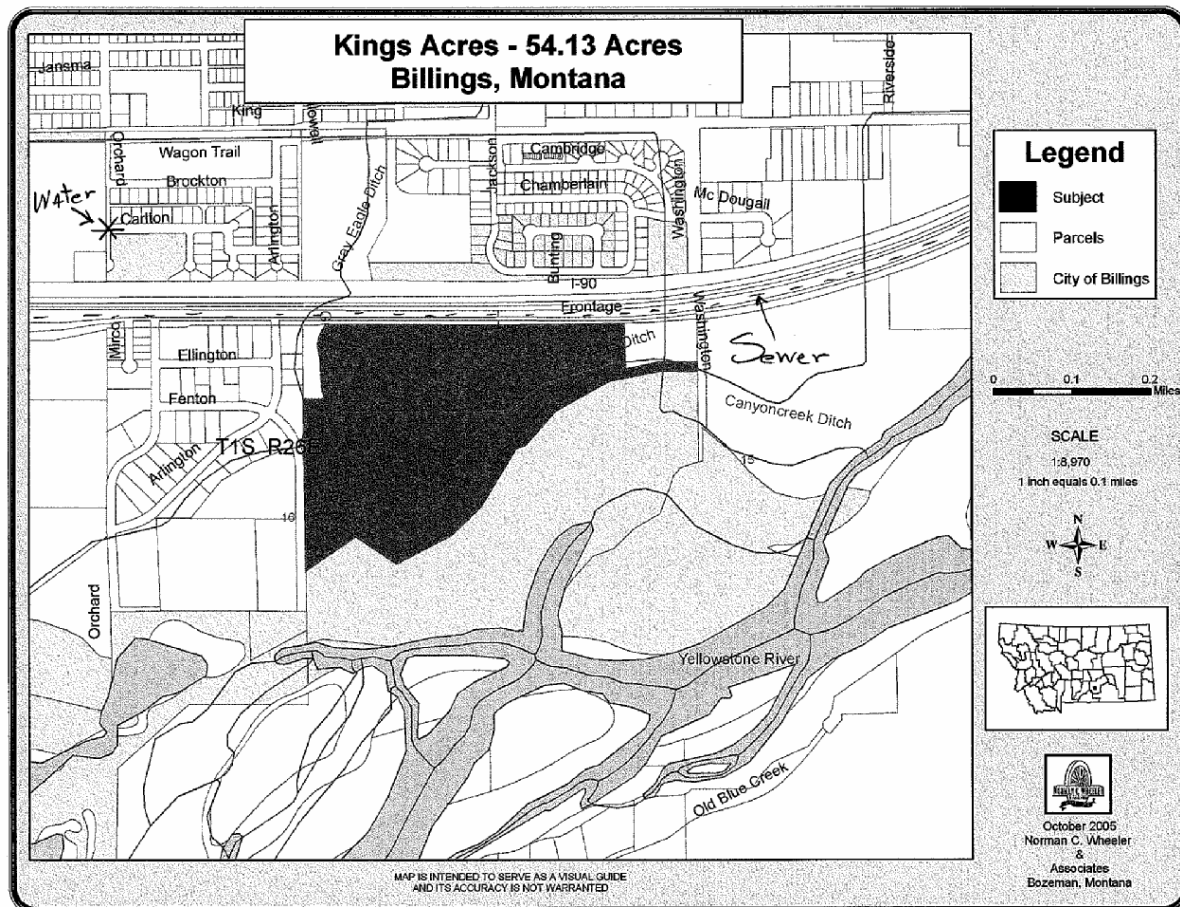
Legal Description	Tax Code	Address of General Location	Use of Property	Legal Property Owners	Address	Phone
Tr. 2 B 4S 1121						
and tr. 2, Sec 15T16E	01866A					
15-26E		3500 South Frontage Rd	Agricultural	King Business Park LLC	1645 Parkhill #3 Blgs. MT	861-1002
				Richard Dorn	59102	855-3013
				Samuel Rankin		
				Hannah Elletson		670-0739

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: 10/30/07
Fee Paid: 800⁰⁰ Ret 109096

Petition Number: AN 0725-923

ATTACHMENT C
Annexation Map



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Confirmation of Probationary Police Officer
DEPARTMENT: Police Department
PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On January 2, 2007, Officer Benjamin Scott was hired by the Billings Police Department as a probationary Police Officer. According to MCA 7-32-4113, his probationary period is for one year from date of hire. At this time Officer Scott has completed his one year probation, and according to state statute, his name is to be submitted to City Council within 30 days for confirmation. All of the supervisor comments concerning Officer Scott's performance are positive and indicates that he is doing a good job, and recommend confirmation.

RECOMMENDATION

City staff recommends Officer Benjamin Scott be confirmed as a Billings Police Officer.

Approved By: City Administrator ____ City Attorney ____

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

J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Boulevard Sidewalk Easement for Lots 2A-1 and Lot 2B-1, Sugar Subdivision, First Amendment

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The developers of Sugar Subdivision First Amendment are constructing a new Muzzle Loader Restaurant. With this development, sidewalk is required to be installed fronting the development. The developers are installing boulevard sidewalk, which will be located on private property. A sidewalk easement becomes necessary to construct the sidewalk.

FINANCIAL IMPACT: There is no financial impact with acceptance of this easement.

RECOMMENDATION

Staff requests that Council accept the Boulevard Sidewalk Easement for Sugar Subdivision, First Amendment.

ATTACHMENT

A. Boulevard Sidewalk Easement

Approved By: City Administrator ____ City Attorney ____

Return to:
City of Billings
P.O. Box 1178
Billings, MT 59103

BOULEVARD SIDEWALK EASEMENT

THIS INDENTURE, made and entered into this 20 day of Dec, 20 07 by and between the following:

Marlon H. Engberg, Rick R. Steinmetz and Rick Jacobson
2225 Rosebud Drive
Billings, Montana 59102,
hereinafter referred to as **GRANTOR**

and

CITY OF BILLINGS, a Municipal Corporation
City Hall – 210 North 27th Street
PO Box 1178
Billings, Montana 59103-1178,
hereinafter referred to as **GRANTEE**



FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged;

WITNESSETH THAT GRANTOR does hereby grant and convey unto the **GRANTEE**, a perpetual easement and right-of-way to construct, reconstruct, maintain, operate, repair and improve sidewalks and accessibility ramps and necessary fixtures and appurtenances over, across and through the real property described as follows:

That portion of Lot 2A-1 and Lot 2B-1 of the Amended Plat of Lots 2A and 2B, Sugar Subdivision, First Amendment situated in the NE1/4 and the SE1/4 of Section 8, T.1S., R.26E., P.M.M., City of Billings, Yellowstone County, Montana, shown and described as "BOULEVARD SIDEWALK EASEMENT" on EXHIBIT "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD unto **GRANTEE** and to its successors and assigns forever.

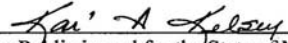
IN WITNESS WHEREOF, the **GRANTOR** warrants that they have good right to convey, free and clear of all encumbrances; the above-described interests in the real estate described and have hereunto set their hand.


MARLON H. ENGBERG

RICK JACOBSON


RICK R. STEINMETZ

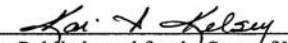
STATE OF MONTANA)
 :SS
County of Yellowstone)

This document was acknowledged before me on Dec. 19th
2007, by MARLON H. ENGBERG.


Notary Public in and for the State of Montana
Printed Name: Kari A. Kelsey
Residing at Yellowstone, Billings
My commission expires 7-15-08

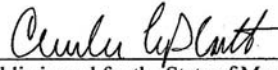
STATE OF MONTANA)
 :SS
County of Yellowstone)

This document was acknowledged before me on Dec. 19th
2007, by RICK R. STEINMETZ.


Notary Public in and for the State of Montana
Printed Name: Kari A. Kelsey
Residing at Yellowstone, Billings
My commission expires 7-15-08

STATE OF MONTANA)
 :SS
County of Yellowstone)

This document was acknowledged before me on Dec. 20, 2007
2007, by RICK JACOBSON.


Notary Public in and for the State of Montana
Printed Name: Charles L. Platt
Residing at Yellowstone, Billings
My commission expires 6-8-10

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

The Mayor and City Council of the City of Billings acknowledges receipt of this perpetual easement and hereby accepts the property interest conveyed through this instrument.

Mayor, City of Billings

ATTEST:

City Clerk

STATE OF MONTANA)
 :ss
County of Yellowstone)

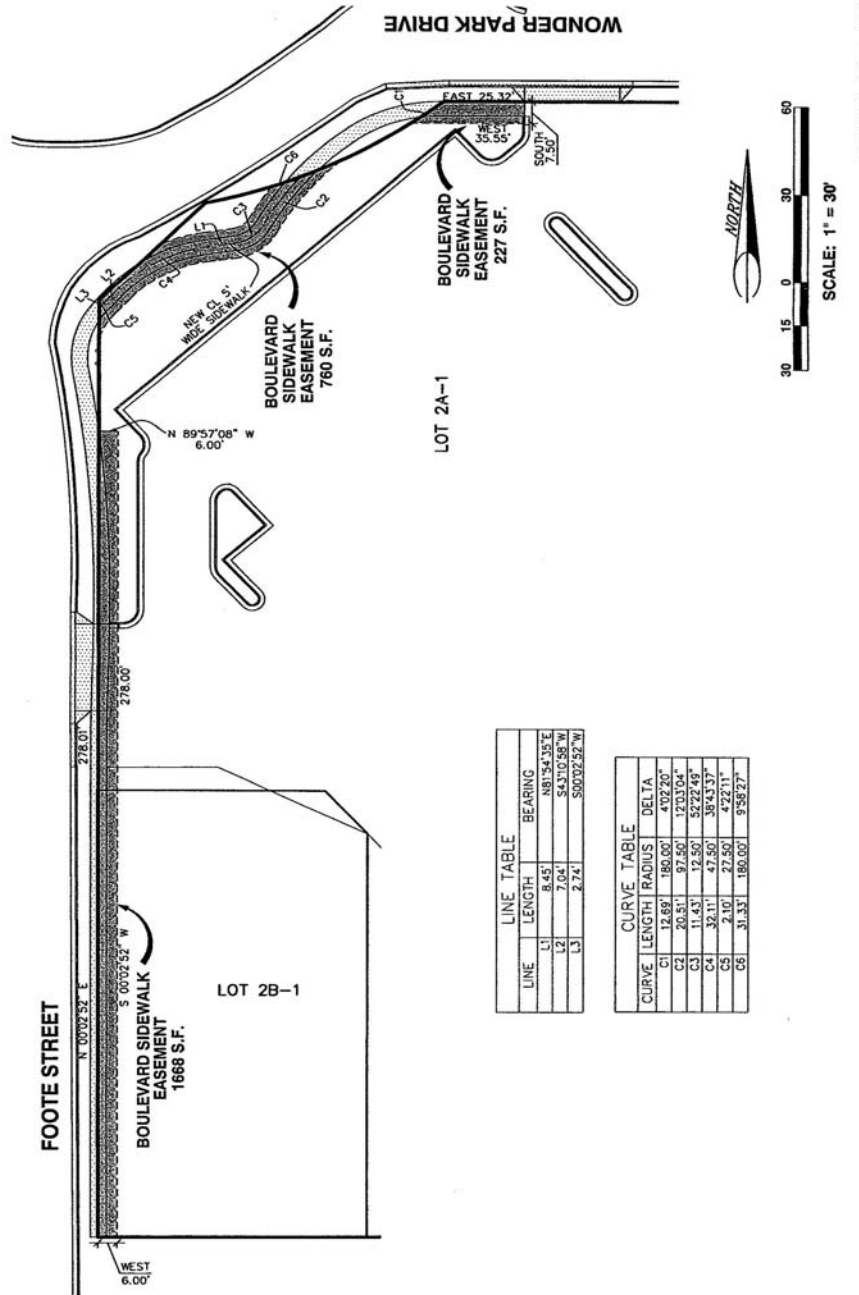
On this _____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk of Billings, respectively, and acknowledged to me that they duly executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

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

EXHIBIT "A"

BOULEVARD SIDEWALK EASEMENT

PREPARED FOR: MUZZLE LOADER CAFE
PREPARED BY: ENGINEERING, INC.



LINE TABLE		
LINE	LENGTH	BEARING
L1	8.45'	N81°54'15"E
L2	7.04'	S43°10'58"W
L3	2.74'	S00°02'52"W

CURVE TABLE		
CURVE	LENGTH	RADIUS
C1	12.69'	180.00'
C2	20.51'	97.50'
C3	11.43'	12.50'
C4	39.11'	47.50'
C5	2.10'	27.50'
C6	31.33'	180.00'

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

K

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 14, 2008

TITLE: Approval and Acceptance of the Warranty Deed from MWSH BILLINGS LLC, owner of Certificate of Survey 1648, Amended Tract 1

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: City Council approved a development agreement with MWSH BILLINGS LLC, owner of Certificate of Survey 1648, Amended Tract 1 located at Central Avenue and Shiloh Road at the August 27, 2007, council meeting. The development agreement stated that the developer must dedicate the necessary right of way on Central Avenue. MWSH BILLINGS LLC has submitted a subdivision plat creating a street tract along Central Avenue and a warranty deed deeded this tract (Tract 1B of Second Amended Tract 1, Certificate of Survey 1648) to the City of Billings. MWSH BILLINGS LLC is currently constructing a senior living center on this parcel.

ALTERNATIVES ANALYZED:

1. Approve warranty deed of Tract 1B of Certificate of Survey 1648, Amended Tract 1.
2. Do not approve warranty deed of Tract 1B of Certificate of Survey 1648, Amended Tract

FINANCIAL IMPACT: There is no financial impact to the City with acceptance of this warranty deed. MWSH BILLINGS LLC is deeded the above mentioned property for no cost to the City of Billings.

RECOMMENDATION

Staff recommends that Council approve a warranty deed for Tract 1B of Certificate of Survey 1648, Amended Tract 1.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A. Warranty Deed

Return to:
City of Billings
P.O. Box 1178
Billings, MT 59101

WARRANTY DEED

THIS INDENTURE, made this _____ day of _____, 200__.

FOR VALUABLE CONSIDERATION, lawful money of the United States to them in hand paid by the **CITY OF BILLINGS**, THE receipt whereof is acknowledged, **WITNESSTH THAT:**

MWSH BILLINGS, LLC
3220 State Street, Suite 200
Salem, Oregon 97301

does hereby **GRANT, BARGAIN, SELL CONVEY, WARRANT AND CONFIRM** unto the **CITY OF BILLINGS** for the benefit and use of **The Public** the following described real property, to wit:

A tract of land situated in the NE 1/4 of Section 10, T.1 S., R.25 E., P.M.M., City of Billings, Yellowstone County, Montana, more particularly described as follows:

TRACT 1B of Second Amended Tract 1, Certificate of Survey No 1648 as shown on the official plat thereof, on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. _____.

PURPOSE OF ACQUISITION is to create a right-of way parcel for construction and use of public road, utility and related appurtenant structures, pursuant to 76-3-201(1)(h) M.C.A. and A.R.M. 24.183.1104 as a division of land that creates rights-of-way or utility sites.

EXCEPTING AND RESERVING, however, all gas and oil, beneath the surface of the above described and conveyed premises, together with the right to extract the same, provided that in the exercise of such right the surface thereof shall not be disturbed, interfered with, or in anyway damaged.

FURTHER EXCEPTING AND RESERVING, unto the grantors, their successors and assigns all water, water rights, ditches, canals, irrigation systems, existing or as relocated, if any, including but not limited to, water stock or shares, bonds, certificates, contracts and any and all other indicia, of water, water right and ditch ownership, or any interest therein, appurtenant to the land described herein.

TO HAVE AND TO HOLD the above described and conveyed premises, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the **CITY OF BILLINGS**, and to its successors and assigns forever.

IN WITNESSTH WHEREOF, the undersigned have executed these premises the day and year first above written.

MWSH Billings, LLC

By:  _____
Title: CEO _____

STATE OF Oregon)
)
County of Marion)

On this 19 day of December, 2007, before me the undersigned Notary Public for the State of Oregon, personally appeared Kelley D. Hamilton known to me to be the person who signed the foregoing instrument as CEO of MWSH Billings, LLC, and who acknowledged to me that he executed the same. Witness my hand and seal the day and year herein above written.

Lillian J. Busch
Notary Public in and for the State of Oregon
Residing in (city) Salem
My commission expires Jan 21, 2011

Lillian J. Busch
Print Name



ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

The Mayor and City Council of the City of Billings acknowledges receipt of this deed and hereby accepts the property interest conveyed through this instrument.

Mayor, City of Billings Date

ATTEST: _____
City Clerk

STATE OF MONTANA)
)
)
County of Yellowstone)

On this _____ day of _____, 200____, before me, a Notary Public in and for the State of Montana, personally appeared _____ as Mayor and _____ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF, I have hereunto set my hand and my seal the day and year herein above written.

Notary Public in and for the State of Montana
Residing in _____
My commission expires _____

Print Name

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

L

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, January 14, 2008**

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement, Quit Claim Deed, and Warranty Deed for Parcel #24, a Portion of Lot 15 of Josephine Subdivision with Orville M. Kurtz and Lake Elmo Storage LLC

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #24 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$20,100.00. The negotiation history for this parcel notes that the property owners felt their property was worth more than the appraisal value based on the loss of mature trees on the side of the property. The City's Land Acquisition Policy allows staff or consultants the latitude to offer up to five percent (5%) above the appraisal amount for property acquisitions. This higher amount, \$21,105.00, was acceptable to the property owners. A copy of the right-of-way agreement; deeds; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$21,105.00. The cost of this acquisition is equal to five percent (5%) above the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement, the Quit Claim Deed, and

the Warranty Deed for right-of-way acquisition for Parcel #24, a Portion of Lot 15 of Josephine Subdivision with Orville M. Kurtz and Lake Elmo Storage LLC in the amount of \$21,105.00, and authorize the Mayor to execute these documents.

ATTACHMENT

A. Right-of-Way Agreement, Quit Claim Deed, and Warranty Deed (10 pages)

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

INTRODUCTION

Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow (typically 60 feet wide) to allow these necessary street improvements. The street improvements are anticipated to include full-depth street reconstruction, curb & gutter, sidewalks, a multi-use trail, accessibility ramps, crosswalks, and storm drain improvements. This right-of-way acquisition project will provide a new right-of-way width of 70 feet along Lake Elmo Drive. It will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street.

PROCEDURAL HISTORY

Completed Items

- January 9, 2006 – Award of Contract for Professional Services for Right-of-Way Acquisition to Right-of-Way Acquisition Group, LLC
- January 23, 2006 – Award of Contract for Professional Services for Land Surveying services related to right-of-way acquisition to Engineering, Inc.
- February 27, 2006 – Council selection of proposed improvements street section
- March 10, 2006 – Public meeting with adjoining property owners
- June 2006 – Initial design completed using the chosen street section
- November 2006 – Appraisals completed on parcels to be acquired
- December 2006 – Right-of-way negotiations began with property owners

Future Items

- January/February 2008 – Estimated completion of right-of-way acquisition
- 2008-2009 – Design and construction of street improvements (in approved CIP)

BACKGROUND

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

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in 2007.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement, the Quit Claim Deed, and the Warranty Deed for right-of-way acquisition for Parcel #24, a Portion of Lot 15 of Josephine Subdivision with Orville M. Kurtz and Lake Elmo Storage LLC in the amount of \$21,105.00, and authorize the Mayor to execute these documents.

ATTACHMENT

A. Right-of-Way Agreement and Warranty Deeds (10 pages)

CITY OF BILLINGS
(hereinafter referred to as City)
RIGHT-OF-WAY AGREEMENT

Lake Elmo Road Hilltop Road to Wicks Lane
DESIGNATION

Work Order: 04-33
Project No. 05153

Yellowstone
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
24	Lot 15 of Josephine Subdivision	22	1N	26E

List Names & Addresses of the Grantors
(Contract Purchaser, Contract Seller, Lessee, etc.)

CONTRACT SELLER:
ORVILLE M. KURTZ
300 SKIPSTEAD ROAD
COLUMBUS, MT 59019
698-5072

CONTRACT PURCHASER:
LAKE ELMO STORAGE, LLC
1032 LAKE ELMO DR TRLR 10
BILLINGS, MT 59105-2459

1. In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and possession of the property is granted to the City when it sends the payment(s) agreed to below. Grantors contract that they will, on City's request, execute a deed and other documents required by the City for all real property agreed to be conveyed by this agreement.
2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)

3,167 square feet by deed	\$7,442.00
Improvements (Rock bed, curbing, trees, fencing)	\$12,406.00
3. OTHER COMPENSATION:

1,056 square feet Temporary Construction Permit	\$ 238.00
Administrative settlement	\$1,005.00
4. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$21,105.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
 A warrant in the amount of \$21,105.00, to be made payable to ORVILLE M. KURTZ AND LAKE ELMO STORAGE, LLC and mailed to PO BOX 1415 BILLINGS, MT 59103.
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.
8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
9. At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

Reconfigure and repair sprinkler system, if any, affected by project.

Grantors understand and agree that upon completion of the construction of this item located upon the Grantors' land, they shall be considered the sole property of the Grantors, and the maintenance and repair of said property shall be the responsibility of the Grantors.

Initials OK

(Continued from Previous Page)

10. Permission is hereby granted the City to enter upon the Grantor's land, where necessary and for the purpose of constructing a curb cut approach off Lake Elmo Drive. It is understood and agreed by the parties hereto that the specific location of this approaches is subject to adjustment at the time of construction to achieve the best physical and legal location for said approach. The City agrees to contact the Grantor for specifics regarding this approach.

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATE:

We understand that we are required by law to provide our correct taxpayer identification number(s). We certify that failing to comply may subject us to civil and criminal penalties. We certify correct taxpayer identification number(s).

Orville M. Kurtz 12-15-07
Signature: ORVILLE M. KURTZ (Date)

Signature: LAKE ELMO STORAGE, LLC (Date) Tax ID No.

Signature: (Date) Tax ID No.

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

Rehald E. Olson 12-17-07
Rehald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

Nicholas R. Balm 12/18/07
City of Billings, Public Works Department (Date)

City Clerk (Date)

LER-024.200 Kurtz/Lake Elmo Storage

CITY OF BILLINGS

(hereinafter referred to as City)

RIGHT-OF-WAY AGREEMENT

Lake Elmo Road Hilltop Road to Wicks Lane
DESIGNATION

Work Order: 04-33
Project No. 05153

Yellowstone
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
24	Lot 15 of Josephine Subdivision	22	1N	26E

List Names & Addresses of the Grantors
(Contract Purchaser, Contract Seller, Lessee, etc.)

CONTRACT SELLER:
ORVILLE M. KURTZ
300 SKIPSTEAD ROAD
COLUMBUS, MT 59019
698-5072

CONTRACT PURCHASER:
LAKE ELMO STORAGE, LLC
1032 LAKE ELMO DR TRLR 10
BILLINGS, MT 59105-2459

1. In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and possession of the property is granted to the City when it sends the payment(s) agreed to below. Grantors contract that they will, on City's request, execute a deed and other documents required by the City for all real property agreed to be conveyed by this agreement.
2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)

3,167 square feet by deed	\$7,442.00
Improvements (Rock bed, curbing, trees, fencing)	\$12,406.00
3. OTHER COMPENSATION:

1,056 square feet Temporary Construction Permit	\$ 238.00
Administrative settlement	\$1,005.00
4. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$21,105.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$21,105.00, to be made payable to ORVILLE M. KURTZ AND LAKE ELMO STORAGE, LLC and mailed to PO BOX ~~188580~~ ¹⁴¹⁵ BILLINGS, MT ~~59400~~ ⁵⁹¹⁰³.
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.
8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
9. At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

Reconfigure and repair sprinkler system, if any, affected by project.

Grantors understand and agree that upon completion of the construction of this item located upon the Grantors' land, they shall be considered the sole property of the Grantors, and the maintenance and repair of said property shall be the responsibility of the Grantors.

Initials MEA

R/W Project: Lake Elmo Road Hilltop Road to Wicks Lane

Parcel No.: 24

(Continued from Previous Page)

10. Permission is hereby granted the City to enter upon the Grantor's land, where necessary and for the purpose of constructing a curb cut approach off Lake Elmo Drive. It is understood and agreed by the parties hereto that the specific location of this approaches is subject to adjustment at the time of construction to achieve the best physical and legal location for said approach. The City agrees to contact the Grantor for specifics regarding this approach.

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN:

We understand that we are required by law to provide our correct taxpayer identification number(s) to the City of Billings and that failing to comply may subject us to civil and criminal penalties. We certify that we have provided our correct taxpayer identification number(s).

Signature: ORVILLE M. KURTZ (Date)

Orville M. Kurtz 7-12-07
Signature: LAKE ELMO STORAGE, LLC (Date)

Signature: (Date)

Tax ID No.

Signature: (Date)

Tax ID No.

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 7-12-07
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

Nicole J. Bailey 12/18/07
City of Billings, Public Works Department (Date)

City Clerk (Date)

LER-024.200 Kurtz/Lake Elmo Storage

Return to: City Clerk
City of Billings
PO Box 1178
Billings, MT 59103

Project No. W.O. 04-33 Parcel No. 24 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 12th day of July, 2007.

FOR VALUABLE CONSIDERATION, lawful money of the United States to them in hand paid by the CITY OF BILLINGS, THE receipt whereof is acknowledged, WITNESSTH THAT:

LAKE ELMO STORAGE, LLC
1032 LAKE ELMO DR TRLR 10
BILLINGS, MT 59105-2459

does hereby GRANT, BARGAIN, SELL CONVEY, WARRANT AND CONFIRM unto the CITY OF BILLINGS for the benefit and use of the Public the following described real property, to wit:

Parcel No. 24 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 15 of Josephine Subdivision, on file under Document No. 428862, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 3,167 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 1,056 sq. ft..

PURPOSE OF ACQUISITION is to create a right-of way parcel for construction and use of public road, utility and related appurtenant structures, pursuant to 76-3-201(1)(h) M.C.A. and A.R.M. 24.183.1104 as a division of land that creates rights-of-way or utility sites.

EXCEPTING AND RESERVING, however, all gas and oil, beneath the surface of the above described and conveyed premises, together with the right to extract the same, provided that in the exercise of such right the surface thereof shall not be disturbed, interfered with, or in anyway damaged.

FURTHER EXCEPTING AND RESERVING, unto the grantors, their successors and assigns all water, water rights, ditches, canals, irrigation systems, existing or as relocated, if any, including but not limited to, water stock or shares, bonds, certificates, contracts and any and all other indicia, of water, water right and ditch ownership, or any interest therein, appurtenant to the land described herein.

TO HAVE AND TO HOLD the above described and conveyed premises, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the CITY OF BILLINGS, and to its successors and assigns forever. IN WITNESSTH WHEREOF, the undersigned have executed these premises the day and year first above written.

Project No. : W.O. 04-33

Parcel No. 24

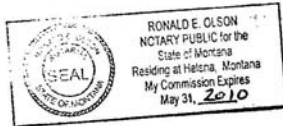
Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

X Mark Arman

State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on July 12, 2007
(date)

by Mark Arman, manager, Lake Elmo Storage, LLC
(names)



Ronald E. Olson
Notary Signature Line
Ronald E. Olson
Notary Printed Name

Notary Public for State of Montana
Residing at: Helena
My Commission Expires: May 31, 2010

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

The Mayor and City Council of the City of Billings acknowledges receipt of this deed and hereby accepts the property interest conveyed through this instrument.

Mayor, City of Billings

Date

ATTEST: _____

City Clerk

STATE OF MONTANA)
:ss
County of Yellowstone)

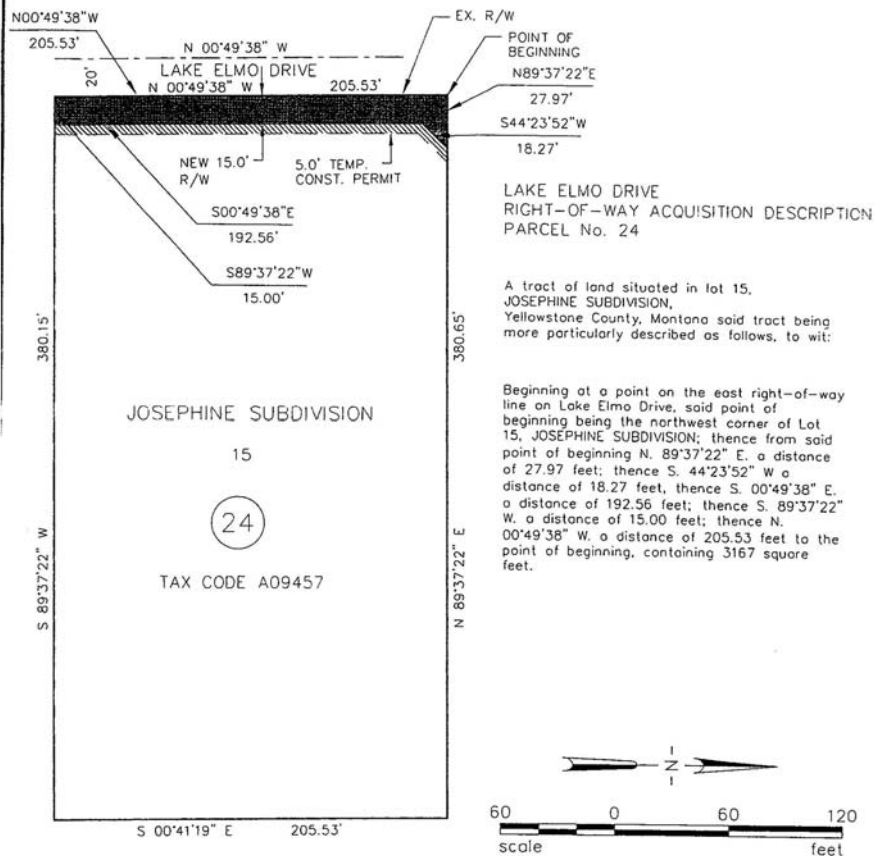
On this _____ day of _____, 200____, before me, a Notary Public in and for the State of Montana, personally appeared _____ as Mayor and _____ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF, I have hereunto set my hand and my seal the day and year herein above written.

Notary Public in and for the State of Montana
Residing in _____
My commission expires _____

Print Name

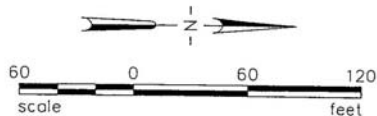
EXHIBIT A

RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 15, JOSEPHINE SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



A tract of land situated in lot 15, JOSEPHINE SUBDIVISION, Yellowstone County, Montana said tract being more particularly described as follows, to wit:

Beginning at a point on the east right-of-way line on Lake Elmo Drive, said point of beginning being the northwest corner of Lot 15, JOSEPHINE SUBDIVISION; thence from said point of beginning N. 89°37'22" E. a distance of 27.97 feet; thence S. 44°23'52" W. a distance of 18.27 feet; thence S. 00°49'38" E. a distance of 192.56 feet; thence S. 89°37'22" W. a distance of 15.00 feet; thence N. 00°49'38" W. a distance of 205.53 feet to the point of beginning, containing 3167 square feet.



AREA TO BE ACQUIRED: 3167 S.F.
AREA OF TEMPORARY CONSTRUCTION PERMIT: 1056 S.F.

LEGEND

- RIGHT-OF-WAY ACQUISITION
- CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 24

THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY PLAN.



ENGINEERING, INC.
Consulting Engineers and Land Surveyors

1300 North Trenchard Way
Billings, Montana 59102
Phone (406) 656-5255
www.eoginc.com

PARCEL 24.DWG

Return To: City Clerk
City of Billings
P.O. Box 1178
Billings, MT 59103

Project No. W.O. 04-33 Parcel No. 24 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

QUIT CLAIM DEED

The undersigned, **ORVILLE M. KURTZ**, 300 SKIPSTEAD ROAD, COLUMBUS, MT 59019, hereby conveys and quits claim unto the **CITY OF BILLINGS** for the benefit and use of the **Public** the following-described real property situated in Yellowstone County, Montana:

Parcel No. 24 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 15 of Josephine Subdivision, on file under Document No. 428862, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 3,167 sq. ft.

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 1,056 sq. ft.

PURPOSE OF ACQUISITION is to create a right-of-way parcel for construction and use of public road, utility and related appurtenant structures, pursuant to 76-3-201(1)(h) M.C.A. and A.R.M. 24.183.1104 as a division of land that creates rights-of-way or utility sites.

EXCEPTING AND RESERVING, however, all gas and oil, beneath the surface of the above described and conveyed premises, together with the right to extract the same, provided that in the exercise of such right the surface thereof shall not be disturbed, interfered with, or in anyway damaged.

FURTHER EXCEPTING AND RESERVING, unto the grantors, their successors and assigns all water, water rights, ditches, canals, irrigation systems, existing or as relocated, if any, including but not limited to, water stock or shares, bonds, certificates, contracts and any and all other indicia, of water, water right and ditch ownership, or any interest therein, appurtenant to the land described herein.

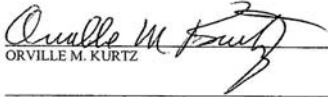
TO HAVE AND TO HOLD the above described and conveyed premises, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the **CITY OF BILLINGS**, and to its successors and assigns forever.

IN WITNESS WHEREOF, the undersigned has executed this instrument on the day and year first above written.

Project No. : W.O. 04-33

Parcel No. 24

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE


ORVILLE M. KURTZ

State of Montana)


County of Yellowstone)

This instrument was acknowledged before me on December 13, 2007
(date)

by Orville M. Kurtz

(names)




Notary Signature Line
Judy A. Staley
Notary Printed Name

Notary Public for State of Montana
Residing at: Billings, MT
My Commission Expires: Sept. 6, 2011

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

The Mayor and City Council of the City of Billings acknowledges receipt of this deed and hereby accepts the property interest conveyed through this instrument.

Mayor, City of Billings

Date

ATTEST: _____

City Clerk

STATE OF MONTANA)

:ss

County of Yellowstone)

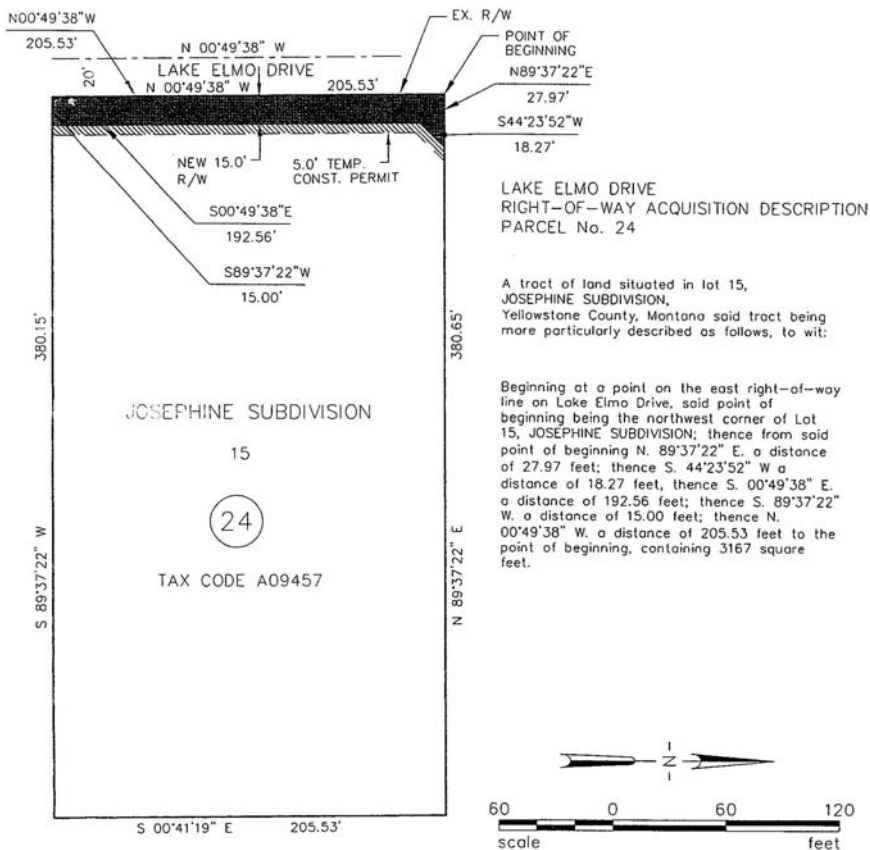
On this _____ day of _____, 200__, before me, a Notary Public in and for the State of Montana, personally appeared _____ as Mayor and _____ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF, I have hereunto set my hand and my seal the day and year herein above written.

Notary Public in and for the State of Montana
Residing in _____
My commission expires _____

Print Name

EXHIBIT A

RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 15, JOSEPHINE SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



AREA TO BE ACQUIRED: 3167 S.F.
AREA OF TEMPORARY CONSTRUCTION PERMIT: 1056 S.F.



ENGINEERING, INC.
Consulting Engineers and Land Surveyors
1200 North Transwest Way
Billings, Montana 59102
Phone (406) 656-5255
www.esginc.com

LEGEND

RIGHT-OF-WAY ACQUISITION
CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 24
THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY PLAN.

(Back to Consent Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Acceptance and Recognition of Donation to the Billings Animal Shelter

DEPARTMENT: Police Department, Animal Shelter Division

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On December 3, 2007 the Billings Animal Shelter received a \$740.00 donation from Steven Kops of EFX Photography in Laurel, Mt. The donation has been placed in the Animal Shelter Injured Animal Donation account as explained in the attached Newsletter Article. Mr. Kops, owner of EFX Photography, offered his services giving owners the opportunity to have a professional photo taken of their pets. He asked in return that they make a donation to the Billings Animal Shelter Emergency Care Donation Account. Mr. Kops offered his services for the entire week of November 26th through December 2nd and in doing so, raised \$740.00 for the Billings Animal Shelter. City Council is now asked to accept and deposit this \$740.00 donation into the City of Billings, Animal Shelter General Donation Injured Animal Account.

ALTERNATIVES ANALYZED:

- Approval and acceptance of the donation.
- Denial and return of the donation.

FINANCIAL IMPACT: This donation to the General Donation Injured Animal Account will be used where needed for injured stray animals which go unclaimed by their owners. Having these funds available will allow for treatment of injured animals, greatly improving their chances of finding someone willing to give them a new home.

RECOMMENDATION

Staff recommends City Council's approval and acceptance of this \$740.00 donation to the Billings Animal Shelter General Donation Injured Animal Account.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Certified Local Government Grant Program
DEPARTMENT: Planning and Community Services
PRESENTED BY: Lora Mattox, AICP, 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. Applications for FY2008-09 funding from the State are due on January 31, 2008. The City of Billings has been utilizing Certified Local Government funding for activities in support of the efforts of the Yellowstone Historic Preservation Board since 1997. A description of these activities is provided in Attachment A.

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 allow the City of Billings to apply for \$5,500 in State of Montana Certified Local Government funding. The local match for the Certified Local Government is \$6,500. The total funding package is \$12,000 that is used for consulting services provided by the Western Heritage Center to perform activities identified in the Yellowstone Historic Preservation Board Work Plan. The Planning Division will provide \$5,036 towards the local match. The Yellowstone Historic Preservation Board will request \$1,000 from Yellowstone County and \$469 from the City of Laurel towards the remaining local match.

RECOMMENDATION

Staff recommends that the City Council authorize the submission of an application for a \$5,500 Certified Local Government grant from the Montana State Historic Preservation Office.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Yellowstone Historic Preservation Board Work Plan
- B. Certified Local Government Grant Application

Attachment A

Yellowstone Historic Preservation Board Work Plan 2007-2008

Goals & Objectives:

- I. Promote the preservation of historic buildings, sites or neighborhoods.
- II. Increase community awareness on the benefits of historic preservation activities.
- III. Promote increased awareness of preservation activities and the work of the YHPB by the four governing bodies represented on the Board.
- IV. 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.

Existing Projects

- 1. To assist developers with new development within the historic district, develop and adopt Standards for New Construction Ordinance. Incorporate the Secretary of Interior Standards for new construction within the Ordinance.**

Time Frame: Fall 2007

Who: YHPB Committee and HPO/WHC

Status: The board may incorporate this project into a review and update of the existing Historic Preservation Ordinance.

- 2. To provide information to interested persons and organizations regarding historic properties within rural Yellowstone County, complete a PowerPoint presentation and establish a web site link to the sites.**

Time Frame: Winter 2006/Spring 2007

Who: WHC

Status: In development

- 3. Update the Historic Downtown Billings Walking Tour booklet. Include more of a story format of the building and site history; include persons of significance or interest.**

Time Frame: Spring/Summer 2007

Who: WHC/Publicity Committee
Status: Not started

- 4. To increase awareness about historic preservation to residents and tourist, complete the construction of the sign boards titled “Billings Through the Decades”. This sign board will be displayed throughout the downtown.**

Time Frame: Spring/Summer 2007
Who: WHC/Publicity Committee
Status: Complete

New Projects

- 1. Review and update as needed the existing Historic Preservation Ordinance to include new construction standards and a set of review criteria for rehabilitation work within the historic district to include the Secretary of Interior Standard Guidelines for rehabilitation.**

Time Frame: Fall 2007
Who: YHPB Committee/HPO/WHC
Status: Started

- 2. Coordinate with the local school districts to promote increased awareness of local historic preservation work through the Bricks and Boards Program and Educational Trunks (mathematical and architectural) with school age children (Billings, Laurel, and Yellowstone County).**

Time Frame: Spring 2007 or Fall 2007
Who: WHC/HPO
Status: Completed. Display at Western Heritage Center Thursday, December 6 – Saturday, January 12, 2008

- 3. To better catalog historic sites and buildings within Yellowstone County, explore partnership with MSU-Bozeman’s Architecture Program to research and identify those potential historic sites and buildings in rural Yellowstone County.**

Time Frame: Spring 2007
Who: WHC

- 4. To provide easier access and updated information regarding architectural survey forms, scan and create a database of available architectural survey forms currently located in binders. This database would be accessible through the web site.**

Time Frame: 2007-2008

Who: WHC

Ongoing/Yearly Projects

- 1. Continue the review of building permits submitted for properties located within the designated historic district.**

Time Frame: Ongoing
Who: Committee and HPO

- 2. Assure existing YHPB products are disseminated in communities (Laurel Walking Tour, Billings Walking Tour, South Side Presentation, and Rural Yellowstone County Presentation, etc).**

Time Frame: Ongoing
Who: WHC/HPO

- 3. To provide up to date information to the general public, continually update the web site on activities and programs.**

Time Frame: Ongoing
Who: WHC

- 4. 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: YHPB Board/HPO/WHC

- 5. Expand YHPB meetings to alternate locations. To take advantage of some of our many historic venues, the board wishes to expand meetings to alternate locations. This is an event that will take place quarterly.**

Time Frame: Ongoing
Who: HPO/WHC

- 6. Due to a loss of potential historic buildings within the City of Billings, an effort is being made to notify WHC and a member of the board about upcoming demolitions. The Building Department notifies HPO on the release of demolition**

permits, HPO notifies members of the demolition and a determination is made to either document/photograph building.

Time Frame: Ongoing
Who: HPO/WHC/Board

7. To provide additional funds to the YHPB for projects, continue exploration of grant opportunities.

Time Frame: Ongoing
Who: HPO/WHC

8. To keep the YHPB abreast of Historic Preservation Activities, consultants and the HPO will attend meetings as needed.

Time Frame: Ongoing
Who: WHC/HPO

9. To provide a forum for Historic Preservationist to share their successes and discuss projects and to present historic preservation awards, continue to host the Historic Preservation Roundtable yearly.

Time Frame: Yearly
Who: WHC/HPO/Board
Status: A date/time will be developed

10. To continually update the local governing bodies of the activities undertaken by the YHPB, annual PowerPoint Presentations will be made to the City of Billings, the City of Laurel and Yellowstone County.

Time Frame: Winter 2007/Yearly
Who: Chair/WHC/HPO
Status: The scheduling of these meetings will take place at the end of 2006.

11. Celebrate National Historic Preservation Month. Board will decide on a program, speakers and other events to commensurate this event.

Time Frame: Yearly
Who: Committee/WHC
Status: This event will be reviewed in early spring of 2007.

Attachment A

Certified Local Government Grant Application

1 April 2008 to 31 March 2009

Application Deadline

31 January 2008

Montana State Historic Preservation Office
PO Box 201202
Helena, MT 59620-1202
(406) 444-7715

2008-2009 GRANT APPLICATION

CERTIFIED LOCAL GOVERNMENT PROGRAM

Certified Local Government: City of Billings, Montana

Address: P.O. Box 1178, Billings, MT 59103

Contact Person: Lora Mattox, AICP, Historic Preservation Officer, Neighborhood Planner

Period of Grant Request: 1 April 2008 to 31 March 2009

Scope of Work: **The National Park Service asks we grant funds to CLGs for kinds and levels of work that reflect increasing sophistication, skills, and roles by the Preservation Officers, in other words, tasks that reflect improvement in community thinking. For this section, please itemize regular work duties (not including special projects) – products or projects starting or completing, meetings to be attended, etc., and more specifically, ways in which the local program will grow and develop. Please tie your tasks to your community's Preservation Plan. If not, please explain.**

(X Check if Scope of Work is continued on additional pages.)

The Cities of Billings and Laurel, Yellowstone County, and the Crow Tribal Council entered into an inter-local agreement in July 1993 establishing the Yellowstone Historic Preservation Board (YHPB). Along with the inter-local agreement, the four governmental entities adapted ordinances setting up a multi-government YHPB, appointed nine (9) qualified board members, and a Historic Preservation Officer. Since that time, the YHPB has been meeting monthly and has continued to develop and refine an encompassing Historic Preservation Program implementing the specific goals of the historic element of the 1990 Yellowstone Comprehensive Development Plan.

In the past, local match funds were provided through the Community Development Block Grant (CDBG) Program. Unfortunately, CDBG funds were no longer available for the 2006-07 grant year and the City of Billings provided the cash match to meet the consulting fees. Year 2007 funding is now requested to continue the work of the YHPB. CLG funds will be matched with local funds being requested from the City of Billings, the City of Laurel, and Yellowstone County to allow the City to contract for services to assist in carrying out the following activities:

- Assist Board and Historic Preservation Officer in undertaking actions to meet short and long-range goals established by the Board. See Attachment A.
- Provide professional services to assist Board, Officer, and the City in performing duties and responsibility identified in the City's Historic Preservation Ordinance MCA 27-500.
- Act as a historic preservation center by providing technical assistance, direction, and literature on the following:
 - a. Historic preservation tax credits
 - b. National Register
 - c. Federal historic preservation regulations, and
 - d. Secretary of Interior standards related to historic preservation activities

- Attend community meetings related to preservation activities, on behalf of the Board upon request.
- Plan and coordinate activities and publicity during National Historic Preservation Week in May 2007.
- Carrying out the responsibilities for the CLG Program as outlined in “The Certified Local Government Program in Montana.”
- Submit quarterly reports on the historic preservation efforts of the community carried out by the City under the CLG grant.

BUDGET

4-1-2008 to 3-31-2009 Budget	Cash Amount	Cash Source	In-kind Amount	In-kind Source	Total
A. Salaries, Wages, Benefits			*	CI/CO	
B. Office Rental			*	CI/CO	
C. Equipment			*	CI/CO	
D. Supplies & Materials Itemize major categories			*	CI/CO	
E. Postage			*	CI/CO	
F. Telephone & Internet			*	CI/CO	
G. Photocopies			*	CI/CO	
H. Film Processing			*	CI/CO	
I. Preservation Commission Number of hours X * rate X number of members X number of meetings			*	PR	
J. Volunteers Hours X * rate X					

number of volunteers.			*	PR	
K. Travel Mileage Number of miles X 0.485 cents. Include funds for HPO and/or Commissioners to attend CLG annual training			*	CI/CO	
L. Travel Meals # of Meals X rate: Breakfast - \$5.00 Lunch - \$6.00 Dinner - \$12.00			*	CI/CO	
M. Lodging \$60.00 plus tax X number of nights			*	CI/CO	
N. Other Expenses – itemized Contract Services	\$5,500 \$6,500	F CI/CO			\$12,000
M. Total Expenses					\$12,000

SOURCE KEY:

F-Federal
CI-City
CO-County
NP- Private/Non-Profit

* Federally approved minimum rate for volunteers is \$17.55 per hour.

SOURCES OF REVENUE

AMOUNT

Itemized Cash Match Source

<u>City of Billings, City of Laurel, Yellowstone County</u>	<u>\$6,500</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Itemized In-Kind Match Source

_____	<u>*</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Federal HPF Grant Request from SHPO

_____	<u>\$5,500</u>
-------	----------------

TOTAL REVENUE \$12,000

*The City of Billings, through its Planning and Community Services Department, will provide in-kind match in the form of staff (administration, financial, administrative support), office supplies, copies, postage, telephone, travel, etc. Since the cash match exceeds the match requirement, we have not itemized the value of these in-kind services for the purposes of this application.

Certified Local Government
Historic Preservation Commission Chairperson or President

Signature _____ Date _____

Name (typed) Brian Roberts

Address 244 Parkhill Drive, Billings, Montana 59101

Telephone (406) 256-1056

Certified Local Government
Chief Elected Official

Signature _____ Date _____

Name (typed) Ron Tussing

Title Mayor

Address P.O. Box 1178, Billings, Montana 59103

Telephone (406) 657-8296

(The local government administrator may sign in addition to the Chief Elected Official.)

Certified Local Government
Historic Preservation Officer

Signature _____ Date _____

Name (typed) Lora Mattox

Address P.O. Box 1178, Billings, Montana 59103

Telephone (406) 247-8622

Please attach the minutes of the meeting at which your application is discussed or an alternate way in writing by which the Board/Commission provides you with directions.

Please attach a list of the historic preservation board members' names, professional discipline or citizen membership, terms (years beginning and ending), and contact information.

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 14, 2008

TITLE: Approval to Submit an Annual Application to the Montana Department of Transportation (MDT) for Paratransit Operating Assistance and the Purchase of Two Paratransit Vans and Subsequent Acceptance of the Grant Agreement

DEPARTMENT: Aviation and Transit Department

PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: The Aviation and Transit Department, MET Transit Division, is seeking assistance from the Montana Department of Transportation – Transit Section, for paratransit operating assistance and the purchase of two paratransit vans. This assistance is requested annually from MDT for both operating and capital assistance. The deadline for the filing of this application is February 1, 2008.

The MDT grant application is two-fold. The first portion of the application is a request for State funds for paratransit operating assistance in the amount of \$49,004. The State recognizes the rising cost of transporting elderly and disabled citizens and the significant impact this has on operating budgets. The intent of this funding is to encourage all agencies to provide coordinated transit service to the elderly and disabled citizens.

The second portion of the grant application may provide capital assistance for the purchase of two paratransit vans. The paratransit vans are replacement vans and are included in the approved Equipment Replacement Program (ERP). Should this funding be awarded by the State, it would provide a State match of 86% of the cost of the vans, with a local match of 14%. The grant application is requesting estimated total costs of \$124,000, with the State share of \$106,640 (86%) and a local share of \$17,360, which will be budgeted in the FY 09 Transit capital budget.

The Aviation and Transit Department, MET Transit Division, is therefore seeking approval to file an application for both operating and capital assistance with the MDT, and approval for the Mayor to execute a grant agreement with the MDT once the grant offer is received by the City. A copy of the Application for Financial Assistance is on file in the City Clerk's office for review.

FINANCIAL IMPACT: Through this grant, the City's Transit Division would receive \$49,004 of revenue for FY 08/09 for paratransit administrative, maintenance, and operating costs. In addition, the Transit Division could receive up to \$106,640, (86%) of the cost of two new paratransit vans.

RECOMMENDATION

Staff recommends that Council approve the submittal of this annual grant application and the subsequent execution, by the Mayor, of a grant agreement with the Montana Department of Transportation upon receipt of the grant offer.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2007

TITLE: Acceptance and Approval of the Billings DWI Court Contract
#2008-19-23-01

DEPARTMENT: Municipal Court

PRESENTED BY: Scott Dobbs, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Billings Municipal Court is one of the largest courts within the state of Montana. During FY07, an average of 50 DUI-related offenses were filed in Billings Municipal Court each month. Billings Adult Misdemeanor Drug Court (“BAMDC”) was established in 2004 to address alcohol- and drug-related offenses and to enhance community safety. A minimum of 25% of BAMDC clients have a DUI-related offense as the underlying cause for admission into the program.

In order to effectively work with DUI offenders, BAMDC applied for and received a training grant in the amount of \$8,000.00 from the National Highway Traffic Safety Administration, Department of Transportation. (DWI Court Contract Award #2008-19-23-01) If accepted, this grant will provide designated staff the necessary training to effectively work with DUI offenders in order to reduce the number of impaired driving crashes, injuries and fatalities in Montana as identified within the FY 2008 Highway Safety Plan.

Staff requests the City Council to accept and approve the award in the amount of \$8,000 and authorize the Mayor to approve the award documents when received.

FINANCIAL IMPACT: No match from the City of Billings will be required. The award has been budgeted in Fund 246 for the balance of FY 08/09.

RECOMMENDATION

Staff recommends approval to accept DWI Court Contract Award #2008-19-23-01 in the amount of \$8,000.00.

Approved By: City Administrator _____ City Attorney _____

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

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 14, 2008

TITLE: Yellowstone County and the City of Billings Joint Resolution addressing Seamless Radio Interoperability and the State-Wide Radio System

DEPARTMENT: City Administration

PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: The City of Billings and Yellowstone County recognize the importance of interoperable radio communications. Therefore, the City and County submit this Joint Resolution for the record. The Joint Resolution publicly states that both the City and the County will consider participating in the State Wide Radio System when the infrastructure is installed in this region. The joint resolution specifically states the radio system must first meet the needs of both entities before the City will consider participating. The Infrastructure for the State Wide VHF Radio System is currently being installed in other areas of the state. Soon it will be installed in Yellowstone County. Being part of the State Wide Radio System will enable the City to communicate both locally, regionally, and state-wide with the radios being used every day. If the City does not participate, it will likely be the only entity that does not. If the City chooses not to participate, it would have to provide for a link between 800 MHz and the new VHF system and then would only be able to communicate with emergency response partners locally. Proving the ability of radio interoperability is currently a standard used to approve or disapprove many federal grants.

ALTERNATIVES ANALYZED: None

FINANCIAL IMPACT: The joint resolution does not commit the City to any amount of financial obligation now or in the future. If the City chooses to participate, there will be an unidentified cost to being part of the State Wide Radio System. The City of Billings is the designated Urban Area Security Initiative (UASI) site for Montana. This designation will provide some level of Federal Funding not yet determined.

RECOMMENDATION

Staff recommends that Council Approve the Joint Resolution.

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

ATTACHMENT:

A. City County Joint Resolution

CITY/COUNTY COMMUNICATION INTEROPERABILITY AGREEMENT

CITY RESOLUTION NO. _____
JOINT RESOLUTION NO. _____
COUNTY RESOLUTION NO. 07-129

A JOINT RESOLUTION OF THE COUNCIL OF THE CITY OF BILLINGS AND
YELLOWSTONE COUNTY TO CONSIDER, IN THE INTEREST OF SEAMLESS RADIO
INTEROPERABILITY, PARTICIPATING IN THE STATE OF MONTANA'S RADIO SYSTEM
IF THE RADIO SYSTEM PROVES TO MEET EACH JURISDICTION'S NEEDS IN THE
AREAS OF CAPACITY, CONTROL AND PENETRATION.

Whereas, the City of Billings and Yellowstone County do now and in the future understand
the need to coordinate services at emergency scenes, and

Whereas, the City of Billings and Yellowstone County recognize the need to have seamless
radio interoperability capabilities throughout each organization, and

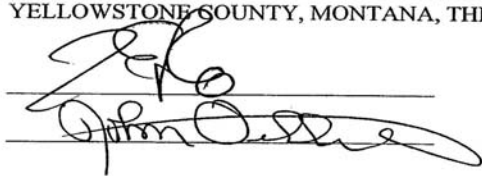
Whereas, the City of Billings and Yellowstone County wish to improve radio
interoperability both locally and regionally, and

Whereas, the City of Billings and Yellowstone County recognize that participating in the
Montana Interoperability Radio System may improve communications both locally
and regionally.

Therefore be it resolved, that the City Council of Billings and the Yellowstone County
Commissioners do hereby support the possibility of participating in the Montana
Interoperability Radio System, if it proves to meet the needs of both entities.

PASSED AND EFFECTIVE BY THE COUNCIL OF THE CITY OF BILLINGS, MONTANA,
THIS _____ DAY OF _____, 2007

PASSED AND EFFECTIVE BY THE BOARD OF COUNTY COMMISSIONERS OF
YELLOWSTONE COUNTY, MONTANA, THIS 11th DAY OF December, 2007.





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

R

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 14, 2008

TITLE: Resolution—Temporary Suspension of the Camping Ordinance

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The Masonic Temple is seeking an exemption from the City's camping ordinance for the state meeting of Eastern Star chapters, to be held June 17 – 22, 2008, at 1101 Broadwater Ave.

City Code section 24-411 prohibits camping anywhere other than an authorized tourist park and in a private parking lot for a 10-hour rest period, if the owner permits it. The ordinance allows a temporary suspension of the ordinance for a special event if the Council adopts a resolution suspending the camping prohibition.

ALTERNATIVES ANALYZED:

- Approve a resolution allowing RV and camper parking at the Masonic Temple for the state meeting of Eastern Star chapters.
- Do not approve the resolution.

FINANCIAL IMPACT: None anticipated.

RECOMMENDATION

Staff recommends that the Council approve the attached resolution allowing temporary RV and camper parking at the Masonic Temple parking lot, 1101 Broadwater, for 48 hours before and after the state meeting of Eastern Star chapters, scheduled for June 17-22, 2008.

Approved By: City Administrator ____ City Attorney ____

Attachments:

A. Resolution

RESOLUTION 08-__

**A RESOLUTION OF THE BILLINGS CITY COUNCIL
TEMPORARILY SUSPENDING BMCC 24-411 TO ALLOW
CAMPING AT THE MASONIC TEMPLE FOR THE 2008
STATE MEETING OF EASTERN STAR CHAPTERS**

WHEREAS, BMCC 24-411. Parking for Camping Purposes, prohibits camping in the City of Billings except in authorized tourist parks and for permitted rest periods, but allows a temporary suspension beginning 48 hours before and extending 48 hours after special events held within the City if a resolution is obtained from the City Council; and

WHEREAS, the Montana Eastern Star chapters will hold its state meeting from June 17 to June 22, 2008, at the Masonic Temple, 1101 Broadwater, and have requested temporary suspension of the camping prohibition.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA that BMCC 24-411 is hereby temporarily suspended for a period of 48 hours before and 48 hours after June 17 - 22, 2008, at the Masonic Temple, 1101 Broadwater, for the state meeting of Eastern Star chapters.

PASSED AND APPROVED by the City Council this 14th day of January, 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, City Clerk

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

S

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 14, 2008

TITLE: Second Reading of an Ordinance Expanding Ward III: Annexation #07-25
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On December 10, 2007, the City Council approved the annexation of a portion of a 40-foot wide county road tract legally described as Block 5, Lot 1, Long Subdivision and contains approximately 2.457 acres. The first reading and public hearing of the ordinance to add the property to Ward III was conducted on December 17, 2007. The second reading of the ordinance is scheduled for the City Council on January 14, 2008.

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

RECOMMENDATION

Staff recommends that the City Council approve the second reading of this ordinance that adds the subject property to City Ward III.

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

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 08-_____

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

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

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

A portion of Lot 5, Block 1, Long Subdivision, Recorded August 30, 1994, Under Document No. 1755400, Records of Yellowstone County, Montana, more particularly described as:

The west 40.0 feet of said Lot 5, Block 1, Long Subdivision, adjacent to Western Sky Subdivision, Recorded April 19, 2006, Under Document No. 3374355, Records of Yellowstone County, Montana, including all adjacent right-of-way of King Avenue West.

Said Tract containing 2.457 gross and net acres.

(# 07-25) See Exhibit "B" Attached

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

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
CITY CLERK

[illegible]

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T

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 14, 2008

TITLE: Second Reading of an Ordinance Expanding Ward IV: Annexation 07-05
DEPARTMENT: Planning and Community Services
PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On December 10, 2007, the City Council approved the annexation of a portion of park land along the Zimmerman Trail road right-of-way and a portion of the Zimmerman Trail road right-of-way (Annexation #07-05) containing 13.4 acres. The property is located along the Zimmerman Trail road corridor between Rimrock Road and Highway 3. The City of Billings owns the property and requested the annexation. After annexation, the property must be added to one of the City's election wards. Council held a public hearing and approved on first reading the ordinance to add the property to Ward IV on December 17, 2007. Council action on the second reading of the ordinance is scheduled for this meeting.

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

RECOMMENDATION

Staff recommends that the City Council approve the second reading of this ordinance that adds this property to City Ward IV.

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

ATTACHMENT

A. Ward Ordinance and Exhibit J

ORDINANCE NO. 08-_____

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

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

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

A tract of land situated in Section 27, T.1N., R.25E., P.M.M., Yellowstone County, Montana,

A portion of Zimmerman Trail between Rimrock Road and State Highway No. 3, as recorded in Book 342, Page 349, Recorded May 11, 1949, Under Document No. 450203, Records of Yellowstone County, also described under Quitclaim Deed, Yellowstone County to the City of Billings, Recorded December 5, 2005, Under Document No. 3359157, Records of Yellowstone County, being a strip of land 100.0 feet in width to the following described centerline:

Beginning at a point on the south line of Section 27, Township 1 North, Range 25 East M.P.M. which point is 2904.9 feet west of the southeast corner of said section; thence due North, 1105 feet; thence Northeast 382.6 feet on a 17°28' curve right ($\Delta=67^{\circ}28'$); thence Easterly 165.9 feet on a 25°43' curve right ($\Delta=42^{\circ}40'$); thence South 69°52' East, 96.5 feet; thence South 69°0' East, 202.4 feet; thence Easterly 351.2 feet on an 8°18' curve left ($\Delta=29^{\circ}09'$); thence North 81°51' East, 66.0 feet; thence North 85°18' East, 110.3 feet; thence Northeasterly 376.1 feet on a 6°0' curve left, ($\Delta=22^{\circ}34'$); thence North 62°44' East, 90.3 feet; thence Northeasterly, 183.9 feet on a 41°0' curve left ($\Delta=75^{\circ}25'$); thence North 12°41' West, 219.8 feet; thence N. 19°01' West, 388.0 feet; thence Northwesterly 392 feet on a 24°0' curve left ($\Delta=92^{\circ}21'$); thence S. 68°38' West, 232 feet; thence Northwesterly 450 feet on a 19°0' curve right ($\Delta=85^{\circ}30'$); thence Northeasterly 371.7 feet on a 15°0' curve right ($\Delta=55^{\circ}45'$); thence North 29°53' East, 93.3 feet, more or less to the intersection with the center line of the new Billings-Broadview road (now known as State Highway No. 3), including all adjacent right-of-way of State Highway No. 3;

Also that portion of Yellowstone County Park land wholly surrounded by the previously described portion of Zimmerman Trail to the west; Durland Heights Subdivision, Recorded September 22, 1951, Under Document No. 482159, Records of Yellowstone County to the south; Wilshire Heights Subdivision 5th Filing, Recorded October 10, 1972, Under Document No. 918177, Records of Yellowstone County, and Wilshire Heights Subdivision 6th Filing, Recorded February 9, 1973, Under Document No. 926987, Records of Yellowstone County to the east; and Wilshire Park of Certificate of Survey No. 972, Recorded September 29, 1964, Under Document No. 739703, Records of Yellowstone County to the north.

Containing 13.401 gross acres and 4.205 net acres, more or less.
(# 07-05) See Exhibit "J" Attached

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

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

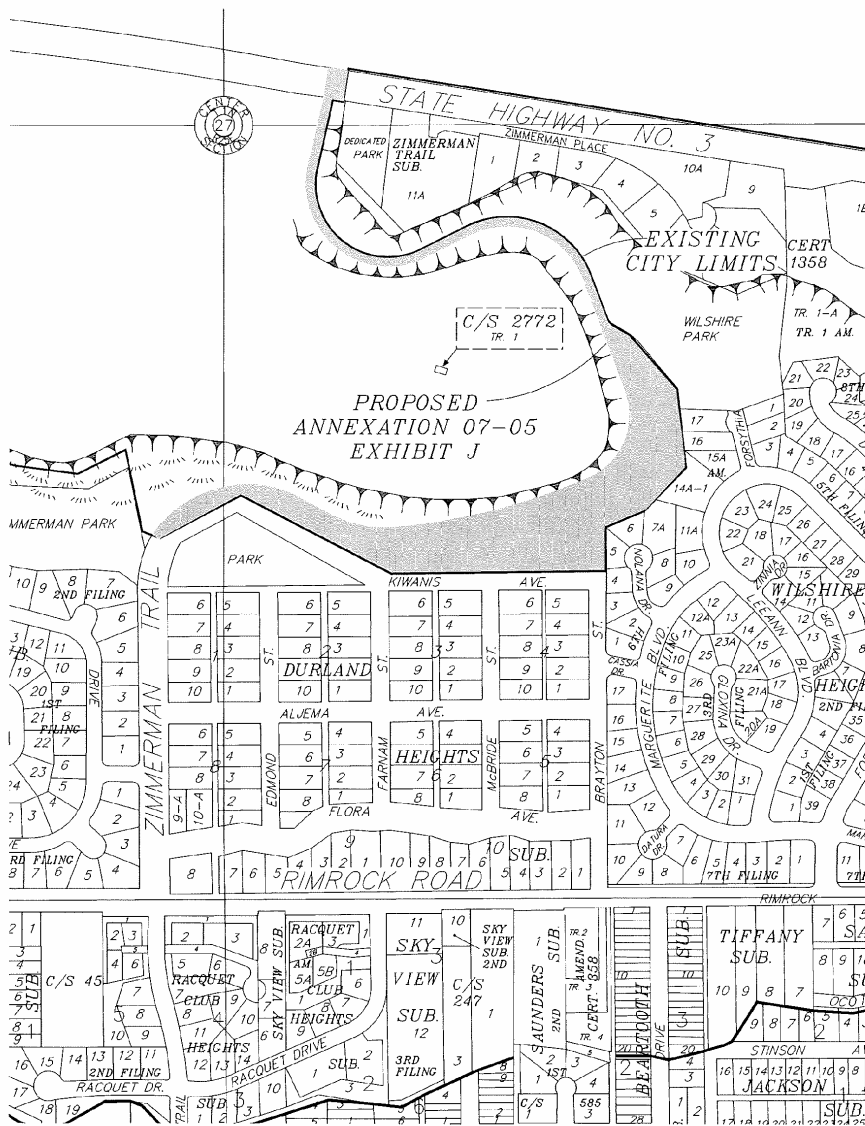
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
CITY CLERK

EXHIBIT J



(Back to Consent Agenda)

U

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 14, 2008

TITLE: Second Reading of an Ordinance Expanding Ward IV: Annexation 07-13
DEPARTMENT: Planning and Community Services
PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On December 10, 2007, the City Council approved the annexation of a portion of Zimmerman Trail road right-of-way (Annexation #07-13) containing 0.92 acres. The property is located between Colton Boulevard and Grand Avenue along the Zimmerman Trail road corridor. The City of Billings owns the property and requested the annexation. After annexation, the property must be added to one of the City's election wards. Council held a public hearing and approved on first reading the ordinance to add the property to Ward IV on December 17, 2007. Council action on the second reading of the ordinance is scheduled for this meeting.

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

RECOMMENDATION

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

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

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 08-_____

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

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

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

Tracts of land situated in the SW1/4 of Section 34, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 1B, Amended Tract 1 of Certificate of Survey No. 1990, Recorded October 26, 2005, Under Document No. 3354258, Records of Yellowstone County, Montana;

Tract 1-B, Amended Tract 1 of Certificate of Survey No. 2974, Recorded October 26, 2005, Under Document No. 3354257, Records of Yellowstone County, Montana. Less that portion of Tract 1-B of said Amended Tract 1 of Certificate of Survey No. 2974 designated for road for Grand Avenue; and less that portion of Tract 1-B previously annexed under City Resolution No. 06-18449, Recorded October 05, 2006, Under Document No. 3395866, Records of Yellowstone County, Montana.

Containing 0.912 gross acres.
(# 07-13) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

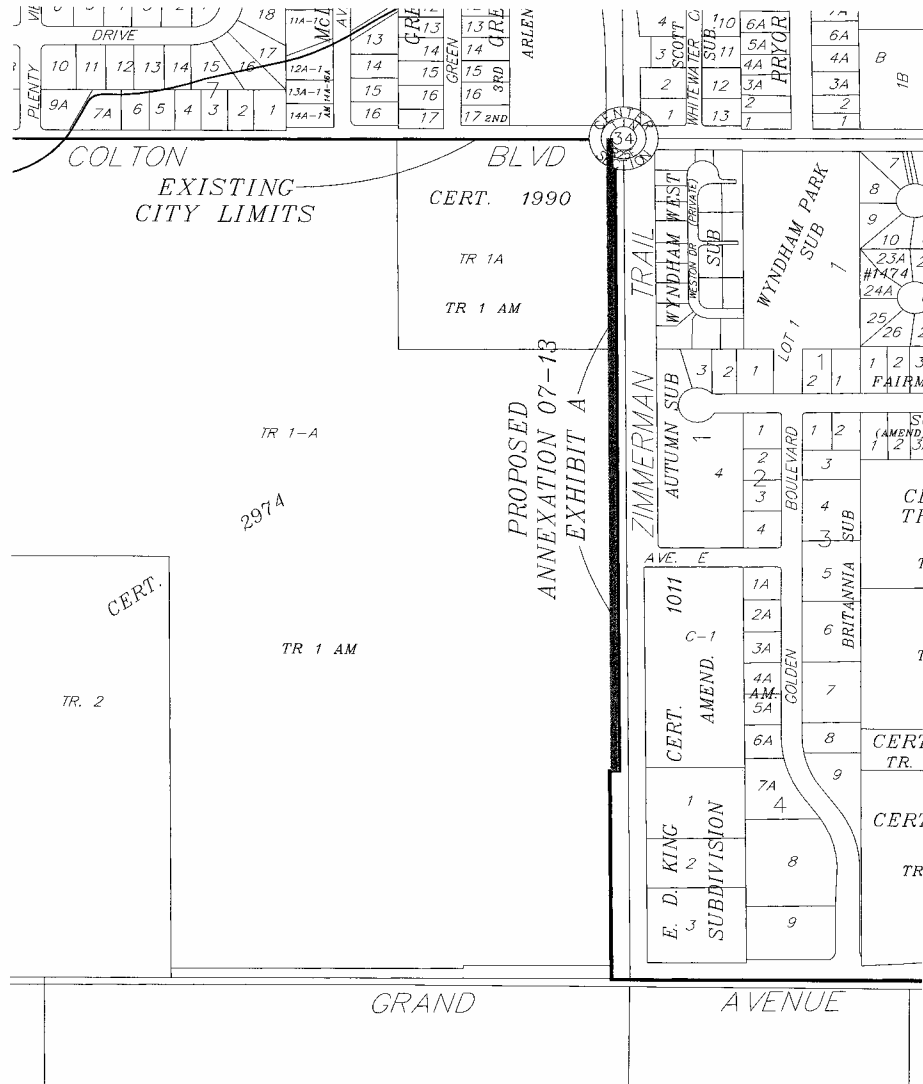
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
CITY CLERK

EXHIBIT A



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

V

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 14, 2008

TITLE: Second Reading of an Ordinance Expanding Ward IV: Annexation 07-14
DEPARTMENT: Planning and Community Services
PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On December 10, 2007, the City Council approved the annexation of a portion of Cove Avenue road right-of-way (Annexation #07-14) containing 4.86 acres. The property is located between 46th Street West and 50th Street West along the Cove Avenue road corridor south of Rimrock Road. The City of Billings owns the property and requested the annexation. After annexation, the property must be added to one of the City's election wards. Council held a public hearing and approved on first reading the ordinance to add the property to Ward IV on December 17, 2007. Council action on the second reading of the ordinance is scheduled for this meeting.

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

RECOMMENDATION

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

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

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 08-_____

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

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

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

A tract of land situated in the NE1/4 of Section 32, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Street right-of-way of Cove Avenue, between east right-of-way line of 50th Street West running easterly to Leroy Lane as recorded with Zimmerman Subdivision 4th Filing, Recorded March 19, 1965, Under Document No. 751012, Records of Yellowstone County, Montana; also that portion of Leroy Lane right-of-way as dedicated with Zimmerman Acreage Tracts Subdivision 3rd Filing, Recorded May 1, 1963, Under Document No. 705939, Records of Yellowstone County, Montana beginning at the northeast corner of Lot 4, Block 3 of said Zimmerman Subdivision 4th Filing and extending easterly to the west right-of-way line of 46th Street West being on the existing City of Billings city limits.

Containing 4.864 gross acres.
(# 07-14) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
CITY CLERK

The map displays a proposed city annexation area, labeled "PROPOSED ANNEXATION 07-14 EXHIBIT A". The area is bounded by 50th St. W to the west, 46th St. West to the east, and Rimrock Road to the north. The map shows various tracts, including Zimmerman Acreage Tracts, Leroy Lane, and Rimrock Road. It also indicates existing city limits and a proposed city limit extension. The map is divided into sections by streets like 50th St. W, 46th St. West, and Rimrock Road. A large area is shaded and labeled "PROPOSED ANNEXATION 07-14 EXHIBIT A". The map includes a scale bar and a north arrow.

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W

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Second Reading of an Ordinance Expanding Ward IV: Annexation #07-16
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On December 10, 2007, the City Council approved the annexation of a portion of Grand Avenue right-of-way that contains approximately 0.359 acres. The property requested to be annexed is the southern 30-feet of the Grand Avenue right-of-way extending from the northwest corner of Vintage Estates Subdivision west to the southwest corner of Lot 65A-4, Sunny Cove Fruit Farms. The first reading and public hearing of the ordinance to add the property to Ward IV was conducted on December 17, 2007. The second reading of the ordinance is scheduled for the City Council on January 14, 2008.

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

RECOMMENDATION

Staff recommends that the City Council approve the second reading of this ordinance that adds the subject property to City Ward IV.

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

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 08-_____

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

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

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

A tract of land situated in the NW1/4 of Section 4, T.1S., R.25E., P.M.M., Yellowstone County, Montana; Yellowstone County road easement for Grand Avenue also described as a portion of County Road Petition Number 5, filed December 26, 1883, Declared a County Road March 6, 1884, being those portions of the E1/2E1/2NW1/4NW1/4 and the W1/2E1/2NW1/4NW1/4 of said Section 4 adjacent to Lot 65A-4 of Amended Plat Of Lot 65A Of The Plat Of Amended Lots 65-68, 93-100, And 125-128 Of Sunny Cove Fruit Farms, Recorded December 29, 2004, Under Document No. 3317043, Records of Yellowstone County.

Said Tract containing 0.359 acres.
(# 07-16) See Exhibit "A"

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

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

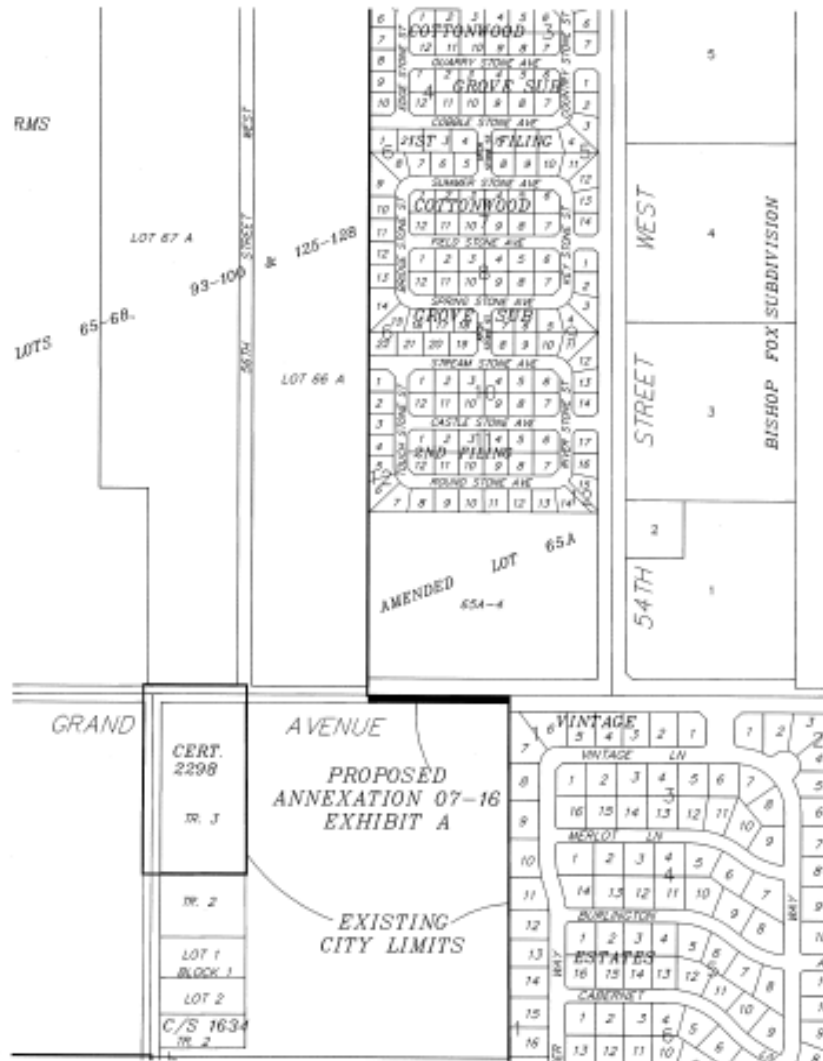
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
CITY CLERK

EXHIBIT A



(Back to Consent Agenda)

X

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Second Reading of an Ordinance Expanding Ward V: Annexation 07-11

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On December 10, 2007, the City Council approved the annexation of a portion of Broadwater Avenue road right-of-way (Annexation #07-11) containing 3.74 acres. The property is located along the Broadwater Avenue road corridor between 30th Street West and 35th Street West. The City of Billings owns the property and requested the annexation. After annexation, the property must be added to one of the City's election wards. Council held a public hearing and approved on first reading the ordinance to add the property to Ward V on December 17, 2007. Council action on the second reading of the ordinance is scheduled for this meeting.

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

RECOMMENDATION

Staff recommends that the City Council approve the second reading of this ordinance that adds this property to City Ward V.

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

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 08-_____

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

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

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

A tract of land situated in the N1/2 of Section 2, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 10-A-2, of Amended Tracts 8-A Through 13-A of Certificate of Survey No. 2314, Recorded January 7, 1992, Under Document No. 1619771, Records of Yellowstone County, Montana, less that portion previously annexed under City of Billings Ordinance No. 4421 Passed by the City Council and Approved by the Mayor February 1, 1982.

Containing 3.741 gross acres.
(# 07-11) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

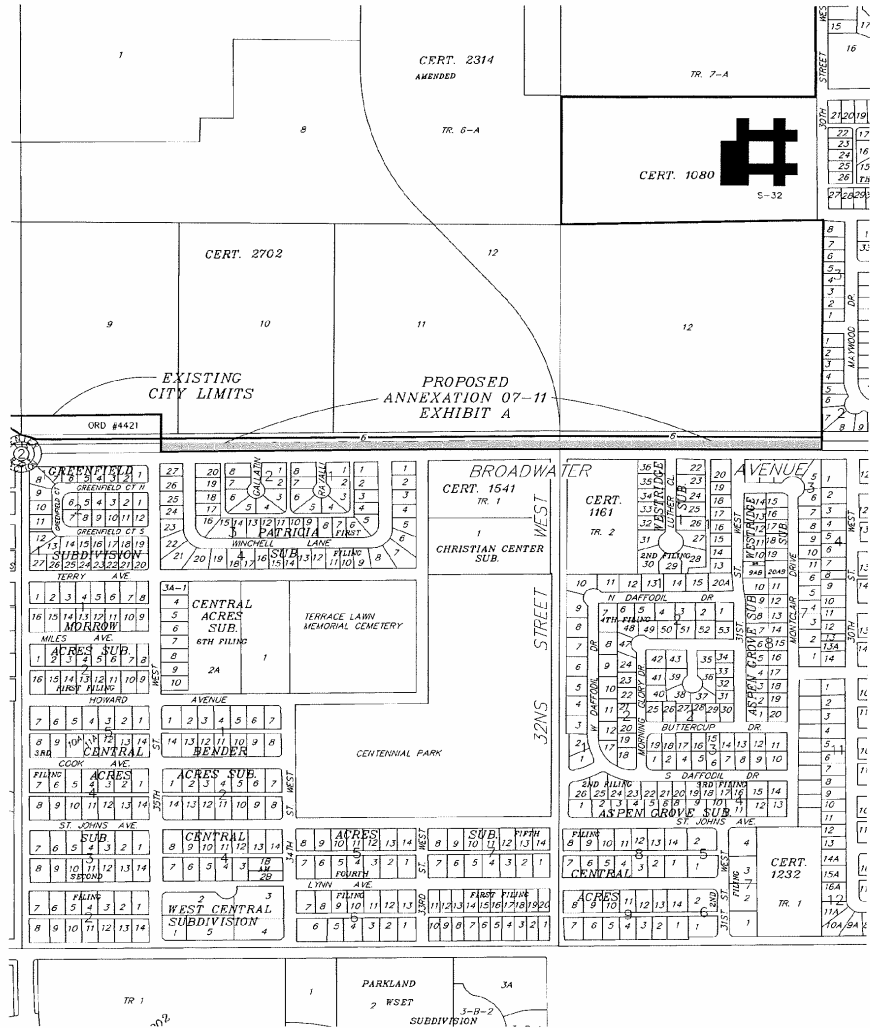
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
CITY CLERK

EXHIBIT A



(Back to Consent Agenda)

Y

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Second Reading of an Ordinance Expanding Ward V: Annexation 07-12
DEPARTMENT: Planning and Community Services
PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On December 10, 2007, the City Council approved the annexation of a portion of Bell Avenue road right-of-way (Annexation #07-12) containing 1.69 acres. The property is located west of Shiloh Road along the Bell Avenue road corridor between Bell Estates and Legends West subdivisions. The City of Billings owns the property and requested the annexation. After annexation, the property must be added to one of the City's election wards. Council held a public hearing and approved on first reading the ordinance to add the property to Ward V on December 17, 2007. Council action on the second reading of the ordinance is scheduled for this meeting.

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

RECOMMENDATION

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

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

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 08-_____

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

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

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

A tract of land situated in the NE1/4 of Section 10, T.1S., R.25E., P.M.M., Yellowstone County, Montana, being a portion of Tract 5 (a road Tract) adjacent to the south line of Tract 1 of Corrected Amendment Of Tracts 1 And 3 and Remainder Tract 2 To Be Amendment Of Tracts 1, 2 And 3 Certificate Of Survey No 1648, Recorded July 20, 1994, Under Document No. 1749237, Records of Yellowstone County, Montana, also adjacent to the south line of Legends West Subdivision, Recorded February 7, 2003, Under Document No. 3214081, Records of Yellowstone County, Montana, and Bell Avenue as shown in Bell Estates Subdivision, Recorded March 27, 2000, Under Document No. 3085059, Records of Yellowstone County, Montana, more particularly described as:

Basis of bearings: Corrected Amendment of Tracts 1 and 3, and Remainder Tract 2 to be Amendment of Tracts 1, 2 And 3 Certificate of Survey No 1648,

Beginning at the northeast corner of Tract 5, of said Corrected Amendment Of Tracts 1 And 3 and Remainder Tract 2 To Be Amendment Of Tracts 1, 2 And 3 Certificate Of Survey No 1648; thence N 89°52'00" W a distance of 1248.02 feet; thence S 00°08'00" W a distance of 30.00; thence S 89°52'00" E a distance of 32.67 feet; thence S 00°08'00" W a distance of 30.00 feet to the south Right-Of-Way line of Bell Avenue as shown in said Bell Estates Subdivision; thence S 89°52'00" E a distance of 1215.78 feet to a point on the west line of the Shiloh Drain; thence N 00°16'30" W a distance of 60.00 feet to the Point of Beginning.

Containing 1.697 gross acres.
(# 07-12) See Exhibit "A" Attached

14. CERTIFICATION. Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.

3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

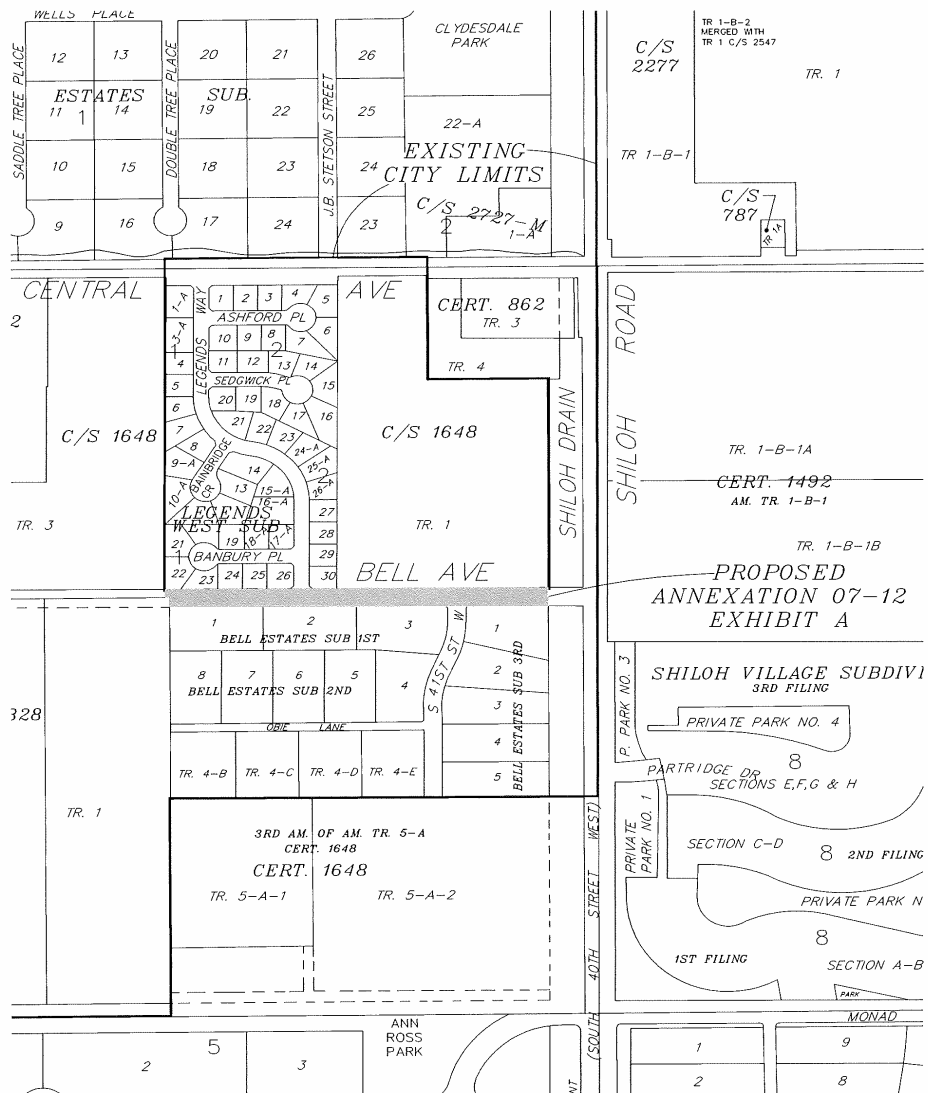
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
CITY CLERK

EXHIBIT A



(Back to Consent Agenda)

Z

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday January 14, 2008

TITLE: Second Reading of an Ordinance Expanding Ward V:
Annexation 07-18

DEPARTMENT: Planning and Community Services Division

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: On December 10, 2007, the City Council approved the annexation of a portion of Broadwater Avenue and 56th Street West road rights-of-way (Annexation #07-18) containing 1.825 acres. The City of Billings has an interest in the property and requested the annexation. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward V was held on December 17, 2007. The second reading of the ordinance will be conducted at this meeting.

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

RECOMMENDATION

Staff recommends that the City Council approve the 2nd reading of this ordinance that adds property to City Ward V.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

A. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 08-_____

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

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

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

Broadwater Avenue Tract:

Basis of bearings Certificate of Survey No. 1322, Recorded June 27, 1973, Under Document No. 937794, Records of Yellowstone County, Montana,

A portion of Tract 7, AKA Broadwater Avenue, of said Certificate of Survey No. 1322 Beginning at the east ¼ corner of Section 5, T.1S., R.25E., P.M.M.; thence 89°48'30" W along the E-W mid section line of said Section 5 for a distance of 1304.6 feet; thence S 00°05'30" for a distance of 30.00 feet; thence 89°48'30" E for a distance of 1304.6 feet to a point on the east section line of said Section 5; thence 00°04' E for a distance of 30.00 feet to the Point of Beginning. Said Tract containing 0.898 acres.

56th Street West Tract:

A portion of Yellowstone County road easement for 56th Street West also described as a portion of County Road Petition Number 19, Filed January 2, 1886, Road Established June 9, 1886, more particularly described as:

Beginning at the west ¼ corner of Section 4, T.1S., R.25E., P.M.M.; thence southerly along the west section line of said Section 4 for a distance of 30.00 feet; thence easterly for a distance of 30.00 feet on a line that is perpendicular to the west section line of said Section 4 to a point; thence northerly and 30.00 feet parallel to the west section line of said Section 4 for an approximate distance of 1347.3 feet to a point, said pint being on a line that is perpendicular to the N1/16 corner of said Section 4; thence westerly for a distance of 30.00 feet to the N1/16 corner of said Section 4; thence southerly along the west section line of said Section 4 for an approximate distance of 1317.3 feet to the Point of Beginning. Said Tract containing 0.927 acres more or less.

Containing a total of 1.825 acres, more or less.

(# 07-18 Exhibit "A" Attached)

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

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

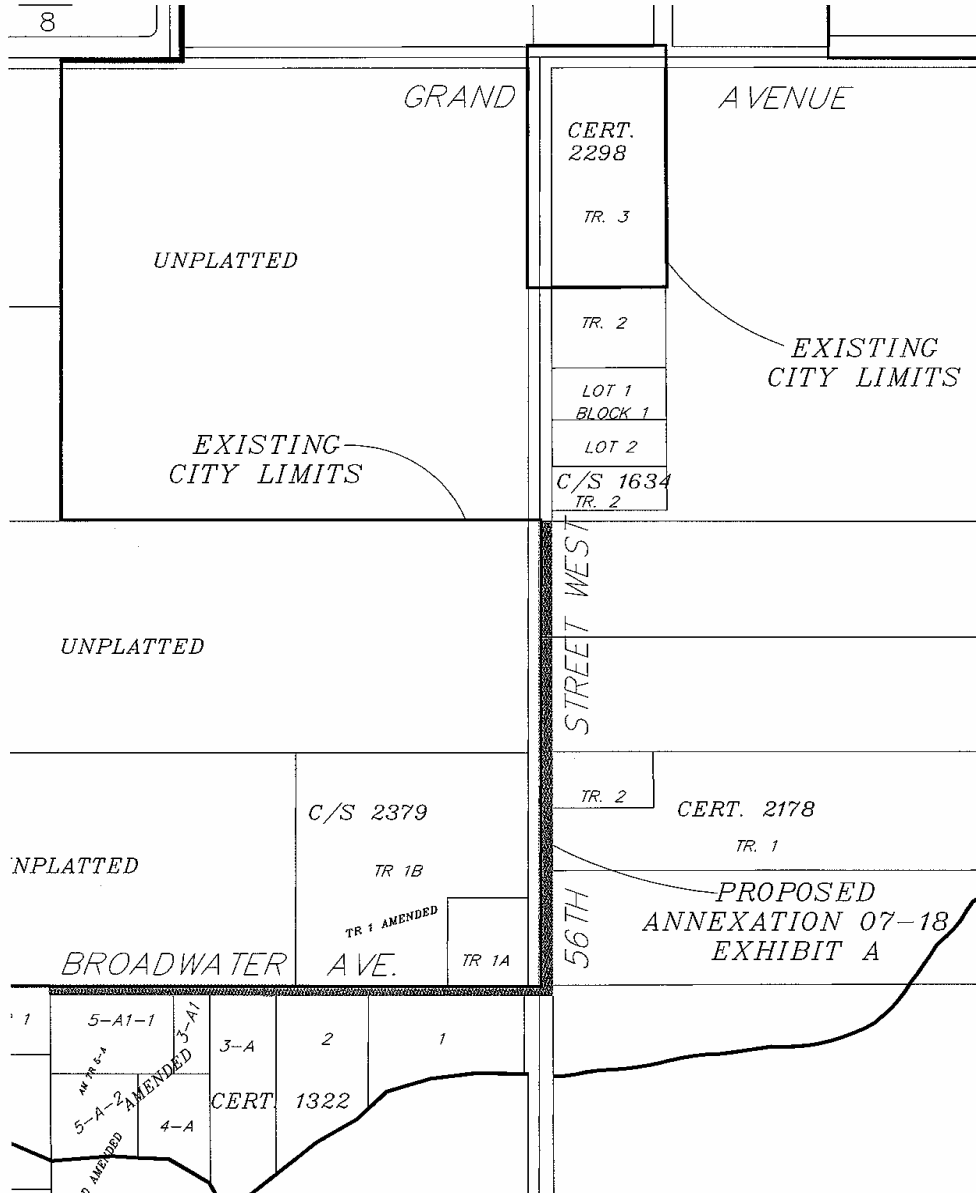
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY:_____
Cari Martin, CITY CLERK

EXHIBIT A



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

AA

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, January 14, 2008

TITLE: Preliminary Subsequent Minor Plat of Amended Lot 1-A, Block 1, McCracken Subdivision, 2nd Filing

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On December 3, 2007, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 1-A, Block 1, McCracken Subdivision, 2nd Filing, which contains two lots on approximately 4.90 acres. Residential development is proposed for the southern lot and the Hope United Methodist Church is located on the proposed northern lot. The subject property is located just west of the intersection of Lake Elmo Drive and Wicks Lane and is zoned Residential 7000 (R-70). The owner and subdivider is the Hope United Methodist Church and the representing agent is Atlas Engineers, Inc.

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on January 23, 2008. State and City subdivision regulations also 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. Within the 35 day review period, the City Council is required to:

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

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

RECOMMENDATION

Staff recommends conditional approval of the preliminary subsequent minor plat of Amended Lot 1-A, Block 1, McCracken Subdivision, 2nd Filing, 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. Findings of Fact
- C. Mayor's Approval Letter

INTRODUCTION

On December 3, 2007, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 1-A, Block 1, McCracken Subdivision, 2nd Filing, which contains two lots on approximately 4.90 acres. Residential development is proposed for the southern lot and the Hope United Methodist Church is located on the proposed northern lot. The subject property is located just west of the intersection of Lake Elmo Drive and Wicks Lane and is zoned Residential R-70.

PROCEDURAL HISTORY

- A pre-application meeting was conducted between the subdivider's representative and city staff on August 24, 2006.
- A second pre-application meeting was conducted between the subdivider's representative and city staff in August of 2007.
- The preliminary plat application for this subdivision was submitted to the Planning Department on December 3, 2007.
- The City Council will consider the preliminary plat on January 14, 2008.

BACKGROUND

General location:	West of the intersection of Lake Elmo Drive and Wicks Lane
Legal Description:	Amended Lot 1-A, Block 1, McCracken Subdivision, 2 nd Filing
Subdivider/Owner:	Hope United Methodist Church
Engineer and Surveyor:	Atlas Engineers, Inc.
Existing Zoning:	R-7000
Existing land use:	Church and Vacant
Proposed land use:	Church and Residential
Gross area:	4.90 acres
Net area:	4.90 acres
Proposed number of lots:	2
Lot size:	Max: 2.90 acres Min.: 2.0 acres

Parkland requirements:

No parkland dedication is required, as this is a subsequent minor 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:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
3. To inform future property owners of conditions for the property, a condition shall be added to Section II of the SIA that there is a 60-foot easement for the Holling Drain that crosses Lot 1-A-1 and the southeast portion of Lot 1-A-2. *(Recommended by City-County Planning)*
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 City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

No variances have been requested.

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 Division 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 subsequent minor plat of Amended Lot 1-A, Block 1, McCracken Subdivision, 2nd Filing, and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

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

ATTACHMENT A

Preliminary Plat of Amended Lot 1-A, Block 1, McCracken Subdivision, 2nd Filing

PRELIMINARY PLAT OF LOT 1-A, BLOCK 1, AMENDED PLAT OF McCRACKEN SUBDIVISION, 2ND FILING.

LOCATED IN THE NE1/4 NW1/4 OF SECTION 22, T.1N., R.26E., P.M.M.,
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

FOR: HOPE UNITED METHODIST CHURCH
BILLINGS, MT.

BY: ATLAS ENGINEERS INC.
BILLINGS, MT.

DATE: JULY, 2007



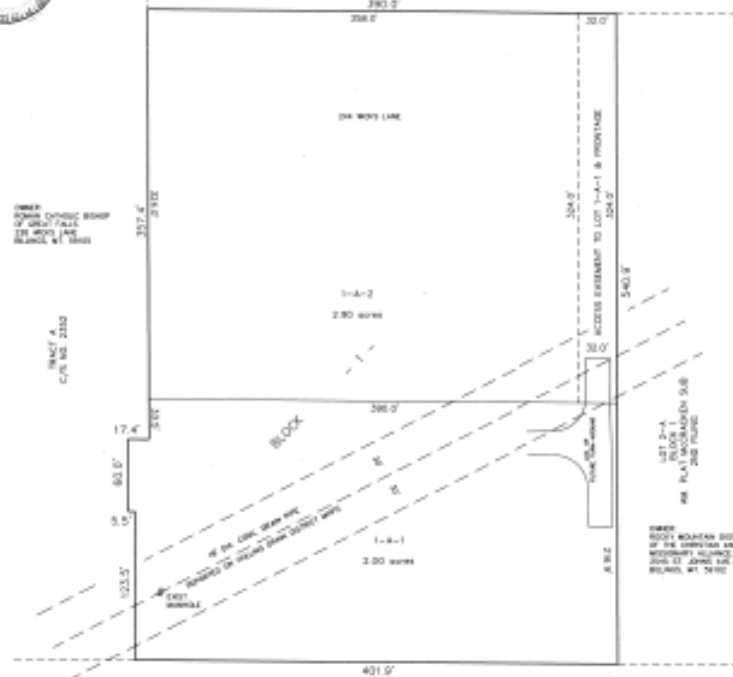
30' WIDE SIDE DRIVE
30' WIDE SIDE DRIVE
30' WIDE SIDE DRIVE

WORKS LANE (90' WIDE)

MINIMUM ELECTRIC AND TELEPHONE LINES IN THE AREA



VICINITY MAP SCALE 1" = 800'



PURPOSE OF SURVEY
THE PURPOSE OF THIS SURVEY IS TO CREATE A
PARCEL FOR CONVEYANCE.

BASE OF SURVEY
THE BASE OF SURVEY FOR THIS SURVEY IS
A LINE BEARING OF N01°10'10\"/>

USE DATA	
NUMBER OF LOTS	2-40, 100, REMAINDER
AREA OF SMALLEST LOT	2.00 acres
AREA OF REMAINDER LOT	2.00 acres
ZONE	R-7000
PAVED DECKARD	HIGH
LENGTH OF NEW STREETS	NONE
CREAT AREA	4.00 acres

REMARKS
CORNER MARKED WITH IRON PIPES
IS MONUMENTED BY A 1/2\"/>

CORNER MARKED WITH IRON PIPES
IS MONUMENTED AS NOTED AND SET (TWO
BY THIS SURVEY OR AS NOTED BY THIS
SURVEY).

OWNER
NORTHERN HEIGHTS
PLAZA CONDOMINIUM
1 NORTHERN DRIVE
BILLINGS, MT 59101

NORTHERN HEIGHTS SUBDIVISION

ATTACHMENT B

Findings of Fact

The Planning Board is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Amended Lot 1-A, Block 1, McCracken Subdivision, 2nd 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 (23-303(H)(2), BMCC).

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? (76-3-608 (3)(a), MCA) (23-302(H)(2), BMCC)

1. Effect on agriculture and agricultural water user facilities

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

2. Effect on local services

- a. **Utilities** – The subject property is located within the County Water District of Billings Heights and is served by City sewer. Water and sanitary sewer exist from Wicks Lane to the existing church on proposed Lot 1-A-2. These lines will be extended to serve Lot 1-A-1
- b. **Stormwater** – As specified in the submitted SIA, all drainage improvements shall comply with the provisions of the Billings Stormwater Management Manual. The Holling Drain is piped underground and runs diagonally across proposed Lot 1-A-1 and the southeast portion of proposed Lot 1-A-2 and is contained within a 60-foot easement. The City does not own the Holling Drain at this location and stormwater runoff from the subdivision is not permitted to utilize the drain. Condition #3 requires that a note be added to the SIA regarding the drain easement location on the property.
- 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 already exists to proposed Lot 1-A-2 from Wicks Lane. A 32-foot wide private easement will provide access to proposed Lot 1-A-1. There is a turnaround proposed at the end of this easement for emergency services, as depicted on the plat.
- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews Drive (Station #6). The Fire Department has reviewed the proposed easement and turnaround and finds it sufficient.
- f. **Schools** - The subdivision is located within School District #2. Bench Elementary, Castle Rock Middle School and Skyview High School will serve the children in this subdivision. No responses were received from the schools.

- g. **Parks and Recreation** – Parkland dedication is not required for this subdivision, as it is a subsequent minor.
- 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 #2. The location of the mail boxes shall be reviewed and approved by the post office.

3. Effect on the natural environment

A geotechnical study was submitted with this application and there were several deficiencies with the report noted by the Building Official. These issues will need to be resolved prior to construction on the property:

- A final geotechnical report will be required.
- Backfill will be compacted to 95%.
- Rain gutters with extended downspouts are required.
- Positive drainage away from any structures is required.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property; however the property is located near open lands, where the likelihood of wildlife interaction is high. A note has been added to the SIA under general conditions that run with the land that future property owners should be aware that the proposed subdivision is located within prime deer and antelope habitat. Any damage caused by wildlife is the responsibility of the owner.

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? (76-3-210, MCA) (23-901, BMCC)

An Environmental Assessment is not required, as this is a subsequent 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? (23-301, BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

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

- a. Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, Page 5)

The proposed subdivision is consistent with the surrounding residential and commercial uses.

- b. 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 compatible with the surrounding multi-family and commercial uses.

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

The property is located within an existing subdivision in an urbanized portion of the city and is considered infill development.

2. Urban Area 2005 Transportation Plan Update

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

3. Heritage Trail Plan

A Heritage Trail corridor is not identified within this subdivision.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? (76-3-608 (3)(b), MCA) (23-301, 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? (23-408, BMCC)

The property is served by Heights water and city sewer, storm drain and solid waste services.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? (23-402, BMCC)

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

G. Does the proposed plat provide easements for the location and installation of any utilities? (76-3-608 (3)(c), MCA) (23-410(A)(1), BMCC)

The City Engineering Department will work with the utility companies to provide easements in acceptable locations on the plat. The City maintains that utility easements provided on front lot lines creates conflicts with sanitary water and sewer lines and have requested that they be located on the rear and sides of lots for public health and safety. Condition #1 requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? (76-3-608 (3)(d), MCA) (23-406, BMCC)

Access to the lots will be through a private easement and existing accesses from Wicks Lane.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Amended Lot 1-A, Block 1, McCracken 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 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, January 14, 2008

Ron Tussing, Mayor

January 14, 2008

Hope United Methodist Church
P.O. Box 50066
Billings, MT 59106

Dear Applicant:

On January 14, 2008, the Billings City Council conditionally approved the preliminary plat of Amended Lot 1-A, Block 1, McCracken Subdivision, 2nd Filing, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
3. To inform future property owners of conditions for the property, a condition shall be added to Section II of the SIA that there is a 60-foot easement for the Holling Drain that crosses Lot 1-A-1 and the southeast portion of Lot 1-A-2. *(Recommended by City-County Planning)*
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 City of Billings, and the laws and Administrative Rules of the State of Montana.

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

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

BB1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 14, 2008

TITLE: Final Plat of Shiloh Crossing Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Shiloh Crossing Subdivision is being presented to Council for approval. On September 10, 2007, the City Council conditionally approved five lots on approximately 74 acres for commercial development. The subject property is located on the southeast corner of the intersection of Shiloh Road and King Avenue West. The owner is the Long Family Limited Partnership, the subdivider is Shiloh Crossing Partners, LLC, and Engineering, Inc. is the agent. The subject property is vacant and is zoned Entryway Light Industrial (ELI). Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

RECOMMENDATION

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

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Plat

ATTACHMENT A

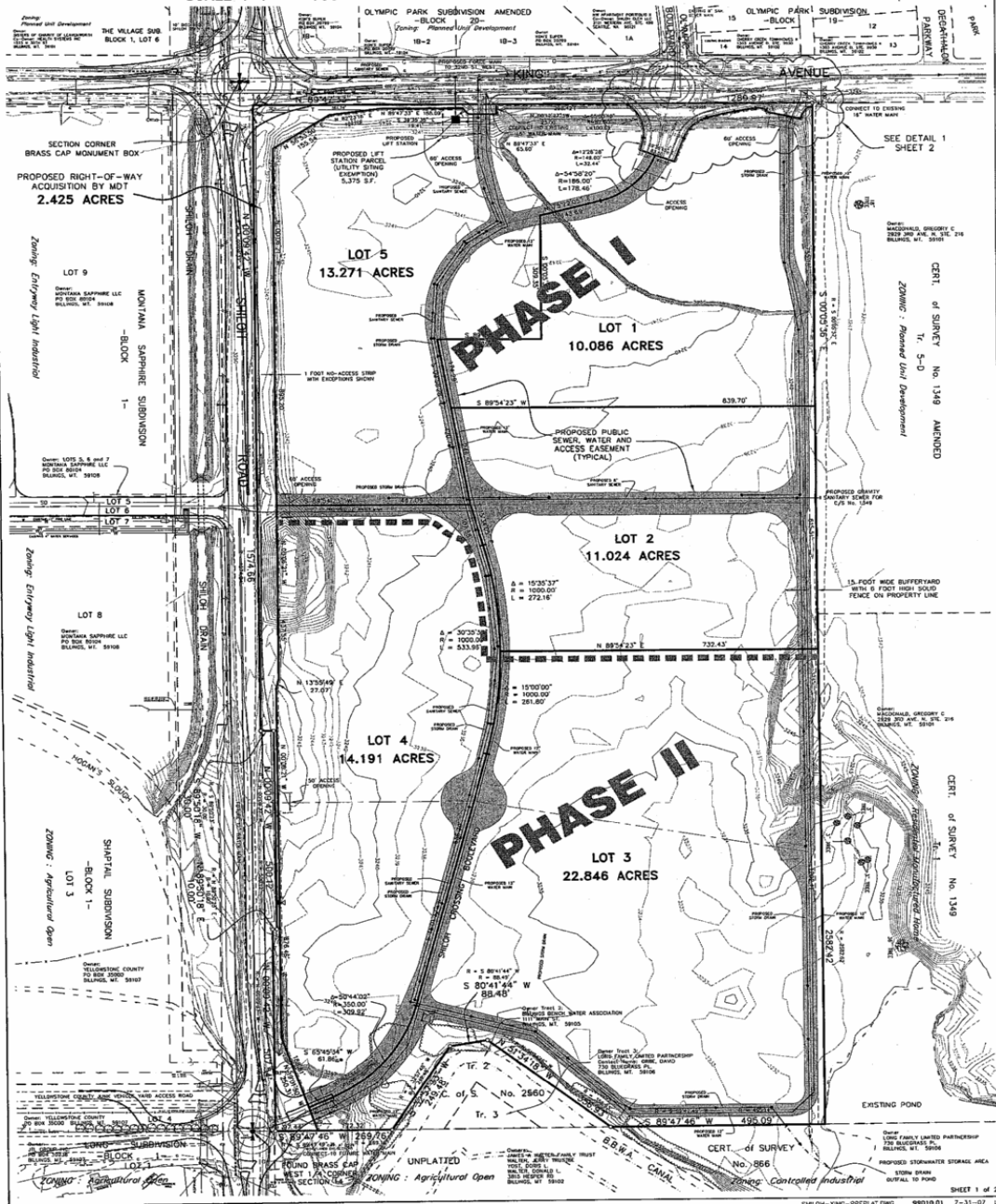
SHILOH CROSSING SUBDIVISION

BEING TRACT 1 OF CERTIFICATE OF SURVEY No. 2560
SITUATED IN THE NORTHWEST 1/4 OF SECTION 14, T. 1 S., R. 25 E., P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : SHILOH CROSSING PARTNERS, LLC
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 100'

JULY, 2007
BILLINGS, MONTANA

SCALE : 1" = 100'



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

BB2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Final Plat of Amended Lot 1, Block 4, High Sierra Subdivision, 2nd Filing
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Amended Lot 1, Block 4, High Sierra Subdivision, 2nd Filing is being presented to Council for approval. On July 9, 2007, the City Council conditionally approved two lots on approximately 28.73 acres for commercial development associated with the Harvest Church Master Plan. The subject property is located at the northeast corner of Wicks Lane and High Sierra Boulevard. The subject property is zoned Residential 9600. The existing church is located on proposed Lot 1A and proposed Lot 1B will contain a recreation center, outdoor aquatic facility (water park), a baseball field, and a soccer field, approved with the Master Plan of Harvest Church in 2003, and amended in 2007. The owner and subdivider is Harvest Church and the representing agent is Engineering, Inc. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

FINANCIAL IMPACT: There are no tax revenues for the city with this development, as the church is tax exempt.

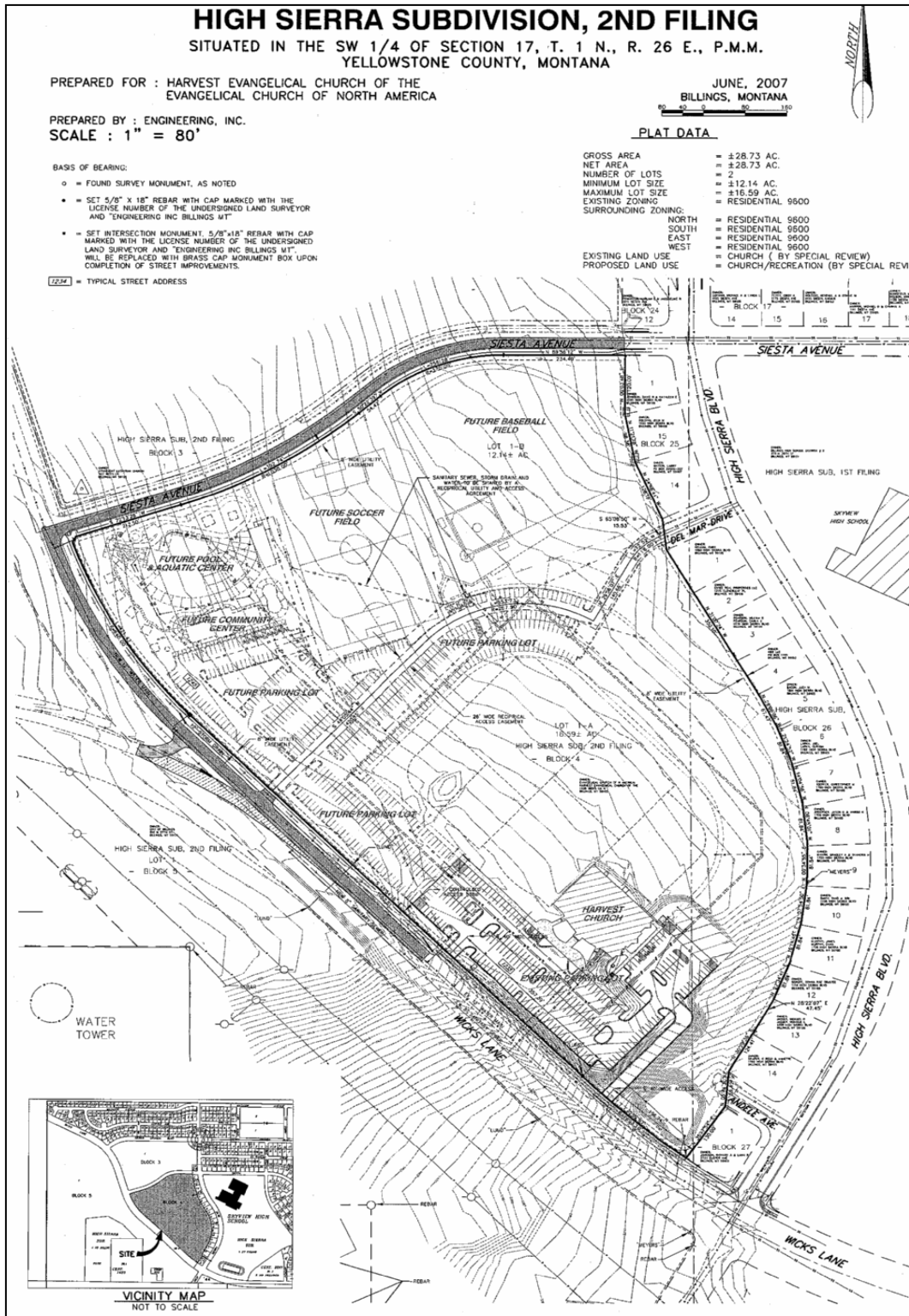
RECOMMENDATION

Staff recommends that the City Council approve the final plat of Amended Lot 1, Block 4, High Sierra Subdivision, 2nd Filing.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Plat



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

CC1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,341,614.32 have been audited and are presented for your approval for payment. A complete listing of the claims dated December 3, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

CC2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$812,822.46 have been audited and are presented for your approval for payment. A complete listing of the claims dated December 7, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

CC3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$2,741,378.61 have been audited and are presented for your approval for payment. A complete listing of the claims dated December 17, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

Agenda Item:



City Council AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Public Hearing and Action on Re-allocation of CDBG and HOME funds

DEPARTMENT: Planning & Community Development Division

PRESENTED BY: Brenda Beckett, Community Development Manager
 Candi Beaudry, Planning and Community Services Director

PROBLEM/ISSUE STATEMENT: Since July 1st the City First Time Homebuyer Program has assisted 32 homebuyers achieve homeownership and expending available HOME funding for the program. Additional funding for the program is needed to meet the needs of lower income homebuyers in Billings between now and June 30. There is currently a waiting list of 21 families that have applied to the First Time Homebuyers program. These families are waiting for funds to be available to sign a Buy/Sell Agreement to purchase their first home. Applications continue to arrive daily. New funding for First Time Homebuyer activities will not be available until July 1, 2008, but CDBG and HOME funding from the Affordable Housing Funds are available immediately to assist these families. It is also a Community Development long term goal to make the First Time Homebuyer Program a year-round self-sustaining program and the additional investment of funding will facilitate this goal. The City's Citizen Participation Plan requires a public hearing and City Council action on amendments in excess of \$25,000.

ALTERNATIVES ANALYZED: (1) Reallocate \$100,000 in CDBG and \$100,000 in HOME funds to the City's First Time Homebuyers Program to provide the resources to meet the current needs and expend the funds in a timely manner or; (2) Continue to reserve the CDBG and HOME funds for the Affordable Housing Development Fund.

FINANCIAL IMPACT:

The recommendation would result in the utilization of existing funds already allocated to the Affordable Housing Development Fund for First Time Homebuyers. There is currently \$300,386 in HOME Entitlement funds available in the Affordable Housing Development Program funding and \$296,221 in CDBG funds. Transferring the \$200,000 CDBG and HOME funds to the First Time Homebuyer Program would still leave \$396,607 in affordable housing

funding available to assist developers in creating affordable housing opportunities between now and June 30, 2008, when new funding is available.

RECOMMENDATION

CD Board and Staff recommend: City Council: (1) Hold a public hearing on the reallocation of CDBG and HOME Affordable Housing Fund to the First Time Homebuyers activities; and (2) approve the transfer of \$200,000 from the CDBG and HOME Affordable Housing Development Fund to the First Time Homebuyers Program.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Public Hearing and Resolution to Proceed to Sell Property, Rehberg Ranch Estates Sub, 2nd Filing, Block 10, Park, Fragment

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Mike Whitaker, PRPL Director

PROBLEM/ISSUE STATEMENT: This is the final step in the process to allow the sale of a fragment of park property in Block 10 of Rehberg Ranch Sub, 2nd Filing, of 4,130 square feet in size, to be replatted and identified as Block 6, Lot 27A, of Rehberg Ranch Sub, 1st Filing, if approved and sold. The Resolution to Proceed authorizes staff to advertise the property for sale and for sealed bids to be received for the purchase of the lot. If sold this fragment would decrease the total park acreage by less than a 10th of an acre. The total acreage of park property in the Rehberg Ranch Subdivision 1st and 2nd Filings totals 49.36 acres. The parcel proposed for sale contains ten (10) feet of the street side frontage of almost 300 feet on the cul-de-sac on which the property is located.

A Resolution of Intention to Sell the property, setting the City Council meeting date of January 14th, 2008, for a Public Hearing and consideration of a Resolution to Proceed with the sale of the property was approved at the December 10, 2007, City Council meeting and a Public Notice of Intent and information on the protest procedure was advertised December 13th and December 20, 2007, and mailed to all property owners within 300 feet of the proposed property, as required by BMC Article 22-900. By close of business, 5:00 p.m., December 28th, 2007, there was one comment or protest filed on the proposed sale. If the Resolution to Proceed is approved, the parcel will be advertised for sale and offers received by sealed bid and opened at a regularly scheduled public bid opening.

ALTERNATIVES ANALYZED:

- Proceed with the offer in accordance with BMC Article 22-900 and allow it to be purchased by the highest bidder. This is the staff recommendation.

- Do not proceed with the sale of the parcel at this time.

FINANCIAL IMPACT: The appraisal value of the subject property was given as a range from \$200.00 to \$1.00 per square foot, or \$4,130. While lots in Rehberg Subdivision sell for over \$4.00 per square foot, the subject property has real value only for the City as the owner and for the adjacent property owner, which reduces its value significantly. The party that purchases the property will be required to pay the costs for all surveying, replatting, and filing fees associated with the lot's sale.

RECOMMENDATION

Staff recommends Council approve the Resolution to Proceed to Sell Lot 27A, Block 6, Rehberg Ranch Subdivision, 1st Filing, in accordance with BMC Article 22-900 as proposed.

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

ATTACHMENTS

- A. Resolution to Proceed to Sell Lot 27A, Block 6
- B. Exhibit A: Amended Plat of Block 10, Park, Rehberg Ranch Estates, 2nd Filing, showing Lot 27A, Block 6.
- C. Exhibit B: Appraisal of proposed lot 27A, Block 6

INTRODUCTION

The owners of Lot 27, Block 6, Rehberg Subdivision, 1st Filing, have requested the City to sell them a parcel of 4,130 square feet abutting their lot in order to provide a more suitable building site. Approval of the Resolution to Proceed to sell the subject property next to Lot 27, Block 6, in Rehberg Estates Subdivision, completes the process to offering the property for sale, according to the requirements of BMC Article 22-900.

PROCEDURAL HISTORY

- The owner of Lot 26, Block 6, Mr. Willett, contacted this office in late 2005 with a query about purchasing a parcel that would provide a more buildable lot and the process was explained. He agreed that he would pay the costs for resurveying and platting the properties involved if the sale is approved.
- The process to make the parcel available for sale is outlined in BMC Article 22-900.
- An appraisal of the parcel was conducted by Richard Bjelland, of Bjelland and Cruikshank Appraisers, SRA.
- The Rehberg Homeowners Association was contacted and they have approved proceeding with the sale.
- Rehberg Ranch Marketing, Inc. was contacted and have approved proceeding with the sale.
- The Resolution of Intent To Sell the subject parcel was approved by City Council on December 10, 2007.
- The Public Notice of Intent to sell the property was advertised on December 13th and December 20, 2007.
- The Public Notice of Intent was sent to all property owners within 300 feet of the property explaining the protest and comment procedures a date for a Public Hearing and Council consideration of the Resolution to Proceed to Sell the fragment was scheduled for the January 14th, 2008, regular City Council meeting.

BACKGROUND

Lot 27, Block 6, sits on a cul-de-sac on the edge of a steep draw that makes the layout of a building on the site problematic. The additional area of 4,130 square feet as platted in Lot 27A is desirable in order to provide additional area of buildable lot. The purchase request was received and the location inspected and it was determined that the parcel involved in the request would not be large enough or located to constitute an essential property for the subdivision or public area for park or access purposes. Less than a 10th of an acre out of the 49.36 acres of public property in the Rehberg Ranch Subdivision would be sold, if approved. Neither the Rehberg Ranch Homeowners Association or the Rehberg Ranch Marketing Company have any objection to sale of the parcel that is being proposed. Approval of the Resolution of Intent to Sell the parcel labeled as Lot 27A, Block 6 as shown in Exhibit "A", is the first step in the process. The Resolution to Proceed to Sell the property provides for advertisement of the property for sale and receiving competitive bids.

ALTERNATIVES ANALYSIS

- Proceed with the offer in accordance with BMC Article 22-900 and allow it to be purchase by the highest bidder. This is the staff recommendation.
- Do not proceed with the sale of the parcel at this time.

STAKEHOLDERS

- The developers have no objection to offering the parcel for sale.
- The Homeowners Association has no objection to offering the parcel up for sale.
- The City of Billings, as the owner, would receive the proceeds from the sale of the parcel, if approved. The property in question does not have any significant impact on the community park needs or the neighborhood park use or access and puts into private ownership and back onto the tax rolls some additional taxable property.
- The adjacent property owner has a compelling need to purchase additional area to expand his lot to provide a workable building site.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

Efforts to dispose of excess and unusable city properties have been encouraged by the City Council as a continuing need for reducing the maintenance burden of the city property on the Billings taxpayers. While sale of this parcel cannot be considered to have a significant impact, it is consistent with past actions similar to the approach being taken regarding other offers to purchase non-essential park property.

RECOMMENDATION

Staff recommends Council approve the Resolution to Proceed to Sell Lot 27A, Block 6, Rehberg Ranch Subdivision, 1st Filing, in accordance with BMC Article 22-900 as proposed.

ATTACHMENTS

- A. Resolution to Proceed to Sell Lot 27A, Block 6
- B. Exhibit A: Amended Plat of Block 10, Park, Rehberg Ranch Estates, 2nd Filing, showing Lot 27A, Block 6.
- C. Exhibit B: Appraisal of proposed lot 27A, Block 6

RESOLUTION 08 - _____

**A RESOLUTION PURSUANT TO BILLINGS,
MONTANA CITY CODE, ARTICLE 22-900: SALE,
DISPOSAL OR LEASE OF CITY PROPERTY,
DESCRIBING THE PROPERTY TO BE DISPOSED
OF, DECLARING THE INTENT OF THE CITY TO
DISPOSE OF THE PROPERTY AND
AUTHORIZING CITY OFFICIALS TO PROCEED.**

WHEREAS, the City of Billings owns and desires to sell a portion of Block 10, PARK, in Rehberg Ranch Estates Subdivision, 2nd Filing, platted and known as Lot 27a, Block 6, Rehberg Ranch Estates Subdivision, and

WHEREAS, the location of the properties to be traded are more particularly described as follows:

A triangular piece of land consisting of 0.0948 acres in Rehberg Ranch Estates Subdivision, 2nd Filing, adjacent to the northeast side of lot 27, Block 6, situated in the NE1/4, and the SE1/4 Section 22, Township 1N, Range 25 E, P. M. M., Yellowstone County, Montana, according to the official plat now on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana; and

WHEREAS, the notice required by Section 22-900 of the Billings Montana City Code has been duly published and mailed; and

WHEREAS, the public hearing required by Section 22-902 of the Billings Montana City Code was duly held on the _____ day of _____, 2008;

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

That the City staff is authorized to proceed with the sale of the 0.0948 acre portion of Block 10, Rehberg Ranch Estates Subdivision, 2nd Filing, to be known as Lot 27A, Block 6, as shown in the attached exhibit of lots and portions thereof under the requirements of Section 22-902 of the Billings, Montana City Code.

APPROVED AND PASSED by the City Council of the City of Billings, Montana this _____ day of _____, 2008.

THE CITY OF BILLINGS:

BY: _____
RON TUSSING, MAYOR

ATTEST:

CARI MARTIN, CITY CLERK

**AMENDED PLAT OF BLOCK 10 PARK,
REHBERG RANCH ESTATES SUBDIVISION, SECOND FILING**
SITUATED IN THE NE1/4 AND THE SE1/4 OF SECTION 22, T. 1 N., R. 25 E., P.M.M.
BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: TRACY WILLETT
PREPARED BY: ENGINEERING, INC.
SCALE: 1" = 40'

MAY, 2006
BILLINGS, MONTANA

BASIS OF BEARING: PLAT OF REHBERG RANCH ESTATES SUBDIVISION,
SECOND FILING.

- - FOUND 5/8" IRON AND CAP MARKED "ENGINEERING INC."
- - SET 5/8" X 18" IRON AND CAP MARKED WITH THE
LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR
AND "ENGINEERING INC. BILLINGS MT."

VICINITY MAP
NOT TO SCALE

PURPOSE OF SURVEY - RELOCATION OF COMMON BOUNDARY LINE

The undersigned hereby certify that the purpose of this survey is to relocate the common boundary line between a single lot within a platted subdivision and adjoining property sections, a platted subdivision, hereby LOT 27A, on those terms, all to be forever merged into adjacent LOT 27, Block 6, Rehberg Ranch Estates Subdivision, First Filing and subject to that to be forever merged into the same.

Therefore this division of land is exempt from review by the Department of Environmental Quality under the permit law on condition for water supply, wastewater disposal or solid waste disposal other than those previously approved by the reviewing authority.

CITY OF BILLINGS, MONTANA

By: _____
City Clerk

By: _____
Tracy L. Willett

By: _____
Fannie Willett

STATE OF MONTANA }
County of Yellowstone }

On this _____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared Tracy L. Willett and Fannie Willett, known to me to be the persons who signed the foregoing instrument on their own behalf, and they acknowledged to me that they executed the same. Witness my hand and seal the day and year herein above written.

Notary Public in and for the State of Montana
Fannie Willett
By commission expires _____

STATE OF MONTANA }
County of Yellowstone }

On this _____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared Tracy L. Willett and Fannie Willett, known to me to be the persons who signed the foregoing instrument on their own behalf, and they acknowledged to me that they executed the same. Witness my hand and seal the day and year herein above written.

Notary Public in and for the State of Montana
Fannie Willett
By commission expires _____

CERTIFICATE OF SURVEYOR

STATE OF MONTANA }
County of Yellowstone }

I, _____, a Montana Registered Land Surveyor, being first duly sworn, depose and say that during the month of May, 2006, a survey was performed under the supervision of a Trust of that named in the NE1/4 and the SE1/4 of Section 22, T. 1 N., R. 25 E., P.M.M., Yellowstone County, Montana, and that being more particularly described as follows:

Beginning at a point which is the southeast corner of Lot 27, Block 6, Rehberg Ranch Estates Subdivision, First Filing; thence from said point of beginning, S 69°20'00" W a distance of 125.17 feet to the northeast corner of said Lot 27, thence along the easterly right-of-way line of Long River Trail, along a non-extended curve to the left with a radius of 45.00 feet a distance of 10.00 feet (chord bearing is S 27°07'00" E, chord length 9.98 feet); thence S 67°02'30" E a distance of 155.58 feet; thence S 52°19'18" W a distance of 40.00 feet to the point of beginning and described tract containing a gross area and a net area of 4120 square feet.

That the aforementioned found and laid out of the above-described and surveyed the positions shown herein, that said survey and the plat hereon shown true and correct dimensions and that the plat conforms with the work on the ground.

ENGINEERING, INC.
By: _____
Montana Registration No. _____

Subscribed and sworn to before me, a Notary Public in and for the State of Montana, this _____ day of _____, 20____.

Notary Public in and for the State of Montana
Fannie Willett
By commission expires _____

ERRORS AND OMISSIONS REVIEW

I hereby certify that I have examined the original and bearing and the above and certify to its accuracy and content.

Licensing Land Surveyor

CERTIFICATE OF CITY ATTORNEY

I, _____, Attorney at Law, do hereby certify that the City of Billings has been duly organized as a City.

Notary Public in and for the State of Montana
Fannie Willett
By commission expires _____

WITNESS DEED

Notary Public in and for the State of Montana

CERTIFICATE OF COUNTY TREASURER

I hereby certify that all real property taxes and other assessments have been paid per 70-7-201(5).

Notary Public in and for the State of Montana
Fannie Willett
By commission expires _____

LAND APPRAISAL REPORT

Exhibit B

Summary Appraisal Report File No. Willett

Property Address: Adjoins East of 4297 Long Rider Trail Census Tract: 0880 0013 Map Reference: N/A

City: Billings County: Yellowstone State: MT Zip Code: 59106

Legal Description: A portion of Lot 4 as on Plat Attached & Attached Legal: Beginning at NE Corner of L 27, Block 6, Rehberg Ranch

Sale Price: \$ N/A Date of Sale: Current Loan Term: N/A yrs. Property Rights Appraised: ☒ Fee ☐ Leasehold ☐ De Minimis PUD

Actual Real Estate Taxes: \$ 703.42 (yr) Loan charges to be paid by seller: \$ N/A Other sales concessions: N/A

Lender/Client: /Client Tracy & Pam Willett Address: 1615 Alderson Avenue Billings, MT 59104

Occupant Vacant Appraiser: Richard W. Bjelland Instructions to Appraiser: Appraiser to Estimate the Market Value for a potential purchase by the adjoining owner.

NEIGHBORHOOD

Location: ☒ Urban ☐ Suburban ☐ Rural

Built Up: ☐ Over 75% ☒ 25% to 75% ☐ Under 25%

Growth Rate: ☐ Fully Dev. ☒ Rapid ☒ Steady ☐ Slow

Property Values: ☒ Increasing ☐ Stable ☐ Declining

Demand/Supply: ☒ Shortage ☐ In Balance ☐ Oversupply

Marketing Time: ☒ Under 3 Mos. ☐ 4-6 Mos. ☐ Over 6 Mos.

Present Land Use: 50% 1 Family 4% 2-4 Family 2% Apts. % Condo 0% Commercial

Change in Present Land Use: ☐ 0% Industrial ☐ % Vacant ☒ 54%

Change in Present Land Use: ☐ Not Likely ☐ Likely (*) ☒ Taking Place (*)

(*) From Agricultural To Residential

Predominant Occupancy: ☒ Owner ☐ Tenant ☐ Vacant

Single Family Price Range: \$ 175 to \$ 600,000 Predominant Value: \$ 275,000

Single Family Age: UC yrs. to 3 yrs. Predominant Age: 2 yrs.

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise): The immediate area is a relatively new subdivision and includes mostly "upper end" housing. The area is below the main runway flight path of Logan International Airport, but this does not adversely affect value. Proximity to Downtown, westend shopping, and amenities is average.

SITE

Dimensions: Irregular (See Attached Legal) 4,050 Sq. Ft. or Acres ☐ Corner Lot

Zoning classification: PUD Present Improvements: ☒ do ☐ do not conform to zoning regulations

Highest and best use: ☐ Present use ☒ Other (specify)

Public: ☒ Other (Describe)

Off Site Improvements: ☒ Street Access ☐ Public ☐ Private

Top: Moderate & steeply sloping

Size: Smaller than typical

Shape: Irregular

View: Average

Drainage: Good

Is the property located in a HUD identified Special Flood Hazard Area? ☒ No ☐ Yes

Comments (favorable or unfavorable) including any apparent adverse easements, encroachments, or other adverse conditions: The subject is not a building site and cannot be built on as per City of Billings Park Department official. It can only be used in connection with the adjoining property ownership. Only 10' of subject is along the Long Rider Trail Cul de Sac along the northerly side and then projects down the hill about 140.5' along Lot 27 Block 6, and then 60' easterly and then return northerly to Long Rider Trail.

The undersigned has reviewed three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to or more favorable than the subject property, a minus (-) adjustment is made thus reducing the indicated value of subject; if a significant item in the comparable is inferior to or less favorable than the subject property, a plus (+) adjustment is made thus increasing the indicated value of the subject.

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	Adjoins E. 4297 Long Rider Trail Billings, MT	4152 Iron Horse Trail Billings, MT	4271 Long Rider Trail Billings, MT	4293 Smohawk Trail Billings, MT
Proximity to Subject		L 4A, B 9, Rehberg Ran. Est 1st	L 25, B 6, Rehberg Ran. Est. 1st	L 10A, B 7, Rehberg Ran. Est 1st
Sales Price	\$ N/A	\$ 37,500	\$ 39,500	\$ 49,000
Price				
Data Source	Inspection/Courthouse	MLS	MLS	MLS
Date of Sale and Time Adjustment	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
Location	Good	Good	Good	Good
Site/View	4050 SF/Average	9717 SF/Busy Street	15866 SF/Good	14804 SF/Good
Street Frontage	10'	99', Good	146', Good	35', Good
Topography	Rolling	Rolling	Rolling	Rolling
Financing	Cash	Cash Sale	Cash Sale	Cash Sale
Utility	Poor	Good	Good	Good
Sales or Financing Concessions	N/A	None	None	None
Net Adj. (Total)				
Indicated Value of Subject				

Comments on Market Data: Sale No. 1 \$3.85 SF, Sale No. 2 \$2.48 SF, Sale No. 3 \$3.30 SF without adjustments. Because subject is not a buildable site and will be used as an emergency road out of the subdivision, it is estimated that subject's monetary value is only as it contributes to the adjoining owner's utility. After the needs of a building site are met, the extra land serves only to enhance a view and the SF value is less than the site value.

Comments and Conditions of Appraisal: The legal description and square footage furnished are assumed to be correct. Comparables similar to subject site are not available. The above comparables represent values for full buildable home sites, while subject is only a non buildable site. The addition of subject parcel to the adjoining ownership would tend to possibly increase the assessed value. The value of subject is only nominal as it has value only to the adjoining owner.

Final Reconciliation: "It is estimated that the subject market value is nominal & with a range between \$200, for a nominal total site value to a maximum value of \$1.00 per SF, or a total site value of \$4050.

I ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF November 14, 2005 to be \$ 200.

Appraiser(s): Richard W. Bjelland Review Appraiser (if applicable): ☒ Did ☐ Did Not Physically Inspect Property

[Y2K]

bjelland & crunkshank appraisal
Form LND - "TOTAL for Windows" appraisal software by a la mode, inc. - 1-800-ALAMODE

(Back to Regular Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Public Hearing and Resolution to sell a portion of Lot 15A, Block 2, Southgate Subdivision, First Filing and Initiating a Zone Change

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: A property owner in the Southgate Subdivision proposes to purchase a portion of a City owned lot. City Code requires the Council to conduct a public hearing before selling any City land. Staff advertised the public hearing and notified all property owners within 300' of the lot. The Council will conduct a public hearing and considering adopting a Resolution to sell a portion of Lot 15A, Block 2 of the Southgate Subdivision, First Filing to Mark Rite Holding Co. LLC, the adjacent property owner. The property occupant is MRL Equipment Co. Inc. (MRL). If the Council approves the land sale, it must initiate a zone change from Public/Open Space to Highway Commercial.

ALTERNATIVES ANALYZED: The alternatives available to the Council include:

- Sell the property as recommended by staff and initiate rezoning
- Do not sell the property and continue maintaining it. The property is not improved, so it requires minimal maintenance.
- Sell the property to a person other than the one currently proposing to purchase it. Interest from other land owners may yield a higher price than appraised value. Rezoning may still be necessary.

FINANCIAL IMPACT: MRL proposed a purchase price of \$3/sq. ft. Staff requested that Corporate Acquisition and Appraisal, Inc. prepare a market analysis of the property and that analysis confirmed that price. Staff proposes that the estimated \$102,000 from the sale be deposited in the Park Development Fund and that the funds be used to purchase park property and/or improvements. The City's PRPL Dept. has been maintaining the property as part of a PMD for Southgate Subd. Staff also recommends that any costs of surveying and transferring the property be paid by MRL.

RECOMMENDATION

Staff recommends that Council 1) conduct a public hearing, 2) approve a Resolution to sell a portion of Lot 15A, Block 2 of Southgate Subdivision, First Filing to Mark Rite Holding Co., LLC for \$3/sq. ft., or approximately \$102,000 and 3) initiate rezoning the property to Highway Commercial.

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

ATTACHMENTS

- A: Purchase proposal
- B: Plat map
- C: Resolution approving land sale and initiating rezoning

INTRODUCTION

A property owner in the Southgate Subdivision proposes to purchase a portion of a City owned lot. City Code requires the Council to conduct a public hearing before selling any City land. Staff advertised the public hearing and notified all property owners within 300' of the lot. The Council will conduct a public hearing and considering selling a portion of Lot 15A, Block 2 of the Southgate Subdivision, First Filing to Mark Rite Holding Co., LLC, the adjacent property owner. If the Council approves the property sale, it must rezone it to a commercial classification so that it can be used as intended by the company.

BACKGROUND

In May, 2007, commercial realtor Al Koelzer, representing MRL Equipment Company (MRL) and Mark Rite Holding Co., LLC (MRH) proposed to purchase a portion of lot 15A, block 2 of the Southgate Subdivision, First Filing. MRL is a manufacturer of highway striping equipment and presently employs 95 people. MRH is the adjacent property owner and desires to purchase the property for the business's employee parking and future building expansion. The property is located between Southgate Drive and King Avenue East, about 400' east of Parkway Lane. MRH is interested in purchasing only the portion of the lot that is immediately east of their property. That portion measures 80' wide (E-W) by approximately 425' long (N-S). At \$3/sq./ft. the estimated total purchase price is \$102,000. There will be additional costs for surveying and transferring the property and MRH has indicated that it is willing to pay those costs.

The Southgate Subdivision First Filing was platted in 1979 and it was zoned as a Planned Development (PD). The plat and the PD Agreement (PDA) created several large lots for open space buffers among internal commercial land uses and from adjacent residential land uses. Lot 15, Block 2 was one of those buffer lots. As in other PDs established during this time frame, the Southgate open space lots were created as independent lots that were supposed to be held, improved and maintained by an owners' association. If the property owners did not create an owners' association to manage the lots, they often were un-maintained and taxes weren't paid. The taxes on this lot became delinquent and the County tax deeded it to the City in April, 1991. The adjacent landowners improved and maintained a portion of the lot until the costs became burdensome and they then requested that the City create a PMD. The PRPL Dept. has been maintaining the property since that time.

Lot 15A is a "T" shaped lot and only the cross-bar is improved and maintained. The vertical leg of the "T" is unimproved and PRPL mows it as needed. The unimproved area is the portion of the lot that MRH wants to purchase. The company indicates that it will use the land for MRL employee parking and future building expansion. All improvements would have to meet current City standards. The land transfer would be accomplished through an exemption from the Subdivision and Platting Act called a common boundary line adjustment. If the Council approves the land sale, MRH's east lot line will be moved 80' east and the "T" leg will become part of Lot 1A, Block 2. Lot 15A will still exist because the "T" cross-bar will survive the lot line adjustment and will continue to be maintained by PRPL through the Southgate PMD.

It is important to maintain this open space area because it buffers the commercial uses within Southgate from the residences that are on the north side of King Avenue East.

City Code Section 22-902 requires the City to give public notice that it intends to sell its property, to notify the property owners within 300' and to conduct a public hearing before approving a sale. The Code also requires the positive vote of at least six (6) Councilmembers. The Billings Times published the notice of public hearing and intention to sell land on December 27th. The Planning Dept. prepared a property owners list and all owners within 300' were informed about the intended sale, by mail, on the same date. The Council needs to conduct a public hearing and at its conclusion may approve or disapprove the attached Resolution.

Planned Developments have underlying zones that mirror traditional zoning classifications. The Southgate PDA identifies lot 15 as open space or buffer, so its underlying zoning is Public. The property must be rezoned in order for MRL to use the property as intended. MRL's property has an underlying zone of Highway Commercial. If the Council approves the land sale, it needs to initiate the zone change to Highway Commercial and its successful rezoning will be one of the sale contingencies.

STAKEHOLDERS:

The Southgate Subd. open space lots were created to buffer commercial uses within the subdivision from each other and to buffer the residential properties on the north side of King Avenue East from the commercial uses on the south side of the street. Nearby residents were notified about the intended sale and may be concerned about it, even though the "T" crossbar will remain and continue buffering their homes from the commercial uses. The property owner to the east of this lot was also notified and may have concerns about removing the buffer or may express interest in purchasing the land, setting up competition for the land. Because the property is only 80' wide and over 400' long, it is unlikely that anyone other than adjacent lot owners will be interested in purchasing the lot portion or retaining it as open space.

RECOMMENDATION

Staff recommends that Council 1) conduct a public hearing, 2) approve a Resolution to sell a portion of Lot 15A, Block 2 of Southgate Subdivision, First Filing to Mark Rite Holding Co., LLC for \$3/sq. ft., or approximately \$102,000 and 3) initiate rezoning the property to Highway Commercial.

ATTACHMENTS

- A: Purchase proposal
- B: Map
- C: Resolution approving land sale and initiating zone change



406/256-5000
Fax 406/256-9494
WATS 800/900-2201
URL <http://www.businessprop.com>
3312 4th Ave. N.
Billings, MT 59101

May 29, 2007

Tina Volek
City Administrator
City of Billings
PO Box 1178
Billings, Montana 59103

Re: Proposed sale of Common Area in Southgate Subdivision

This letter is to inform you that MRL Equipment Company through its property entity Mark Rite Holding Company, L.L.C., would like to purchase the city property described in the accompanying exhibit.

For your information MRL, located on the adjoining property at 5379 Southgate Drive, is the largest manufacturer of highway striping equipment in the country. The company has been in business in Billings since 1989, presently employs 95, and is one of Billings's primary manufacturers and employers.

Acquisition of this city site will provide important additional employee and product parking and enable future expansion of the building.

Initial conversations with the Superintendent of Parks indicated that there is adequate landscaping area in Southgate Subdivision along King Avenue and that conversion of this area was not objectionable. In fact, an MRL purchase of this property would result in the area being dramatically improved from its present state.

As is evident from the Exhibits, the property is about 80 feet by 410 feet, or 32,800 sq. feet. It could quickly and affordably be absorbed into the present MRL site by a simple lot line adjustment. We would expect that the property be zoned at the time of sale consistent with MRL's current property zoning and manufacturing activities.

Regarding value, our company has been active in land sales in Southgate Subdivision as follows;

<u>Property</u>	<u>Buyer</u>	<u>Close Date</u>	<u>Size/sf</u>	<u>Price</u>	<u>\$/psf</u>
Lot 2A-1, B2	Farm to Market	5/31/06	92,742	\$330,000	\$3.55
Lot 5, 6A	Keneally	9/12/03	104,074	\$235,000	\$2.26
Lot 1A, B1	MDU	11/29/06	217,147	\$750,000	\$3.45
L4, B3	Farmhand	2/27/04	82,546	\$160,800	\$1.95

These indicate a current value of around \$3.00 per square foot.

Your consideration of this inquiry is appreciated.

Sincerely,



Al Koelzer, Buyer Agent

FOR: JAMES STIERT & ASSOC.
PLAT AND SURVEY BY: SANDERSON/STEWART/GASTON ENGINEERING INC.
SCALE 1" = 60'

SEPTEMBER, 1983
BILLINGS, MONTANA



ATTACHMENT C
Resolution Approving Land Sale

RESOLUTION 08 - _____

A RESOLUTION PURSUANT TO BILLINGS,
MONTANA CITY CODE, ARTICLE 22-900: SALE,
DISPOSAL OR LEASE OF CITY PROPERTY,
DESCRIBING THE PROPERTY TO BE DISPOSED OF,
AUTHORIZING CITY OFFICIALS TO PROCEED AND
INITIATING REZONING THE PROPERTY.

WHEREAS, the City of Billings owns and desires to dispose of unnecessary public property located at approximately 5400 Southgate Drive; and

WHEREAS, the public property to be disposed of is more particularly described as follows:

A portion of Lot 15A, Block 2, Southgate Subdivision, First Filing, City of Billings, Yellowstone County, Montana, according to the official plat now on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana and as show on the attached exhibit A; and

WHEREAS, the notice required by Section 22-902 of the Billings Montana City Code has been duly published and mailed; and

WHEREAS, the public hearing required by Section 22-902 of the Billings Montana City Code was duly held on the 14th day of January, 2008.

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

- 1) *That the City staff is authorized to proceed with the sale of a portion of Lot 15A, Block 2 of the Southgate Subdivision, First Filing, measuring approximately 80' X 425' and containing 34,000 square feet to Mark Rite Holding Co., LLC for the appraised value of \$3/square foot, under the requirements of Section 22-902 of the Billings, Montana City Code.*
- 2) *That the Billings City Council is initiating a zone change on the subject parcel from Public to Highway Commercial.*

APPROVED AND PASSED by the City Council of the City of Billings, Montana this _____ day of _____, 2008.

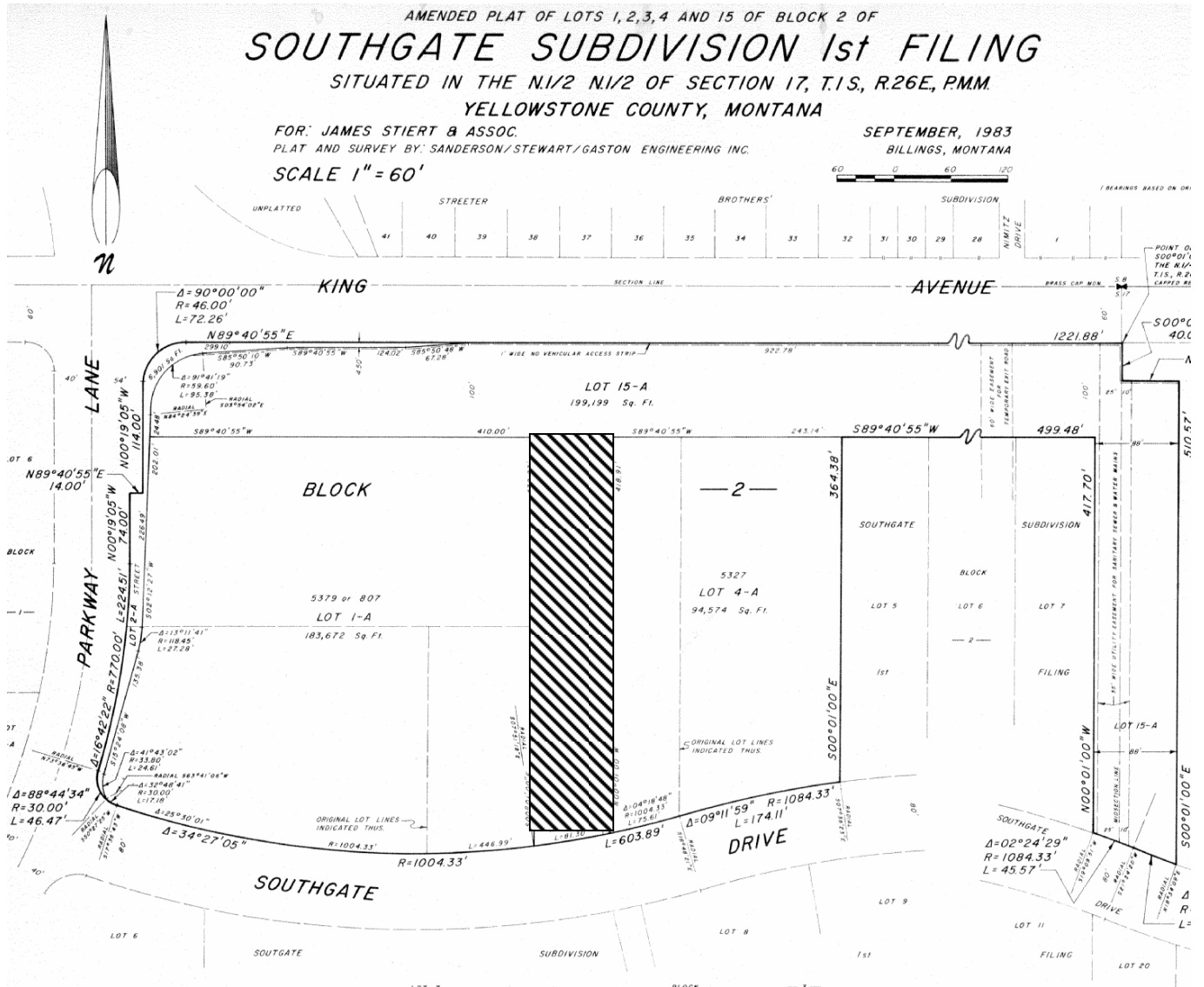
THE CITY OF BILLINGS:

BY: _____
RON TUSSING, MAYOR

ATTEST:

CARI MARTIN, CITY CLERK

EXHIBIT A



(Back to Regular Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Public Hearing and Resolution to Adopt the South Side Neighborhood Plan

DEPARTMENT: Planning & Community Services Director

PRESENTED BY: Lora Mattox, AICP, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: The South Side Neighborhood Plan is a guide for land use and community development and will serve as a guiding document for making decisions that will affect the future of the South Side Neighborhood. Extensive research, public input and local government review ensures that this Neighborhood Plan sets forth attainable goals based on current public values. The strategies to achieve these goals rely on commonly-accepted planning, engineering and organizational practices, as well as, state-of-the-art approaches to contemporary issues.

The Billings City Council at a work session on December 3, 2007, heard a report from the Planning & Community Services Department discussing the South Side Neighborhood Plan. At the December 17, 2007, council meeting, the Council passed a Resolution of Intent to Adopt the South Side Neighborhood Plan and a public hearing date to receive public comment on the plan was set for January 14, 2008. The action to be taken today is to adopt the Neighborhood Plan by resolution.

ALTERNATIVES ANALYZED: The City Council may:

1. Adopt
2. Modify
3. Do not adopt
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: A primary objective of community planning is to reduce the cost of services by assessing future public needs and establishing cost-effective methods to address those needs. This Neighborhood Plan sets out a rational course for managing City resources wisely. Examples of cost-effective policies and strategies include:

- Promote economic development along the South 27th Street corridor

- Encourage infill development of affordable housing

RECOMMENDATION

The Yellowstone County Board of Planning recommends on a 7-0 vote that City Council approve the Resolution to Adopt the South Side Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy. A copy of the plan is on file in the City Clerk's Office.

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

ATTACHMENT

- A. Resolution to Adopt the South Side Neighborhood Plan

RESOLUTION NO. 08-_____

RESOLUTION TO ADOPT THE SOUTH SIDE NEIGHBORHOOD PLAN AS PART OF THE YELLOWSTONE COUNTY - CITY OF BILLINGS 2003 GROWTH POLICY.

WHEREAS, pursuant to Title 76, Chapter 1, PART 601, Montana Codes Annotated, the Billings City Council, desire to adopt a Neighborhood Plan consistent with the 2003 Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction:

WHEREAS, on the 11th day of December, 2007, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Neighborhood Plan:

WHEREAS, The Yellowstone County Board of Planning by Resolution 07-02, recommends the Billings City Council adopt the proposed Neighborhood Plan and any ordinances and resolution for its implementation:

WHEREAS, on the 17th day of December, 2007, the Billings City Council passed a Resolution of Intent to Adopt the South Side Neighborhood Plan and to set a public hearing date of January 14, 2008 to receive comment on the neighborhood plan:

NOW, THEREFORE, BE IT HEREBY RESOLVED that it is the intent of the Billings City Council to adopt the South Side Neighborhood Plan as part of the Yellowstone County – City of Billings 2003 Growth Policy.

APPROVED AND PASSED by the City Council of the City of Billings this 14th day of January, 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Zone Change #825, Public Hearing and 1st Reading of Ordinance –
Accessory Dwelling Units
Amending Sections 27-201, 27-305 and 27-310

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: Sections 27-201 and 27-305 of the Unified Zoning Regulations define and regulate the types of uses allowed within residential zoning districts in the City of Billings and the zoning jurisdiction in Yellowstone County. The 2003 Growth Policy recommended several community goals including more housing and business choices within each neighborhood, including affordable housing; support of contiguous development focused in and around existing neighborhoods; and reduced traffic congestion. The proposed zoning text amendment attempts to meet these goals and would allow through a special review the addition of single-bedroom rental units under certain circumstances on single-family, owner-occupied lots within existing residential zoning districts. The Billings City Council and Board of County Commissioners agreed to initiate these amendments to Sections 27-201, 27-305 and 27-310. The City Zoning Commission held two separate public hearings on the proposed amendments on November 6, 2007, and December 6, 2007. After consideration of the proposal and public testimony they voted 4-0 to recommend denial to the City Council.

ALTERNATIVES ANALYZED: The City Zoning Commission held a public hearing on the proposed text amendment on November 6, 2007. One person testified in favor of the amendment and three persons testified in opposition. The City Zoning Commission is forwarding a recommendation of denial. 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 new zoning regulation.

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council deny Zone Change #825.

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

ATTACHMENTS:

A: Ordinance

B: Photographs of possible existing non-conforming accessory dwelling units

INTRODUCTION

On November 20, 2006, the City Council reviewed the proposed text amendment to Sections 27-201, 27-305 and 27-310, and agreed to initiate this zone change that would allow Accessory Dwelling Units under certain circumstances. Planning Division staff then developed the proposed amendment based on similar provisions in other cities in Montana and around the western United States. The draft amendment was reviewed with the City Council at a work session in September, 2007, and then scheduled for the public hearing process that all zone changes follow. Planning staff also attended several neighborhood and interest group meetings to explain the proposal.

PROCEDURAL HISTORY

- On November 20, 2006, the City Council initiated the process to amend the zoning regulations to allow accessory dwelling units under certain circumstances in residential zones.
- On January 17, 2007, the Board of County Commissioners also initiated the process to amend the zoning regulations in this way.
- On August 13, 2007, the Board of County Commissioners reviewed the draft changes to Sections 27-201, 27-305, and 27-310.
- On September 17, 2007, the City Council met in a work session and reviewed the draft changes to Sections 27-201, 27-305, and 27-310.
- On November 6, 2007, the City Zoning Commission conducted the first public hearing and voted to delay action for 30 days.
- On December 6, 2007, the City Zoning Commission conducted a second public hearing on an updated draft of the ordinance and voted 4-0 to recommend denial of Zone Change #825.
- The City Council will hold a public hearing and 1st reading of the ordinance on January 14, 2008, and may make a decision on the proposal to allow accessory dwelling units by Special Review in certain residential zones.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on January 28, 2007.

BACKGROUND

Demographic trends in Billings, and Montana as a whole, indicate a growing need for single-unit housing for the aging population or other single renters. In fact, 70% of all dwellings in the Billings community have only 1 or 2 people in them. Also, affordable workforce housing for entry-level or service oriented employees has been of concern in recent years. Other communities have started to address these needs by implementing provisions for single unit rentals in a principal dwelling's basement, above a garage, or as a separate guest house on owner-occupied lots. Accessory Dwelling Units (ADUs) are often limited in size and number of renters, require their own off-street parking, and require the main residence to be owner-occupied. These and other restrictions have made ADUs successful and compatible uses in other communities.

The proposed ordinance would potentially allow one, single-bedroom accessory dwelling unit per single-family residential lot after a Special Review. The ADU may not exceed 800 square feet in size, and must meet all other applicable height, setback and lot restrictions found within the underlying zoning district. It must also meet all applicable building codes and a separate off-street parking space must be provided for its occupants. Furthermore, in order to maintain neighborhood stability, either the principle dwelling or the ADU must be owner-occupied for the life of the ADU, as controlled by a deed restriction. A permit is required to ensure compliance with the requirements.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, or delay the adoption of the changes to allow accessory dwelling units through special review.

STAKEHOLDERS

The City Zoning Commission held a public hearing (concurrent with the County Zoning Commission) on November 6, 2007, to review and take testimony on the proposed changes to Sections 27-201, 27-305 and 27-310. Planning Staff explained the proposed changes to the Zoning Commission. One person spoke in favor of the proposal stating it could provide an affordable housing option for single renters, young and old, and help with in-fill housing.

Five people had concerns about the proposed ordinance or spoke in opposition to it. Concerns that were expressed included: There are many of these types of rentals in place now as non-conforming uses. In order to make them conforming to meet the ADU definitions and requirements they would potentially need to be brought up to current building codes. It was explained that the non-conforming uses can remain unless they are destroyed, expanded, or need a re-build letter for financing. The ADU ordinance would give the owner an option to rebuild the ADU in compliance and make it saleable as a legal second dwelling. Enforcement of the owner-occupied provision, as well as difficulty gaining access into properties for enforcement, and potential confusion in cases of corporate ownership were also raised as concerns. Furthermore, there was a question about the capacities of utilities such as water, sewer, electric and gas.

Three of the five opponents were generally supportive of the ordinance if a special review requirement was added. They felt this might mitigate potential negative effects on neighborhoods as well as give neighbors within 300 feet of a proposed ADU notice of the proposal. The City Zoning Commission felt that the Special Review provisions seem appropriate for this new use, and voted unanimously to delay action for 30 days, have staff amend the ordinance to include the special review requirements and open a new public hearing on December 6, 2007.

On December 6, 2007, the City Zoning Commission held another public hearing on the proposed ADU ordinance. Staff had made the requested changes to the ordinance, including adding the special review provision for all proposed ADUs. Four citizens spoke in favor of the updated ordinance, stating that the special review option would go far to address the concerns previously

mentioned. In fact, 3 of these proponents had spoke in opposition at the previous public hearing, but after learning more about the ordinance and having the special review requirement added, changed their position.

Nine citizens spoke in opposition to the proposed ordinance at this second hearing. Reasons for their opposition included:

- The passage of this ordinance would eliminate single-family zoning (R-9600 in the City) and this would cause a problem for many people who bought into single-family neighborhood living.
- Enforcement of owner-occupancy of one of the units would be difficult.
- Older subdivisions or neighborhoods would be more greatly affected due to the absence of protective covenants preventing these rental units.
- That the ordinance should go to a vote of the entire population it will affect.

The Zoning Commission, after hearing all of the additional testimony, felt that the ordinance would create more problems than it would solve. They felt it might cause additional parking and traffic congestion, neighborhood discontent, and enforcement issues. They also thought that additional housing options should be made available by supporting zone changes to multi-family zoning, not by allowing it in every residential neighborhood. Based on the 12 criteria for reviewing zone changes, the Zoning Commission voted 4-0 to deny Zone Change #825.

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council deny Zone Change #825.

ATTACHMENTS:

A: Ordinance

B: Photographs of possible existing non-conforming accessory dwelling units

ATTACHMENT A

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-201, DEFINITIONS; SECTION 27-305, DISTRICT REGULATIONS, RESIDENTIAL USES; AND SECTION 27-310, SUPPLEMENTAL AREA, YARD, AND HEIGHT RESTRICTIONS, TO ALLOW ACCESSORY DWELLING UNITS IN CERTAIN DISTRICTS THROUGH A SPECIAL REVIEW, 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 City Council 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 the City of Billings.

Section 3. That the Billings, Montana City Code be amended by revising Section 27-201 to add new language in alphanumeric order to the existing definitions to read as follows:

ACCESSORY DWELLING UNIT: A dwelling unit accessory to a single-family dwelling that meets the criteria outlined in BMCC Sec. 27-310(j). Accessory dwelling units may be attached or detached from the principal dwelling unit.

Section 4. That the Billings, Montana City Code be amended by revising Section 27-305 to add new language in alphanumeric order to the existing uses to read as follows:

Sec. 27-305. District Regulations: Residential Uses.

TITLES AND DESCRIPTION OF INDUSTRIES SR - SPECIAL REVIEW A - ALLOWED	Agricultural - Open Space	Agricultural - Suburban	Residential - 15,000	Residential - 9,600	Residential - 8,000	Residential - 7,000 Restricted	Residential - 7,000	Residential - 6,000 Restricted	Residential - 6,000	Residential - 5,000	Residential Multi-Family	Residential Multi-Family - Restricted	Residential Manufactured Home
<u>Accessory Dwelling Units (See Section 27-310 (j) for additional requirements)</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>			

Section 5. That the Billings, Montana City Code be amended by revising Section 27-310 to add new language to read as follows:

(j) Accessory Dwelling Unit: An owner or the owners of real property wishing to establish and maintain an accessory dwelling unit (ADU) for rent or lease, or separate occupancy, shall apply for a Special Review as outlined in BMCC Sections 27-1503 and 27-1509. In addition to conditions that may be imposed as part of a special review approval, the following standards shall apply to every ADU during the existence of the ADU:

(1) Location. ADUs are allowed on properties where there is only one principal single-family dwelling unit. Only one accessory dwelling unit may be created per site. The accessory dwelling unit may be located within a detached single-family dwelling, above a detached garage, or as a separate guest cottage

(2) Occupancy. Either the single-family dwelling unit or the ADU must be owner occupied during the existence of the ADU.

(3) Size. The gross floor area of the ADU may be up to 800 square feet and shall have no more than one bedroom.

(4) Parking. One off-street parking space shall be provided for the ADU, in addition to the parking requirements of the primary dwelling.

(5) Other. All other requirements outlined in this chapter, including but not limited to, yard setback and height requirements for accessory structures, lot coverage and building separations shall be followed. Additionally, all other applicable city codes, including but not limited to, building codes, shall be followed.

(6) Permit Required. In order to determine compliance with these regulations and any conditions of the special review, property owners wishing to complete the establishment of an ADU shall apply for and receive an ADU permit through the

Planning and Community Services Department. Prior to issuance of this permit, the applicant will be required to provide the Planning Department with a copy of a deed restriction that runs with the land that is recorded with the County Clerk and Recorder stating that the accessory dwelling may not be occupied, rented or leased as a separate residence unless the property owner maintains permanent residence in the primary dwelling or the ADU.

Section 6. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

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

Section 8. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading January ____, 2008.

PASSED, ADOPTED AND APPROVED on second reading January ____, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
Cari Martin, City Clerk

Accessory Dwelling Units

ATTACHMENT B
Photos of existing possible Accessory Dwelling Units



ADU as separate cottage in back



Principal dwelling



ADU as separate cottage off alley



ADU as separate cottage with front yard access



ADU above attached garage



Possible ADU in basement



ADU in basement with separate entrance on right



ADU in basement with separate entrance on left

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Zone Change #827 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Lora Mattox, AICP, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: This is a zone change request from Residential-9600 (R-96) to Residential-7000 (R-70) on a 44,644 square foot property located in the Billings Heights north of Saturn Place. The property is proposed as the Eagle View Subdivision. Dorn Property LLC, owner and Engineering, Inc., agent. The Zoning Commission conducted a public hearing on December 4, 2007. It is forwarding a recommendation of approval on a 3-0 vote.

ALTERNATIVES ANALYZED: State law, 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 as requested
2. Deny the zone change as requested
3. Approve the zone change as recommended by the Zoning Commission
4. Allow withdrawal of the application
5. Delay action for up to thirty (30) days

FINANCIAL IMPACT: The proposed zone change would facilitate the development of the property which would increase the City's tax revenue on the parcel.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval of Zone Change #827 to the City Council and adoption of the 12 Zoning Commission Determinations on a 3-0 vote.

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

ATTACHMENTS:

A: Site Photographs

B: Zoning Map
C: Proposed Site Plan
D: Applicant Letter
E: Ordinance

INTRODUCTION

This is a zone change request from R-96 to R-70 on a 44,644 square foot property on the north side of Saturn Place and west of Lake Hills Subdivision, 6th Filing. The property was annexed into the City limits on November 4, 1984, and is proposed to be subdivided as Eagle View Subdivision.

PROCEDURAL HISTORY

- On November 5, 2007, the application for zone change was submitted for review.
- On December 5, 2007, the City Zoning Commission opened a public hearing for the proposed zone change and voted 3-0 to forward a recommendation of approval of the City Council.
- On January 14, 2008, the City Council will conduct a public hearing and 1st reading to approve or deny the zone change.
- On January 28, 2008, if approved on the 1st reading, the City Council will conduct the 2nd reading of the proposed zone change.

BACKGROUND

The proposed zone change is located in an area that supports single-family and two-family residential units. The new zoning will allow a single-family dwelling unit per 7,000 square feet or a duplex unit per 9,600 square feet.

The agent for the proposed zone change held a neighborhood meeting on October 10, 2007 to discuss the proposal with surrounding property owners. No surrounding property owners attended this meeting.

Many of the details of the subdivision will be reviewed at the platting stage. At this point, staff must rely on the 12 zoning criteria when reviewing the proposal's potential zoning implications. After review of the proposal based on the 12 criteria listed below, staff recommended approval of the zone change to the Zoning Commission.

The Zoning Commission is forwarding a recommendation of approval on a 3-0 vote.

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 following are the Zoning Commission's determinations.

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

The proposed development is consistent with the following goals and objectives of the 2003 Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element #1, pg. 5)*

The proposed land use is consistent with the existing land uses adjacent to the proposed zone change property.

- *New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element #2, pg. 6)*

The proposed zone change would allow a single-family or two-family subdivision with similar lot sizes and residential densities to those existing developments to the south and east.

- *More housing and business choices within each neighborhood. (Land Use Element #6, pg. 6)*

The developer proposes to offer an affordable housing supply similar to what is currently developed adjacent to this property.

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

The development should not negatively impact the local streets in the area.

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

The nearest fire station is located nearby at 1601 St. Andrew's Drive. The property will also be served by City water and sewer services when development occurs. No public health or safety issues have been raised with this application.

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

The new zoning would allow single-family or two-family residences to be built with City services. No public health or safety issues have been raised with this application.

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

The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.

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

The new zoning would allow the development of single-family homes on lots that are a minimum of 7,000 square feet or two-family homes on lots that are a minimum of 9,600 square feet. The proposed site plan indicates that the lots will range in size from 7,147 square feet to 9,778 square feet. It also indicates that 5 lots are proposed for the property. At the time of development, setbacks, lot coverage, height, and other requirements will help to prevent overcrowding of the land.

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

The new zoning would allow the development of single family homes on lots that are a minimum of 7,000 square feet or two-family homes on lots that are a minimum of 9,600 square feet. The R-70 zoning would allow for approximately 6 single family homes or approximately 4 two-family homes. The R-70 zoning is set up to avoid undue concentrations of population.

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

Transportation: The development should not negatively impact the local streets in the area.

Water and Sewerage: The City will provide water and sewer service to the property and has adequate facilities to serve this property.

Schools and Parks: There should be no negative effect on parks or schools from this rezoning.

Fire and Police: The property is served by existing services and there should be no effect on these services from the new zoning.

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

Staff is comfortable that the new zoning does give reasonable consideration to the character of the surrounding community in that it would allow development of similarly-sized single and two-family lots. The developer did host a neighborhood meeting and invited surrounding property owners. No property owners attended this meeting.

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

The subject property is located in an area of R-96 and R-70 zoning districts. The proposal is suitable for the requested zoning district.

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

As noted in #9 above, the new zoning would seem to conserve the value of the similarly priced residences to the south and east of the subject property.

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

Yes, the new zoning will encourage the most appropriate use of this land in the area.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report. The zone change is also consistent with the adopted Billings Heights Neighborhood Plan in the following way:

Land Use: Residential Development

Goal: To provide safe, good quality and affordable housing in the Heights. Develop housing patterns that are compatible with existing neighborhoods. Maintain similar housing in established neighborhoods.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on December 4, 2007. The applicants' agent, Will Ralph from Engineering Inc., provided a brief overview of the intent of the zone change, which is to subdivide the property into 5 single family lots.

No members of the audience spoke in opposition to the proposal.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval of Zone Change #827 to the City Council and adoption of the 12 Zoning Commission Determinations on a 3-0 vote.

ATTACHMENTS:

- A: Site Photographs
- B: Zoning Map
- C: Draft Master Plan
- D: Applicant Letter
- E: Ordinance

Attachment A

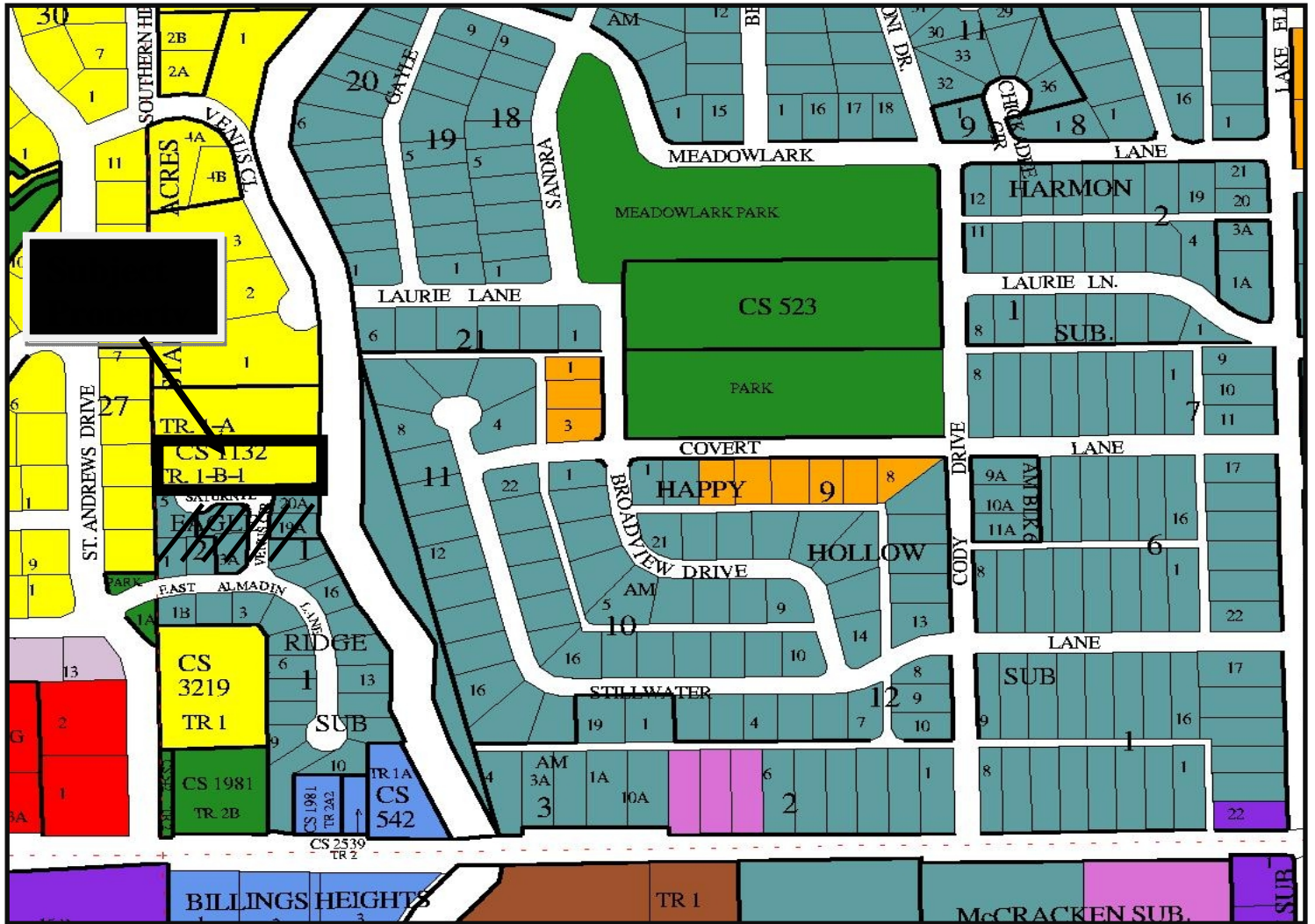


Subject Property



Looking South from Subject Property

Attachment B
Zoning Map



Attachment C

Proposed Site Plan

PRELIMINARY PLAT OF EAGLE VIEW SUBDIVISION BEING TRACT 1-B-1 C.O.S. 1132 SITUATED IN THE SW 1/4 OF SECTION 15, T. 1 N., R. 26 E., P.M.M. CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

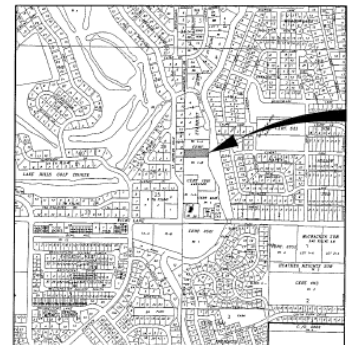
PREPARED FOR DORN REAL ESTATE & DEVELOPMENT, LLC
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 20'

SEPTEMBER, 2007
BILLINGS, MONTANA

BASIS OF BEARING: C.O.S. 1132 TRACT 1 AMENDED (TRACT 1-B AMENDED)
O = FOUND SURVEY MONUMENT, AS NOTED

PLAT DATA

GROSS AREA	= 44,666 SQ. FT.
NET AREA	= 41,884 SQ. FT.
NUMBER OF LOTS	= 5
MINIMUM LOT SIZE	= 7,147 SQ. FT.
MAXIMUM LOT SIZE	= 9,778 SQ. FT.
LINEAL FEET OF STREETS	= 177
PARKLAND REQUIREMENT	= 4,913 SQ. FT.
PARKLAND DEDICATION	= CASH IN LIEU
EXISTING ZONING	= R-7000
SURROUNDING ZONING:	
NORTH	= R-9600
SOUTH	= R-7000
EAST	= R-9600
WEST	= R-9600
EXISTING LAND USE	= VACANT
PROPOSED LAND USE	= RESIDENTIAL



VICINITY MAP N.T.S.

DDPA, CONCEPT - 2.DWG 00009 9/18/07 SP2

Attachment D
Applicant Letter



ENGINEERING, INC.
Consulting Engineers and Land Surveyors

November 15, 2007

Ms. Nicole Cromwell
City of Billings Zoning Coordinator
510 N. Broadway, 4th Floor
Billings, MT 59101

Reference: Proposed Eagle View Subdivision
E.I. No. 06099

Dear Nicole:

As part of the zone change requirements for the City of Billings, I am writing this letter to describe the zone change plan for Tract 1-B-1 of Certificate of Survey No. 1132 in the Billings Heights. The property is approximately 44,666 square feet and is currently zoned Residential-9600. This zone change submittal proposes to change the zoning of this property to Residential-7000.

On October 10, 2007, a pre-application neighborhood meeting was held at the office of Engineering, Inc. No surrounding property owners came to the meeting. Because no surrounding property owners attended the meeting, meeting minutes were not kept. I have attached the invitation letter to the surrounding property owners for your reference.

If you have any questions, feel free to contact me anytime at 406/656-5255.

Sincerely,

Will Ralph, PE
Associate/Project Manager

WR/skw

Enc.

P:06099_Cromwell_Ltr_111507

ORDINANCE NO. 08-
AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Tract 1-B-1 of Certificate of Survey 1132, containing
approximately 44,644 square feet or 1.02 acres.

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 1-B-1 of Certificate of Survey 1132, containing approximately 44,644 square feet or 1.02 acres and is presently zoned Residential 9,600 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 9,600** to **Residential 7,000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 7,000** 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 January 14, 2008.

PASSED, ADOPTED AND APPROVED on second reading January 28, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

City Clerk

ZC #827

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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, January 14, 2008

SUBJECT: Zone Change #828, Northwest corner of Poly Drive and 17th Street West
Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The applicant is requesting to rezone Lot 3, Block 1, Rocky Village Subdivision, from Residential 9600 (R-96) to Residential Professional (RP). The subject property is generally located on the northwest corner of Poly Drive and 17th Street West and is currently a Conoco Service Station. The Zoning Commission conducted a public hearing on December 4, 2007, and is forwarding a recommendation for approval with a vote of 3-0.

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: If the zone change is approved, future development of the property should increase the City's tax base.

RECOMMENDATION

The Zoning Commission recommends by a 3-0 vote that the City Council approve Zone Change #828 and adopt the determinations of the 12 criteria, as discussed within this report.

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

ATTACHMENTS

- A: Site Map
- B: Surrounding zoning
- C: Site Photographs
- D: Opposition Letter
- E: Ordinance

INTRODUCTION

The applicant is requesting to rezone Lot 3, Block 1, Rocky Village Subdivision, from R-96 to RP. The proposed zoning will allow for professional offices on the property. It is the developers stated intent to build medical offices on the property. The existing medical building on Lot 2B that surrounds Lot 3 on the north and west is a PUD with underlying zoning of Residential Professional.

The developers' agent conducted a neighborhood meeting on October 29th, 2007 at the 17th Street Station. The surrounding property owners were contacted about the meeting and they were presented with the proposed zone change and use. The developers plan, sometime in the future, to remove the existing Conoco station and existing medical building on Lot 2B west of the subject property, and build a small medical complex of several buildings on both properties. There was some concern raised about the height of the new buildings. In current RP zoning they are not allowed to build any taller than residential zoning allows, 34 feet high maximum.

The Zoning Commission conducted a public hearing on December 4, 2007, and is forwarding a recommendation for approval with a vote of 3-0.

PROCEDURAL HISTORY

- A zone change request was received on November 5, 2007, for the subject property.
- The Zoning Commission conducted a public hearing on December 4, 2007, and recommended approval to the City Council by a 3-0 vote.
- The City Council will conduct a public hearing and first reading on January 14, 2008, 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 January 28, 2008.

BACKGROUND

The applicant is requesting to rezone Lot 3, Block 1, Rocky Village Subdivision, from R-96 to RP. The proposed zoning will allow for professional office uses on the lot where there is currently a Conoco gas station.

Lot 3 of Rocky Village Subdivision is the currently used as a Conoco gas station and it is a legal non-conforming use on this property. The applicants are proposing to remove the gas station and build a medical building on the site. At some point in the future, the existing medical building will be removed and a new facility will be built on the lot where the existing building is located. The applicant has stated that he will close the two access points that currently serve the gas station and use the one access that is currently used for the existing medical building. This would eliminate some traffic conflicts that currently exist with the two accesses on the corner that serve the Conoco gas station.

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 Zoning Commission is recommending approval of the proposed zone change. The Zoning Commission's determinations are outlined below:

Prior to any recommendation to the City Council, the Zoning Commission shall consider the following:

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 5)*

This property is in an area of Billings that has a larger amount of residentially developed property. The addition of this parcel as Residential Professional will enable the property owners to expand the existing RP use behind this property and provide medical facilities to the neighborhood.

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

The proposed zone change would allow the property to be developed to expand a medical facility that exists in the neighborhood and provide more services to the surrounding neighborhood.

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

The proposed zoning will permit an expansion of an existing use behind this property.

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

The new zoning will allow the expansion of the existing medical facility adjacent to this property and with that expansion of use an existing access on 17th Street West will be used. The new access configuration will allow the closing of the accesses that currently exist for the Conoco station so that there will no longer be accesses right on the northwest corner of Poly and 17th Street West.

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

When the developer submits a proposed site plan, the Engineering Division, Planning Division and the Fire Department will be able to review what the developer is proposing to build and have input to insure that it is designed to meet safety requirements.

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

The proposed zoning will permit Residential Professional uses. The Unified Zoning Regulations specify minimum setbacks, lot coverage requirements and height restrictions. It also has landscape requirements to enhance the look of the site and make it a positive addition.

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, contains limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land.

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

The proposed zoning is for Residential Professional use which will not cause a concentration of population.

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 future closure of the two accesses for the existing Conoco station on the northwest corner of Poly and 17 th Street West will reduce the traffic conflicts on that corner.
<i>Water and Sewer:</i>	The City will provide water and sewer to the entire property through existing lines from Poly or 17 th Street West.
<i>Schools and Parks:</i>	The proposed zoning will have no effect on the school system.
<i>Fire and Police:</i>	The subject property is currently served by the City of Billings fire and police departments.

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 Residential Professional zoning to the west and north and will provide services to the surrounding neighborhood.

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

The subject property is suitable for the requested zoning. The proposed medical facility will provide the surrounding citizens with a medical facility within their neighborhood.

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

The applicant has proposed Residential Professional zoning for the property so it will be the same as the zoning to the west and north. This zoning will lend itself to a development on the street intersection that allows for professional medical offices where keeping it R-9600 would render the corner difficult to sell for a single family home. Therefore, it will be an expansion of an existing use that is already in the neighborhood.

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

The proposed zoning will permit an expansion of an existing use, it will be the most appropriate use of the land and not bring unwanted commercial use into the area.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

Ric Heldt from A&E Architects, representing the applicants, provided an overview of the proposed zone change and new use on Lot 3, Block 1, Rocky Village Subdivision. The applicants plan to build a new medical office facility that will use the existing access for the medical facility that is on Lot 2 to the north and west. At some time in the future, the existing building will be removed and a new building erected so there will be two medical buildings on the northwest corner of 17th Street West and Poly Drive. They are planning to remove the existing Conoco station and build a new medical building within a year of approval of the zone change. The concerns of some neighbors about the height of buildings were addressed at the neighborhood meeting. Removal of the existing building, that Mr Heldt believes is taller than 34 feet, and replacing it with a building that is 34 feet or less was welcomed. Also, the surrounding property is on ground that is higher in elevation than the property on the northwest corner and will enable surrounding neighbors to look over the new structures that comply with current zoning.

RECOMMENDATION

The Zoning Commission forwards a recommendation of approval to the City Council for Zone Change #828 with a vote of 3-0.

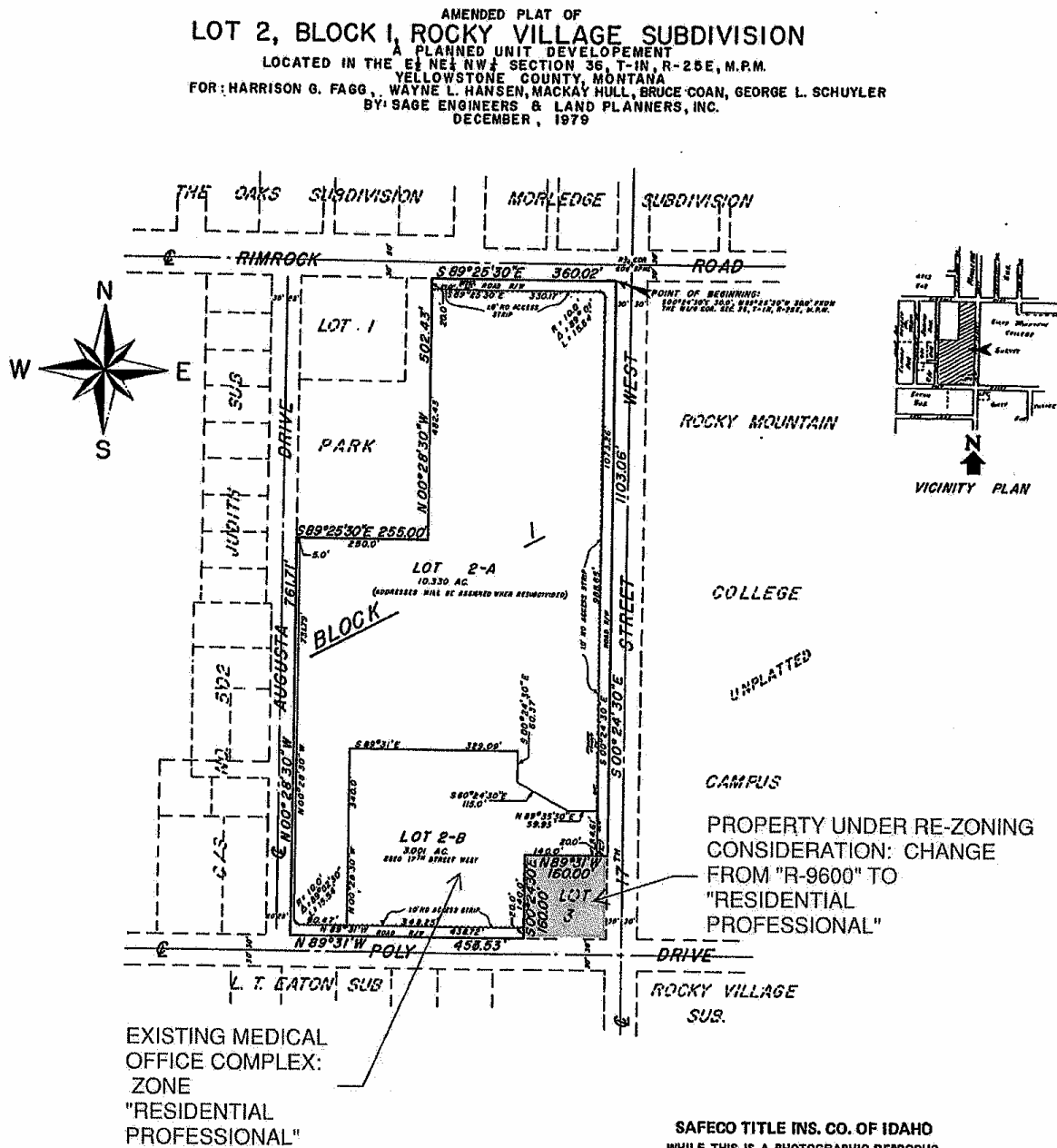
ATTACHMENTS:

- A: Site Map
- B: Surrounding zoning
- C: Site Photographs
- D: Ordinance

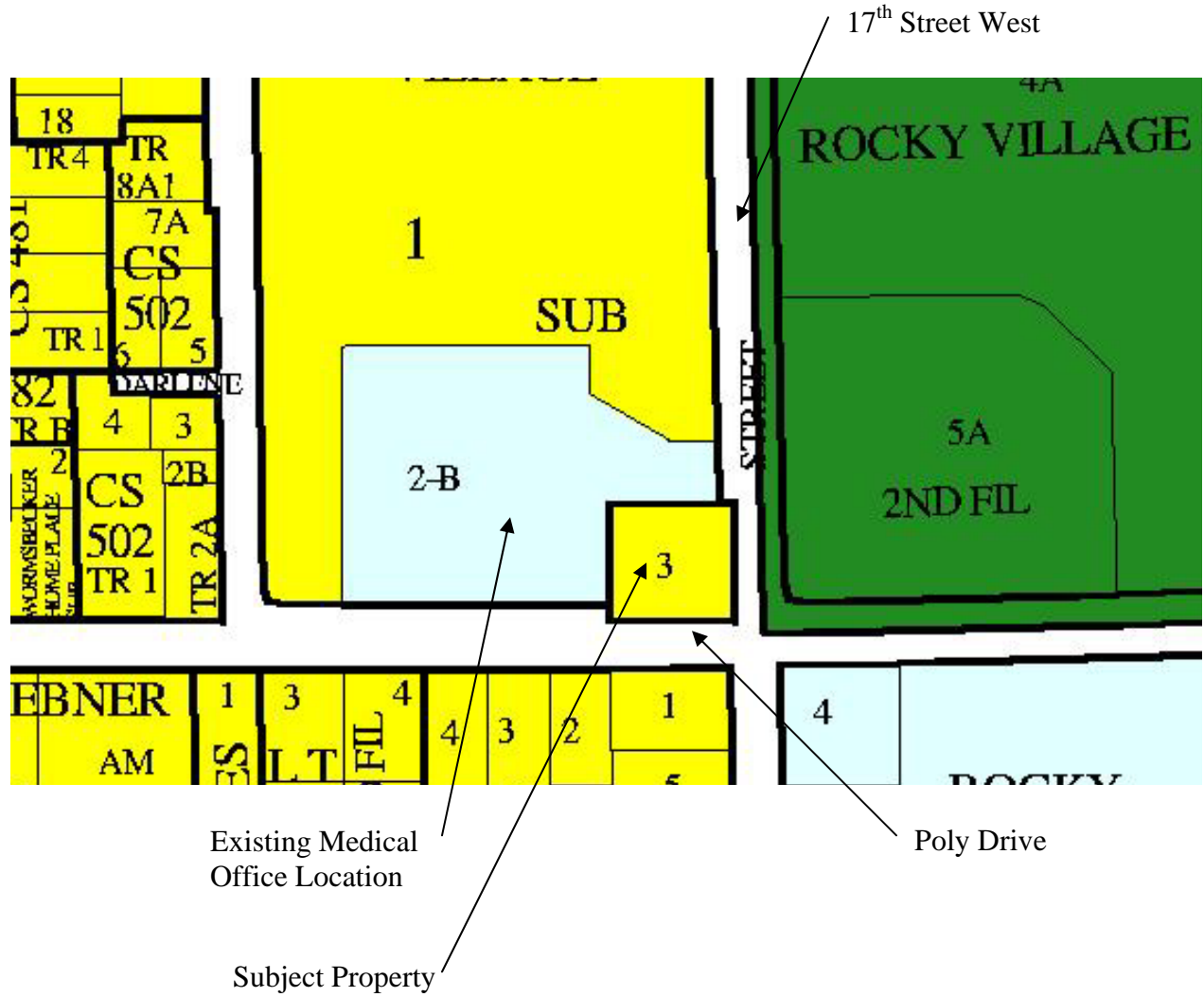
ATTACHMENT A

Site Map

EXHIBIT "A"



ATTACHMENT B
 Surrounding Zoning Map



ATTACHMENT C
Site Photographs



Looking north from subject property on Poly and 17th Street West



Looking west at existing medical building



Looking south at the intersection of 17th Street West and Poly Drive

ATTACHMENT D

Ordinance

ORDINANCE NO. 08-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Lot 3, Block 1, Rocky Village Subdivision, Section 36,
T.1N, R.25E, containing approximately 0.583 acres

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 Lot 3, Block 1, Rocky Village Subdivision, Section 36, T.1N, R.25E, containing approximately 0.583 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 Professional** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential Professional** 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 January 14, 2008.

PASSED, ADOPTED AND APPROVED on second reading January 28, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: Cari Martin, City Clerk

ZC #828

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 14, 2008

TITLE: Approval of Development Agreement for Federal Courthouse Site

DEPARTMENT: City Administrator's Office

PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: The City Council is being asked to join in a development agreement for a Federal Courthouse on 26th Street between Second and Third Avenues in cooperation with the Downtown Billings Partnership/Downtown Development Council (DBP/DDC); Yellowstone County; the White Family, LLC; and the Big Sky Economic Development Agency (BSEDA).

Approval of this agreement would result in the City selling half of North 26th Street between 2nd and 3rd Avenues North to BSEDA and to the DBP at a cost of \$126,075 to each of those entities. The street portion would ultimately be closed and sold to a private developer for part of the Federal Courthouse construction site. The remaining half of the block likely will be purchased and closed in the future by Yellowstone County, which will own the Sheriff's Department on one side and a County parking lot on the other side of 26th Street.

ALTERNATIVES ANALYZED:

- Approve the development agreement, which will lead to construction of a Federal Courthouse if all parties agree;
- Amend the development agreement, which will require further negotiations;
- Do not approve the development agreement, which may result in the Federal Courthouse moving to another site and the DBP completing either the Quiet Zone or the street conversion project, instead.

FINANCIAL IMPACT: If the Federal Courthouse is built, the City will receive \$252,150 by selling part of 26th Street between Second and Third Avenues North to DBP and BSEDA. Future revenue may be achieved if the City sells the northern portion of the site to Yellowstone County, which is expected to own the parcels surrounding that portion of the road.

RECOMMENDATION

Approve the development agreement.

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

Attachment:

A: Development Agreement (01/04/08 Version)

DBP DRAFT 1-4-08

(Prepared at and following 1/4/08 a.m. meeting of Krueger, Turner, McCandless and Hunnes)

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into as of _____, 2008 by and between the City of Billings, a municipality of the State of Montana (“City”), Downtown Billings Partnership, Inc., an I.R.C. §501(c)(4) Montana non-profit corporation, (“DBP”) and Downtown Development Corporation, an I.R.C. §501(c)(3) Montana non-profit corporation, (“DDC”), White Family, LLC, a Montana limited liability company (“White Family”), the County of Yellowstone, a county of the State of Montana (“County”) and Big Sky Economic Development Authority, a _____, (“Big Sky EDA”). DBP and DDC are collectively referred to herein as “DBP/DDC”. DBP/DDC, White Family, County and Big Sky EDA are collectively referred to herein as the “Development Entities”.

WHEREAS, DBP is the entity responsible for administration of Tax Increment Financing (“TIF”) funds for City; and

WHEREAS, County, DBP and Big Sky EDA have entered into a Development Agreement dated July 3, 2007 whereby DBP agree to construct a parking lot for the County in order to provide certain replacement parking for County as a result of an exchange of property between City and County.

WHEREAS, DBP and City have entered into a Development Agreement dated November 26, 2007 and approved by the Billings City Council on November 19, 2007 for approved urban renewal projects described therein, including land acquisition and assemblage for the purpose of development or redevelopment of a site for construction of a new Federal Courthouse (“Federal Courthouse Project”) in the Civic Plaza area roughly located between N. 25th Street and N. 27th Street and 2nd Avenue North and 3rd Avenue North in Billings, Montana.

WHEREAS, the Development Entities have reached an agreement for resolution of replacement parking for County and for the acquisition and assemblage of land for the Federal Courthouse Project.

WHEREAS, the agreement between the Development Entities requires that the land assemblage and acquisition be accomplished in two phases in order to provide for the acquisition of property by County for replacement parking and future expansion.

WHEREAS, the Development Entities wish to establish the terms, conditions and sequence of the transactions for the acquisition and assemblage of land for the Federal Courthouse Project.

NOW, THEREFORE, subject to the terms and conditions of this Agreement, the Development Entities agree as follows:

SECTION 1: SUBJECT OF AGREEMENT

1.1 Purpose of Agreement. The Development Entities shall assemble, acquire and make ready for sale to the developer selected by the United States General Services Administration (“GSA Developer”) approximately 63,000 square feet of land within the area defined by the Downtown Billings

Framework Plan as the Civic District, specifically located between 2nd Avenue North and 3rd Avenue North and between North 25th Street and North 27th Street, Billings, Montana as more specifically depicted on Exhibit 1 (“Preferred Site”) for an agreed upon value and within an agreed upon period of time. The purpose of the acquisition and assemblage of land is to develop or redevelop a site for construction of a new Federal Courthouse building in the Civic District by the GSA Developer as part of an urban renewal project for the City (“Federal Courthouse Project”). Further, this Agreement provides for the use of City Fund 202 Tax Increment Funds to acquire or assemble land for the Federal Courthouse Project as set forth in the Development Agreement between City and DBP/DDC dated November 26, 2007. Further, this Agreement sets forth the required land exchanges, purchases, sales and development contingencies to accomplish the land assemblage for the Federal Courthouse Project and to assure compliance with the Montana Urban Renewal Law.

SECTION 2: DEFINITIONS/EXHIBITS AND TABLE

2.1 County Lots. The term “County Lots” shall mean the real property presently owned by County consisting of two (2) lots (totaling 7,000 sq. ft.) directly north of the MDU Property, as more particularly described in Exhibit 2 to this Agreement.

2.2 MDU Site. The term “MDU Site” shall mean the real property presently owned by Big Sky EDA in the location of the former MDU building, as more particularly described in Exhibit 2 to this Agreement.

2.3 Preferred Site. The term “Preferred Site” shall mean the real property depicted on Exhibit 1 to this Agreement. The Preferred Site consists of approximately 63,000 square feet of land to be assembled under this Agreement for ultimate sale to the GSA Developer. The description of the Preferred Site will be approximate until the specific legal description has been determined to include any required set-backs for the Federal Courthouse building; however the Preferred Site shall include the real property identified and/or assembled pursuant to the Phase 2 Transactions described in Section 5.3 of this Agreement.

2.4 SFC Property. The term “SFC Property” shall mean the real property owned by SFC II, LLC, as more particularly described in Exhibit 2 to this Agreement. The SFC Property is presently subject to a buy sell agreement between County and SFC II, LLC.

2.5 Wells Fargo Site. The term “Wells Fargo Site” shall mean the real property presently owned by County in the location of the former Wells Fargo Drive-In Bank, as more particularly described in Exhibit 2 to this Agreement.

2.6 White Family Property. The term “White Family Property” shall mean the real property presently owned by White Family, as more particularly described in Exhibit 2 to this Agreement.

2.7 Exhibits and Table. Attached to this Agreement and incorporated herein are the following Exhibits and Table:

Exhibit 1 shows the Preferred Site and the proposed land use scenario for the Federal Courthouse Project.

Exhibit 2 shows the legal descriptions of the properties identified in this Agreement.

Exhibit 3 is the Release Agreement between County, DBP/DDC and Big Sky EDA related to satisfaction of their respective obligations under the Development Agreement dated July 3, 2007.

Table 1 describes the sources and uses of funds for the Federal Courthouse Project and presently estimated values based on appraisals and/or comparable values from prior exchanges and transactions.

SECTION 3: PROPERTY OWNERSHIP/ACQUISITION AND ASSEMBLAGE

3.1 Ownership. The Development Entities own fee title to, or have binding purchase rights to, the respective properties identified below as of the date of this Agreement:

County Lots	County
SFC Property	County has binding buy sell agreement to purchase from SFC II
MDU Site	Big Sky EDA
Wells Fargo Site	County
White Family Property	White Family

3.2 Ownership of Preferred Site. The Development Entities agree that upon completion of the land acquisition, assemblage and transactions identified in this Agreement, and immediately prior to the ultimate sale and transfer of title to the Preferred Site to the GSA Developer, that the Preferred Site will be owned and titled as follows:

- (a) DBP/DDC will have title to that part of the Preferred Site east of the centerline of North 26th Street.
- (b) Big Sky EDA will have title to that part of the Preferred Site west of the centerline of North 26th Street.

SECTION 4: CONDITIONS PRECEDENT

4.1 Conditions Precedent. The Development Entities' obligation to be bound by the provisions of Phase 2 of this Agreement is subject to and contingent upon each of the following terms and conditions:

- (a) The GSA Developer must purchase the entire Preferred Site (including the portion of North 26th Street within the Preferred Site) for the appraised value at the time of transfer, but not less than \$35.00 per square foot nor more than \$40.00 per square foot.
- (b) The GSA Developer must be responsible for all demolition costs (including demolition of the former MDU building and former Wells Fargo drive up bank building) and any infrastructure expenses due to construction of the Federal Courthouse Project on the portions of the Preferred Site that were formerly part of North 26th Street.
- (c) The GSA Developer must be responsible for all of its legal and professional fees related to the Federal Courthouse Project.

4.2 Closing of Phase 2 Transactions. The transactions described in Section 5.3 of this Agreement as the Phase 2 Transactions, are mutually dependent and conditioned upon the performance of each of the other transactions. Although the Phase 2 Transactions will close sequentially, they will take place as part of a unitary closing that will include the contemporaneous purchase of the Preferred Site by the GSA Developer.

4.3 Appraisals. The Development Entities have ordered appraisals of certain parcels of the property subject to this Agreement. The Development Entities have agreed to the sale prices and exchange values for certain of the properties as described in Section 5.3 of this Agreement, however certain of these transactions require appraisals to demonstrate that the agreed sale price or exchange value is at least equal to, or within the range of, the appraised value. If the appraised value does not justify the sales price or exchange value, then the conditions set forth in Section 5.3 of this Agreement will fail and the Agreement shall terminate without further obligation on the part of any of the Development Entities pursuant to this Agreement; provided, that the Development Entities may agree to modify and extend this Agreement.

4.4 Expenditure of TIF funds. DBP's obligation to be bound by the provisions of Section 5.3 Phase 2 Transactions of this Agreement is subject to and contingent upon its commitment to ultimately expend no more than a net amount of \$800,000 of TIF funds when the sale to the GSA Developer is completed. This net amount of TIF funds of \$800,000 includes the \$446,200 of TIF funds expended under Phase 1 of this Agreement.

SECTION 5: LAND ASSEMBLAGE TRANSACTIONS

5.1 General. The Development Entities agree to perform and complete the following transactions set forth in Phases 1 and 2 below (Sections 5.2 and 5.3), for the acquisition and assemblage of land for the Federal Courthouse Project, subject to the terms and conditions below.

5.2 **Phase 1.** Within 30 days of execution of this Agreement by the Development Entities, DBP/DDC will authorize and City will pay a \$446,200 parking and site acquisition grant to County for the acquisition and development of replacement parking within the 1976 Downtown Tax Increment District pursuant to the Development Agreement dated July 3, 2007. County agrees to remit back to City any of the \$446,200 grant funds not expended for such purposes. Upon funding the parking and site acquisition grant, County, DBP/DDC and Big Sky EDA shall execute the Release Agreement attached hereto as Exhibit 3.

5.3. **Phase 2.** The Development Entities shall perform and complete the following transactions in the sequence indicated below, subject to the terms and conditions of this Agreement ("Phase 2 Transactions"). The Phase 2 Transactions will take place in a single closing contemporaneously with the closing of the sale of the Preferred Site to the GSA Developer.

- (a) County will transfer and convey the Wells Fargo Site to White Family in exchange for the White Family Property. White Family will transfer and convey the White Family Property to County in exchange for the Wells Fargo Site. White Family will pay to County the greater of: (1) \$297,500; or, (2) the difference between the appraised value of the White Family Property and the appraised value of the Wells Fargo Site. The appraised value of Wells Fargo Site is agreed to be \$787,500, based on current appraisal

of \$35.00 per square foot.

- (b) DBP/DDC will purchase from White Family and White Family will sell to DBP/DDC the Wells Fargo Site acquired by White Family from County pursuant to Section 5.3(a) above. The purchase price will be \$900,000 plus the amount necessary to fully reimburse White Family for cash paid to County by the White Family pursuant to Section 5.3(a) above. DBP/DDC and County will cooperate with The White Family with respect to an IRC section 1033 tax exchange.

The White Family exchange, purchase and sale described in Sections 5.3(a) and (b) are based upon the understanding and representation of DBP that without these transactions, there is a genuine likelihood of condemnation of their property for the Federal Courthouse Project.

DBP/DDC will purchase from City and City will vacate and sell to DBP/DDC that portion of North 26th Street, as well as that portion of 2nd Avenue North within the Preferred Site and East of the centerline of the street, for the sum of \$126,075.

- (c) Big Sky EDA will purchase from County and County will sell to Big Sky EDA the County Lots for the greater of: (1) \$245,000; or (2) appraised value.

Big Sky EDA will purchase from City and City will vacate and sell to Big Sky EDA, that portion of North 26th Street, as well as that portion of 2nd Avenue North, within the Preferred Site and West of the centerline of the street for the sum of \$126,075.

- (d) Upon completion of the land assemblage described herein, DBP/DDC will sell to the GSA Developer the portion of the Preferred Site east of the centerline of North 26th Street. The final sale price for the Preferred Site to the GSA Developer shall be subject to final negotiation and approval of DBP/DDC, but shall not be less than \$35.00 per square foot.

Upon completion of the land assemblage described herein, Big Sky EDA will sell to the GSA Developer the portion of the Preferred Site west of the centerline of North 26th Street (including the MDU Site). The final sale price for the Preferred Site to the GSA Developer shall be subject to final negotiation and approval of DBP/DDC, but shall not be less than \$35.00 per square foot.

The sales proceeds of the Preferred Site shall be paid as follows: (1) Big Sky EDA shall receive payment of \$765,000 for the MDU Site, \$126,075 for the street purchase, and the amount paid for the County Lots pursuant to Section 5.3(c); and, (2) DBP/DDC shall receive the balance of the sale proceeds.

City and GSA Developer will cooperate with one another to facilitate adequate redistribution of traffic, parking and sidewalk configurations on 2nd Ave. North between North 25th Street and North 27th Street to facilitate the Federal Courthouse Project and to accommodate the required set-backs for the new Federal Courthouse as estimated on Exhibit 1.

5.5 Costs of Administration. The Development Entities shall each bear their own reasonable legal costs regarding their respective portions of the purchase/exchange agreements listed above. DBP/DDC shall pay the costs of the appraisals of the properties identified in this Agreement.

5.6 Use of TIF Funds. The TIF funds which are the subject of this Agreement shall be used only for urban renewal activities, including the rehabilitation and redevelopment of the Preferred Site, in accordance with the Urban Renewal Law of the State of Montana.

5.7 Availability of TIF Funds. City has committed TIF Funds to the Federal Courthouse Project subject to availability of funds. In the event TIF Funds are not available due to causes beyond control of City, this Agreement shall terminate, and upon such termination, no Development Entity shall have further obligations or liability to the others under this Agreement.

5.8 Extent of Commitment. Neither DBP, DDC or City shall have any obligation for any costs associated with the transactions described in this Agreement which exceed the amount of the TIF Funds approved in accordance with Section 4.4 of this Agreement.

5.9 Other Documents. The Development Entities agree to execute any and all other documents that are reasonably needed to effectuate the Phase 2 Transactions and any other obligations in this Agreement. The Development Entities acknowledge that such documents may include sale and purchase and exchange agreements, and hereby agree that such documents shall contain usual and customary real estate transaction terms and provisions.

SECTION 6: WARRANTIES

6.1 Joint Representations and Warranties. The following representations and warranties are made by each party to the other as of the date hereof:

- (a) Authority. Each party has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate this transaction.
- (b) Actions. All requisite action has been taken by each party in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of this transaction. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.
- (c) Due Execution. The individuals executing this Agreement and the instruments referenced herein on behalf of each party and the partners, officers or trustees of each party, if any, have the legal power, right, and actual authority to bind each party to the terms and conditions of those documents.

6.2 Representations regarding SFC Property. County represents that its agreement to purchase the SFC Property is a separate arms-length transaction providing for the future expansion of the County. The Development Entities acknowledge that they do not assert any interest in the SFC Property, on behalf of themselves or the federal government or its agencies, as a result of this Agreement.

6.3 Consideration for Local Developers. The Development Entities desire equal and fair consideration by GSA for local developers and contractors to bid on development or construction the Federal Courthouse.

SECTION 7: TERM and TERMINATION/ DEFAULTS AND REMEDIES

7.1 Term of Agreement. This Agreement shall terminate on June 30, 2009, unless extended by mutual written agreement of all of the Development Entities.

7.2 Default/General. The failure or delay by any party to perform any term or provision of this Agreement constitutes a default; however, if the defaulting party commences to cure such default within 60 days after receipt of a notice specifying the default, and thereafter diligently prosecutes such cure to completion, then such party shall not be deemed to be in default. The injured party shall give written notice of default to the defaulting party, specifying the default. The injured party may not institute proceedings, whether judicial or otherwise, against the party in default until 60 days after giving such notice. Any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies or deprive such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

7.3 Rights and Remedies. Any Development Entity may seek any legal or equitable remedy to cure, correct or remedy any default, to recover any damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same default or any other default by the other party.

7.4 Dispute Resolution. Prior to commencing any litigation, the parties shall first attempt to resolve the dispute informally in accordance with this section. In the event a dispute arises, the complaining party shall deliver notice of the matter in dispute to the other party at the address and in the manner provided for in Section 8.2 hereof. Each party shall thereafter promptly designate a representative to address the matter, which representatives shall attempt, in good faith, to resolve the disputed matter. In the event the designated representatives are unable, despite their good faith efforts, to resolve the disputed matter within fifteen days of the initial notice thereof, then, any party may commence litigation.

SECTION 8: GENERAL PROVISIONS

8.1 Litigation. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of any other party arising out of this Agreement, the prevailing party will be entitled to have the recovery of and from the other party all costs and expenses of the action or suit, actual attorneys' fees (including the allocated costs of in-house counsel), witness fees and any other professional fees resulting therefrom.

8.2 Notices. All notices or other communications required or permitted hereunder must be in writing, and must be personally delivered (including by a professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below. All notices sent by mail will be deemed received 2 (two) days after the date of mailing and all notices sent by other means permitted herein shall be deemed received on the date delivered. Notices will be sent as follows to:

City: Billings City Administrator
P.O. Box 1178
Billings, MT 59103

With a copy to: City of Billings
Attn: Brent Brooks City Attorney
210 North 27th Street
Billings, MT 59101
Telephone: (406) 657-8205

DBP: Downtown Billings Partnership, Inc.
Attn: Executive Director
2815 2nd Ave. N
P. O. Box 2117
Billings, MT 59103
Telephone: (406) 294-5060
Facsimile: (406) 294-5061

DDC: Downtown Development Corporation
Attn: Executive Director
2815 2nd Ave. N
P. O. Box 2117
Billings, MT 59103
Telephone: (406) 259-5454
Facsimile: (406) 294-5061

Yellowstone County: Yellowstone County Commission
P.O. Box 35000
Billings, MT 59107

With a copy to: Yellowstone County
Attn: Dan Schwarz Deputy County Attorney
P.O. Box

Big Sky EDA:

White Family:

employee or agent of any Development Entity shall be personally liable to any party or any successor-in-interest thereto, in the event of any default or breach by any party or for any amount which may become due to any party or its successor, or any obligations under the terms of this Agreement.

8.4 Headings. Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

8.5 Time of Essence. Time is of the essence of this Agreement. All obligations of the Development Entities to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.

8.6 Construction/Governing Law/Venue. The Development Entities and their respective advisors believe that this Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor of or against any Development Entity. The parties further agree that this Agreement will be construed to effectuate the normal and reasonable expectations of sophisticated parties. The parties hereto expressly agree that this Agreement will be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Montana. Any action in law or equity, or judicial proceeding for the enforcement of this Agreement or any of the provisions contained herein, shall be instituted and maintained only in Thirteenth Judicial District Court for Yellowstone County, Montana.

8.7 Severability. If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

8.8 No Partnership. Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

8.9 Government Rights. Except as provided herein, by making this Agreement, the Development Entities are not obligating themselves or any other agency with respect to any discretionary action relating to the development of the Federal Courthouse Project or development, operation and use of the improvements to be constructed on the Preferred Site, including but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals which are or may be required.

8.10 Non-Waivers. No waiver of any breach of any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which will be extended by a period of time equal to the period of the delay.

8.11 Entire Agreement/Counterparts. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. This Agreement may be signed in counterparts.

County of Yellowstone)
:SS

This instrument was acknowledged before me on _____ by
_____ as President of Downtown Billings Partnership, Inc..

(SEAL)
Montana

Printed Name: _____
Notary Public for the State of Montana
Residing at _____,
My Commission expires: _____

STATE OF MONTANA)
:SS
County of Yellowstone)

This instrument was acknowledged before me on _____ by
_____ as President of Downtown Development Corporation.

(SEAL)
Montana

Printed Name: _____
Notary Public for the State of Montana
Residing at _____,
My Commission expires: _____

By: _____
Its: _____

This instrument was acknowledged before me on _____ by _____ as _____ of White Family, LLC.

expires:_____

Printed Name: _____
 Notary Public for the State of Montana
 Residing at _____,
 My Commission

Bill Kennedy, Chairman

James E. Reno, Member

John Ostlund, Member

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(SEAL)
Montana

Printed Name: _____
Notary Public for the State of Montana
Residing at _____,
My Commission
expires: _____

[illegible]

(SEAL)
Montana

Printed Name: _____
Notary Public for the State of Montana
Residing at _____,
My Commission
expires: _____

EXHIBIT 2
Legal Descriptions

County Lots

SFC Property

MDU Site

Wells Fargo Site

White Family Property

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