

# CITY OF BILLINGS

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

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## AGENDA

COUNCIL CHAMBERS

October 23, 2006

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Vince Ruegamer

ROLL CALL

MINUTES – October 10, 2006

COURTESIES

PROCLAMATIONS

- October: National Breast Cancer Awareness Month

ADMINISTRATOR REPORTS – Tina Volek

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #8 thru #10**

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

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

### **CONSENT AGENDA:**

1. A. **Mayor's appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Sue Runkle	Homelessness Committee	10/23/06	12/31/08
2.	Patt Leikam	Human Relations Commission	10/23/06	12/31/08
3.	Brad Frank	Exchange City Golf Corporation Board	10/23/06	12/31/06

1. Unexpired term of Laura Dimmler (Academia background)
2. Unexpired term of Gordon Belcourt
3. Unexpired term of Todd Harkness

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

**B. Bid Awards:**

**(1) One 2007 Current Model 48,000 GVW 8-Yard Dump Truck.**  
(Opened 10/10/06. Delayed from 10/11/06). Recommend Motor Power Equipment Co., \$75,810.00.

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

**C. W.O. 07-01: 2007 Water and Sewer Replacement Project, Professional Services Contract, Morrison-Maierle, Inc., not to exceed \$649,615.00.**

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

**D. W.O. 04-36: Briarwood Sanitary Sewer Main Extension:**

**(1) Right-of-Way Agreement AND perpetual Right-of-Way Easement with Blue Creek Baptist Church, Inc., \$2,150.00.**

**(2) Right-of-Way Agreement AND perpetual Right-of-Way Easement with George E. Oliver, Jr. and Richard L. Oliver, \$3,350.00.**

**(3) Right-of-Way Agreement AND perpetual Right-of-Way Easement with John Harvat Egeland, \$6,700.00.**

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

**E. Airline Operating Permit with Pinnacle Airlines.**

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

**F. Acceptance and approval of the 2006 Native American Project award, Office of National Drug Control Policy (ONDCP), \$75,000.00.**

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

**G. Authorization to bid and sell five (5) used MET Transit buses, bus parts and one (1) rebuilt Transit bus engine.**

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

**H. Approval of the Montana State Library subgrant from South Central Federation of Libraries, \$1,272.76.**

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

**I. Acceptance and approval of donations:**

**(1) In-kind donation from CMG Construction, Inc. and Fisher Sand & Gravel, Inc. for Big Ditch Trail, Phase I, \$5,010.00 value.**

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

**(2) In-kind donation from Land Design, Inc., for Stewart Park Trailhead Signage Construction, \$3,500.00 value.**

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

(3) Grant from Fannie Mae American Dream Fund on behalf of Billings Partners for American Indian Homeownership, \$2,500.00.

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

(4) Donation of activity table, book bench and seating unit from Friends of the Library, \$3,744.99 value.

[\(Corresponding Staff Memo I4\)](#)

**J. Resolution of Intent** to dispose of a portion of Lot 10, Block 5, O'Leary Subdivision, City of Billings, owner, and setting a public hearing for 11/27/06.

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

**K. Second/final reading ordinance** expanding the boundaries of Ward IV to include recently annexed property in Annex #06-13: a 64.714 acre parcel described as Tracts 1 and 2, C/S 2054, and Cynthia Park; Krutzfeldt Ranch LLC, owner.

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

**L. Exempt Plat** in Rehberg Ranch Estates Subdivision, approving the common boundary line adjustment on Lot 38-A and 39-A, Block 5 of Rehberg Ranch Subdivision, Second Filing.

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

**M. Unnamed Certificate of Survey** located in T1N-R25E-S32: NESE, approving the exempt plat for agricultural purposes.

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

**N. Final Plat** of Chrysalis Acres Subdivision.

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

**O. Final Plat** of Greer Subdivision.

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

**P. Bills and Payroll.**

(1) September 22, 2006

[\(Corresponding Staff Memo P1\)](#)

(2) September 29, 2006

[\(Corresponding Staff Memo P2\)](#)

(3) August 1, 2006 – August 31, 2006 (Municipal Court)

[\(Corresponding Staff Memo P3\)](#)

(4) September 1, 2006 – September 30, 2006 (Municipal Court)

[\(Corresponding Staff Memo P4\)](#)

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

## **REGULAR AGENDA:**

2. **PUBLIC HEARING AND SPECIAL REVIEW #829:** A special review to locate an all beverage liquor license with gaming in a new multi-tenant building in a Community Commercial zone described as: Lot 6D, Block 2 of Circle Fifty Subdivision and located at 3839 Grand Avenue. Grand Plaza, LLC, owner; Bob Pulley and Dan Pendergrass, agents. Zoning Commission makes no recommendation. **(Action:** approval or disapproval of Special Review.)

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

3. **PUBLIC HEARING AND VARIANCE #OP06-02:** A variance from the Site Development Ordinance, BMCC Section 6-1203(j) regarding off-street parking for an affordable housing project at the southeast corner of 8<sup>th</sup> Avenue South and South 28<sup>th</sup> Street, homeWORD, Inc., applicant. Staff recommends conditional approval. **(Action:** approval or disapproval of Staff recommendation.)

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

4. **PUBLIC HEARING AND RESOLUTION** vacating a portion of Zimmerman Trail and Lyman Avenue abutting Lot 6, Scott Subdivision, for a value of \$6,277.10. Ronald Sanchez and Traci Albright, petitioners. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

5. **CONTINUANCE OF PUBLIC HEARING AND RESOLUTION** vacating portions of 8<sup>th</sup> Avenue North and the alley between 7<sup>th</sup> Avenue North and 8<sup>th</sup> Avenue North for a value of \$584,250.00. Billings Clinic, petitioner. (Continued from 9/25/06). Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 5\)](#)

6. **CONTINUANCE OF PUBLIC HEARING AND FIRST READING ORDINANCE** relating to the creation of the East Billings Urban Renewal Area; and adopting an urban renewal plan, including a tax increment provision. (Continued from 10/10/06). Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 6\)](#)

7. **CONTINUANCE OF PUBLIC HEARING AND FIRST READING ORDINANCE** modifying the Urban Renewal Plan of 27<sup>th</sup> Street District Urban Renewal Area to include certain property formerly part of the Downtown Redevelopment District in order to establish the *Extended North 27<sup>th</sup> Street District Urban Renewal Area.*; adopting a modified urban renewal plan therefor, including a tax increment provision; approving an urban renewal project therein and authorizing the issuance of tax increment urban renewal revenue bonds of the City to finance costs thereof. (Continued from 10/10/06). Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

8. **RESOLUTION** amending Res 06-18437 authorizing an increased purchase offer of \$294,000.00 to the owner of property described as Lot 3, Sunset Subdivision, 5<sup>th</sup> Filing and located at 1048 Grand Avenue, to be condemned in the Grand Avenue widening project. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 8\)](#)
9. **VARIANCE from BMCC Section 23-1009(D)** regarding parkland dedication for offsite parkland for Silver Creek Estates Subdivision. Staff recommends denial. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 9\)](#)
10. **2006 CTEP PROJECT APPLICATIONS** to be submitted to the Montana Department of Transportation for funding from the Community Transportation Enhancement Project (CTEP) program. (Delayed from 10/10/06). Staff recommends the Council formulate a recommendation for the Mayor to take to the Policy Coordinating Committee (PCC). **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 10\)](#)
11. **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>**

## CALENDAR (Council AND Boards & Commissions)

### **OCTOBER:**

10/23/2006	REGULAR Council Meeting	6:30 p.m.	Council Chambers
10/24/2006	Planning Board Traffic Control Board Board of Ethics	6:00 p.m. NOON 4:00 p.m.	4 <sup>th</sup> Floor Library 4 <sup>th</sup> Floor Library CH Conference Room
10/25/2006	Housing Authority Development Process Advisory Review Board (DPARB) Electronic Signs Ad Hoc Committee	NOON 1:00 p.m. 1:00 p.m.	2415 1 <sup>st</sup> Avenue North CH Conference Room 4 <sup>th</sup> Floor Library
10/26/2006	Yellowstone County Board of Health (Note: November and December meetings to be combined at a date decided in October)	7:00 a.m.	Community Health Center

### **NOVEMBER:**

11/01/2006	Policy Coordinating Committee	8:00 a.m.	4 <sup>th</sup> Floor Library
11/02/2006	Human Relations Commission	12:15 p.m.	CH Conference Room
11/06/2006	Community Development Board Council WORK SESSION	3:00 p.m. 5:30 p.m.	4 <sup>th</sup> Floor Conf. Rm. Community Center 360 N. 23 <sup>rd</sup> St
11/07/2006      ELECTION DAY – CITY OFFICES CLOSED			
11/08/2006	Zoning Commission Aviation & Transit Commission	4:30 p.m. 5:30 p.m.	Council Chambers Airport Terminal
11/08/2006	Parks/Recreation/Cemetery Bd Board of Adjustment	11:30 a.m. 6:00 p.m.	Community Center 360 N. 23 <sup>rd</sup> St. Council Chambers
11/09/2006	Library Board Homeless Committee	NOON 2:00 p.m.	Library 3 <sup>rd</sup> Floor Library
11/10/2006      VETERAN'S DAY – CITY OFFICES CLOSED			
11/13/2006	Energy & Conservation Commission Parking Advisory Board REGULAR Council Meeting	3:00 p.m. 4:00 p.m. 6:30 p.m.	BOC Conference Room CH Conference Room Council Chambers
11/14/2006	Planning Board	6:00 p.m.	4 <sup>th</sup> Floor Library

11/20/2006	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 <sup>rd</sup> St
11/21/2006	Yellowstone Historic Preservation Board	8:00 a.m.	4 <sup>th</sup> Floor Library
11/22/2006	Housing Authority Development Process Advisory Review Board (DPARB)	NOON 1:00 p.m.	2415 1 <sup>st</sup> Avenue North CH Conference Room
11/23/2006	THANKSGIVING DAY – CITY OFFICES CLOSED		
11/27/2006	REGULAR Council Meeting	6:30 p.m.	Council Chambers
11/28/2006	Planning Board	6:00 p.m.	4 <sup>th</sup> Floor Library
11/29/2006	Housing Authority	NOON	2415 1 <sup>st</sup> Avenue North

# A



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

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

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

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

**RECOMMENDATION**

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Sue Runkle	Homelessness Committee	10/23/06	12/31/08
2.	Patt Leikam	Human Relations Commission	10/23/06	12/31/08
3.	Brad Frank	Exchange City Golf Corporation Board	10/23/06	12/31/06

4. Unexpired term of Laura Dimmler (Academia background)
5. Unexpired term of Gordon Belcourt
6. Unexpired term of Todd Harkness

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

Attachment

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

# B1

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, October 23, 2006

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**TITLE:** One (1) 2007 Current Model 48,000 GVW 8-Yard Dump Truck  
**DEPARTMENT:** Public Works Department  
**PRESENTED BY:** Dave Mumford, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The Public Works Department received bids for one (1) 2007 current model 48,000 GVW 8-yard dump truck in accordance with the approved equipment replacement plan and is recommending award.

**FINANCIAL IMPACT:** The bid was advertised on September 28 and October 5, 2006. Action on this item was deferred at the Council meeting of October 10, 2006. There is sufficient money in the FY 07 budget for the Construction and Equipment Fund to cover the award. Four bids were received on October 10, 2006, as follows:

Motor Power Equipment Co. ....	\$ 75,810.00
Northwest Truck & Trailer Sales, Inc.....	\$ 83,643.00
Rimrock Commercial Trucks.....	\$ 83,442.00
I-State Truck Center.....	\$ 84,209.00

### **RECOMMENDATION**

Staff recommends that Council award the bid for one (1) 2007 current model 48,000 GVW 8-yard dump truck to Motor Power Equipment Co. in the amount of \$ 75,810.00.

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

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

# C

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, October 23, 2006

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**TITLE:** Work Order 07-01 – Contract for Professional Engineering Services, 2007 Water and Sewer Replacement Project

**DEPARTMENT:** Public Works - Engineering Division

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

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**PROBLEM/ISSUE STATEMENT:** Mayor and Council are asked to consider authorizing and executing a Contract for Professional Services with Morrison-Maierle, Inc. for engineering design services and construction administration on the 2007 Water and Sewer Replacement Project. Water and sewer mains would be replaced in various City locations as identified by City staff. Morrison-Maierle, Inc. was selected to perform these services according to the City's Request for Proposals and Consultant Selection policy.

**ALTERNATIVES ANALYZED:**

1. Authorize the Mayor to sign a contract with Morrison-Maierle, Inc. as set forth in this staff memorandum.
2. Request that City staff perform the engineering project design and construction administration.

**FINANCIAL IMPACT:** Funding for this project has been approved in the CIP projects – Water Main Replacement (FY07 \$1,080,843) and Sanitary Sewer Replacement (FY07 \$2,179,493). Funding is sufficient for the engineering design and construction administration portion of the project which is now under consideration as well as for project construction which is planned for bidding in early 2007.

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign a contract for professional services for the design and construction administration portion of the 2007 Water & Sewer Replacement Project with Morrison-Maierle, Inc. in the amount not to exceed \$649,615.00.

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

## **INTRODUCTION**

This project would replace water and sanitary sewer lines in various areas of Billings. The water and sewer main replacement program is a long-standing annual program that was developed to maintain the integrity of the utility lines serving the residents of Billings.

## **PROCEDURAL HISTORY**

Completed Items:

- Morrison-Maierle, Inc. was chosen by a selection committee through the Request for Proposals and Consultant Selection policy. The selection committee included Joe Sheridan of Public Works Distribution & Collection, Wyeth Friday of City/County Planning, and Andrew Mattie, Nick Bailey, and Randy Straus of Public Works Engineering.

Items to be Completed:

- Council authorizes the Mayor to sign the Contract with Morrison-Maierle, Inc.
- Morrison-Maierle, Inc. completes the design and performs construction administration of the project once it is bid and awarded.

## **BACKGROUND**

Each year, the City identifies areas in need of replacement based on data collected related to the frequency of main failures in various areas throughout Billings.

Design work for the 2007 City of Billings water and sewer replacement project has approximately 12,795 linear feet of sewer main and 9,050 linear feet of water main; and, construction phase work has approximately 12,795 linear feet of sewer main and 4,850 linear feet of water main. Water main not currently planned for 2007 replacement will be designed by this project. In the event that another City project using other water replacement funds (e.g., Grand Ave.) does not proceed in 2007, the water main “over-designed” in this project may proceed to construction in 2007 using the other (e.g. Grand Ave.) replacement funds.

## **ALTERNATIVES ANALYSIS**

If the annual rehabilitation project is not constructed, the City runs the risk of failed utility lines and interruption of services to the residents of Billings.

## **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign a contract for professional services for the 2007 Water & Sewer Replacement Project with Morrison-Maierle, Inc. in the amount not to exceed \$649,615.

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

# D

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

#### CITY OF BILLINGS, MONTANA

#### Monday, October 23, 2006

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**TITLE:** W.O. 04-36 – Briarwood Sanitary Sewer Main Extension, Approval of Right-of-Way Agreements and Perpetual Right-of-Way Easements with Blue Creek Baptist Church, Egeland and Oliver

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The preferred alternative identified in the Preliminary Engineering Report (PER) for the above-named project recommended that the new sewer main generally follow a route along Blue Creek Road so that the southerly portion of the new sewer main will drain via gravity from Briarwood to the area of Santiago Boulevard. From the Santiago area, a sewer lift station is needed to convey sewerage via a force main across the Yellowstone River then to the existing sewer in the South Frontage Road of I-90. Due to utility congestion and/or adverse slopes in most places along the Blue Creek Road (MDT) right-of-way, it is necessary to obtain easements from property owners along the proposed sewer route. There are a total of thirteen (13) easements necessary from eleven (11) different property owners; this memo represents the first three of them. The rest of the easements are still in negotiations. A copy of each of the right-of-way agreements, easements, appraisals, and negotiation histories for the Blue Creek Baptist Church, Egeland and Oliver properties is on file with the City Clerk.

**FINANCIAL IMPACT:** The total cost of the three easements is \$12,200. The cost of each easement is the appraised value of the easement. Funding is available from project funds.

The budgeted amount for this entire project (CIP# PWB-1), including engineering, right-of-way acquisition, and construction is \$600,000 in FY 2005, and \$4,335,350 in FY 2007.

### **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Perpetual Right-of-Way Easement each with: (1) Blue Creek Baptist Church, Inc. for \$2,150.00, (2) George E. Oliver, Jr. and Richard L. Oliver for \$3,350.00, and (3) John Harvat Egeland for \$6,700.00, and authorize the Mayor to execute these documents.

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

**ATTACHMENT**

A. Right-of-Way Agreements and Perpetual Right-of-Way Easements (3 sets)

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

Briarwood Sewer Main Extension  
DESIGNATION

Work Order: 04-36  
MMI Project No. 0686.170-0211      Yellowstone  
COUNTY

Subdivision  
Tract B-1B, Amended Tract B-1 of 2<sup>nd</sup>  
Amended COS 646

Section  
21

Township  
1S

Range  
26E

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

BLUE CREEK BAPTIST CHURCH, INC.  
2337 BLUE CREEK ROAD  
BILLINGS, MT 59101  
254-9474

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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 an easement 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.)

0.052 acre by easement	\$2,150.00
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3. OTHER COMPENSATION:

None

4. TOTAL COMPENSATION (includes all damages to the remainder): \$2,150.00.

5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$2,150.00, to be made payable to BLUE CREEK BAPTIST CHURCH, INC. and mailed to 2337 BLUE CREEK ROAD, BILLINGS, MT 59101

6. 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
7. All fencing will be replaced in kind. Metal gates to be placed between property owners.

(Continued from Previous Page)

## 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 the number(s) below is/are our correct taxpayer identification number(s).

<u>John Tor</u> Signature:	<u>5-18-06</u> (Date)	<u>81-0396627</u> Tax ID No.
Signature:	(Date)	Tax ID No.
RECOMMENDED FOR APPROVAL: <u>Ronald E. Olson</u> Ronald E. Olson, Olson Land Services	<u>5-18-06</u> (Date)	APPROVED FOR AND ON BEHALF OF DEPARTMENT: <u>R/W Supervisor</u> R/W Supervisor
Consultant – Morrison-Maeire, Inc.	(Date)	Acquisition Manager

B-Baptist.200

**PERPETUAL RIGHT-OF-WAY EASEMENT**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on  
this 18th day of May, 2006, the undersigned,

BLUE CREEK BAPTIST CHURCH, INC.  
2337 BLUE CREEK ROAD  
BILLINGS, MT 59101

hereinafter called "Grantor(s)", hereby grant and convey unto THE CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, hereinafter called "Grantee", a perpetual easement and right-of-way over, across, under and through the following described tracts of real property in Yellowstone County Montana:

**SEE ATTACHED EXHIBIT "A" FIG. 1, EXHIBIT "A" FIG. 2, AND EXHIBIT "B"**

This Perpetual easement to Grantee is for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing sanitary sewers and/or water lines over, across, under and through the said real property, together with the right of free ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing said sanitary sewers and/or water lines and appurtenances, and adding additional sanitary sewer and/or water lines.

Grantors shall continue to have the right to use and enjoy the above-described property, except as to the rights herein granted, subject to the following restrictions:

1. Grantors and their successors agree not to construct, nor cause to be constructed, within the easement right-of-way, any type of building or structure, such as, but not limited to, houses, garages, sheds, kennels, fences, nor any other fixed objects of any kind, shape or form, except as many be licensed by Grantee.
2. Grantors agree not to plant, nor cause to be planted within the easement right-of-way any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except as may be licensed by Grantee.
3. Grantors agree that authorized representatives of the City of Billings can freely travel within the easement right-of-way with their equipment in the performance of their duties at any time, day or night, regardless of outside weather conditions.
4. Grantors agree to obtain the permission of the Public Works Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way and, in addition, in the event such permission is granted, the Grantors agree to perform any work necessary to modify the existing sanitary sewers and/or water lines and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way and all such work shall be done at the Grantor's expense and without expense to the City.
5. Grantors agree that the sole responsibility of the City of Billings for any surface restoration due to any construction, replacement, repair or service work to the sanitary sewer and/or water lines by the City of Billings, shall be limited to trench backfill compaction and placement of backfill material to existing grade by the City of Billings.

6. **HOLD HARMLESS AGREEMENT:**

- Grantors agree that the owner or owners of the above described property shall at all times fully relieve and save harmless the City of Billings and its authorized representatives for any and all damages of property that may be caused within said easement right-of-way, such as, but not limited to, ruts or deep tracks in lawns, gardens, or flower beds, broken or crushed shrubs, bushes, hedges, trees or any other type of plantings; crushed, cracked split or otherwise damaged, irrigation piping and appurtenances; and, any other damage to any other type of object, material or equipment located within the easement right-of-way which cannot, with a minimum of human effort and within a few minutes time period, be removed from easement right-of-way by authorized representatives of the City of Billings in exercise of any of their rights under this easement right-of-way.
- Grantors agree the owners of the above described real property shall reimburse the City of Billings for any and all damage claims paid by the City for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by such owner's failure to comply with any portion of the rights, restrictions, obligations or responsibilities contained in this agreement.

7. The restrictions, Covenants and Hold Harmless Agreements herein contained shall attach to and run with the land and shall bind the parties hereto and all persons claiming thereunder.

*Kevin Fox*

State of MONTANA )  
County of YELLOWSTONE )

This instrument was acknowledged before me on May 18, 2006 (date)

by Kevin Fox

(name of person(s))

as SECRETARY

(type of authority, e.g., officer, trustee, etc.)

of BLUE CREEK BAPTIST CHURCH, INC.

(name of party on behalf of whom instrument was executed)

*RONALD E. OLSON*

Notary Signature Line

RONALD E. OLSON

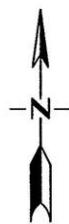
Notary Printed Name

Notary Public for State of MONTANA

Residing at: HELENA

My Commission Expires: MAY 31, 2010

**EXHIBIT 'A'**  
**SANITARY SEWER MAIN**  
**EASEMENT**



50 25 0 50 100  
 SCALE: 1" = 50'

C/S 646 2nd AM  
 TRACT B-1B  
 DOC. 1437959

C/S 646 2nd AM  
 TRACT B-2B  
 DOC. 1036714

NEW SANITARY  
 SEWER MAIN EASEMENT  
 0.052 ACRES

N48°07'19"W 82.44' N62°09'45"W 77.45'  
 S62°09'45"E 146.74' S00°16'12"E 22.67'

P.O.B.

10'

10'  
 20'



*An Employee-Owned Company*

Engineers  
 Surveyors  
 Scientists  
 Planners

315 N. 25th Street  
 Suite 102  
 Billings MT 59101  
 Phone: (406) 656-6000  
 Fax: (406) 656-3432  
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DRAWN BY: GAP  
 CHK'D. BY: KES  
 APPR. BY: GAP  
 DATE: 05/2006

BRIARWOOD SEWER MAIN EXTENSION  
 WORK ORDER 04-36  
 BILLINGS  
 SEWER MAIN EASEMENT  
 TRACT B-1B, AMENDED TRACT B-1 of 2nd AMENDED C/S No.646,  
 SEC. 21, T.1S., R.26E., PMM, YELLOWSTONE CNTY, MONTANA

PROJECT NO.  
 0886.160  
 MT  
 FIGURE NUMBER  
**FIG. 1**

## **EXHIBIT 'B'**

### **DESCRIPTION:**

A permanent 20.0 foot wide sanitary sewer easement across a portion of Tract B-1B, Amended Tract B-1 of 2<sup>nd</sup> Amended Certificate of Survey No. 646 in the Southwest Quarter of Section 21, T.1S., R.26E., P.M.M., Yellowstone County, Montana, where said easement runs across, adjoins or touches the aforementioned tract:

Beginning at the Southeast corner of said Tract B-1B, thence along the Northerly right-of-way of State Highway No. F.A.P.-416-1(31), the following two courses, N62°09'45"W, a distance of 77.45 feet, and N48°07'19"W, a distance of 82.44 feet; thence S62°09'45"E, a distance of 146.74 feet, to the Easterly line of said Tract B-1B; thence S00°16'12"E, a distance of 22.67 feet to the Point of Beginning, containing 0.052 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

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

Briarwood Sewer Main Extension  
DESIGNATION

Work Order: 04-36  
MMI Project No. 0686.170-0211      Yellowstone  
COUNTY

Subdivision  
Tract 10, Blue Creek Acreage Tract  
Subdivision

Section  
28

Township  
1S

Range  
26E

---

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

GEORGE E. OLIVER, JR. AND RICHARD L. OLIVER  
411 HILLVIEW LANE  
BILLINGS, MT 59101  
252-5478

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 an easement 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.)

0.080 acres by easement	\$3,350.00
-------------------------	------------

3. OTHER COMPENSATION:

None

4. TOTAL COMPENSATION (includes all damages to the remainder): \$3,350.00.

5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$3,350.00, to be made payable to GEORGE E. OLIVER, JR. AND RICHARD L. OLIVER and mailed to 411 HILLVIEW LANE, BILLINGS, MT 59101

6. 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

7. City agrees to replace all fencing in kind with a 16' metal tube gate on their approach. Fencing to be placed on the north boundary of easement.

8. City agrees to replace existing approach in kind.

(Continued from Previous Page)

## 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 the number(s) below is/are our correct taxpayer identification number(s).

George E. Oliver Jr. 8-02-06 516-39-5317  
Signature: GEORGE E. OLIVER, JR. (Date) Tax ID No.

Richard Oliver \_\_\_\_\_  
Signature: RICHARD L. OLIVER (Date) \_\_\_\_\_ Tax ID No.

## RECOMMENDED FOR APPROVAL:

Ronald E. Olson 8-206  
Ronald E. Olson, Olson Land Services (Date)

## APPROVED FOR AND ON BEHALF OF DEPARTMENT:

R/W Supervisor (Date)

Consultant – Morrison-Maerile, Inc.

(Date)

Acquisition Manager

(Date)

B-Oliver.200

**PERPETUAL RIGHT-OF-WAY EASEMENT**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this 2000 day of August, 2006, the undersigned,

GEORGE E. OLIVER, JR. AND RICHARD L. OLIVER  
411 HILLVIEW LANE  
BILLINGS, MT 59101

hereinafter called "Grantor(s)", hereby grant and convey unto THE CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, hereinafter called "Grantee", a perpetual easement and right-of-way over, across, under and through the following described tracts of real property in Yellowstone County Montana:

**SEE ATTACHED EXHIBIT "A" AND EXHIBIT "B"**

This Perpetual easement to Grantee is for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing sanitary sewers and/or water lines over, across, under and through the said real property, together with the right of free ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing said sanitary sewers and/or water lines and appurtenances, and adding additional sanitary sewer and/or water lines.

Grantors shall continue to have the right to use and enjoy the above-described property, except as to the rights herein granted, subject to the following restrictions:

1. Grantors and their successors agree not to construct, nor cause to be constructed, within the easement right-of-way, any type of building or structure, such as, but not limited to, houses, garages, sheds, kennels, fences, nor any other fixed objects of any kind, shape or form, except as many be licensed by Grantee.
2. Grantors agree not to plant, nor cause to be planted within the easement right-of-way any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except as may be licensed by Grantee.
3. Grantors agree that authorized representatives of the City of Billings can freely travel within the easement right-of-way with their equipment in the performance of their duties at any time, day or night, regardless of outside weather conditions.
4. Grantors agree to obtain the permission of the Public Works Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way and, in addition, in the event such permission is granted, the Grantors agree to perform any work necessary to modify the existing sanitary sewers and/or water lines and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way and all such work shall be done at the Grantor's expense and without expense to the City.
5. Grantors agree that the sole responsibility of the City of Billings for any surface restoration due to any construction, replacement, repair or service work to the sanitary sewer and/or water lines by the City of Billings, shall be limited to trench backfill compaction and placement of backfill material to existing grade by the City of Billings.

6. **HOLD HARMLESS AGREEMENT:**

- Grantors agree that the owner or owners of the above described property shall at all times fully relieve and save harmless the City of Billings and its authorized representatives for any and all damages of property that may be caused within said easement right-of-way, such as, but not limited to, ruts or deep tracks in lawns, gardens, or flower beds, broken or crushed shrubs, bushes, hedges, trees or any other type of plantings; crushed, cracked split or otherwise damaged, irrigation piping and appurtenances; and, any other damage to any other type of object, material or equipment located within the easement right-of-way which cannot, with a minimum of human effort and within a few minutes time period, be removed from easement right-of-way by authorized representatives of the City of Billings in exercise of any of their rights under this easement right-of-way.
- Grantors agree the owners of the above described real property shall reimburse the City of Billings for any and all damage claims paid by the City for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by such owner's failure to comply with any portion of the rights, restrictions, obligations or responsibilities contained in this agreement.

7. The restrictions, Covenants and Hold Harmless Agreements herein contained shall attach to and run with the land and shall bind the parties hereto and all persons claiming thereunder.

*George E. Oliver Jr.*  
*Richard J. Oliver*

State of MONTANA )  
County of YELLOWSTONE )

This instrument was acknowledged before me on August 2, 2006 (date)

by GEORGE E. OLIVER, JR. AND RICHARD L. OLIVER (names)

*Reed A*  
Notary Signature Line

(Seal)

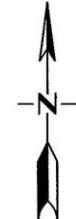
RONALD E. OLSON Notary Printed Name

Notary Public for State of MONTANA

Residing at: HELENA

My Commission Expires: MAY 31, 2010

**EXHIBIT 'A'**  
**SANITARY SEWER MAIN**  
**EASEMENT**



50 25 0 50 100  
 SCALE: 1" = 50'

TRACT 9

BLUE CREEK ACREAGE  
 TRACTS SUBDIVISION

TRACT 10

NEW SANITARY  
 SEWER MAIN EASEMENT  
 0.080 ACRES

CL NEW SANITARY  
 SEWER MAIN

STATE HWY No. FAP-416-1(3),  
 175.0'

EXISTING HWY R/W  
 175.0'

TRACT 2

BLUE CREEK ACREAGE  
 TRACTS SUBDIVISION

BRIARWOOD SEWER MAIN EXTENSION  
 WORK ORDER 04-36  
 BILLINGS MONTANA  
 SEWER MAIN EASEMENT  
 TRACT 10, BLUE CREEK ACREAGE TRACTS SUBD.  
 SEC. 28, T.1S., R.26E., PMM, YELLOWSTONE CNTY, MONTANA



An Employee-Owned Company

Engineers  
 Surveyors  
 Scientists  
 Planners  
 315 N. 25th Street  
 Suite 100  
 Billings MT 59101  
 Phone: (406) 656-6000  
 Fax: (406) 656-3432

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V:\0686160-Brianwood\ACADISURVEY\0686160-Easement-OLIVER.dwg Plotted by dschmitz on May 5/2008

DRAWN BY: DGS  
 CHKD. BY: KES  
 APPR. BY: GAP  
 DATE: 04/2008

BRIARWOOD SEWER MAIN EXTENSION  
 WORK ORDER 04-36  
 BILLINGS MONTANA

PROJECT NO.  
 0686.160

FIGURE NUMBER  
 FIG. 1

## **EXHIBIT 'B'**

### **DESCRIPTION:**

A permanent 20 foot wide sanitary sewer easement in Tract 10, Blue Creek Acreage Tracts Subdivision, in Section 28 T.1S., R.26E., P..M., Yellowstone County, Montana, where said easement runs across, adjoins or touches the aforementioned tract:

Being the Southerly 20 feet of said Tract 10 coincident with the Northerly right-of-way of State Highway No. F.A.P. 416 1(3)1, containing 0.080 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

## CITY OF BILLINGS

(hereinafter referred to as City)

### RIGHT-OF-WAY AGREEMENT

Briarwood Sewer Main Extension  
DESIGNATION

Work Order: 04-36  
MMI Project No. 0686.170-0211

Yellowstone  
COUNTY

Subdivision  
Tract 8 and 9, Blue Creek Acreage Tract  
Subdivision

Section  
28

Township  
1S

Range  
26E

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

JOHN HARVAT EGELAND  
828 BURLINGTON AVENUE  
BILLINGS, MT 59101  
256-8140

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 an easement 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.)

0.161 acres by easement	\$6,700.00
-------------------------	------------

3. OTHER COMPENSATION:

None

4. TOTAL COMPENSATION (includes all damages to the remainder): \$6,700.00

5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$6,700.00, to be made payable to JOHN HARVAT EGELAND and mailed to 828 BURLINGTON AVENUE, BILLINGS, MT 59101

6. This agreement, upon execution by an agent of the City and presentation to the Grantor 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 Grantor.

7. **New fencing to be placed on the ~~not~~ side of the easement and a metal gate placed where their access is.**

(Continued from Previous Page)

## 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 the number(s) below is/are our correct taxpayer identification number(s).

X John Harvat Egeland  
Signature: JOHN HARVAT EGELAND

5-24-06  
(Date)

516-82-6870  
Tax ID No.

Signature: \_\_\_\_\_ (Date) \_\_\_\_\_ Tax ID No.

## RECOMMENDED FOR APPROVAL:

Neil Oe  
Ronald E. Olson, Olson Land Services

05-24-06  
(Date)

## APPROVED FOR AND ON BEHALF OF DEPARTMENT:

R/W Supervisor \_\_\_\_\_ (Date)

Consultant – Morrison-Maerile, Inc.

(Date)

Acquisition Manager

(Date)

B-Egeland.200

**PERPETUAL RIGHT-OF-WAY EASEMENT**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on  
this 24th day of May, 2006, the undersigned,

JOHN HARVAT EGELAND  
828 BURLINGTON AVENUE  
BILLINGS, MT 59102

hereinafter called "Grantor(s)", hereby grant and convey unto THE CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, hereinafter called "Grantee", a perpetual easement and right-of-way over, across, under and through the following described tracts of real property in Yellowstone County Montana:

**SEE ATTACHED EXHIBIT "A" AND EXHIBIT "B"**

This Perpetual easement to Grantee is for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing sanitary sewers and/or water lines over, across, under and through the said real property, together with the right of free ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing said sanitary sewers and/or water lines and appurtenances, and adding additional sanitary sewer and/or water lines.

Grantors shall continue to have the right to use and enjoy the above-described property, except as to the rights herein granted, subject to the following restrictions:

1. Grantors and their successors agree not to construct, nor cause to be constructed, within the easement right-of-way, any type of building or structure, such as, but not limited to, houses, garages, sheds, kennels, fences, nor any other fixed objects of any kind, shape or form, except as may be licensed by Grantee.
2. Grantors agree not to plant, nor cause to be planted within the easement right-of-way any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except as may be licensed by Grantee.
3. Grantors agree that authorized representatives of the City of Billings can freely travel within the easement right-of-way with their equipment in the performance of their duties at any time, day or night, regardless of outside weather conditions.
4. Grantors agree to obtain the permission of the Public Works Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way and, in addition, in the event such permission is granted, the Grantors agree to perform any work necessary to modify the existing sanitary sewers and/or water lines and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way and all such work shall be done at the Grantor's expense and without expense to the City.
5. Grantors agree that the sole responsibility of the City of Billings for any surface restoration due to any construction, replacement, repair or service work to the sanitary sewer and/or water lines by the City of Billings, shall be limited to trench backfill compaction and placement of backfill material to existing grade by the City of Billings.

6. HOLD HARMLESS AGREEMENT:

- Grantors agree that the owner or owners of the above described property shall at all times fully relieve and save harmless the City of Billings and its authorized representatives for any and all damages of property that may be caused within said easement right-of-way, such as, but not limited to, ruts or deep tracks in lawns, gardens, or flower beds, broken or crushed shrubs, bushes, hedges, trees or any other type of plantings; crushed, cracked split or otherwise damaged, irrigation piping and appurtenances; and, any other damage to any other type of object, material or equipment located within the easement right-of-way which cannot, with a minimum of human effort and within a few minutes time period, be removed from easement right-of-way by authorized representatives of the City of Billings in exercise of any of their rights under this easement right-of-way.
- Grantors agree the owners of the above described real property shall reimburse the City of Billings for any and all damage claims paid by the City for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by such owner's failure to comply with any portion of the rights, restrictions, obligations or responsibilities contained in this agreement.

7. The restrictions, Covenants and Hold Harmless Agreements herein contained shall attach to and run with the land and shall bind the parties hereto and all persons claiming thereunder.

John Harvat Egeland

State of MONTANA )  
County of YELLOWSTONE )

This instrument was acknowledged before me on May 24, 2006 (date)

by JOHN HARVAT EGELAND

(names)



Notary Signature Line

RONALD E. OLSON Notary Printed Name

Notary Public for State of MONTANA

Residing at: HELENA

My Commission Expires: MAY 31, 2010

**EXHIBIT 'A'**  
**SANITARY SEWER MAIN**  
**EASEMENT**

TRACT  
7

BLUE CREEK ACREAGE  
TRACTS SUBDIVISION

TRACT  
8

NEW SANITARY  
SEWER MAIN EASEMENT  
0.161 ACRES

50 25 0 50 100  
SCALE: 1" = 50'

TRACT  
9

CL NEW SANITARY  
SEWER MAIN

TRACT  
1

BLUE CREEK ACREAGE  
TRACTS SUBDIVISION

STATE HWY No. FAP-416-1(3)1

EXISTING HWY R/W

TRACT  
9

CL NEW SANITARY  
SEWER MAIN

EXISTING HWY R/W

 <b>MORRISON MAIERLE, INC.</b> <i>An Employee-Owned Company</i>	Engineers Surveyors Scientists Planners  315 N. 25th Street Suite 102 Billings MT 59101  Phone: (406) 656-6000 Fax: (406) 656-3432  DRAWN BY: <u>DGS</u> CHKD. BY: <u>KES</u> APPR. BY: <u>GAP</u> DATE: <u>04/2006</u>  BILLINGS	<b>BRIARWOOD SEWER MAIN EXTENSION</b> <b>WORK ORDER 04-36</b> <b>MONTANA</b>	PROJECT NO. 0666.160
		SEWER MAIN EASEMENT TRACTS 8 & 9, BLUE CREEK ACREAGE TRACTS SUBD. SEC. 28, T.1S., R.26E., PMM, YELLOWSTONE CNTY, MONTANA	FIGURE NUMBER <b>FIG. 1</b>

V:\0666\160-Brianwood\ACAD\SURVEY\0666160-Easement-EGELAND.dwg Plotted by dschmitz on May 4/2006

## **EXHIBIT 'B'**

### **DESCRIPTION:**

A permanent 20 foot wide sanitary sewer easement in Tracts 8 and 9, Blue Creek Acreage Tracts Subdivision, in Section 28 T.1S., R.26E., P.M.M., Yellowstone County, Montana, where said easement runs across, adjoins or touches the aforementioned tract:

Being the Southerly 20 feet of said Tracts 8 and 9 coincident with the Northerly right-of-way of State Highway No. F.A.P. 416 1(3), containing 0.161 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

E

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, October 23, 2006**

---

**TITLE:** Airline Operating Permit with Pinnacle Airlines

**DEPARTMENT:** Aviation and Transit

**PRESENTED BY:** Tom Binford, A.A.E., Director of Aviation and Transit

---

**PROBLEM/ISSUE STATEMENT:** Pinnacle Airlines will be supplementing airline operations for Northwest Airlines at various times throughout the travel seasons, mostly during the times of heavy Summer traffic and the holidays when extra flights are brought in to accommodate the larger number of travelers. To ensure that specific operating requirements will be met, a Scheduled Airline Operating Permit should be entered into between the City of Billings and Pinnacle. This is a standard Operating Permit that is used for various airlines that operate occasionally for the Signatory Airlines that are based in Billings. The Operating Permit ensures that the airline follows certain operating parameters and procedures, including providing proof that the proper insurance coverage is in place.

**FINANCIAL IMPACT:** The City will benefit from the additional landing fees that will be generated by the Pinnacle operations taking place. It is difficult to estimate what the actual financial benefit might be, but it is estimated to be \$4,000 to \$5,000 annually.

**RECOMMENDATION**

Staff recommends that Council approve and the Mayor execute the Scheduled Airline Operating Permit with Pinnacle Airlines. A copy of the Operating Permit is on file with the City Clerk.

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

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

F

AGENDA ITEM:



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

---

**TITLE:** Acceptance and Approval for modification to 2006 HIDTA Award – Increase of \$75,000 for Native American Project.

**DEPARTMENT:** Police Department

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

---

**PROBLEM/ISSUE STATEMENT:** The Office of National Drug Control Policy (ONDCP) made \$500,000 available from the FY 2006 appropriation for the High Intensity Drug Trafficking Area (HIDTA) for the Native American Project. The purpose of the Project is to use intelligence driven operations to detect, deter, interdict, disrupt and/or dismantle organizations involved in drug trafficking in general or methamphetamine trafficking specifically, on tribal lands. Of the 37 HIDTA Initiatives in the Rocky Mountain HIDTA, only 2 Initiatives received Native American Project Award dollars because of their proximity to Indian Reservations: Eastern Montana Drug Task Force (of which the Billings Police Department is a member) and the SW Colorado Drug Task Force. Because of that proximity and the overlapping activity between the reservations and the Billings/Yellowstone County area, ONDCP offered these additional monies to augment our existing resources and enhance cooperative efforts with other area law enforcement entities to meet the purpose of the project as outlined above. This money is being awarded to us as a modification to the 2006 HIDTA Award. The amount of the award will increase \$75,000; from \$160,659 to \$235,659. City Council is being asked to approve the modification to the 2006 HIDTA Award in the amount of \$75,000; and when the supplemental award documents are received, the Mayor be authorized to sign.

**FINANCIAL IMPACT:** The ONDCP has increased our 2006 HIDTA award by \$75,000: \$50,000 for Overtime and \$25,000 for the Purchase of Evidence and Payment to Informants. This money will be supplemental to our 2006 HIDTA Award in the amount of \$160,659; bringing the total amount of the 2006 HIDTA Award to \$235,659. There will be no cost to the City. All expenditures are wired to the City on a quarterly reimbursement.

**RECOMMENDATION**

Staff recommends that Council approve the Native American Project supplemental award in the amount of \$75,000; bringing the total 2006 HIDTA Award to \$235,659. When the supplemental award documents are received, the Mayor be authorized to sign the documents.

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

cc:    LT. Bedford for 10/23/06 Council meeting  
Chief St. John for 10/10 Agenda Meeting  
Capt. Hinkel  
Sgt. House  
Marita Herold, City Clerk  
Review Copy  
File

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

# G

AGENDA ITEM:



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

---

**TITLE:** Approval to Receive Bids for and Sell Five (5) Used MET Transit Buses, Bus Parts, and One (1) Rebuilt Transit Bus Engine

**DEPARTMENT:** Aviation/Transit Department

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

---

**PROBLEM/ISSUE STATEMENT:** MET Transit is currently storing five used transit buses, accompanying bus parts, and a rebuilt bus engine. The five 1991 MET buses do not meet ADA requirements, and were taken out of service when new replacement buses were received in the spring of 2006. The bus parts and the rebuilt bus engine are only useable on these 1991 buses. Bus manufactures do not take trade-ins on new bus purchases as the buses are traditionally sold factory direct, subsequently no dealer network is available to handle the used buses. The bus manufacturer of the 1991 buses has since gone out of business subsequently, the parts have little value except for use on these particular buses. The MET would like to dispose of these buses and related parts prior to winter so that the MET is not required to do a winterization program on the buses to protect the engines, batteries and other fluid filled components from freezing and causing additional needed repairs before disposing of the buses. In hopes of selling the buses and parts the MET would solicit for bids by running ads in both a national publication and the local papers. The buses, the parts, and the engine may be difficult to sell as the market for these items is not particularly strong, especially since the buses do not meet ADA requirements and the manufacturer has gone out of business.

**FINANCIAL IMPACT:** Based on the sale of our used buses last year, it is estimated that the 1991 buses may sell for \$1,500 to \$2,000 each, the parts for \$2,000, and the rebuilt engine for \$1,000 with a possible total sale of \$10,500 to \$13,000.

**RECOMMENDATION**

Staff seeks Council's permission to solicit bids and finalize the sale of five used transit buses, bus parts, and one rebuilt engine.

**Approved By:** City Administrator City Attorney   
[\(Back to Consent Agenda\)](#)

H

AGENDA ITEM:



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

---

TITLE: State Grant from South Central Federation of Libraries  
DEPARTMENT: Library  
PRESENTED BY: Bill Cochran, Library Director

---

**PROBLEM/ISSUE STATEMENT:** As per the process established in the Library Interlocal Agreement, at its meeting on August 10, 2006, the Library Board of Trustees approved a subgrant in the amount of \$1,272.76 from the South Central Federation of Libraries. Since 1989, the Montana State Library has provided annual grants to the six Federations of Libraries, which subsequently provide subgrants to member libraries.

**FINANCIAL IMPACT:** This subgrant was included as both revenue and expenditure in the Library's approved FY07 budget. A total of \$750.00 will be used to fund the Library's subscription to NoveList, an online reader's advisory database, and \$522.76 will be applied against the Library's online cataloging charges from OCLC. Both of these are eligible expenditures under the state program.

**RECOMMENDATION**

Staff recommends that Council approve the subgrant.

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

**ATTACHMENTS**

- A. Plan of Services for South Central Member library grant agreement

**PLAN OF SERVICE AND BUDGET REQUEST  
FOR  
JULY 2006 THROUGH JUNE 2007**

**Name of Federation: South Central  
Member library grant agreement**

I have been provided a copy of the FY 2007 South Central Plan of Service and Budget dated **June 2, 2006**. I understand that the Federation grant of **\$1,272.76** which my library will receive from the State Library is to be used in accordance with the specifications and requirements stated within that document.

I further understand that I will provide a brief written report to the Federation Coordinator and the State Librarian on or before September 14, 2007 stating specifically how I used the funds to meet the Federation goals/programs.

I also understand via MCA 22-1-326 (3) that the money appropriated for this grant may not be used to supplant general operating funds of recipient public libraries. The Montana State Library Commission may withhold a distribution to a library that receives less support from a mill levy or local government appropriation than its average for the preceding three fiscal years if such a decrease may reasonably be linked to money received or expected to be received via this grant from the State Library.

**Name of Library: Parmly Billings Library**

**Name of Director: Bill Cochran**

**Signature of Director:** Bill Cochran

**Name of Board Chair:** Lloyd D Mickelson

**Signature of Board Chair:** Lloyd D Mickelson

**Date:** 9-15-06

**Please sign and return this agreement by September 15, 2006 to:**

**FEDERATION GRANTS  
MONTANA STATE LIBRARY  
1515 EAST 6<sup>TH</sup> AVE  
HELENA MT 59620-1800**

**Upon receipt of the signed agreement, the grant payment will be mailed to your library.**

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

## AGENDA ITEM:



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

---

**TITLE:** In-Kind Donation for Big Ditch Trail Construction  
**DEPARTMENT:** Public Works  
**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

---

**PROBLEM/ISSUE STATEMENT:** On August 14, 2006, Council awarded a contract to CMG Construction, Inc. to construct the Big Ditch Trail Phase 1. The Big Ditch Trail project will extend a multi-use path from the Shiloh Underpass west to approximately Rangeview Place. CMG Construction, Inc. and Fisher Sand & Gravel, Inc. (CMG's subcontractor who is supplying the concrete and gravel on this project) have offered to provide in-kind donation of approximately 97 linear feet of trail construction from the point where the already-funded trail construction ends near Rangeview Place west towards the trail intersection south of Larchwood Lane. This in-kind donation is worth approximately \$5,010. Council has previously accepted two donations for the Big Ditch Trail: (1) BIKENET, a local trails advocacy group, has donated the approximately \$21,000 for the CTEP required local matching funds, and (2) Bikes Belong, a Colorado-based bicycling advocacy group, donated \$5,000 for trail construction.

**FINANCIAL IMPACT:** The in-kind donation would, in effect, reduce the overall cost of building the Big Ditch Phase 2 trail segment because the Phase 1 segment would be lengthened by almost 100 linear feet.

**RECOMMENDATION**

Staff recommends that Council approve the donation of approximately \$5,010 of in-kind trail construction donation from CMG Construction, Inc and Fisher Sand & Gravel, Inc. for the Big Ditch Trail, Phase 1.

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

**ATTACHMENT**

CMG Letter (1 page)



P.O. Box 80252  
Billings, MT 59108  
(406) 655-1892

Nick Bailey  
City of Billings  
510 N Broadway - 4th Floor  
Billings, MT 59101

**RE: W.O. 05-12 – BIG DITCH MULTI-USE TRAIL**

Nick,

In an effort to help extend the Big Ditch Multi-Use Trail to the west CMG Construction, Inc. and our construction material supplier, Fisher Sand & Gravel, have teamed up to provide an in-kind contribution of \$ 5,000.00 towards the construction of this project. Based on the following items of work this will extend the concrete trail 97-lf.

Items of Work Donated:

Unclassified Excavation	= 35 cy @ \$ 18.00/cy	= \$ 630.00
10-foot Wide Concrete Trail	= 970 sf @ \$ 4.00/sf	= \$ 3,880.00
Adjust Existing Manholes	= 2 Each @ \$ 250.00/ea	<u>= \$ 500.00</u>
		= \$ 5,010.00

Both Dennis Dinardi from Fisher Sand & Gravel and myself are pleased to provide this contribution to this project. Based on this contribution we would ask that our firms be recognized on the SandStone Trail Sign that will be installed on this project.

Thank You again and we look forward to working with you on this project.

If you have any questions please call me at 655-1892.

Sincerely,

**CMG Construction, Inc.**

A handwritten signature in black ink, appearing to read "Kevin McGovern".

Kevin McGovern

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

## AGENDA ITEM:



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

---

**TITLE:** In-Kind Donation for Stewart Park Trailhead Signage Construction  
**DEPARTMENT:** Public Works  
**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

---

**PROBLEM/ISSUE STATEMENT:** On July 10, 2006, Council awarded a contract to CMG Construction, Inc. to construct the Stewart Park Trail. The Stewart Park Trail project has extended a multi-use path from the south side of Central Avenue through Stewart Park and ending at Monad Road. Land Design, Inc (the subcontractor CMG chose to fabricate and place the trailhead signage for this project) has offered to donate the trailhead signage in lieu of accepting payment for the signage under the contract. This in-kind donation is worth approximately \$3,500.

**FINANCIAL IMPACT:** The in-kind donation would decrease the cost of the project by removing the cost of the trailhead signage bid item (\$3,500).

**RECOMMENDATION**

Staff recommends that Council approve the donation of approximately \$3,500 of in-kind trailhead signage donation from Land Design, Inc.

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

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



**AGENDA ITEM:**

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

---

**TITLE:** Donation Acceptance for the Fannie Mae American Dream Fund on behalf of the Billings Partners for American Indian Homeownership

**DEPARTMENT:** Planning & Community Development Division

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

---

**PROBLEM/ISSUE STATEMENT:** The Community Development Division is requesting approval to accept a donation from the Fannie Mae American Dream Fund for \$2,500 on behalf of the Billings Partners for American Indian Homeownership (BPAIH). The grant would assist the BPAIH in providing educational opportunities promoting American Indian Homeownership.

The City provides staff support for this organization, which was initiated by the U.S. Department of Housing and Urban Development in 1998, to address the extremely low homeownership rate for American Indians in Billings.

**ALTERNATIVES ANALYZED:** Alternatives analyzed include either accepting the donation or not accepting the donation. If unable to accept the donation, the BPAIH would not be able to receive the funding which would facilitate their educational efforts.

**FINANCIAL IMPACT:** The City is not required to match the donation and the financial impact to the organization is limited to administration of payments for approved projects.

**RECOMMENDATION**

Staff recommends that the City Council accept the donation on behalf of the Billings Partners for American Indian Homeownership.

**Approved By:** City Administrator \_\_\_\_\_ **City Attorney** \_\_\_\_\_  
[\(Back to Consent Agenda\)](#)

## AGENDA ITEM:



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

---

TITLE: Donation from Friends of the Library  
DEPARTMENT: Library  
PRESENTED BY: Bill Cochran, Library Director

---

**PROBLEM/ISSUE STATEMENT:** As per the process established in the Library Interlocal Agreement, at its meeting on August 10, 2006, the Library Board of Trustees approved a request to the Board of the Friends of the Library for an activity table, a book bench and a seating unit for the Library's Children's Services area at a cost of \$3,744.99 plus shipping and handling. The Friends Board approved the request at its meeting of September 6, 2006.

**FINANCIAL IMPACT:** This donation will provide welcoming and comfortable seating and play equipment for children and their parents in the busy Children's Services area, for which no funds are available in the Library's FY07 budget.

**RECOMMENDATION**

Staff recommends that Council approve the donation of an activity table, book bench, and seating unit from the Friends of the Library.

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

**ATTACHMENTS**

**A.** City of Billings Donor Verification

*Attachment A*

CITY OF BILLINGS DONOR VERIFICATION

Department Parmy Billings Library

Please complete the information below concerning your recent donation to the City of Billings. As soon as we receive the completed verification form, your donation will be acknowledged and forwarded to the City Council for acceptance. Thank you for your generosity.

Donor: Friends of the Library

Address: 510 N. Broadway

Billings, MT 59101

Phone Number\_\_\_\_\_

Donation: Activity table, book bench and love seat

Value of Donation: \$3,744.99

Purpose of Donation: (Montana Law allows you to designate a specific purpose for which your donation will be used)

Furnishings for the Children's area in the Library.

One activity table from Constructive Playthings,

one book bench and a two person love seat from Big Cozy Books.

Please print below how you wish your name to be listed:

Friends of the Library

Donor Signature: Nancy Brues, Pres. FOL

Date: 10/4/06

I wish to remain anonymous.\*

\*If you wish to make a donation and remain anonymous, the City will attempt to keep your donation anonymous. However, the City cannot guarantee your anonymity as most financial records of the City are matters of public record and are available to the public upon request. Please check here if you wish to remain anonymous.

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J

AGENDA ITEM:



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

**TITLE:** Resolution of Intent to Dispose of a Portion of Lot 10, Block 5, O'Leary Subdivision

**DEPARTMENT:** Public Works

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

**PROBLEM/ISSUE STATEMENT:** The City of Billings owns Lot 10, Block 5, O'Leary Subdivision as shown on the attached map. Lot 10 was dedicated to the public as a "planting strip" when O'Leary Subdivision was platted in 1958. The "planting strip" was not necessary to satisfy a park dedication requirement when the subdivision was platted. The City of Billings desires to exchange a portion of this Lot 10 (approximately 2,636 square feet) with the adjoining landowner, Linde Properties LC (Dr. Brian Linde of Heights Eyecare), for a right-of-way dedication from Linde Properties LC along Lake Elmo Road (approximately 3,222 square feet). In 1996, an agreement was signed to affect this exchange, but no legal documents were prepared and filed at that time. An exchange of this nature would be considered a "disposal" of City property because the planting strip was platted and dedicated as a lot, not as a right-of-way. It is necessary under City Code section 22-900 to publish notice of intent, notify property owners within 300 feet of the property proposed for disposal, and hold a public hearing to receive public comments on the proposed disposal. This memo represents the first step in the property disposal process. The exchange can be accomplished with a plat relocating the common boundary and dedicating the right-of-way to the City and with a deed from the City to Linde Properties LC for the portion of the Lot 10 planting strip.

**ALTERNATIVES ANALYZED:**

1. Approve the Resolution of Intent to Dispose of a Portion of Lot 10, Block 5, O'Leary Subdivision and set a public hearing for November 27, 2006.
2. Do not approve the Resolution of Intent to Dispose of a Portion of Lot 10, Block 5, O'Leary Subdivision.

**FINANCIAL IMPACT:** Approving the Resolution of Intent would have no cost. The exchange of a portion of the Lot 10 planting strip for a right-of-way dedication from Tract B of CoS 606, Amended Plat of Lots 1 and 2, would also have no cost.

## **RECOMMENDATION**

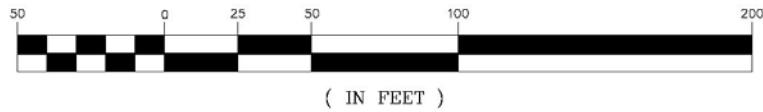
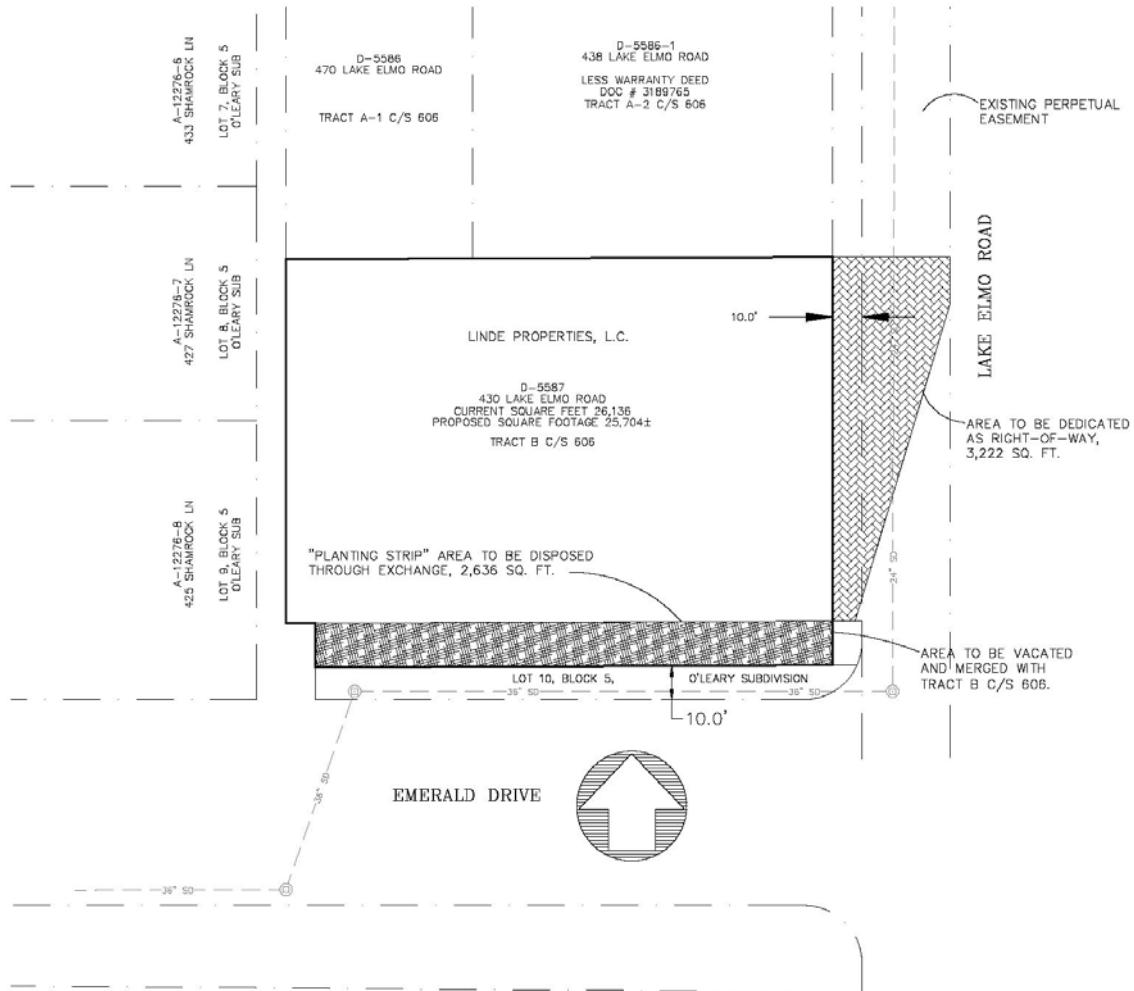
Staff recommends that Council approve the Resolution of Intent to Dispose of a Portion of Lot 10, Block 5, O'Leary Subdivision and set a public hearing for November 27, 2006.

Approved By: City Administrator        City Attorney       

## **ATTACHMENTS**

- A. Map depicting Proposed Lot 10 and Right-of-Way Boundaries (1 page)
- B. Right-of-Way Agreement dated 12/23/96 (1 page)
- C. Resolution of Intent to Dispose of a Portion of Lot 10, Block 5, O'Leary Subdivision

ATTACHMENT A  
PROPOSED LOT 10 AND RIGHT-OF-WAY BOUNDARIES



DRAFT: 10/02/06

Attachment B

**CITY OF BILLINGS**

**PUBLIC WORKS DEPARTMENT**

Project No. 96-09 Parcel No. T.B.D. County of Yellowstone  
Designation Lake Elmo Road

**RIGHT OF WAY AGREEMENT**

Parcel From Subdivision

T.B.D.

Tracts of land situated in Tract B, Amended Plat of Lots 1 & 2, Certificate of Survey No. 606, and in Lot 10, O'Leary Subdivision, Yellowstone County, Montana:

List Names & Addresses of the Grantor

Dr. Brian Linde, O.D.  
926 Main Street, Suite 18  
Billings, MT 59105

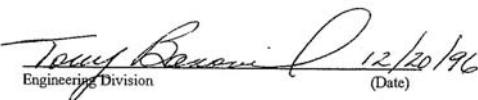
1. **IN CONSIDERATION OF THE AGREEMENTS HEREIN SET FORTH AND THE SPECIFIC AGREEMENTS TO BE PERFORMED BY BOTH PARTIES HERETO AND WRITTEN IN THIS AGREEMENT, THE PARTIES HERETO BIND THEMSELVES TO THE TERMS AND CONDITIONS SET FORTH HEREIN. NO VERBAL AGREEMENTS SHALL BE BINDING UPON EITHER PARTY AND THIS AGREEMENT SHALL BECOME EFFECTIVE UPON EXECUTION BY A DESIGNATED REPRESENTATIVE OF THE CITY OF BILLINGS.**
2. **COMPENSATION FOR LAND AND IMPROVEMENTS** (List acres and/or sq. ft. and improvements in the taking.)  
Parcel "A" Land acquired by City: Approximately 1,240 sq. ft., consisting of the east 10 feet of Tract B, Amended Plat of Lots 1 & 2, Certificate of Survey No. 606.  
Parcel "B" Land acquired by Milne: Approximately 2,812.50 sq. ft., consisting of the North 15 feet of Lot 10, O'Leary Subdivision.
3. **IT IS UNDERSTOOD AND AGREED** that the exact dimensions and area of the lands to be acquired by the City and by Milne shall be based on a right-of-way plan currently being prepared under City Work Order 96-09 by MSE-HKM.
4. **IT IS UNDERSTOOD AND AGREED** that the acquisition of Parcel "B" by Milne shall constitute full compensation for the acquisition of Parcel "A" by the City.
5. **IT IS UNDERSTOOD AND AGREED** that the final area acquired by Milne shall not be determined until such time as as-built plans are prepared defining the location of the storm drain line installed through Lot 10, O'Leary Subdivision, as constructed under City Work Order #94-11. Further, it is understood and agreed that the City will retain 10 feet of right-of-way north of the centerline of the pipe for future operations and maintenance capabilities.
6. **IT IS UNDERSTOOD AND AGREED** that upon completion of the above-referenced as-built plans and right-of-way plans that an amended Right-of-Way Agreement shall be prepared identifying the specific areas of conveyance for approval by the Billings City Council.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year as written below.

**RECOMMENDED FOR APPROVAL**

  
Brian Linde  
Linde

12/23/96  
(Date)

  
Tony Beason 12/20/96  
Engineering Division  
(Date)

RESOLUTION 06-\_\_\_\_\_

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

WHEREAS, the City of Billings finds it necessary or desirable to dispose of property it currently owns, located on Emerald Drive and described as a portion of Lot 10, Block 5, O'Leary Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file under Document #597508, recorded on February 27, 1958, in the office of the Yellowstone County Clerk and Recorder's office, and more particularly described as:

Beginning at a point, said point being the Northwest corner of Lot 10, Block 5, O'Leary Subdivision; thence N 89°46'00" E a distance of 175.70 feet; thence S 00°00'00 E a distance of 15.00 feet; thence S 89°46'00" W a distance of 175.70 feet; thence N 00°00'00" E for a distance of 15.00 feet to the Point of Beginning. Said property contains 2,636 square feet.

WHEREAS, Article 22-900 BMCC requires the city to declare its intention to dispose of such lands, giving the public the opportunity to be heard regarding such action, and setting a public hearing date, and

WHEREAS, Article 22-900 BMCC also requires that all property owners within three hundred (300) feet of the exterior boundaries of said property, be notified by mail, fifteen (15) days in advance of the time, date, place of public hearing and the existing and proposed use.

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

PUBLIC HEARING. The public hearing date has been set for November 27, 2006, at 6:30 o'clock p.m. in the Council Chambers, located on the Second Floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. The City Clerk is hereby directed to publish notice of the public hearing in The Billings Times in its regular issue on November 2nd and 9th, 2006, and to mail a copy of such notice to all property owners within the three hundred (300) foot notification area.

APPROVED AND PASSED by the City Council of the City of Billings this 23rd day of October, 2006.

## THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing MAYOR

ATTEST:

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

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# K

AGENDA ITEM:

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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, October 23, 2006

---

TITLE: Second Reading of an Ordinance Expanding Ward IV  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Candi Beaudry, AICP, Interim Director

---

**PROBLEM/ISSUE STATEMENT:** On September 25, 2006, the City Council approved the annexation of properties described as Tracts 1 and 2, Certificate of Survey 2054 and Cynthia Park, a County park, totaling 64.714 acres. (Annexation #06-13). The petition for annexation was submitted by Krutzfeldt Ranch, LLC, owner of property, on behalf of Blue Diamond Ranch, LLC. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward IV was held on October 10, 2006. The second reading of the ordinance is scheduled for Council action on October 23, 2006.

**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 property to City Ward IV.

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

### **ATTACHMENT**

**A. Ward Ordinance and Exhibit A**

**ORDINANCE NO. 06-\_\_\_\_\_**

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

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

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

Tracts of land situated in the N1/2 of Section 32, the NE1/4 of Section 31, the SE1/4 of Section 30 and the SW1/4 of Section 29, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: Tracts 1 and 2 of Certificate of Survey 2054, Recorded March 2, 1981, Under Document No. 1191101, Records of Yellowstone County, Montana; Cynthia Park of Yerger Heights Subdivision, Recorded December 27, 1956, Under Document No. 575291, Records of Yellowstone County, Montana; including all adjacent right-of-way of Rimrock Road, 54th Street West, 50th Street West and Cynthia Park Drive. Containing 68.128 gross and 64.714 net acres.

(# 06-13) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 10<sup>th</sup> day of October, 2006.

PASSED by the City Council on the second reading this 23<sup>rd</sup> day of October, 2006.

THE CITY OF BILLINGS:

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Ron Tussing, MAYOR

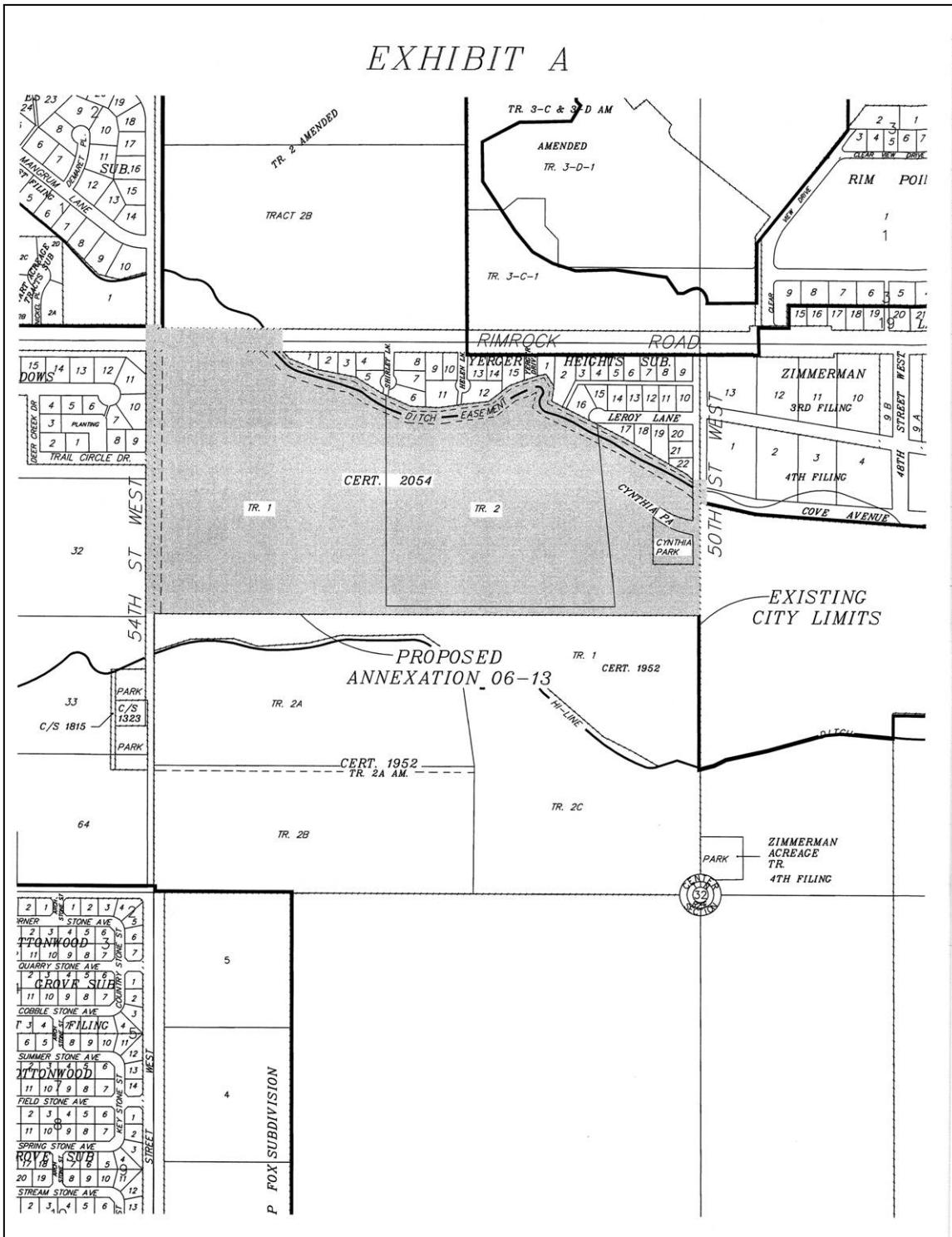
ATTEST:

BY:

---

Marita Herold, CMC/AAE CITY CLERK

*EXHIBIT A*



(Back to Consent Agenda)



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

---

**TITLE:** Request for Approval of Exempt Plat in Rehberg Ranch Estates Subdivision

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** David Green, Planner I

---

**PROBLEM/ISSUE STATEMENT:** On September 14, 2006, Kenmark Construction submitted an exempt plat for Rehberg Ranch Estates Subdivision, to relocate a common boundary line which affects Lot 38-A and 39-A Block 5 of Rehberg Ranch Subdivision, Second Filing, and land within an existing park. The option to relocate a common boundary through the process of an exempt plat is allowed pursuant to Section (76-3-207(1)(d),MCA). The two (2) lots combined contain approximately 32,533 square feet (.75 acres) of land for residential development. The common boundary line readjustment does not change the square footage of the park. Since this adjustment affects city parkland, the city is required to sign the exempt plat. The proposed common boundary line adjustment is located on the southwest corner of Ironhorse Trail and Gram's Court. The owner is Kenmark Construction and the representing agent is Engineering Inc.

The owner is requesting the common boundary line readjustment to create a larger lot to construct a residence. The Parks Department has reviewed the proposed common boundary line adjustment and finds that it is acceptable, as the acreage remains the same.

**RECOMMENDATION**

Staff recommends Council approve the common boundary line adjustment on Lot 38-A and 39-A Block 5 of Rehberg Ranch Subdivision, Second Filing. Upon approval the mayor's signature is required on the plat.

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

**ATTACHMENT**

A: Parks, Recreation and Public lands memo

B: Engineering Inc memo

**ATTACHMENT A**  
Parks, Recreation and Public lands memo



**CITY OF BILLINGS**

DEPARTMENT OF PARKS, RECREATION & PUBLIC LANDS  
390 N 23RD STREET  
BILLINGS, MONTANA 59101  
Mark L. Jarvis, Park Planner  
(406) 657-8367  
FAX: (406) 247-8641  
[jarvism@ci.billings.mt.us](mailto:jarvism@ci.billings.mt.us)



**MEMORANDUM**

Date: October 5, 2006

To: Dave Green, Planner  
City/County Planning  
510 N. Broadway

Subject: Rehberg Ranch Lot Line Adjustment

c.c. Gene Blackwell, Interim Director, File

After review of the plat for Rehberg Ranch and the proposed property line adjustment, we do not have any concerns with making this change.

**ATTACHMENT B**  
Engineering Inc memo



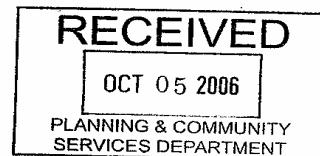
**ENGINEERING, INC.**  
Consulting Engineers and Land Surveyors

Re: AMENDED PLAT OF LOTS 38, 39 AND PARK IN BLOCK 5 OF  
REHBERG RANCH ESTATES SUBDIVISION, SECOND FILING

This Amended Plat increases the original area of Lot 38 by subtracting 909 square feet from the adjacent Public Park.

At the same time, 909 square feet is removed from Lot 39 and added to the same Public Park.

The result is that the original park area remains unchanged at 182,742 square feet.



00102.40

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1300 North TransTech Way • Billings, Montana 59102 • Phone (406) 656-5255 • Fax (406) 656-0967  
www.enginc.com

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# M

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, October 23, 2006

---

TITLE: Unnamed Certificate of Survey for Agricultural Purposes  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Aura Lindstrand, Planner II

---

**PROBLEM/ISSUE STATEMENT:** On September 19, 2006, Kenmark Construction submitted an unnamed Certificate of Survey located in the NE1/4SE1/4, Section 32, Township 1N, Range 25 East, which is being proposed for an agricultural exemption. The subject property is located west of 46<sup>th</sup> Street West, south of Rimrock Road, adjacent to the south of Zimmerman Acreage Tracts Subdivision, 3<sup>rd</sup> Filing.

**ALTERNATIVES ANALYZED:** Pursuant to Section 73-3-101, MCA, certain divisions of land, which would otherwise constitute a subdivision, are exempt from local subdivision review, provided that they meet the criteria of the exemption being requested. In this case, an agricultural exemption is being requested in order to create two parcels of land. Section 76-3-207(1)(c), MCA, specifies the purpose of an agricultural exemption is to allow a landowner to create a parcel that will only be utilized for agricultural livestock production or for agricultural crops, where no residential, commercial, or industrial buildings will be constructed. This section further states that an agreement shall be entered between the property owner and the governing body.

**FINANCIAL IMPACT:** The financial impact cannot be determined. Should the parcel remain as agricultural land the tax revenue for the city would not be as great as the proposed major residential subdivision.

**RECOMMENDATION**

Pursuant to Section 76-3-207(1)(c), staff recommends that the City Council approve the exempt plat for agricultural purposes.

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

## **INTRODUCTION**

On September 19, 2006, Kenmark Construction submitted an unnamed Certificate of Survey located in the NE1/4SE1/4, Section 32, Township 1N, Range 25 East, which is being proposed for an agricultural exemption. The subject property is located west of 46<sup>th</sup> Street West, south of Rimrock Road, adjacent to the south of Zimmerman Acreage Tracts Subdivision, 3<sup>rd</sup> Filing.

## **BACKGROUND**

Pursuant to Section 73-3-101, MCA, certain divisions of land, which would otherwise constitute a subdivision, are exempt from local subdivision review, provided that they meet the criteria of the exemption being requested. In this case, an agricultural exemption is being requested in order to create two parcels of land; one containing 62.68 acres and one containing 69.59 acres. The southern parcel is a remainder (69.59 acres) located within the county and is not subject to review of the exempt plat. However, the northern parcel (62.68 acres) was annexed in 2005, and is proposed for the agricultural exemption. Section 76-3-207(1)(c), MCA, specifies the purpose of an agricultural exemption is to allow a landowner to create a parcel that will only be utilized for agricultural livestock production or for agricultural crops, where no residential, commercial, or industrial buildings will be constructed. This section further states that an agreement shall be entered between the property owner and the governing body. Therefore, this plat is being presented to the Council for signature of the Declaration of Agricultural Covenant that accompanies the exempt plat. In order to lift the Agricultural Covenant, 76-3-207(2)(b), a change in use of the land exempted for anything other than agricultural purposes subjects the parcel to full review as a subdivision. The northern portion of the subject property is currently under a major subdivision review and, if approved, the subdivision will lift the agricultural restriction upon final plat recordation.

While typically agricultural uses are not permitted within the city, this property has historically been utilized for agricultural crop production, even as recently as last year. Therefore, the use can continue within the Residential 9600 (R-9600) zoning district in accordance with Section 27-403, BMCC, which states that if "a lawful use of land exists that is no longer permissible under the terms of the ordinance, such use may be continued, so long as it remains otherwise lawful."

## **RECOMMENDATION**

Pursuant to Section 76-3-207(1)(c), staff recommends that the City Council approve the exempt plat for agricultural purposes.

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

N

AGENDA ITEM:



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

---

TITLE: Final Plat of Chrysalis Acres Subdivision  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: David Green, Planner I

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**PROBLEM/ISSUE STATEMENT:** The final plat of Chrysalis Acres Subdivision is being presented to the City Council for approval. On July 24, 2006, the City Council conditionally approved the 2-lot subsequent minor plat on 14,003 square feet (.32 acres) for residential development. The subject property is zoned Residential 7000 (R-7000) and is located on the west side of Monarch Street between Cecropia Avenue (north) and Bruce Avenue (south). The owner and representing agent is Community Leadership Development Inc. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

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

**RECOMMENDATION**

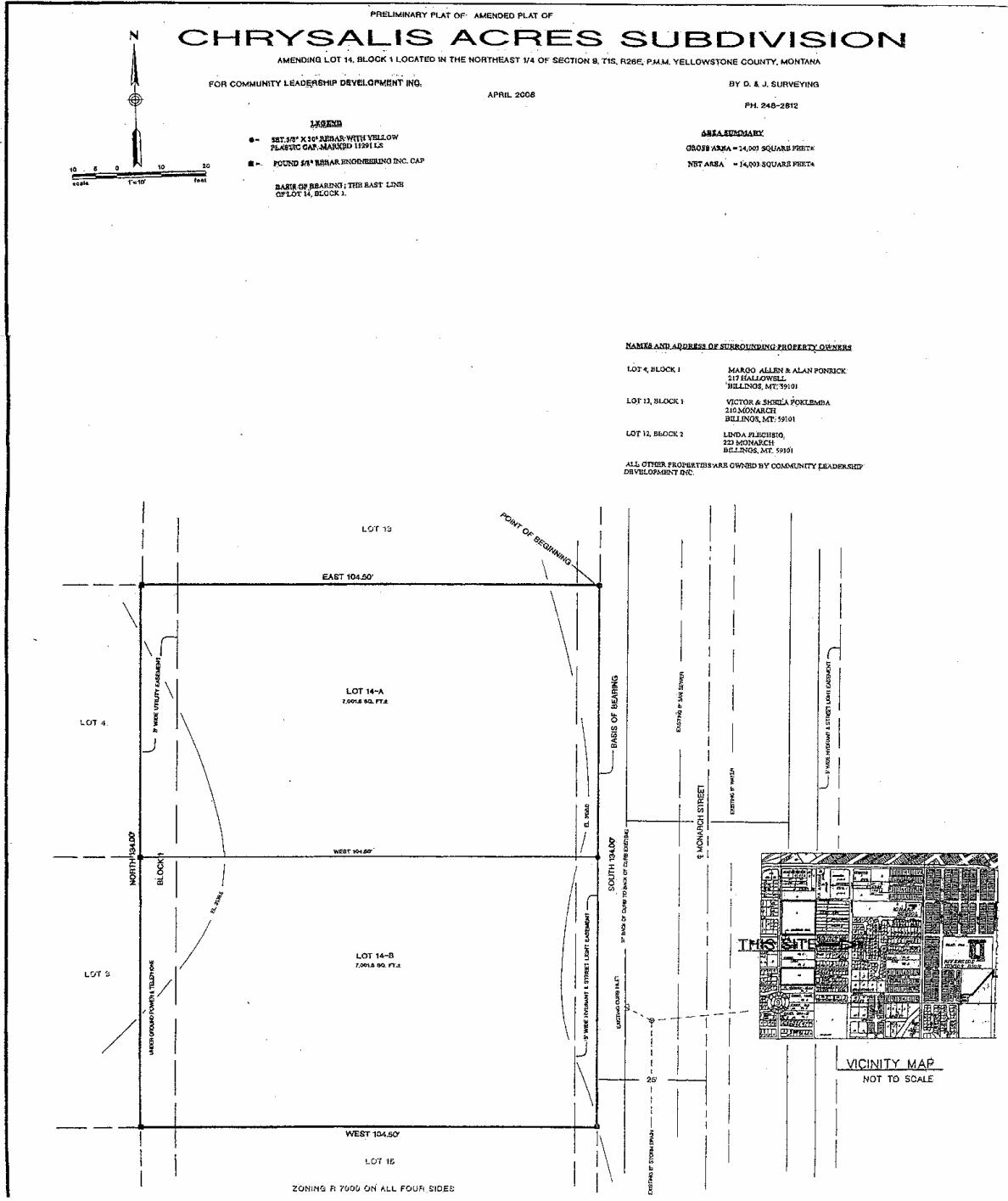
Staff recommends that the City Council approve the final plat of Chrysalis Acres Subdivision.

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

**ATTACHMENT**

A:      Final Plat

**ATTACHMENT A**  
Final Plat



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

O

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, October 23, 2006**

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**TITLE:** Final Plat of Greer Subdivision

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Juliet Spalding, Planner II

---

**PROBLEM/ISSUE STATEMENT:** The final plat of Greer Subdivision is being presented to the City Council for approval. On March 13, 2006, the City Council conditionally approved the 2-lot preliminary minor plat of .91 acres for commercial use. The subject property is zoned Community Commercial and is located at the corner of Lake Elmo Road and the Hilltop Road ramp. The owner is Robert Greer and the agent is Engineering, Inc. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

A:      Final Plat

**ATTACHMENT A**  
Final Plat

(Back to Consent Agenda)

# P1

AGENDA ITEM:

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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, October 23, 2006

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**TITLE:** Payment of Claims

**DEPARTMENT:** Administration – Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,463,245.47 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 22, 2006, is on file in the Finance Department.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

**Approved By:** City Administrator  City Attorney

### **ATTACHMENT:**

A -- List of claims greater than \$2500 (on file in City Clerk's office)

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P2

AGENDA ITEM:



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

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TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$3,688,544.18 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 29, 2006, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

Approved By:      City Administrator             City Attorney       

**ATTACHMENT:**

A -- List of claims greater than \$2500 (on file in City Clerk's office)

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

# P3



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, October 23, 2006

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**SUBJECT:** Payment of Claims

**DEPARTMENT:** Municipal Court

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$319,976.82 have been audited and are presented for your approval for payment. A complete listing of the claims dated August 1, 2006 to August 31, 2006 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

**Approved By:** City Administrator  City Attorney

### **ATTACHMENTS**

A – Check register 08/01/2006 – 08/31/2006 (On file in City Clerk's office)

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



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, October 23, 2006

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**SUBJECT:** Payment of Claims

**DEPARTMENT:** Municipal Court

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$177,326.83 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 1, 2006 to September 30, 2006 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

**Approved By:** City Administrator        City Attorney       

### **ATTACHMENTS**

A – Check register 09/01/2006 – 09/30/2006 (On file in City Clerk's office)

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

## AGENDA ITEM:



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

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**TITLE:** Public Hearing for Special Review #829

**DEPARTMENT:** Planning & Community Services

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

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**PROBLEM/ISSUE STATEMENT:** This is a Special Review to locate an all beverage liquor license with gaming in a Community Commercial zone, Lot 6D, Block 2 of Circle Fifty Subdivision. The subject property is located at 3839 Grand Avenue and is 1.04 acres. The owner Grand Plaza, LLC, and Tom Pulley and Dan Pendergrass are the agents. The Zoning Commission conducted a public hearing on October 3, 2006, and is forwarding no recommendation to the City Council on a 2-2 vote on the motion to recommend approval.

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

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

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

**RECOMMENDATION**

The Zoning Commission is forwarding no recommendation to the City Council on a 2-2 vote on the motion to recommend approval of Special Review #829.

**Approved By:** City Administrator City Attorney

**ATTACHMENTS**

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

## INTRODUCTION

This is a request for a special review to locate an all beverage liquor license with gaming for a proposed Silver City Casino in a multi-tenant building on Lot 6D, Block 2 of Circle Fifty Subdivision located at 3839 Grand Avenue. The property is zoned Community Commercial and on-premise consumption of alcoholic beverages and gaming can be allowed only by special review approval. The Circle Fifty Subdivision and Hancock Grand Subdivision to the east are a mixture of commercial, professional office space, retail, multi-family residential, assisted living facilities as well as single and two-family residential dwellings. The Silver City Casino is proposed to be 2,000 square feet within a proposed multi-tenant building on the 1+ acre parcel located at 3839 Grand Avenue. The proposed facility will be primarily a casino with limited food service available. There is a proposed restaurant in another tenant space in the proposed building.

## **PROCEDURAL HISTORY**

- A special review application to allow an all beverage liquor license with gaming was received on September 5, 2006.
- The City Zoning Commission held a public hearing on October 3, 2006, and is forwarding no recommendation to the City Council on a 2-2 on a motion to recommend approval of this special review request.
- The City Council will conduct a public hearing and consider this application on October 23, 2006.

## BACKGROUND

This property is surrounded by a mix of undeveloped property and new commercial uses. The Red Door nightclub and the new Atlantis Casino are located on property directly west of the subject property. To the north is a mixed density neighborhood with few vacant lots remaining. Grand Avenue hosts eight (8) casino or gaming establishments in the two mile segment between 24<sup>th</sup> Street West and Shiloh Road. There are no schools, churches, or play grounds with equipment within 600 feet of the proposed location.

The Planning Department reviewed this application and recommended denial to the Zoning Commission. Before a recommendation of approval or conditional approval can be made each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it is within one of the six primary commercial or industrial zoning districts where on-premise consumption of alcoholic beverages and gaming may be allowed by special review approval. The form of the application is correct and the proposed development of the property for the multi-tenant building appears to conform to site development standards. More detailed landscaping and parking plans are normally reviewed at the time of building permit submittal.

The application does not conform to the second and third criteria. The second criterion requires the application to be consistent with the purposes of the zoning regulations and the adopted growth

policy. The zoning regulations adopted by the City Council have designated six zoning districts where on-premise consumption of alcoholic beverages and gaming may be allowed. The existing eight (8) casinos on Grand Avenue between 24<sup>th</sup> Street West and Shiloh Road are all located within Community Commercial zoning districts. Grand Avenue has become known for its concentration of casinos. The existing eight (8) casinos have been approved over a period of 17 years from 1987 to 2004. Two existing casinos, The Red Door and the Atlantis, are located directly west of the subject property and two additional casinos, The Lucky Star Casino and the Samurai Garden Casino, are located closer to the intersection with Shiloh Road. Community Commercial zoning districts are *“intended primarily to accommodate community retail, service and office facilities offering a greater variety than would normally be found in a neighborhood or convenience retail development.”* The proliferation of casinos within the Community Commercial zoning district in the Circle Fifty Subdivision is contrary to the intended purpose of the district and does not meet the second review criterion for special review requests. Concentrating and encouraging additional casinos within this area of Grand Avenue is not in harmony with goals of the 2003 Growth Policy specifically the goal of encouraging new developments that are sensitive to and compatible with the character of the adjacent neighborhoods. This goal can be achieved by providing a mixture of uses at the Grand Avenue and Shiloh Road intersections without allowing one business type to dominate.

The third review criterion requires the proposed use to be compatible with surrounding uses. While the use is identical to four other casinos in the area, it is not necessarily compatible with the residential neighborhood to the north. This commercial node currently supports two banks, two gasoline stations with convenience stores, a veterinary clinic, a package liquor store, a fast food restaurant, an auto repair service and four casinos. An additional casino at this location is not necessary and is incompatible with the surrounding land uses. The Zoning Commission conducted the public hearing and voted 2-2 on a motion to recommend approval to the City Council.

## **ALTERNATIVES ANALYSIS**

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

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

*This application does comply with the requirements of the zoning regulations.*

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

This application is not consistent with the purposes of Chapter 27 and the 2003 Growth Policy. The application does not encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood.

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

*The proposed use is not compatible with purposes of the Community Commercial zoning district and the adjoining land uses and no conditions of approval are recommended.*

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

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

Based on the above criteria, the Zoning Commission is forwarding no recommendation to the City Council on a 2-2 vote on the motion to recommend approval of Special Review #829.

### **CONDITIONS OF APPROVAL**

None

### **STAKEHOLDERS**

The public hearing was held on October 3, 2006, before the City Zoning Commission. Charles B. Goldy, Jr., Rob Veltkamp, Dan Pendergrass were present at the hearing as agents for the property owner and explained the proposal to the Zoning Commission. There were no surrounding property owners who attended or testified before the Zoning Commission. No letters of opposition were received. Two letters in favor of the proposal were presented to the Zoning Commission: one from Michael Stock, a prospective buyer of the property from Grand Plaza, LLC and one from Remy Roma, a real estate agent for Dan Pendergrass.

Mr. Goldy explained that he prepared the initial site plan and building proposal for the multi-tenant structure. He explained that he should have advised Mr. Pendergrass to include the proposed restaurant area as part of his special review application. The Silver City Casino is not proposed as a stand alone bar or tavern, but is proposed to fit in with the other tenant spaces in the building. The casino will not be like the Red Door or the Atlantis. The proposed casino will be a good neighbor. Mr. Goldy explained that in Las Vegas, casinos are grouped together rather than scattered on every street corner because they are more economically viable in a grouping. An all-beverage liquor license now costs about \$800,000 to purchase in the Billings area. It makes economic sense for a bar and restaurant but neither one could afford the cost alone.

Rob Veltkamp, a commercial real estate agent, explained the proposed build out of this area of Circle Fifty Subdivision. He stated that lot 6B north of proposed site is owned by Kenmark Construction and is proposed for a 9,000 square foot office building. Lot 6C and Lots 9, 10 & 11 are proposed for a new athletic club and is owned by the Billings Racquet Club. Lots 7 & 8 to the east is preparing for construction of a new branch of Rocky Mountain bank. All of the lots surrounding the proposed location of the Silver City Casino will have a variety of other uses. The proposed multi-tenant building for Lot 6D will be about 10,000 square feet. A Chinese restaurant will be an anchor tenant and take up about 3,500 square feet. The proposed Silver City Casino will be next door and be 2,000 square feet. In the future, the restaurant may "share" the on-

premise liquor license and offer restaurant goers beer, wine or mixed drinks with meals. The remaining 4,500 square feet will be for two or three retail tenants. Mr. Veltkamp presented the letter of support from Michael Stock, a prospective buyer of the property.

Dan Pendergrass, agent and owner of the on-premise liquor license proposed for this location, explained the project to the Zoning Commission. Mr. Pendergrass now owns and runs the Traxx Bar & Grill in the former Beanery Restaurant next to The Depot on Montana Avenue. He explained how the current location does not make economic sense. The “per plate” cost of running the kitchen is not economically viable. He cannot increase the size of the kitchen to increase the menu variety or serve all of the potential patrons. He has been looking for a new location for his on-premise liquor license for about one year. The restrictions imposed by the Department of Revenue in addition to the local zoning regulations have made this a difficult task. Mr. Pendergrass stated there are 19 gaming establishments on Grand Avenue from 8<sup>th</sup> Street West to 24<sup>th</sup> Street West, but only eight gaming establishments west of 24<sup>th</sup> Street West to Shiloh Road. He explained that although his establishment will offer gaming, it is only the second all beverage liquor license in this area near Shiloh Road. He expects to reach an agreement in the future to allow alcoholic beverage service in the proposed new restaurant adjacent to the casino. Mr. Pendergrass read into the record a letter of support from Ms. Remy Roma, a real estate agent and casino owner in Billings. Mr. Pendergrass stated his business will have a variety of other uses around the site and will not impact the adjacent neighborhood north of Avenue B.

The Zoning Commission asked questions of the applicant and agent. Mr. Mike Boyett, Zoning Commission member, stated he was concerned the commission might be setting a precedent by accepting the staff’s recommendation of denial. He was concerned that businesses should know in advance if the city was placing a limitation on the number of casinos that could be in one particular area. He stated this issue has not been a previous concern expressed by Planning staff or the City Council. He stated the proposed casino will not be a stand alone bar and that it would be surrounding by a variety of other uses as explained by the agents for the applicant. Mr. Ed Workman, Vice Chair of the Zoning Commission, stated the proposed uses seemed to fit into the multi-tenant building and would compliment the other proposed uses on the lots north and east of the site. He stated the application was for a casino but it will not be a stand alone business similar to the Red Door or the Atlantis. Mr. Leonard Dailey, Zoning Commission member, stated he agreed with the staff recommendation. He agreed that an additional liquor license with gaming in this area of Grand Avenue would not contribute to the variety of uses in the area. He understood the need expressed by the agents but could not vote in favor of the application. Mr. Tom Grimm, Zoning Commission member, stated he agreed with the staff recommendation.

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

In addition to the above discussion in the Alternatives Analysis section, this application does not conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.

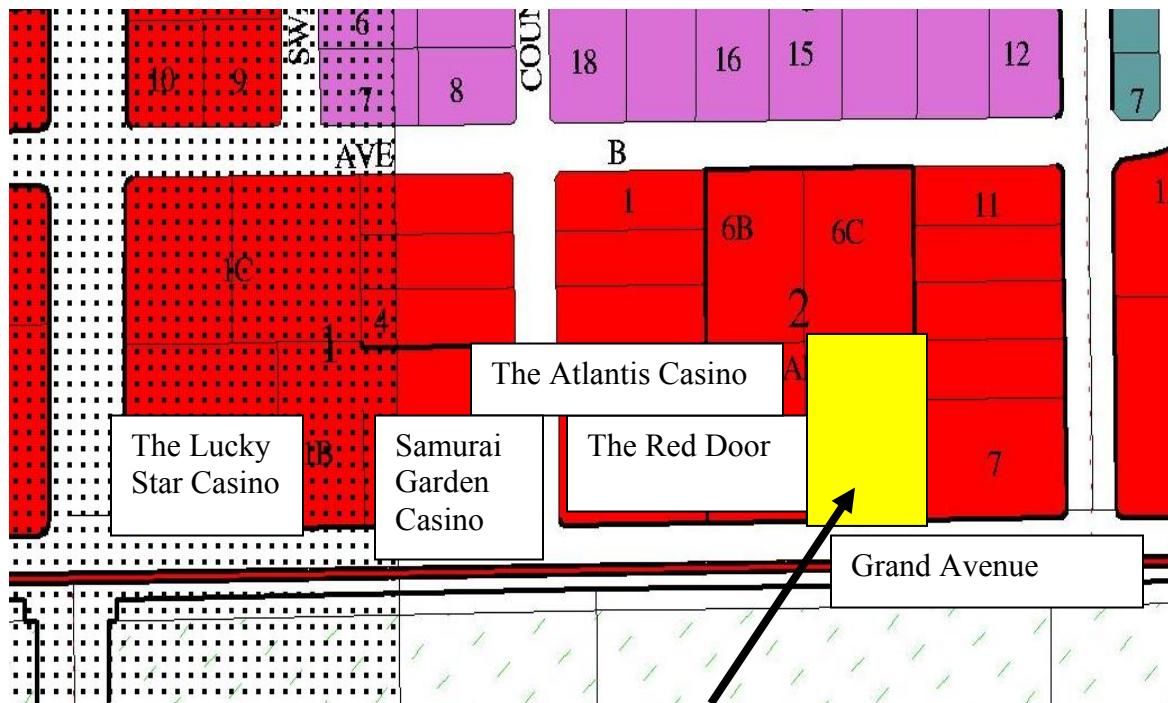
## **RECOMMENDATION**

The Zoning Commission is forwarding no recommendation to the City Council on a 2-2 vote on the motion to recommend approval of Special Review #829.

## **ATTACHMENTS**

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

**ATTACHMENT A**  
Zoning Map – Special Review #829



3839 Grand Avenue – Subject Property

**ATTACHMENT B**  
**Site photographs –Special Review #829**

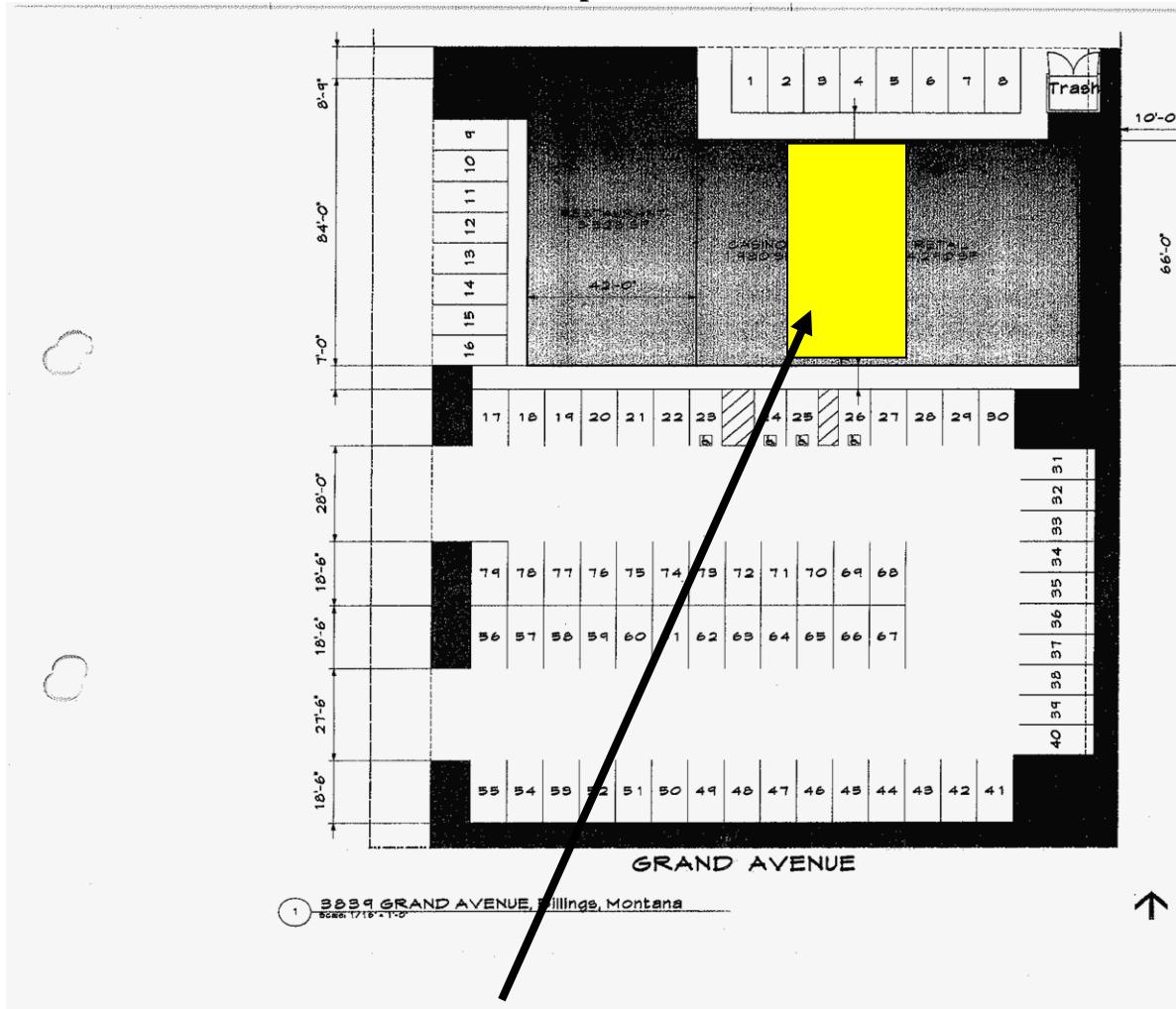


Subject property at 3839 Grand Avenue



View west from subject property – The Red Door parking lot

**ATTACHMENT C**  
**Site Plan Special Review #829**



Proposed Silver City Casino, 2,000 square feet, 3839 Grand Avenue

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

# 3

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, October 23, 2006

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**TITLE:** Public Hearing & Site Development Ordinance Variance #OP06-02

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** The developers of an affordable housing project at the southeast corner of 8<sup>th</sup> Avenue South and South 28<sup>th</sup> Street, homeWORD, Inc. of Missoula, have applied for a variance from Section 6-1203 BMCC to reduce the amount of off-street parking required with the project from 28 spaces to 20 spaces.

#### ALTERNATIVES ANALYZED:

1. Approve the variance.
2. Approve the variance with conditions
3. Do not approve the variance.

**FINANCIAL IMPACT:** There is no direct financial impact to the City. Advertising costs for the public hearing are offset by the variance application fee.

#### **RECOMMENDATION**

Staff recommends that Council conditionally approve the variance subject to the conditions outlined in the staff report.

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

#### ATTACHMENTS

- A. Proposed Site Sketch (1 page)
- B. Letter from Developer (1 page)

## **INTRODUCTION**

HomeWORD, Inc. of Missoula is proposing an affordable housing development at the intersection of 8<sup>th</sup> Avenue South and South 28<sup>th</sup> Street. The developer is seeking a reduction in the minimum required number of off-street parking spaces from 28 spaces as required by Section 12-603(j) of the City's Site Development Ordinance, to 20 spaces.

## **BACKGROUND**

HomeWORD of Missoula is proposing a multi-family housing complex with 20 living units, located near South Park at the southeast corner of 8<sup>th</sup> Avenue South & South 28<sup>th</sup> Street. The complex would include two 4-bedroom units, four 3-bedroom units, nine 2-bedroom units, and five 1-bedroom units. The design and location of the project is intended to provide affordable housing that encourages the use of alternative transportation modes (bike, pedestrian and transit).

Billings establishes minimum off-street parking requirements for new development under the Site Development Ordinance. Off-street parking requirements for multi-family residential are based on one space for 1-bedroom units, and 1.5 spaces per unit for 2 or more bedroom units. Fractional spaces are rounded up to the next full space.

Interstate Engineering, Inc. prepared a report for the homeWORD project that shows based on census data, that auto ownership rates are significantly less on Billings south side than in other areas in Billings. Typical auto ownership rates based on year 2000 Census data are:

	Percent of Households			
	South Side	Heights	North Park	West End
No Vehicles	25%	3%	3%	1%
1 vehicle	<b>43%</b>	18%	30%	10%
2 vehicles	25%	52%	39%	57%
3+ vehicles	6%	26%	27%	33%

HomeWORD has incorporated transit programs and auto ownership restrictions into similar projects in Missoula. Currently in Missoula, each homeWORD resident is given an annual bus pass through a partnership between Mountain Lines, Missoula in Motion and homeWORD. HomeWORD is discussing available pass programs and costs with MET Transit. MET routes 10D and 19D pass directly by the site on south 28<sup>th</sup> Street. Although homeWORD's desire is to provide free bus service to all residents of the complex (including children), the details of funding such a program have not been worked out.

HomeWORD also has experience incorporating auto ownership restrictions into tenant leases. This can take the form of restricting ownership to one vehicle per unit, or establishing some units as "Bike/Ped" units. To qualify for "Bike/Ped" units a resident cannot own a vehicle.

## **ALTERNATIVES ANALYSIS**

1. Approve the variance. One option is to approve the variance without any restrictions. If ownership of the property changes in the future, there would be no guarantee that bus pass programs or lease restrictions on auto ownership would continue.
2. Approve the variance with conditions. Conditional approval would help insure that the rental management policies that allow the development to work with reduced off-street parking would continue into the future regardless of ownership of the complex. Limiting auto ownership to 20 vehicles for the entire complex would provide more management flexibility than limiting ownership to one vehicle per unit.
3. Do not approve the variance. Denying this variance will require substantial redesign of the site. The required parking could not be provided on site without going to a taller multi-story apartment complex, or reducing the number of units. The City Council previously granted conditional approval of a special review for the project in February 2006, allowing development of 20 multi-family living units on the property in the current configuration.

**CONDITIONS OF APPROVAL:** To insure that the reduction in required off-street parking has minimal impact on the surrounding neighborhood, staff recommends approval of the variance be subject to the following conditions:

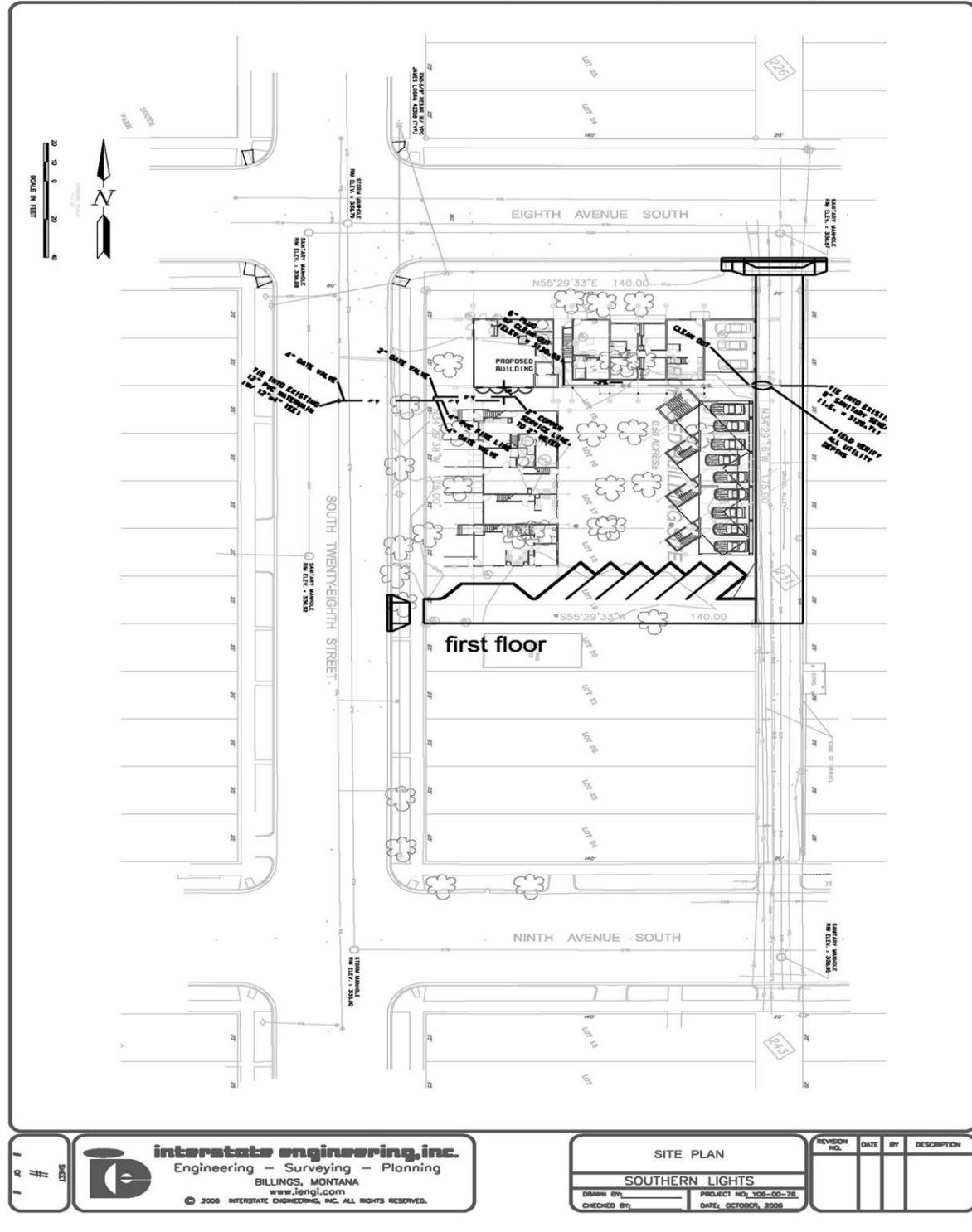
- a. The reduction in required parking is only applicable to development of the property with a maximum of 20 rental dwelling units, in substantial conformance with the preliminary site plan submitted with the variance application.
- b. The aggregate number of automobiles owned by all tenants in the development shall be limited to no more than 20 vehicles by appropriate restrictions in the lease or rental agreements for individual living units.
- c. Each living unit shall be furnished at least one MET Transit monthly pass (unlimited ridership for one individual) included as part of the base monthly rental fee charged for the unit.

## **RECOMMENDATION**

Staff recommends that Council conditionally approve the variance subject to the conditions outlined in the staff report.

## **ATTACHMENTS**

- A. Proposed Site Sketch (1 page)
- B. Letter from Developer (1 page)



SITE PLAN	
SOUTHERN LIGHTS	
DRAWN BY:	PROJECT NO. Y06-00-78
CHECKED BY:	DATE: OCTOBER, 2006

Attachment 1B



homeWORD

[www.homeWORD.org](http://www.homeWORD.org)



PHONE 406.545.3550  
FAX 406.721.4584  
127 N. HIGGINS #307  
MISSOULA MT 59802



PHONE 406.256.0298  
FAX 406.256.7132  
2722 3rd AVE N. #3B  
BILLINGS MT 59101



September 11, 2006

Kim Olsen  
208 N. Broadway, Suite 350  
Billings, MT 59101

RE: Parking Reduction

To Kim,

It is homeWORD's intent and mission to provide free bus service for all residents, including children, of the Southern Lights development. homeWORD is a leader in the affordable housing field, developing innovative approaches that mesh affordability with sustainable and holistic methods. This program embodies homeWORD's values by providing residents with easy and inexpensive transportation for their day-to-day traveling, while reducing on-site parking demands. Montanans spend an average of \$7,532 annually to own and operate a car. By providing residents an alternative means of commuting, homeWORD is offering its residents the opportunity for financial empowerment and savings.

homeWORD has prior success with the implementation of resident bus programs. Currently in Missoula, each homeWORD resident is given an annual EZ Pass. This is attainable through an invested partnership between Mountain Line, Missoula in Motion, and homeWORD. In Billings, homeWORD will collaborate with Met Transit to ensure that this is plausible for its Southern Light's residents. homeWORD will look for funding for a similar program in Billings, but will incorporate this into the Southern Lights operating budget regardless.



To help ensure a parking reduction, homeWORD is willing to incorporate parking restrictions into resident leases. A percentage of units may be held for bike/pedestrian residents, called "Bike/Ped units". To qualify for these units, a potential resident needs to not own a vehicle. Units may also be restricted to one vehicle per unit as we have done successfully on our previous developments.

If you have any questions, please feel free to call me at 543-3550.

Sincerely,

Heather McMillan,  
homeWORD Housing Development Manager



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

**AGENDA ITEM:**

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

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**TITLE:** Public Hearing and Resolution for Vacation of Portions of Zimmerman Trail and Lyman Avenue abutting Lot 6, Scott Subdivision

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** The City of Billings recently platted Arlene Subdivision out of the parcels purchased for Zimmerman Trail just south of Poly Drive. The subdivision plat dedicated the necessary right of way for Zimmerman Trail and split the remaining land into three developable parcels. The final plat was approved at the June 26, 2006, City Council Meeting. The City purchased the land for \$0.82 per square foot. The city has offered to sell the parcels and any unnecessary right of way to adjacent land owners at the same price the land was purchased (\$0.82 per square foot). The city vacated portions of Zimmerman Trail abutting Lots 1, 2, and 4, Scott Subdivision at the August 14, 2006, City Council Meeting. The property owner of Lot 6, Scott Subdivision, has requested to vacate a portion of Zimmerman Trail and Lyman Avenue abutting Lot 6, Scott Subdivision. This will put the property back on the tax rolls and relieve the city of its maintenance. On September 25, 2006, City Council Meeting, Council acknowledged receipt of petition and set a public hearing for October 23, 2006.

**ALTERNATIVES ANALYZED:**

- After holding a public hearing approve the vacation of the above-mentioned right-of-way.
- Do not approve the vacation of the right-of-way.

**FINANCIAL IMPACT:** The property owners of Lot 6, Ronald Sanchez and Traci Albright, are proposing to purchase 7,655 sf of right of way for \$6,277.10.

**RECOMMENDATION**

Staff recommends that Council approve the vacation of portions of Zimmerman Trail and Lyman Avenue abutting Lot 6, Scott Subdivision.

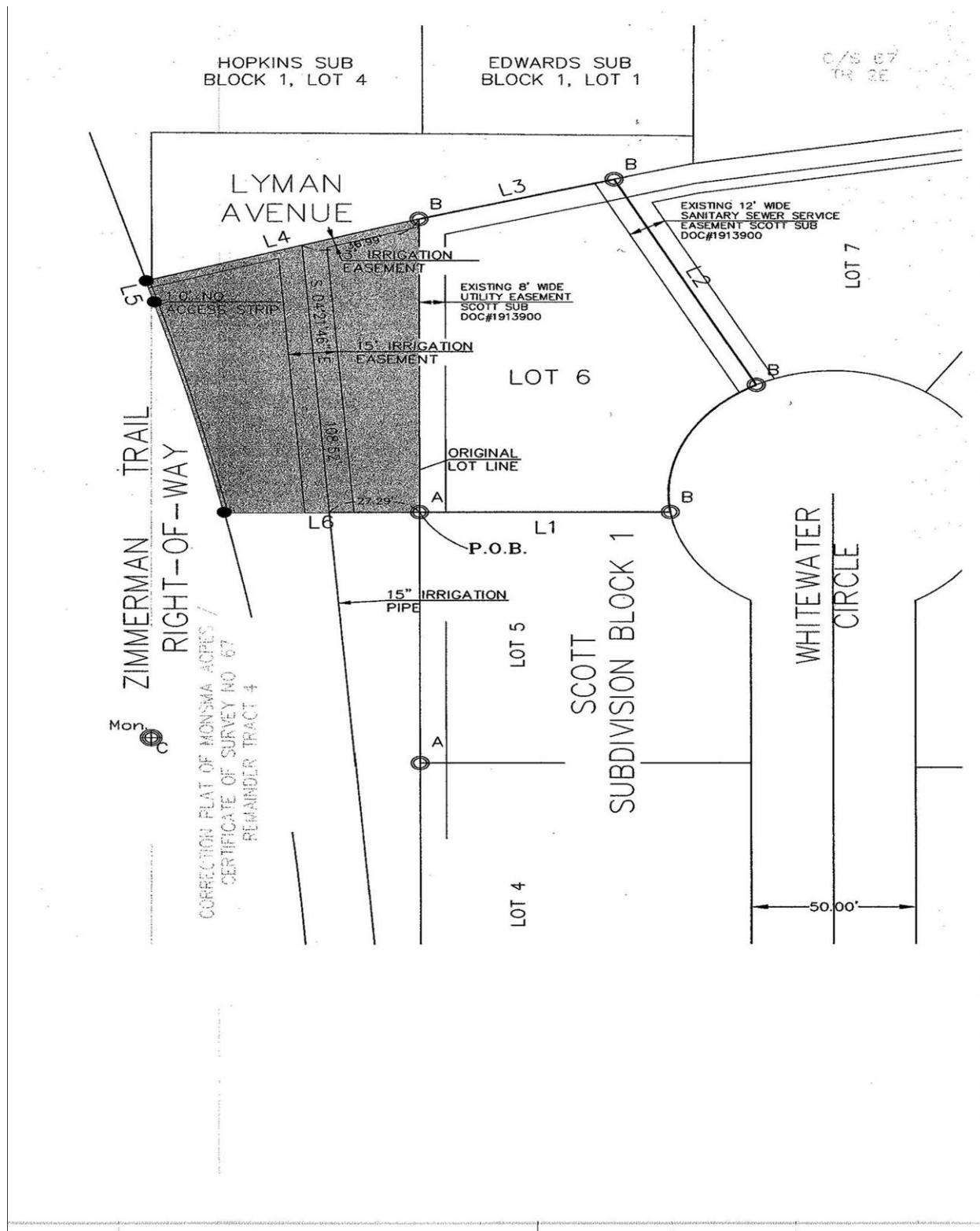
Approved By: City Administrator \_\_\_\_\_ City Attorney \_\_\_\_\_

\_\_\_\_/\_\_\_\_

**ATTACHMENTS**

Map Depicting Area to be Vacated

Resolution vacating portions of Zimmerman Trail and Lyman Avenue



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

A RESOLUTION OF THE CITY OF BILLINGS,  
MONTANA, DISCONTINUING AND VACATING portion of  
Zimmerman Trail.

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of portion of Zimmerman Trail as described hereinafter; and

WHEREAS, a public hearing was properly noticed and held as required by law.

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

1. DISCONTINUANCE AND VACATION. Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., portion of Zimmerman Trail more particularly described as follows:

A tract of land situated in the S1/2 of Section 34, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: A portion of Zimmerman Trail Right-Of-Way and Lyman Avenue Right-Of-Way adjacent to Lot 6, Block 1 Scott Subdivision, Recorded March 11, 1998, Under Document No. 1913900, Records of Yellowstone County, Montana, beginning at the southwest corner of said Lot 6, Block 1 Scott Subdivision; thence N 00° 03' 03" W for a distance of 93.31 feet to a point on the south right-of-way of Lyman Avenue; thence N 00° 03' 03" W for a distance of 25.50 feet to the northwest corner of said Lot 6, Block 1 Scott Subdivision; thence S 73° 13' 41" W for a distance of 86.70 feet; thence S 16° 04' 54" E for a distance of 8.85 feet; thence on a curve to the right with a radius of 1251.22 feet and an arc length of 87.94 feet (chord bearing S 14° 03' 36" E for a chord distance of 87.93 feet); thence N 90° 00' 00" E for a distance of 59.31 feet to the Point of Beginning. Containing 7,655 square feet.

Is hereby discontinued, abandoned and vacated.

2. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described portion of Zimmerman Trail is in the best interest of the public and can be done without any public detriment.

PASSED by the City Council and APPROVED this 23<sup>rd</sup> day of October 2006.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing MAYOR

ATTEST:

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

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

**AGENDA ITEM:**

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

---

**TITLE:** Continuance of Public Hearing to Vacate Portions of 8<sup>th</sup> Avenue North and the Alley between 7<sup>th</sup> Avenue North and 8<sup>th</sup> Avenue North

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** Billings Clinic has petitioned to vacate 8<sup>th</sup> Avenue North between North 28<sup>th</sup> Street and North 29<sup>th</sup> Street and the alley between 7<sup>th</sup> Avenue North and 8<sup>th</sup> Avenue North. Billings Clinic owns all of the property abutting the proposed right-of-way and is proposing to develop the property in the future. The City Council continued the public hearing from the September 25, 2006, City Council Meeting and delayed action on the proposed vacation.

**ALTERNATIVES ANALYZED:**

3. After continuing the public hearing, approve the vacation of the above-mentioned right-of-way.
4. After continuing the public hearing, do not approve the vacation of the above-mentioned right-of-way.

**FINANCIAL IMPACT:** Billings Clinic is willing to accept the same value established by an appraisal completed for North 28<sup>th</sup> Street between 11<sup>th</sup> Avenue North and 12<sup>th</sup> Avenue North. The appraisal established the value of the right-of-way at \$20.50 per square foot. The total value of the proposed vacated property (28,500 square feet) to be paid to the city from Billings Clinic is \$584,250.00. This will be deposited into the General Fund.

**RECOMMENDATION**

After continuing the public hearing, staff recommends that Council approve the vacation of portions of 8<sup>th</sup> Avenue North and the alley between 7<sup>th</sup> Avenue North and 8<sup>th</sup> Avenue North.

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

\_\_\_\_/\_\_\_\_

ATTACHMENTS

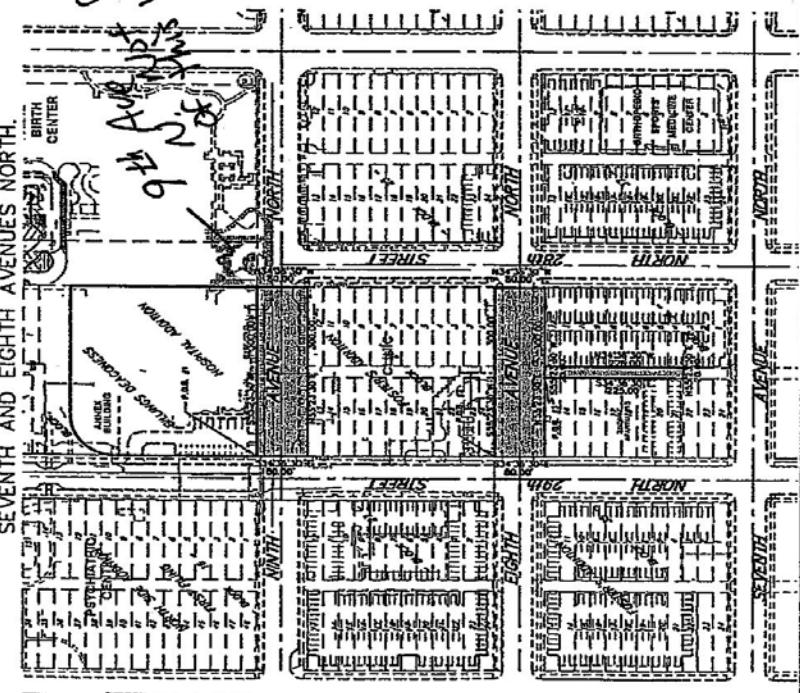
Map Depicting Area to be Vacated

Resolution to Vacate

# Attachment A

## EXHIBIT "A"

RIGHT-OF-WAY VACATION FOR EIGHTH AND NINTH AVENUES NORTH  
BETWEEN NORTH 29TH AND NORTH 28TH STREETS AND THE ALLEY  
WAY EAST OF AND PARALLEL TO NORTH 29TH STREET BETWEEN  
SEVENTH AND EIGHTH AVENUES NORTH.



### DESCRIPTION #1: NINTH AVENUE NORTH VACATION

A tract of land situated in the E1/2 of Section 32, T 1 N, R. 26 E, P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit: Beginning at a point which is the southwesterly corner of Block 1, of the Billings Deaconess Hospital Addition; thence, from said point of beginning, crossing the right-of-way of Ninth Avenue North, S 34°36'30" E a distance of 80.00 feet to the northwesterly corner of Block 26, of solid Fosters Addition; thence, along the northeasterly corner of said Block 26, N 55°23'30" E a distance of 300.00 feet to the northeasterly corner of said Block 26, N 55°23'30" E a distance of 300.00 feet to the right-of-way of solid Ninth Avenue North, N 34°36'30" W a distance of 80.00 feet to the northeasterly corner of Block 1, of the Billings Deaconess Hospital Addition; thence, along the southerly line of said Block 1, S 55°23'30" W a distance of 300.00 feet to the point of beginning; solid described tract having an area of 24,000 square feet.

### DESCRIPTION #2: EIGHTH AVENUE NORTH VACATION

A tract of land situated in the E1/2 of Section 32, T 1 N, R. 26 E, P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit: Beginning at a point which is the southwesterly corner of Block 26, of Fosters Addition; thence, from said point of beginning, crossing the right-of-way of Eighth Avenue North, S 34°36'30" E a distance of 80.00 feet to the northeasterly corner of Block 36, of solid Fosters Addition; thence, along the Northerly line of said Block 36, N 55°23'30" E a distance of 300.00 feet to the northeasterly corner of solid Block 36; thence, crossing the right-of-way of Eighth Avenue North, N 34°36'30" W a distance of 80.00 feet to the northeasterly corner of Block 26; thence, along the southerly line of solid Block 26, S 55°23'30" W a distance of 300.00 feet to the point of beginning; solid described tract having an area of 24,000 square feet.

### DESCRIPTION #3: ALLEY WAY VACATION

A tract of land situated in the E1/2 of Section 32, T 1 N, R. 26 E, P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit: Beginning at a point which is the northeasterly corner of Lot 13, Block 36 of Fosters Addition; thence, from said point of beginning, S 34°36'30" E a distance of 225.00 feet to the southwesterly corner of Lot 21, of solid Block 36; thence, N 55°23'30" E a distance of 20.00 feet to the southwesterly corner of Lot 4, of solid Block 36; thence, N 34°36'30" W a distance of 225.00 feet to the northeasterly corner of Lot 12, of solid Block 36; thence along the northerly line of solid Block 36, S 55°23'30" W a distance of 20.00 feet to the point of beginning; solid described tract having an area of 4,500 square feet.

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

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA,  
DISCONTINUING AND VACATING portions of 8<sup>th</sup> Avenue  
North and the Alley between 7<sup>th</sup> Avenue North and 8<sup>th</sup> Avenue  
North.

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of portions of 8<sup>th</sup> Avenue North and the Alley between 7<sup>th</sup> Avenue  
North and 8<sup>th</sup> Avenue North as described hereinafter; and

WHEREAS, a public hearing was properly noticed and held as required by law.

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

1. DISCONTINUANCE AND VACATION. Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., portions of 8<sup>th</sup> Avenue North and the Alley between 7<sup>th</sup> Avenue  
North and 8<sup>th</sup> Avenue North more particularly described as follows:

DESCRIPTION #1: 8<sup>TH</sup> AVENUE NORTH:

A tract of land situated in the E1/2 of Section 32, T. 1 N., R. 26 E., P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit:  
Beginning at a point which is the southwesterly corner of Block 26 of Fosters Addition; thence, from said point of beginning, crossing the right-of-way of Eighth Avenue North, S 34°36'30" E a distance of 80.00 feet to the northwesterly corner of Block 36 of said Fosters Addition; thence, along the Northerly line of said Block 36, N 55°23'30" E a distance of 300.00 feet to the northeasterly corner of said Block 36; thence, crossing the right-of-way of said Eighth Avenue North, N 34°36'30" W a distance of 80.00 feet to the southeasterly corner of Block 26; thence along the southerly line of said Block 26, S 55°23'30" W a distance of 300.00 feet to the point of beginning; said described tract having an area of 24,000 square feet.

DESCRIPTION #2: ALLEY BETWEEN 7<sup>TH</sup> AVENUE NORTH AND 8<sup>TH</sup> AVENUE NORTH:

A tract of land situated in the E1/2 of Section 32, T. 1 N., R. 26 E., P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit:

Beginning at a point which is the northeasterly corner of Lot 13, Block 36 of Fosters Addition; thence, from said point of beginning, S 34°36'30" E a distance of 225.00 feet to the southeasterly corner of Lot 21, of said Block 36; thence, N 55°23'30" E a distance of 20.00 feet to the southwesterly corner of Lot 4 of said Block 36; thence, N 34°36'30" W a distance of 225.00 feet to the northwesterly corner of Lot 12 of said Block 36; thence along the northerly line of said Block 36, S 55°23'30" W a distance of 20.00 feet to the point of beginning; said described tract having an area of 4,500 square feet.

Is hereby discontinued, abandoned and vacated.

2. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described **portions of 8<sup>th</sup> Avenue North and the Alley between 7<sup>th</sup> Avenue North and 8<sup>th</sup> Avenue North** is in the best interest of the public and can be done without any public detriment.

PASSED by the City Council and APPROVED this 23<sup>rd</sup> day of October 2006.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing MAYOR

ATTEST:

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

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

## AGENDA ITEM:



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

---

**TITLE:** Public Hearing and First Reading Ordinance for the East Billings Urban Renewal District

**DEPARTMENT:** Planning and Community Services Department

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

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**PROBLEM/ISSUE STATEMENT:** The Council will consider adopting an ordinance creating an East Billings Urban Renewal District. This action was originally scheduled for the October 10 meeting but, with staff recommendation, the Council continued the public hearing and tabled the ordinance until this meeting. On September 25, 2006, Council adopted a resolution of intent to create the district, which also included tax increment authority, a description of the property involved and the blighted conditions. The next step is to create the district by Ordinance and establish the boundary for the new district. It is important that the district be created this calendar year in order to take advantage of the lowest possible taxable value when establishing the District's base value.

**ALTERNATIVES ANALYZED:** Creating this district is discretionary. The City Council may:

- reject the ordinance
- modify the proposed boundary
- adopt the ordinance with the proposed boundary

**FINANCIAL IMPACT:** The financial impact is unknown. However, the taxable market value is approximately \$75,000,000 and is stagnant. The purpose of an urban renewal and tax increment district is for the public to invest in infrastructure and thereby encourage private investment that increases the taxable value. Without the public investment, it is assumed that the private investment would not occur, thus there is no "loss" of taxes from freezing the taxable value base because all taxing entities continue to collect taxes on the base value.

## **RECOMMENDATION**

Staff recommends that City Council adopt the Ordinance creating the East Billings Urban Renewal District.

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

## **ATTACHMENTS**

A.      Ordinance

## **INTRODUCTION**

The City Council will hold a public hearing and consider the ordinance that adopts the plan and allows the City to use tax increment financing for public improvements.

## **PROCEDURAL HISTORY**

- April 3, 2006, City Council work session on new downtown and East Billings urban renewal districts
- August 21, 2006; City Council work session status report on downtown and East Billings urban renewal districts
- August 22, 2006; Yellowstone County Planning Board voted to recommend that the City Council adopt the East Billings Urban Renewal Plan
- September 25, 2006; City Council considers adopting a resolution of intent to create the East Billings district and setting a public hearing date
- September 28, 2006; City publishes and mails notice of public hearing to property owners
- October 10, 2006; City Council public hearing continued and ordinance tabled until October 23, 2006
- October 23, 2006; City Council continues public hearing and considers first reading of the ordinance
- November 13, 2006; City Council considers the ordinance on second and final reading. The ordinance becomes effective 30 days later unless appealed

## **BACKGROUND**

With the Billings Downtown Core TIFD sunsetting in 2008, key players saw the need to move forward with the East Transition Zone revitalization effort. These key players represent the Big Sky EDA, the City of Billings and local community members. A consultant team was selected in fall of 2005, to rally support, facilitate meetings relating directly to the TIFD and to write the Urban Renewal Plan based on the desires of the local property and business owners. At that time there was a desire to explore the possibility of expanding the district boundaries to include properties outside the original proposed district boundary. After the first round of stakeholder and public meetings, it became clear that a smaller district would be more manageable.

A group of property owners saw a need for a grassroots effort led by the owners themselves. They formed their own non-profit organization called the Billings Industrial Revitalization District Incorporated or BIRD, Inc. The BIRD, Inc. with the guidance of the consultant team and the assistance of the volunteer group began to build consensus with the property owners and garner support for revitalization. The volunteer group dedicated a couple hours a week of their time to assisting the BIRD, Inc. contacting business owners and assisting in any other way possible with the process.

The BIRD, Inc., or other succeeding local stakeholder owner entity, is the organization that will provide management of the tax increment finance district and submit recommendations to the City Council as revitalization projects emerge.

A Vision Map was created through an open forum workshop with the property owners. They took charge of what revitalization means for the district and what improvements they wanted to see. These changes included improvements to traffic patterns, residential housing, open lot development, filling vacated warehousing, streetscape improvements, pedestrian friendly linkages from the downtown core to the MetraPark and many others.

Concurrent with the vision mapping effort, drafting of the urban renewal plan began. Multiple drafts have been produced, discussed and reviewed in Urban Renewal Task Force meetings, Steering Committee meetings, and BIRD, Inc. meetings. The high level of transparency and frequency of meetings has ensured that a large local constituency have been involved, and as many as possible approve of the plan.

The Urban Renewal Plan was review by the City Attorney and City Administration. Comments and recommendations were taken into account and incorporated into the plan.

The plan was also sent to the Planning Board for their review and recommendations regarding the plan's conformity to the 2003 Growth Policy. Approval with recommendations was passed by the Planning Board on August 22, 2006.

At the time of the reviews the district included county parcels. Several meetings were held with City Administration, City Legal, an Independent attorney and members of the Board of County Commissioners to pursue drafting the interlocal agreement to create a basis for a bi-jurisdictional district. A final interlocal agreement was never completed because an Attorney General opinion was given on September 6<sup>th</sup>, 2006, stating that a bi-jurisdictional urban renewal district cannot be created. The Ruling also states that Urban Renewal Districts can only be formed within municipalities.

After the boundaries were modified to conform to the Montana Attorney General's opinion the Urban Renewal Plan was reviewed and edited by the Urban Renewal Plan Task Force. The local office for the Department of Revenue provided taxable values for the revised district boundaries.

A resolution on blight for the district was prepared for the City Council. On September 25, the City Council approved the resolution on blight, paving the way for adoption of the urban renewal plan.

## **ALTERNATIVES ANALYSIS**

Creating this district is discretionary. The City Council may:

- reject the ordinance
- modify the proposed boundary
- adopt the ordinance with the proposed boundary

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

The Yellowstone County Planning Board voted to recommend approval of the East Billings Urban Renewal Plan on August 22, 2006. The Board determined that the plan was consistent with the 2003 Growth Policy. The Board also recommended minor changes to the draft plan in order to improve clarity. These changes, where appropriate, have been made to the final plan.

### **RECOMMENDATION**

Staff recommends that City Council adopt the Ordinance creating the East Billings Urban Renewal District.

### **ATTACHMENTS**

- A. Ordinance

ORDINANCE NO. 06 \_\_\_\_\_

AN ORDINANCE RELATING TO THE CREATION OF THE EAST BILLINGS URBAN RENEWAL AREA; AND ADOPTING AN URBAN RENEWAL PLAN, INCLUDING A TAX INCREMENT PROVISION.

Recitals:

WHEREAS, this Council on October 10, 2006, conducted a public hearing on a proposal to establish a new urban renewal area on specified property (as hereinafter defined, the "Property") to be designated "The East Billings Urban Renewal Area", and to adopt an urban renewal plan, as authorized by Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act").

WHEREAS, the Property is depicted on the attached Exhibit A and legally described on the attached Exhibit B (each of which is hereby incorporated herein and made a part hereof).

WHEREAS, opportunities have been presented to the City that make it desirable for the City to consider an urban renewal project within the District consisting of the acquisition of certain vacant or blighted properties, demolishing the blighted structures thereon, improving such properties with, landscaping, utilities, and other similar improvements, assembling such properties, and making the properties so improved available for private redevelopment in accordance with the Act.

WHEREAS, an urban renewal plan entitled the East Billings Urban Renewal Plan is attached hereto as Exhibit C (which is hereby incorporated herein and made a part hereof) (the "Plan"). The Plan contains a tax increment provision and will govern the operation and administration of the District.

WHEREAS, the Plan has been reviewed and approved by the Yellowstone County Planning Board, as evidenced by the Board meeting minutes of August 22, 2006. The Plan contains a description of the Project and its estimated costs.

Ordinance:

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Billings, Montana, as follows:

1. Findings. This Council hereby finds, determines and declares, based on the comments received at the public hearing and other studies and information available to this Council, that:

a. The Property presently contains structures and property that are in a state of substantial deterioration, are obsolete or defective, pose unsanitary or unsafe conditions, are vacant and unused, and have inappropriate uses, the present condition of the Property substantially impairs the sound functioning of the East Billings area of the City and its environs, is conducive to juvenile delinquency and crime, poses the threat of vandalism or mischief and fire or loss, constitutes an economic and social liability, and is a menace to the public health, safety, and welfare of the residents of the City. Accordingly, the Council finds that the Property is a blighted area within the meaning of Section 7-15-4210 of the Act. This Council finds that the rehabilitation, redevelopment or a combination thereof of the Property is necessary in the interest of the public, health, safety, morals or

welfare of the residents of the City. This Council finds that undertaking measures to eradicate or diminish the blight affecting the Property will help to foster a more dynamic, livable, and vibrant downtown.

- b. No housing element or structure is disturbed by this District making no relocation necessary;
- c. The Plan conforms to the Growth Policy or parts thereof of the City for the municipality as a whole;
- d. The Plan will afford maximum opportunity, consistent with the needs of the City as a whole, for the rehabilitation or redevelopment of the District by private enterprise;

2. Plan Adoption. The Plan is hereby adopted and approved in all respects, including without limitation, the segregation and application of tax increments as provided in Sections 7-15-4282 through 7-15-4293 of the Act as provided therein.

3. Conditional Commitment. The adoption of the Plan does not constitute a guarantee or a firm commitment that the City will issue the Bonds or undertake the Project. If, based on comments or information made available to or obtained by the City, it appears that the issuance of the Bonds or the Project is not in the public interest or consistent with the purposes of the Act, the City reserves the right not to issue the Bonds or undertake the Project.

4. Effective Date. This Ordinance shall be in full force and effect from and after the date that is 30 calendar days after the date set forth below.

PASSED by the City Council on first reading October 10, 2006.

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

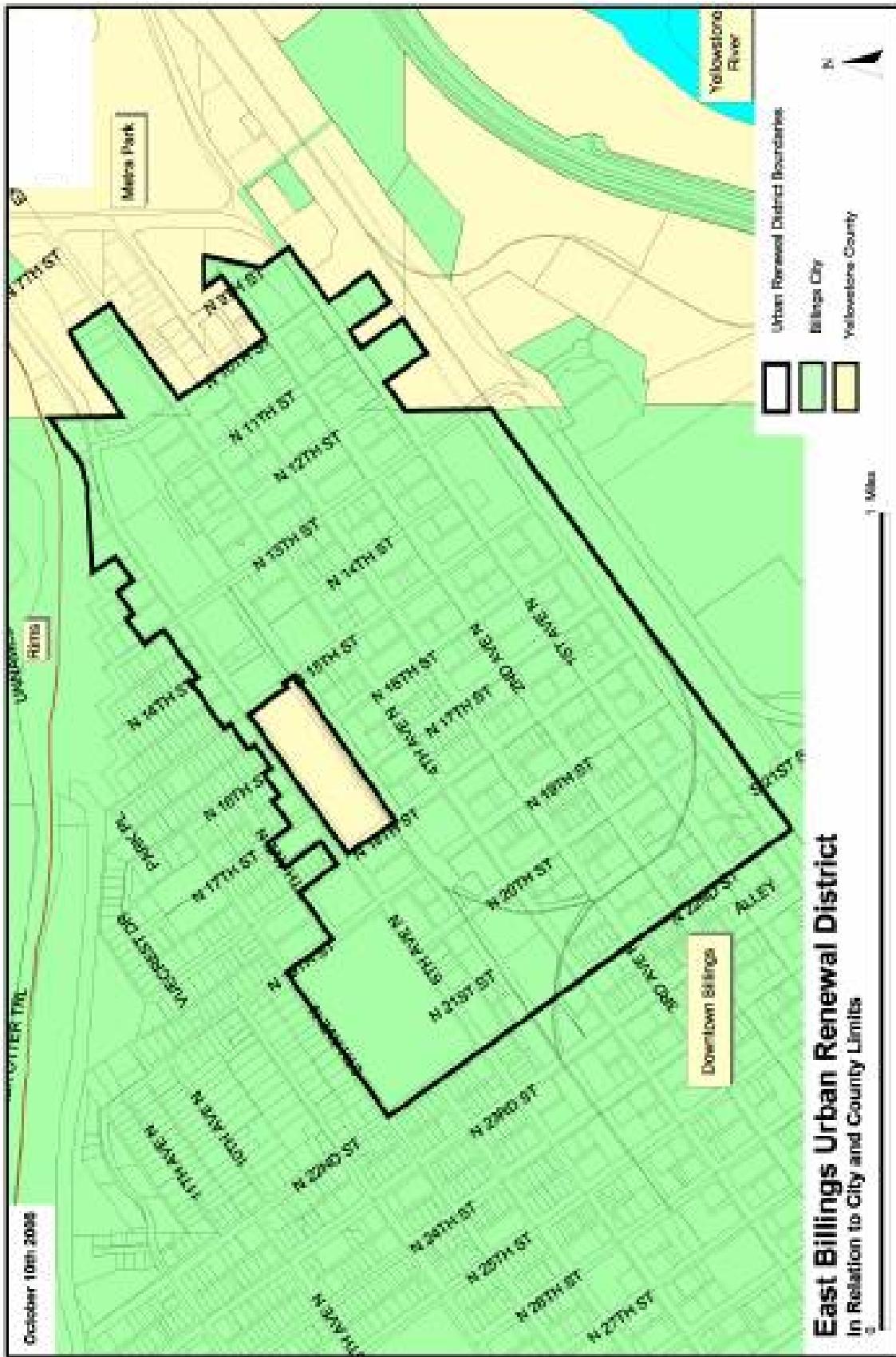
CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

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

**EXHIBIT A**  
**MAP OF URBAN RENEWAL AREA**



**EXHIBIT B**  
**LEGAL DESCRIPTION OF URBAN RENEWAL AREA**

Starting at the intersection of Montana Avenue and North 22nd Street, extending north down the centerline of North 22nd to the intersection of North 22<sup>nd</sup> Street and 8<sup>th</sup> Avenue North, extending east down the centerline of 8th Avenue North to the intersection of 8<sup>th</sup> Avenue North and North 19th Street, extending south down the centerline of North 19<sup>th</sup> Street to the intersection of North 19<sup>th</sup> Street and 7<sup>th</sup> Avenue North, extending east along the centerline of 7<sup>th</sup> Avenue North to the intersection of North 18<sup>th</sup> Street and 7<sup>th</sup> Avenue North, extending south down the centerline of North 18<sup>th</sup> Street to be perpendicular with the northern most edge of property line of LT 23 & 24 BLK 274 BILLINGS 1<sup>ST</sup> ADD, T01NR26E, extending east along the Northern edge of LT 23 & 24 BLK 274 BILLINGS 1<sup>ST</sup> ADD, T01NR26E and hence eastward including in their entirety the southern most properties most directly adjacent to 6th Avenue North to the city boundary line, extending southerly and westerly along the city boundary lines to the northern edge of the rail road tracks, extending west along the northern edge of the railroad tracks to the centerline of North 22<sup>nd</sup> Street, extending north along the centerline of North 22<sup>nd</sup> Street to the ending point at the intersection of Montana Avenue and North 22nd Street. Excluding the non-incorporated land that envelops the empire steel property LTS 3 TO 23 & VAC 10FT ADJ ALLEY & E 404T ADJ N 16<sup>TH</sup> ST BLK 258 & 259.

**EXHIBIT C**  
**EAST BILLINGS URBAN RENEWAL PLAN**

**(separate document – on file in City Clerk’s Office)**

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

## AGENDA ITEM:



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

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**TITLE:** Public Hearing and First Reading Ordinance for the Expanded N. 27<sup>th</sup> Street Urban Renewal District

**DEPARTMENT:** Administration

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

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**PROBLEM/ISSUE STATEMENT:** The Council will conduct a public hearing and consider adopting an ordinance that removes property from the existing downtown urban renewal and tax increment district and adds it to the existing N. 27<sup>th</sup> Street Urban Renewal District. This action was originally scheduled for the October 10 meeting but, with staff recommendation, the Council continued the public hearing and tabled the ordinance until this meeting. On September 25 the Council adopted a resolution of intent to create the district, which included a description of the property and the blighted conditions and set a public hearing for this date. The next step is to adopt this ordinance that creates the expanded district. It is important that the district be expanded this calendar year in order to take advantage of the relatively low base taxable value. Taxable value in the proposed district is expected to increase next year because a number of properties have changed ownership and property investments are occurring or will occur next year.

**ALTERNATIVES ANALYZED:** Creating this district is discretionary. The City Council may:

- approve the ordinance
- modify the proposed boundary
- not approve the ordinance

**FINANCIAL IMPACT:** The financial impact is unknown. However, the taxable value is approximately \$700,000 and the proposed district includes a lot of public and tax exempt property. The purpose of an urban renewal and tax increment district is for the public to invest tax increment in infrastructure and thereby encourage private investment. Without the public investment, it is assumed that the private investment would not occur, thus there is no "loss" of

taxes from freezing the taxable value base. All taxing entities continue to collect property taxes on the base value.

**RECOMMENDATION**

Staff recommends that Council adopt the ordinance removing property from the present downtown urban renewal and tax increment district and expanding the N. 27<sup>th</sup> Street urban renewal and tax increment district.

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

**ATTACHMENTS**

A:      Ordinance

## **INTRODUCTION**

The City Council will conduct a public hearing and consider adopting an ordinance that removes property from the existing downtown urban renewal and tax increment district and adds it to the N. 27<sup>th</sup> Street urban renewal and tax increment district.

## **PROCEDURAL HISTORY**

- April 3, 2006; City Council work session on an expanded N. 27<sup>th</sup> Street and a new East Billings urban renewal district.
- August 21, 2006; City Council work session status report on the proposed N. 27<sup>th</sup> Street district expansion and a new East Billings urban renewal district.
- September 25, 2006; City Council adopted a resolution of intent to expand the N. 27<sup>th</sup> Street district and setting a public hearing date.
- September 28, 2006; City publishes and mails notice of public hearing to property owners
- October 10, 2006; City Council public hearing continued and ordinance tabled until October 23, 2006.
- October 23, 2006; City Council continues public hearing and considers first reading of the ordinance.
- November 13, 2006; City Council considers the ordinance on second and final reading. The ordinance becomes effective 30 days later unless appealed.

## **BACKGROUND**

In 2005 and at least twice this year, the Council heard presentations on the potential of creating a new downtown tax increment district. The Downtown Billings Partnership (DBP) took the lead and wrote an urban renewal plan for an area of the central downtown that expands the existing N. 27<sup>th</sup> Street district that was created in 2005. After the Dept. of Revenue ruled earlier this summer that boundary changes are acceptable, it was decided that this is the most efficient way to create the new TIF area. The area is roughly bounded by N. 25<sup>th</sup> Street, 6<sup>th</sup> Avenue North, N. 30<sup>th</sup> Street and 1<sup>st</sup> Avenue North, however, the boundary is irregular and does not include all of the property within this general description. A more exact boundary description is included in the plan and the attached ordinance. The boundary was established to capture the lowest possible base value and to take advantage of planned private investments that will produce a tax increment.

The expanded N. 27<sup>th</sup> Street Urban Renewal Plan outlines a number of objectives and projects. The objectives focus on creating additional housing, retail, office space and parking within the area. The projects mirror the objectives, calling for a mixed use project near the Library, the possible remodel of the Library, a new bank and parking. The City may choose to contract for plan implementation and administration by the DBP or other organization or it may retain all administrative functions.

## **ALTERNATIVES ANALYSIS**

The City Council may approve or disapprove the ordinance and it may alter the boundaries. Adopting the ordinance will remove property from the existing district and add it to the N. 27<sup>th</sup> Street district. It will allow the City to freeze the property tax base in that area at the January 1,

2006 value, so that any property value increases that occur after that date will create a tax increment that can be used for public improvements to spur further private investments.

The Council may modify the proposed boundary. It is irregular, primarily in an attempt to capture future increased taxable value from properties between N 25<sup>th</sup> and N 26<sup>th</sup> Street, along N. 27<sup>th</sup> Street and in the vicinity of 4<sup>th</sup> Avenue North and Broadway. Modifying the boundary will probably require a new hearing before the Planning Board and the City Council and it will be impossible to accomplish this before the end of the calendar year. The district boundaries may be changed by the Council at any time in the future.

The Council may reject the ordinance. If that occurs, the property will remain in the existing district, which expires on March 1, 2008. The N. 27<sup>th</sup> Street district will remain in place but it is not expected to produce a tax increment until the property is redeveloped.

## **STAKEHOLDERS**

- The DBP initiated this project and endorses it.

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

Consistency with the Growth Policy is one requirement for adopting an urban renewal plan. Growth Policy compliance is outlined in the body of the plan.

## **RECOMMENDATION**

Staff recommends that Council adopt the ordinance removing property from the present downtown urban renewal and tax increment district and expanding the N. 27<sup>th</sup> Street urban renewal and tax increment district.

## **ATTACHMENTS**

A:      Ordinance

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

AN ORDINANCE MODIFYING THE URBAN RENEWAL PLAN OF 27<sup>TH</sup> STREET DISTRICT URBAN RENEWAL AREA TO INCLUDE CERTAIN PROPERTY FORMERLY PART OF THE DOWNTOWN REDEVELOPMENT DISTRICT IN ORDER TO ESTABLISH THE EXTENDED NORTH 27<sup>TH</sup> STREET DISTRICT URBAN RENEWAL AREA; ADOPTING A MODIFIED URBAN RENEWAL PLAN THEREFOR INCLUDING A TAX INCREMENT PROVISION; APPROVING AN URBAN RENEWAL PROJECT THEREIN AND AUTHORIZING THE ISSUANCE OF TAX INCREMENT URBAN RENEWAL REVENUE BONDS OF THE CITY TO FINANCE COSTS THEREOF

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

WHEREAS, the City Council of the City (this “Council”) created the Downtown Redevelopment District as an urban renewal area (the “Redevelopment Area”) pursuant to, among other documents, Resolution No. 12303, adopted by this Council on December 20, 1975, as amended and supplemented, and the City has issued its tax increment urban renewal bonds payable from the tax increment generated from the Redevelopment Area, which were outstanding as of September, 2006 in the aggregate principal amount of \$2,645,000 (the “Outstanding Bonds”), pursuant to Resolution No. 12937, adopted February 26, 1979, as amended and supplemented from time to time (as amended and supplemented to date, the “Bond Resolution”).

WHEREAS, on July 11, 2005 the City Council adopted Ordinance No. 05-5333, which created the 27<sup>th</sup> Street District Urban Renewal Area (hereafter “North 27<sup>th</sup> Street District”) and adopted the Urban Renewal Plan of 27<sup>th</sup> Street District Urban Renewal Area (“27<sup>th</sup> Street Plan”) that included a tax increment provision and endorsed a mixed-use urban renewal project known as “the Sandstone.”

WHEREAS, it has been determined that the North 27<sup>th</sup> Street District and the 27<sup>th</sup> Street Plan should be modified to include additional property contiguous to the North 27<sup>th</sup> Street District that is currently included in the Redevelopment Area.

WHEREAS, this Council on October 10, 2006, conducted a public hearing on a proposal to modify the North 27<sup>th</sup> Street Plan by adopting the Urban Renewal Plan of the Extended North 27<sup>th</sup> Street District Urban Renewal Area, which calls ~~which calls~~ for the removal of certain property from the Downtown Redevelopment District (the “Extension Property”) and aggregating said Extension Property into the North 27<sup>th</sup> Street District, thereby establishing a modified urban renewal area to be formally designated as the Extended North 27th Street District Urban Renewal Area (the “Extended North 27<sup>th</sup> Street District” or “the Property”), and to

undertake urban renewal projects therein, all as authorized by Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “Act”).

WHEREAS, the Extended North 27<sup>th</sup> Street District is depicted on Attachment 1 and Attachment 1a (depicting the relationship of the old urban renewal area to The Redevelopment Area) hereto and Attachment 2 (each of which is hereby incorporated herein and made a part hereof). Pursuant to this Ordinance, the boundaries of the Redevelopment Area are being modified to reflect the removal of the Extension Property from the Redevelopment Area and addition ~~the removed properties~~ of the Extension Property to the N. 27<sup>th</sup> Street District, as depicted on the map on Attachment 1. The Redevelopment Area, as modified, is depicted on Attachment 2 and legally described on Attachment 3 (the “Resulting Redevelopment Area”) (each of which is hereby incorporated herein and made a part hereof). The Resulting Redevelopment Area is contiguous.

WHEREAS, the Extension Property, as part of the Downtown Redevelopment Area, was previously determined by this Council to be “blighted” within the meaning of the Act and an appropriate area for an urban renewal project in Resolution 12107 dated January 5, 1976; and

WHEREAS, opportunities have been presented to the City that makes it desirable for the City to consider urban renewal projects within the Extended North 27<sup>th</sup> Street District consisting of demolishing certain blighted structures within the district; improving such properties with new construction, landscaping, utilities, and other similar improvements; and making the properties so improved available for private redevelopment in accordance with the Act (the “Projects”). Development proposals to be considered for funding include mixed use occupancies. The Projects could also include building renovations and the construction or expansion of City owned parking structures within the District (~~the “Bonds”~~).

WHEREAS, the proposed modified urban renewal plan titled the Urban Renewal Plan of the Extended North 27th Street District Urban Renewal Area is attached hereto as Attachment 4 (which is hereby incorporated herein and made a part hereof) (the “Modified Plan”). The Modified Plan contains a tax increment provision and will govern the operation and administration of the Extended North 27<sup>th</sup> Street District.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Billings, Montana, as follows:

1. Findings. This Council hereby finds, determines and declares, based on the comments received at the public hearing and other studies and information available to this Council, that:

a. The Property presently contains structures and improvements that are in a state of substantial deterioration, are obsolete or defective, pose unsanitary or unsafe conditions, are vacant and unused, and have inappropriate uses. The present condition of the Property substantially impairs the sound functioning of the downtown area of the City and its environs, is

conducive to juvenile delinquency and crime, poses the threat of vandalism or mischief and fire or loss, constitutes an economic and social liability, and is a menace to the public health, safety, and welfare of the residents of the City. Accordingly, the Council reaffirms its previous findings that the Property remains a blighted area within the meaning of Section 7-15-4210 of the Act. This Council finds that the rehabilitation, redevelopment or a combination thereof of the Property is necessary and in the interest of the health, safety, morals or welfare of the residents of the City. This Council finds that undertaking measures to eradicate or diminish the blight affecting the Property will help to foster a more dynamic, livable, and vibrant downtown.

b. If Projects require relocation of displaced persons, a detailed relocation plan is required.

c. The Plan must conform to the Growth Policy and Framework Plan or parts thereof of the City.

d. The Plan will afford maximum opportunity, consistent with the needs of the City as a whole, for the rehabilitation or redevelopment of the District by private enterprise.

e. A sound and adequate financial program is required for the financing of Projects, ~~which program includes substantial private investment and financing and the sale and issuance by the City of the Bonds in an amount not to exceed \$10 million after payment of administration costs, reserve fund deposits, capitalized interest and costs of issuance of the Bonds, in proportions yet to be determined, for the purpose of financing a portion of the costs of the Projects as set forth above.~~

f. **Approved** Projects approved in accordance with the Plan and Act will constitute urban renewal projects within the meaning of the Act and are authorized to be undertaken by the City.

2. Plan Adoption. The Modified Plan is hereby adopted and approved in all respects, including without limitation, the segregation and application of tax increments as provided in Sections 7-15-4282 through 7-15-4293 of the Act as provided therein. For purposes of allocating taxes according to the Act, the "prior assessed value" of taxable property within the Extended North 27<sup>th</sup> Street District is that value shown on the assessment rolls as of January 1, 2006.

**3. Project Approval. Authorized Projects are hereby approved.**

3. Bonds. The City may issue tax increment bonds for projects that are approved under the Plan and Act. This Council approves financing the costs of Urban Renewal Projects, or a portion thereof, with proceeds of the Bonds. The City is hereby authorized and directed to undertake activities and analysis ordinarily prerequisite to the issuance of tax increment urban renewal revenue bonds in a principal amount not to

~~exceed \$10 million for financing of the costs of Urban Renewal Projects or a portion thereof.~~

4. Conditional Commitment. The adoption of the Plan does not constitute a guarantee or a firm commitment that the City will issue the Bonds or undertake Projects. If, based on comments or information made available to or obtained by the City, it appears that the issuance of the Bonds or Projects is not in the public interest or consistent with the purposes of the Act, the City reserves the right not to issue the Bonds or undertake the Project.

5. Repealer. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

6. 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.

7. Effective Date. This Ordinance shall be in full force and effect from and after the date that is 30 calendar days after the date set forth below.

ADOPTED by the City Council of the City of Billings, Montana, on second reading this \_\_\_\_\_ day of 2006.

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Ron Tussing, Mayor

ATTEST:

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Marita Herold, CMC/AAE City Clerk

## ATTACHMENT 1

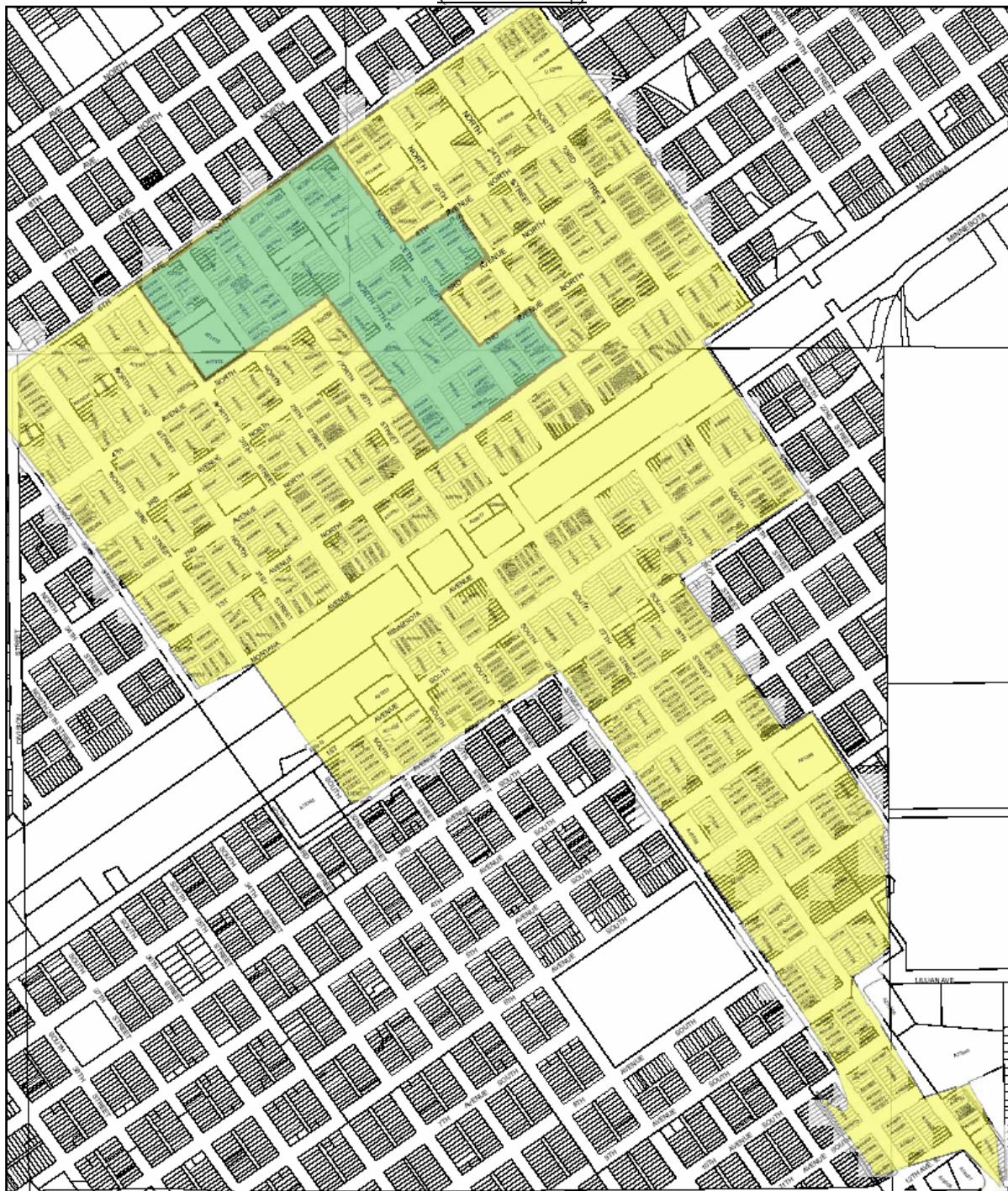
Map of the Proposed Extended District In Relation to Established District (2005) (NORTH = ↑)



ATTACHMENT 1a

Map of the Proposed Extended District In Relation to Old Urban Renewal Area – TID

(NORTH = ↑)



## ATTACHMENT 2

### Map of Resulting Redevelopment Area

(NORTH =  $\uparrow$ )



### ATTACHMENT 3

#### Legal Description of the Resulting Redevelopment Area

##### Legal Description of Property

The area in the City of Billings which is inside the boundaries described as:

Beginning at a point at the centerline intersection of the 1<sup>st</sup> Avenue North right of way and the centerline of North 25<sup>th</sup> Street right of way and proceeding west along the centerline of 1<sup>st</sup> Avenue North until reaching the intersection with the centerline of the alley right of way between North 27<sup>th</sup> Street and North 28<sup>th</sup> Street then proceeding north down the centerline of the alley until the intersection of the alley and the centerline of the 4<sup>th</sup> Avenue North right of way then proceeding west along the centerline of 4<sup>th</sup> Ave. North until the intersection of 4<sup>th</sup> Ave. North and the North 30<sup>th</sup> Street centerline then proceeding north along the centerline of North 30<sup>th</sup> Street until the intersection of North 30<sup>th</sup> Street and the centerline of the 6<sup>th</sup> Avenue North right of way then proceeding east along the centerline of 6<sup>th</sup> Avenue North until the intersection of 6<sup>th</sup> Avenue North and the centerline of North 26<sup>th</sup> Street then proceeding south along the centerline of North 26<sup>th</sup> Street right of way until the intersection of the centerline of 4<sup>th</sup> Avenue North right of way then proceeding east along the centerline of 4<sup>th</sup> Avenue North until the intersection of the centerline of North 25<sup>th</sup> Street right of way then proceeding south along the centerline of North 25<sup>th</sup> Street until the intersection of the centerline of the 3<sup>rd</sup> Ave. North right of way then proceeding west along the centerline of 3<sup>rd</sup> Avenue North until the intersection of the centerline of North 26<sup>th</sup> Street right of way then proceeding south along the centerline of North 26<sup>th</sup> Street until the intersection of the centerline of the 2<sup>nd</sup> Avenue North right of way then proceeding east along the centerline of 2<sup>nd</sup> Avenue North until the intersection with the centerline of North 25<sup>th</sup> Street the proceeding south along the centerline of North 25<sup>th</sup> Street to the intersection of the centerline of 1st Avenue North thus arriving at the beginning, all inclusive.

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

## AGENDA ITEM:

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

**TITLE:** Amending Resolution No. 06-18437, authorizing an increased purchase offer to one of the owners of property to be condemned in the Grand Avenue widening project

**DEPARTMENT:** City Attorney

**PRESENTED BY:** Kelly Addy, Deputy City Attorney, Brent Brooks, City Attorney

**PROBLEM/ISSUE STATEMENT:** The owner of one of the properties affected by the widening of Grand Avenue has refused to provide the City or its appraisers with a copy of the lease the owner has with his tenant, the Dairy Queen drive-in, but has now provided new and additional information to a Councilmember which suggests that the property is worth more than the amount City staff has heretofore been authorized to offer to purchase the property.

**ALTERNATIVES ANALYZED:**

- Proceed with the condemnation action without adjusting the offered amount in light of the new information.
- Adjust the offered amount in light of the new information.

**FINANCIAL IMPACT:**

- Adjusting the offered amount to reflect the new appraisal information provided will increase the City's offer to the owner of the property now leased to the Dairy Queen drive-in on Grand Avenue from \$231,000 to \$294,000, an increase of \$63,000.
- Failing to adjust the offered amount exposes the City to an award of litigation costs in addition to the amount it is required to pay for the purchase of the property.

**RECOMMENDATION**

Staff recommends that Council authorize City staff to make a new offer to the owner of the property now leased to the Dairy Queen drive-in on Grand Avenue in the amount of \$294,000.

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

## **ATTACHMENTS**

Resolution amending Resolution No. 06-18437.

## **INTRODUCTION**

In order to update the City's offer to the owner of the property now leased to the Dairy Queen drive-in on Grand Avenue, it is necessary for the Council to amend Resolution No. 06-18437, passed on June 12, 2006.

## **PROCEDURAL HISTORY**

- The Council authorized staff to offer \$231,000 based upon appraisals and a comparative market analysis that assumed the lease on the property would expire in six months. The owner of the property now leased to the Dairy Queen drive-in on Grand Avenue had refused to provide a copy of the lease to the City's appraisers.
- The owner of the property now leased to the Dairy Queen drive-in on Grand Avenue provided a Councilmember with information, which is not confirmed by an opportunity to examine a copy of the lease, that the lease would continue until February of 2010.
- The City asked the realtor who did the original comparative market analysis of the property to update fair market value assuming the accuracy of the new information and the realtor adjusted his estimate of fair market value from \$220,000 to \$280,000 on the basis of the new information.
- City staff are asking the Council for additional authority to make an offer which reflects the new information that has been received since Resolution No. 06-18437 was passed.

## **BACKGROUND**

- Before City staff can make a new and higher offer, it is necessary for the Council to provide staff with additional authority, since the previous Resolution of the Council authorized an offer in a specific, lower amount.
- Section 70-30-305(2), MCA provides that if the condemnee prevails by receiving an award in excess of the final offer of the condemnor, the court is required to award necessary expenses of litigation to the condemnee in addition to the amount the condemnee is to receive for the purchase of the property. These litigation costs include attorneys' fees, expert witness fees, exhibit costs, and court costs.
- In order to avoid an award of litigation costs in addition to the amount it is required to pay for the purchase of the property, the City must make an offer which is equal to or greater than the amount that a court or a panel of condemnation commissioners would award to the property owner.
- It is necessary to make this offer prior to filing of the Complaint for Condemnation of these properties.

## **ALTERNATIVES ANALYSIS**

If the City makes an award which is equal to or greater than the amount awarded by a court or a panel of condemnation commissioners, the property owner has to pay his own litigation costs. It is desirable to avoid these additional costs.

If the City does not change its offer to this property owner and the court or condemnation commissioners make an award that is greater than the City's best offer, the City will have to pay litigation costs incurred by the condemnee.

If the City does not change its offer to this property owner and the court or condemnation commissioners make an award that is less than or equal to the City's best offer, the City will not have to pay litigation costs incurred by the condemnee.

If the City does change its offer to this property owner and the court or condemnation commissioners make an award that is less than or equal to the City's best offer, the City will not have to pay litigation costs incurred by the condemnee.

## **RECOMMENDATION**

Staff recommends that Council authorize City staff to make a new offer to the owner of the property now leased to the Dairy Queen drive-in on Grand Avenue in the amount of \$294,000.

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

## AGENDA ITEM: REVISED



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

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TITLE: Withdrawal of the Variance Request for Silver Creek Subdivision  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Aura Lindstrand, Planner II

---

**PROBLEM/ISSUE STATEMENT:** Staff has received a request to withdraw the proposed offsite parkland variance from the City Council agenda for October 23, 2006. The owner, Boyer Land, LLC, has been working with staff to provide parkland within River Rock Estates, directly adjacent to the south of this subdivision, and a cash-in-lieu for the required parkland dedication for Silver Creek Estates Subdivision. The revised parkland will come before the Council with the preliminary plat in December.

**RECOMMENDATION**

Staff recommends that the City Council withdraw this request from the agenda.

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

**ATTACHMENT**

A. Variance Withdrawal Letter from Doug James, Moulton Law Firm

## Attachment A

BRENT R. CROMLEY	Law Offices	WILLIAM J. SPEARE
GERALD B. MURPHY		MICHELE L. JENSEN
K. KENT KOOLEN		MICHAEL E. BEGLEY
GREGORY G. MURPHY		WILLIAM O. RYAN, JR.
W. A. FORSYTHE		JEFF G. SORENSEN
DOUG JAMES		JESSICA K. FEHR
BRAD H. ANDERSON		MATTHEW D. BRAUKMANN
THOMAS E. SMITH		KATHRYN J. BELL
JOHN T. JONES		
HARLAN B. KROGH		
DUNCAN A. PEETE		
NANCY BENNETT		
GERRY P. FAGAN		
<hr/>		
BERNARD E. LONGO		FREDRIC D. MOULTON
OF COUNSEL		[1812-1989]
		W. S. MATHER
		[1822-1998]
		W.M. H. BELLINGHAM
		[1920-2002]

**MOULTON, BELLINGHAM, LONGO & MATHER, P.C.**

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27 NORTH 27TH STREET  
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**BILLINGS, MONTANA 59103-2559**  
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[www.moultonlawfirm.com](http://www.moultonlawfirm.com)

October 17, 2006

Candi Beaudry  
Acting Planning Director  
City of Billings Planning Department  
510 North Broadway, 4<sup>th</sup> Floor  
Billings, MT 59101

Re: Our Client: Boyer Land, LLC  
Matter: Variance Request

Dear Ms. Beaudry:

On September 29, 2006, we submitted a variance request on behalf of Boyer Land, LLC. Boyer Land, LLC was requesting a variance of the park dedication requirements for the Silver Creek Subdivision. Boyer Land, LLC proposed fulfilling a portion of its parkland dedication requirements by dedicating an additional 5.58 acres in the Alkali Creek drainage. Boyer Land's proposal also included increasing the size of River Rock Park in River Rock Estates by an additional 1.05 acres.

Boyer Land, LLC was encouraged to propose the Alkali Creek dedication by a number of community leaders. The Alkali Creek acreage is unique, valuable, and clearly deserves protection. Boyer Land, LLC strongly supports the dedication of the additional parkland in the Alkali Creek drainage. This is something that will benefit our entire community. Despite this, however, Boyer Land, LLC has authorized and directed me to withdraw its request for a variance.

Boyer Land, as the developer of the Silver Creek subdivision, wants and intends to be a good neighbor. Recently, several neighbors of the adjoining subdivisions suggested that their interests and the interests of the future residents of the Silver Creek subdivision would be better served if Boyer Land made a cash in lieu donation to the City to assist in the development of River Rock Park in River Rock Estates. The neighbors' request is reasonable and is a request that Boyer Land, LLC can accommodate. Accordingly, please consider this letter as Boyer Land, LLC's formal request to withdraw its September 29, 2006 request for a variance.

October 17, 2006

Page 2

Please note that Boyer Land still intends to increase the size of River Rock Park. Boyer Land, LLC wants to work with the City to make River Rock Park larger and would like to include a cash in lieu donation for some of the park dedication requirements for the Silver Creek Subdivision. We would like the cash in lieu donation to go towards developing River Rock Park.

On behalf of Boyer Land, LLC, as well as myself, I want to thank you and your staff for the time and courtesy you have afforded to us in discussing our variance request. We look forward to your continued cooperation.

Sincerely,

DOUG JAMES  
*JAMES@moultonlawfirm.com*

DJ:ssm

**AGENDA ITEM: See Revision above**



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

---

**TITLE:** Variance for Offsite Parkland for Silver Creek Estates Subdivision  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** On August 1, 2006, the subdivider applied for preliminary major plat approval for Silver Creek Subdivision, which contains 111 lots on approximately 52.50 acres of land. The subject property is generally located adjacent to the west of 46<sup>th</sup> Street West, south of Rimrock Road between the Hi-Line Ditch and Cove Ditch and is zoned Residential 9600 (R-9600). Boyer Land, LLC is the owner. The subdivider is requesting a variance from Section 23-1009(D), BMCC, which states that the governing body shall waive the parkland dedication if the subdivider dedicates land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of those who will ultimately reside within the subdivision. The subdivider is proposing to dedicate 5.33 acres of parkland along Alkali Creek to help satisfy the parkland dedication for Silver Creek Subdivision.

**ALTERNATIVES ANALYZED:** Pursuant to Section 23-1101 of the subdivision regulations, effective March 15, 2006, the City Council may grant reasonable variances from the design and improvement standards of the City Subdivision Regulations when strict compliance would result in a hardship and the result would not negatively affect public health and safety. The City Council must act on any requests to vary from the subdivision regulations as a separate application. In requesting a variance, the subdivider shall provide a written statement describing the hardship and address the five findings within Section 23-1101(A).

**FINANCIAL IMPACT:** Permitting the variance could result in the acquisition of less valuable parkland than that of Silver Creek Subdivision located on the west end. The city already owns 17.37 acres along this area of Alkali Creek and the small additional pieces of parkland will not further increase or decrease the financial burden for the city.

**RECOMMENDATION**

Staff recommends denial of a variance from Section 23-1009(D), BMCC to the City Council.

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

**ATTACHMENTS**

A: Attorney's letter addressing the five variance findings

## **INTRODUCTION**

On August 1, 2006, the subdivider applied for preliminary major plat approval for Silver Creek Subdivision, which contains 111 lots on approximately 52.50 acres of land. The subject property is generally located adjacent to the west of 46<sup>th</sup> Street West, south of Rimrock Road between the Hi-Line Ditch and Cove Ditch and is zoned Residential 9600 (R-9600). The subdivider is requesting a variance from Section 23-1009(D), BMCC, which states that the governing body shall waive the parkland dedication if the subdivider dedicates land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of those who will ultimately reside within the subdivision.

## **PROCEDURAL HISTORY**

- On March 30, 2006, the pre-application meeting for Silver Creek Subdivision was conducted by city staff.
- On August 1, 2006, the preliminary plat was submitted to the Planning Department.
- On September 12, 2006, the Planning Board conducted a plat review of the proposed subdivision.
- On September 14, 2006, staff conducted a pre-application meeting for Terrace Estates, 4<sup>th</sup> Filing.
- On September 15, 2006, the subdivider requested a 60-day extension of the review period for Silver Creek Subdivision in order to request a variance for the offsite parkland dedication through City Council.
- Since the public hearing had already been advertised when the extension was requested, the Planning Board opened the public hearing on September 26, 2006, and continued it to November 14, 2006.
- On October 23, 2006, the City Council will hear the variance request for the offsite parkland dedication.
- On October 24, 2006, the Planning Board will conduct an additional plat review for Silver Creek Subdivision.
- On November 14, 2006, the Planning Board will re-open the continued public hearing and make a recommendation to the City Council for Silver Creek Subdivision.
- On December 11, 2006, Silver Creek Subdivision will come before the City Council for a final decision.

## **ALTERNATIVES ANALYSIS**

Section 23-1101 specifies that the City Council may grant reasonable variances from the design and improvement standards of the City Subdivision Regulations when strict compliance would result in a hardship and the result would not negatively affect public health and safety. In requesting a variance, the subdivider shall provide a written statement describing the hardship and address the five findings within Section 23-1101(A). These findings are provided in Attachment A, along with staff's recommendation for review by the City Council.

## **VARIANCE REQUESTED**

The subdivider is requesting a variance from Section 23-1009(D), BMCC, which states that “the governing body shall waive the parkland dedication if the subdivider dedicates land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of those who will ultimately reside within the subdivision. The proposed offsite parkland must equal or exceed the parkland dedication required for the subdivision.” In this case, the subdivider is required to provide 5.58 acres of parkland for Silver Creek Subdivision located on 46<sup>th</sup> Street West. Approximately 0.08 acres is being provided onsite within a trail dedication in the subdivision leaving a remainder of 5.50 acres of parkland to be satisfied. The subdivider is proposing to dedicate approximately 5.33 acres within the Alkali Creek area of Terrace Estates Subdivision, 4<sup>th</sup> Filing, which is approximately 11 miles from Silver Creek Subdivision. During the pre-application meeting for Terrace Estates Subdivision, 4<sup>th</sup> Filing, the subdivider indicated that he is proposing a parkland dedication of 22.69 acres. However, approximately 17.37 acres of that parkland is already city owned park, located within the floodplain of Alkali Creek, that was dedicated with Terrace Estates Subdivision, 3<sup>rd</sup> Filing in 1985. In the early 1990’s, an updated flood study was completed for Alkali Creek, which increased the floodplain area on the property including additional land located within the floodplain. The subdivider is proposing an additional 5.33 acres within the floodplain, as well as portions of vertical rim face to satisfy the parkland dedication for Silver Creek Subdivision.

On September 29, 2006, Doug James with Moulton Law Firm submitted a letter regarding the proposed variance and its compliance with the local subdivision regulations and state law (Attachment A). Upon review of this letter, the Parks and Recreation Department noted an inconsistency in the statement that the proposed parkland is an extension of Pow Wow Park by approximately 32%. The proposed parkland dedication is not part of Pow Wow Park, as it is located on the east side of Senators Boulevard, over ¼ of a mile east of the location of the proposed park. Furthermore, while the letter also states that an additional 1.05 acres will be provided within River Rock Estates Subdivision to the south for Silver Creek Subdivision, the Parks and Recreation Department has not determined whether it will be accepted at this time, as it is mainly to be utilized as a stormwater detention area. The parkland dedication within River Rock Estates should not be considered within this variance request.

Planning staff, in consultation with the Parks and Recreation Department, finds that the proposed offsite parkland dedication does not satisfy the intent of the regulations for useable parkland nor does it serve those who reside within Silver Creek Subdivision. In addition, staff does not find that there is a hardship incurred by the subdivider in this case. The following findings have been provided for review by the City Council:

1. *The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;*

The granting of the variance will not be a detriment to public health and safety or injurious to adjacent properties.

2. *Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced;*

Silver Creek Subdivision is proposed in a relatively flat area on the west end and does not provide any physical or topographic constraints that would cause an undue hardship if the subdivider were to provide parkland within the subdivision. If parkland is not provided within the subdivision or within River Rock Estates located directly adjacent to the south of Silver Creek Subdivision, the subdivider would be required to pay a cash-in-lieu of the parkland dedication at fair market value. This cash could then be used to acquire additional parkland or to make improvements to existing parks. There is no hardship placed on the subdivider if the strict letter of the regulation is enforced, with the exception of a possible financial impact, which shall not be used to justify the variance.

3. *The variance will not result in an increase in taxpayer burden;*

The variance will not cause an increase in taxpayer burden.

4. *The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy; and*

While the proposed parkland will not place the subdivision in nonconformance with the zoning regulations, the purpose of the parkland dedication, as specified within Section 23-1001, BMCC, "is to provide active and passive parkland and open space that is accessible for use by the residents of a specific development and, where preferred, by the community." The proposed parkland will not directly benefit the residents within Silver Creek Subdivision.

5. *The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.*

Alkali Creek is already protected within 17.37 acres of parkland that was dedicated in 1985. The additional 5.33 acres of parkland proposed for Silver Creek Subdivision includes additional unbuildable floodplain, as well as segmented portions of vertical rimface located on the northern portion of the subdivision. These small additions of acreage across the subdivision cannot be constructed upon due to topographic constraints or floodplain constraints. The alternative design will not provide the city with any additional useable parkland than that already provided within the 17.37 acres of previously dedicated parkland. Also, and most importantly, the residents of proposed Silver Creek Subdivision will not benefit from this variance request, as the additional fragmented pieces of land within the floodplain located approximately 11 miles from their residences.

**STAKEHOLDERS**

A public hearing is not scheduled for the City Council meeting; however nearby property owners may attend the City Council meeting. A public hearing for the preliminary plat was conducted on September 26, 2006, and has been continued to November 14, 2006, pending the outcome of this variance.

**RECOMMENDATION**

Staff recommends denial of a variance from Section 23-1009(D), BMCC to the City Council.

**ATTACHMENT**

A: Attorney's letter addressing the five variance findings

## ATTACHMENT

### A

BRENT R. CROMLEY  
GERALD B. MURPHY  
K. KENT KOOLEN  
GREGORY G. MURPHY  
W. A. FORSYTHE  
DOUG JAMES  
BRAD H. ANDERSON  
THOMAS E. SMITH  
JOHN T. JONES  
HARLAN B. KROGH  
DUNCAN A. PEETE  
NANCY BENNETT  
GERRY P. FAGAN

BERNARD E. LONGO  
OF COUNSEL

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WILLIAM J. SPEARE  
MICHELE L. JENSEN  
MICHAEL E. BEGLEY  
WILLIAM O. RYAN, JR.  
JEFF G. SORENSEN  
JESSICA K. FEHR  
MATTHEW D. BRAUKMANN  
KATHRYN J. BELL

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FREDRIC D. MOULTON  
[1912-1989]  
W. S. MATHER  
[1922-1998]  
WM. H. BELLINGHAM  
[1920-2002]

September 29, 2006

**VIA  
HAND DELIVERY**

Aura Lindstrand  
Subdivision Coordinator  
City of Billings Planning Department  
510 North Broadway, 4<sup>th</sup> Floor  
Billings, MT 59101

Re: Our Client: Boyer Land, LLC  
Matter: Variance Request

Dear Ms. Lindstrand:

I am writing to you on behalf of our client Boyer Land, LLC in order to request a variance of the parkland dedication requirements for the Silvercreek Subdivision pursuant to § 23-1101 of the Billings Montana City Code.

Boyer Land, LLC is proposing to dedicate 6.71 acres as parkland in connection with the Silvercreek Subdivision. This is 1.2 acres more than the required park dedication for Silvercreek (which is 5.51 acres). The proposed dedication of 6.71 acres has three components, specifically:

- 5.58 acres in the Alkali Creek Drainage (see attached sit plan)
- An addition of 1.05 acres to the River Rock Park in River Rock Estates, south of the Silvercreek Subdivision
- 0.08 acres in the Silvercreek Subdivision for the connection to the Heritage Trail System

The River Rock Estates subdivision has a park dedication requirement of 2.96 acres. Our client is proposing to increase the size of that park to 4.01 acres. Accordingly, the dedication would be 1.05 acres more than what is required for River Rock Estates.

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The Alkali Creek acreage is unique and clearly should be preserved and protected as a public space. The proposed dedication would add approximately 5.58 acres to the 17.37 acres already owned by the City in the Alkali Creek drainage. The aesthetic vistas, habitat, and landscape of this area are not duplicated anywhere in the Billings area. This is a special place that should be preserved, protected, and enjoyed by the general public.

There are two Montana statutes that are applicable to variances from the parkland dedication requirements. The applicable statutes are Montana Code Ann. § 76-3-621(6) and (7). Subsection (7) is a permissive statute that says the local governing body "may" waive the park dedication requirements if certain conditions are met. Subsection (6) is obligatory and provides that the governing body "shall" waive the park dedication requirements if certain conditions are met. These statutes provide, in pertinent part:

**76-3-621(6).** The local governing body **shall waive** the park dedication requirement if:

\*\*\*

(d)(i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who ultimately reside in the subdivision; and (ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1) (emphasis added).

**76-3-621(7).** The local governing body **may waive** the park dedication requirement if (a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and (b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a) equals or exceeds the area of the dedication required under subsection (1) (emphasis added).

Billings has not adopted a municipal ordinance comparable to Subsection (7) above. In the absence of a local ordinance, we submit that state law governs and that the City may proceed under the permissive statute, § 76-3-621(7) Mont. Code Ann. The City may also proceed under the mandatory statute (§ 76-3-621(6) Mont. Code Ann.) which is comparable to § 23-1009(4) of the Billings Montana *City Code* which provides:

The governing body shall waive the park dedication requirement if:

\*\*\*

(4) the subdivider dedicates land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and the area of the land equals or exceeds the area of the dedication required under Section 23-1002.

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Page 3

Boyer Land, LLC is meeting the needs of the Silvercreek residents with the proposed dedications. In that regard, I note the following for your consideration:

- A. The proposed dedication of 5.58 acres in the Alkali Creek drainage will preserve and protect critical habitat that is both unique and valuable. This dedication will extend and enlarge the existing Pow Wow Park by approximately 32% and will help to protect Pow Wow Park from the potentially adverse effects of upstream development.
- B. The residents of the Silvercreek Subdivision will also be well served by the River Rock Park that is being developed as part of River Rock Estates, which is contiguous with and immediately south of the Silvercreek Subdivision. The proposal for River Rock Park is to create a 4.01-acre park that will serve the residents of both River Rock Estates and the Silvercreek Subdivisions. Please note that the proposed 4.01-acre park exceeds the park dedication requirement for River Rock Estates by approximately 1.05 acres. This additional park space has been included in order to meet the needs of the Silvercreek residents.
- C. In addition to the proposed River Rock Park and the proposed 5.58 acre Alkali Creek dedication, Boyer Land, LLC proposes to dedicate an additional .08 acres within Silvercreek Subdivision as parkland in order to create access to the Heritage Trail System.
- D. The Silvercreek Subdivision is proposed as a higher end development with larger lots. The lots range from 10,781 square feet to 36,998 square feet. The larger lots help to satisfy the residents' needs for recreational space. Because of the lot size, there is no need for "pocket parks" within the Silvercreek Subdivision. What is more desirable is to have a larger park. This need is being met by expanding the proposed River Rock Park and also by adding an additional 5.58 acres of public parkland in the Alkali Creek drainage.

We believe the Alkali Creek property meets the requirements specified by Montana Code Annotated § 76-3-621(7)(a), as well as § 76-3-621(6) and 23-1009(4) BMCC. As I previously noted, the Alkali Creek property is special because of its wildlife habitat, aesthetic vistas, natural resources, etc. It is a property that should be preserved for the benefit and enjoyment of all of the citizens of Billings. This property will benefit the residents of the Silvercreek Subdivision and all of Billings by protecting and preserving this important natural habitat.

In support of this request for a variance, I note the following additional matters for your consideration:

- A. Public health, safety, and welfare. The granting of this variance will not be detrimental to the public health, safety, or general welfare, and will not be injurious

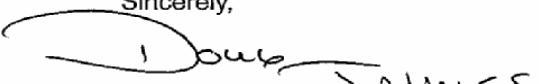
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Page 4

to other adjoining properties. To the contrary, the public health, safety, and general welfare will be promoted by preserving and protecting critical wildlife habitat and open spaces.

- B. Undue hardship. Our client would suffer an undue hardship if this variance is not granted. Our client would have to redesign both the Silvercreek and River Rock Estates subdivisions, which would result in increased costs and expenses. River Rock Park would be downsized, which would be unfortunate for both of these subdivisions and our community. Our client also would not be able to preserve and protect the Alkali Creek property for the benefit of the general public, which is one of the objectives of this variance request.
- C. Taxpayer burden. This variance will not result in an increase in taxpayer burden.
- D. Other non-conformance. This variance will not place the Silvercreek Subdivision in non-conformance with any adopted zoning regulations or growth policy.
- E. Proposed Alternative. The proposed alternative is equally effective, and the objectives of parkland dedication are still satisfied by preserving and protecting the critical habitat in Alkali Creek and by expanding River Rock Park by approximately 1.05 acres to create a larger park.

I believe it is undisputed that the Alkali Creek property should be preserved and protected in its natural habitat for the use of the general public. This is in the best interests of our community. The development of the Silvercreek Subdivision has provided the mechanism to preserve and protect this critical habitat not only for the residents of the Silvercreek Subdivision, but also for our entire community. Accordingly, we submit our that client's request for a variance of the parkland dedication requirements should be granted. Again, I note that Boyer Land, LLC is proposing to dedicate 6.71 acres as parkland when the required dedication for Silvercreek is only 5.51 acres. We hope that the City of Billings will grant the requested variance.

Sincerely,

  
DOUG JAMES  
[JAMES@moultonlawfirm.com](mailto:JAMES@moultonlawfirm.com)

DJ:ssm

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## AGENDA ITEM:



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**CITY COUNCIL ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Tuesday, October 23, 2006**

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**TITLE:** 2006 CTEP Project Applications

**DEPARTMENT:** Planning and Community Services Department

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

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**PROBLEM/ISSUE STATEMENT:** Each year Billings submits projects to the Montana Department of Transportation for funding from the Community Transportation Enhancement Project (CTEP) program. These projects typically represent construction of pedestrian and/or bicycle facilities in the community. Council must formulate a recommendation to the Policy Coordinating Committee (PCC). This is a returning item from the October 10 Council meeting.

**ALTERNATIVES ANALYZED:**

- Approve the CTEP applications for submission as recommended by TAC.
- City Council formulate their own project list.
- Do not approve the CTEP applications for submission. This would result in the loss of CTEP funding for this year.

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

**RECOMMENDATION**

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

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

## **INTRODUCTION**

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

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

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

Council delayed this item from the October 10<sup>th</sup> meeting to discuss funding options for the various path connections. Specifically discussed was the connection from Chandelier Circle to the Big Ditch Trail.

## **PROCEDURAL HISTORY**

- Completed Items
  - 8/1/06; CTEP project applications received
  - 9/14/06; Technical Advisory Committee (TAC) reviews applications and makes recommendation on which projects to fund and their priority
  - 9/18/06; Council receives information and presentation of CTEP projects at Work Session
  - 9/26/06; Planning Board reviewed applications and concurred with TAC's recommendation
  - 9/28/06; County Commissioners reviewed applications and concurred with TAC's and Planning Boards recommendation
  - 10/10/06; City Council reviews applications and tabled discussion to their October 23<sup>rd</sup> meeting
- Future Items
  - 11/1/06; Policy Coordination Committee reviews the applications and action taken by the other groups and determines the final recommendation and prioritization
  - The final recommendation and prioritization are reviewed by the Montana Department of Transportation (MDT)

- MDT forwards the recommendation and prioritization to the Highway Commission for final approval
- Highway Commission approves the recommendation and prioritization
- MDT creates the project specific agreements and forwards them to the City
- City Council accepts and executes the project specific agreements
- The executed agreements are returned to MDT
- The Highway Commission approves the project agreements
- MDT authorizes the City to begin project development
- Project development and design
- Project construction
- Project close-out

## **BACKGROUND**

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

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

Preliminary estimates for the construction of the Chandelier section of path which includes a bridge over the Big Ditch Canal is \$20,000.

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

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

## **BACKGROUND**

It should be noted that project request this year totals \$1,590,863 and CTEP funding available is \$581,000. Current projects and recommendations are as follows:

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### **F.Y. 2006 CTEP PROPOSALS**

- **Big Ditch Trail Connections**

This project would construct four connection paths and a ditch crossing for bicycle and pedestrians to link the adjacent neighborhoods to the main Big Ditch Trail located between the Shiloh Underpass and 46<sup>th</sup> St. W.

CTEP Funds: \$73,593 City of Billings/Local Match: \$11,407 Project Cost: \$85,000

- **Lake Elmo – Hilltop To Wicks (Sidewalks)**

This project would fund sidewalks along high priority school walking routes on Lake Elmo from Hilltop Road to Wicks Lane. This would include approximately ¾ of a mile of sidewalks and just under a mile of multi-use path.

CTEP Funds: \$384,630 City of Billings/Local Match: \$59,620 Project Cost: \$2,850,000\*

\* This total includes \$2,405,750 in additional local funding.

- **Lampman Strip Park Trail**

This project would construct a 10' wide, approximately ½ mile, hard surface path in Lampman Park from Monad road to the Famous Dave's path.

CTEP Funds: \$264,069 City of Billings/Local Match: \$40,931 Project Cost: \$305,000

- **Main Street Bike/Pedestrian Underpass**

This project would construct a culvert under Main Street connecting Metra Park and the Alkali Creek area.

CTEP Funds: \$264,069 City of Billings/Local Match: \$40,931 Project Cost: \$700,000\*

\* This total includes \$395,000 in additional local funding (2001-Federal Appropriation).

- **On-Street Bike Lanes**

This project would stripe bike lanes on various street segments through out the City of Billings.

CTEP Funds: \$100,823 City of Billings/Local Match: \$15,628 Project Cost: \$116,451

- **Swords Park Trail - Phase II**

This project would construct approximately 1 mile of hard surfaced path extending the existing trail connection that was built from the west side of Swords Park to where it

currently ends at the fork in the Black Otter Trail Road. Phase II will continue the trail access to the east end of Swords Park and eventually make the connection to the north to the pedestrian underpass that will be built as part of the Airport Road project.

CTEP Funds: **\$457,142** City of Billings/Local Match: **\$70,858** Project Cost: **\$528,000**

- **Laurel Pedestrian Bridge**

This project would construct a bridge over the Big Ditch connecting 12<sup>th</sup> Street to the neighborhood to the East in Laurel, MT.

CTEP Funds: **\$46,537** Yellowstone Co./Local Match: **\$7,213** Project Cost: **\$53,750**

**F.Y. 2006 CTEP APPLICANT REQUESTS**

**\$ 1,590,863**

**F.Y. 2006 CURRENT CTEP DOLLARS AVAILABLE**

**\$ 581,000**

**TAC, PLANNING BOARD &  
COMMISSION RECOMMENDATION**

<b>PROJECT FUNDING</b>	<b>CTEP REQUEST</b>	<b>RECOMMENDED</b>
<b>1. Lake Elmo – Hilltop To Wicks (Sidewalks)</b>	\$384,630	\$384,630
<b>2. Main Street Bike/Pedestrian Underpass</b>	\$264,069	\$264,069
<b>3. Laurel Pedestrian Bridge</b>	\$46,537	\$46,537
<b>TOTAL</b>	<b>\$695,236</b>	<b>\$695,236</b>

\*The TAC recommendation includes allocating approximately \$114,000 of 2007 CTEP funds.

## **ISSUES**

The TAC felt strongly that it is important to utilize the 2001 Federal Earmark to make the connection under Main Street. Main Street remains the largest obstacle to making the connection from the Rims to the River. TAC also felt that the Lake Elmo and Laurel Bridge Projects were of importance to the safety of children that use these routes to get to and from school. TAC is following the president set by PCC several years ago to borrow future year funding to pay for this years projects. The City Council members will need to determine which projects are their priority.

## **RECOMMENDATION**

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



4<sup>th</sup> Floor Library  
510 Broadway

## PLANNING AND COMMUNITY SERVICES DEPARTMENT



Billings, MT 59101  
406-657-8246

# Memorandum

**To:** Honorable Mayor and City Councilmembers  
**CC:** Tina Volek, City Administrator  
**From:** Candi Beaudry, Planning Division Manager  
**Date:** 10/24/2006  
**Re:** Chandelier Circle – Big Ditch Trail Connection

To aid Council in their deliberation of the CTEP application recommendation scheduled for Monday night, staff is providing four options to construct the bicycle/pedestrian pathway between Chandelier Circle and the Big Ditch Trail. These options are based on the following assumptions:

1. The trail will be built to City standards, taking into consideration maintenance and construction cost. The proposed trail would be eight-feet wide and constructed of concrete. The ditch crossing would likely utilize concrete culvert pipe. Asphalt was not considered because of the higher maintenance costs and a steel bridge crossing was ruled out because it would cost more than a culvert crossing.
2. Design and construction of the trail and ditch crossing, as described above, is estimated to cost \$25,000.

The four options for funding and constructing the connections and the advantages and disadvantages of each are discussed below.

1. Private funding or a combination of private funding and G.O. bond contribution. I visited with the BikeNet Board on Wednesday, October 18 and inquired about the possibility of BikeNet contributing funds to this project. The outcome of that discussion was that a Board member volunteered to investigate whether residents in Shiloh Point Subdivision would be

willing to contribute to the cost of constructing the trail and BikeNet would consider matching these contributions. The match amount was not discussed. The City could also contribute to the match with funds from the G.O. bond. Timing of construction would be dependent on how quickly the private funding could be raised.

2. Include the crossing in Phase II of the Big Ditch Trail CTEP project. A portion of the CTEP funding programmed for Phase II could be used to construct the Chandelier Circle connection. Staff has received verbal confirmation from Montana Department of Transportation, CTEP Division that this option is possible under the constraints of our existing project agreement. This option would shift approximately \$25,000 from the main Big Ditch Trail from Larchwood Drive to the west end of Rimrock West Park to this connection. This would shorten the length of the main trail. Phase II is scheduled to be completed in 2007.
3. Apply for and receive CTEP funding. A 2006 CTEP application was submitted for review for the construction of three connections along the Big Ditch Trail (Big Ditch Phase III), including the Chandelier Circle connection and the ditch crossing. CTEP applications are reviewed by the Technical Advisory Committee, the County Planning Board, the County Commissioners, and the City Council. The governing bodies and the Planning Board forward recommendations to the Policy Coordinating Committee for a final vote on which applications will be submitted to the state for funding. Neither the Commissioners nor the Planning Board forwarded a recommendation to include the Big Ditch Trail connectors as a CTEP application. This puts the Council at a disadvantage when the PCC votes on the applications. There are four voting members on the PCC – the Mayor, Chairman of the County Commissioners, President of the Planning Board, and the District Manager of the Montana Department of Transportation. The latter generally chooses to abstain on local matters. The likelihood of the CTEP application being approved by the PCC is slim. If it is approved, the connections could be constructed in 2008.
4. Fund connections through an SID. As provided for in Rush Subdivision 6<sup>th</sup> Filing, Rush Subdivision 7<sup>th</sup> Filing, Rush Subdivision 8<sup>th</sup> Filing, Goodman Subdivision 3<sup>rd</sup> Filing, Goodman Subdivision 4<sup>th</sup> Filing and Shiloh Point Subdivision Improvement Agreements, an SID will be created to construct improvements in Rush Park, located in Rush Subdivision 6<sup>th</sup> Filing. The Shiloh Point SIA also adds the provision for a ditch crossing at 43<sup>rd</sup> Street West to be included in that same SID. The formation of the SID is conditioned on 90% buildout of Rush Subdivisions, 6<sup>th</sup> and 8<sup>th</sup> Filings. This percent buildout will be reached within the next year or two. Once the SID is created, a connection across the Big Ditch at 43<sup>rd</sup> St. W. will be constructed. The Council could choose to add a connection to Chandelier Circle as part of this SID. All property owners in these subdivisions are subject to a Waiver of Right to Protest the Creation of an SID. The construction of the connection and ditch crossing at Chandelier Circle could be completed by 2008, at the latest, under this scenario.

In summary, the most expedient method to complete the trail connection and ditch crossing is to change the scope of the Phase II CTEP project and build the improvements next year (Option 2).

The most equitable way to distribute the cost of building the connection and crossing is to include these costs in an area-wide SID (Option 4).

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