

CITY OF BILLINGS

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

AGENDA

COUNCIL CHAMBERS

February 12, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tussing
PLEDGE OF ALLEGIANCE – Mayor Tussing
INVOCATION – Councilmember Larry Brewster
ROLL CALL
MINUTES – January 22, 2007
COURTESIES
PROCLAMATIONS
▪ February 18 – 24: National Engineers Week
ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 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.	Skip Godfrey	Human Relations Commission	01/01/07	12/31/09
2.	Bill Iverson	Yellowstone County Board of Planning (Ward 1)	01/01/07	12/31/08
3.	Donna Forbes	Yellowstone County Board of Planning (Ward 3)	01/01/07	12/31/08

4.	Bill Lucas	Yellowstone County Board of Planning (Ward 4)	01/01/07	12/31/08
5.	Fred Rogers	Yellowstone County Board of Planning (Ward 5)	01/01/07	12/31/08

1. Beginning term was listed as 12/31/09
2. Yellowstone County Board of Planning terms were listed as 4 year terms instead of 2 year terms.

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

B. Bid Awards:

(1) **W.O. 06-20: Downtown Billings Wayfinding Signage.** (Opened 1/23/07). Recommend Epcon Sign Company, \$191,567.80.

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

(2) **W.O. 06-11: Heated Storage Addition.** (Opened 1/12/07). Recommend High Tech Construction, \$547,400.00

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

C. Change Order #1, AIP #29: Taxiway G Improvements, Empire Sand and Gravel, deduct \$54,585.11.

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

D. Amendment #1 to Scheduled Airline Operating Agreement & Terminal Building Lease:

- (1) Big Sky Airlines
- (2) Horizon Air
- (3) Northwest Airlines
- (4) SkyWest Airlines
- (5) United Airlines

extending the contract expiration date to 6/30/07.

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

E. W.O. 05-20: Aronson Avenue, Professional Services Contract with HKM Engineering, Inc., \$316,199.00.

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

F. W.O. 04-33: Lake Elmo Drive (Hilltop Rd to Wicks Ln) Right-of-Way Acquisition:

(1) Parcel 81: Portion of Lot 15, Block 1, Arrowhead Sub., Gary A. Leapoldt, \$2,450.00.

[\(Corresponding Staff Memo F1\)](#)

(2) Parcel 80: Portion of Lot 16, Block 1, Arrowhead Sub., Troy C. Wolff, \$2,550.00.

[\(Corresponding Staff Memo F2\)](#)

(3) Parcel 79: Portion of Lot 17, Block 1, Arrowhead Sub., Clarence H. Hein, \$1,750.00.

[\(Corresponding Staff Memo F3\)](#)

(4) Parcel 69: Portion of Lot 3, Block 4, Arrowhead Sub., Joseph A. Deigert, \$2,250.00.

[\(Corresponding Staff Memo F4\)](#)

(5) Parcel 72: Portion of Lot 6, Block 4, Arrowhead Sub., Roberta A. Mee, \$2,400.00.

[\(Corresponding Staff Memo F5\)](#)

(6) Parcel 36: Portion of Lot 16, Barkley Subdivision, Richard A. Fox and Judy K. Fox, \$3,950.00.

[\(Corresponding Staff Memo F6\)](#)

(7) Parcel 5: Portion of Lot 2, Windsor Sub., Hanson Brothers, \$6,200.00.

[\(Corresponding Staff Memo F7\)](#)

G. Memorandum of Understanding (MOU) with Beartooth Resource Conservation and Development Area, Inc. (RC&D), \$8,380.00.

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

H. Acceptance of Easement on Lots 1-2, Block 1, Cellan Acre Tracts, Gammy Group, LLP, owners, \$0.00.

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

I. Revolving Fund Loan to Kimberly A. Pettit d/b/a The Rims Montessori Academy for Children, \$19,575.00.

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

J. Approval of Grant application submittal and finalization for a subgrant from the Montana Board of Crime Control, Stop Violence Against Women (VAWA) Funds, \$60,000.00.

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

K. Acceptance of Donation to Animal Shelter, Donald and Carol Roberts Foundation in memory of Virginia K. Weston, Inc., \$500.00.

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

L. Acceptance of Donation to Southwest Cop Shop, Jim Brown, \$3,000.00.

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

M. Approval of Certified Local Government (CLG) Grant application for a grant from the Montana State Historic Preservation Office, \$4,031.00.

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

N. Acknowledging receipt of Annex petition #07-02: a petition to annex 13.01 acres described as Lot 65A-4, Amended Plat of Lot 65A of Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms, Mary Kramer, petitioner, and setting a public hearing for 2/26/07.

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

O. Acknowledging receipt of Annex petition #07-03: a petition to annex 3 parcels totaling 2.44 acres and described as (1) N2 of Lot 3 & All of Lot 4, Sandra Subdivision and 63,784 sf combined with Lot 15A, (2) S2, Lot 7, Sandra Subdivision, and (3) N2, Lot 7, Sandra Subdivision, City of Billings, petitioner, and setting a public hearing for 3/26/07.

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

P. Resolution of Intention to Create Park Maintenance District #4036: Josephine Crossing Subdivision and setting a public hearing for 3/12/07.

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

Q. Second/final reading ordinance amending BMCC Section 23-1101; providing updates to regulations on requesting a variance from the subdivision regulations.

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

R. Second/final reading ordinance for Zone Change #793: a zone change from Residential Multi-family (RMF) to Neighborhood Commercial (NC) on 14,000 sf of an existing parcel of land described as: S/2 of Lots 13 through 21, Block 59 Foster's Addition and located at 632 North 26th Street aka Skyline Court Condominiums. Thomas Towe and Court E. Ball Partnership, owner; Susan Lovely, agent. (Delayed from 1/22/07). Approval of the zone change and adoption of the determinations of the 12 criteria.

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

S. Second/final reading ordinance for Zone Change #795: A zone change from Residential-7,000 to Neighborhood Commercial (NC) and Residential Multi-family-Restricted (RMF-R) on a 4.69 acre parcel of land described as: Tracts 1 – 5, Brittain Acres Subdivision and located at 803 Yellowstone River Rd., and 821 & 823 Bench Blvd. Big Sky Floral Supply, owner. Approval of the zone change and adoption of the determinations of the 12 criteria.

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

T. Subdivision Plats for Scott Subdivision, Lots 1, 2, 4 and 6 and vacated portions of Zimmerman Trail.

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

U. Preliminary Major Plat of Grand Peaks Subdivision generally located East of the intersection of Grand Ave. and 54th St. W, adjacent to Bishop Fox Sub., conditional approval of the plat, approval of the variance and adoption of the Findings of Fact.

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

V. Bills and Payroll.

(1) January 5, 2007

[\(Corresponding Staff Memo V1\)](#)

(2) January 12, 2007

[\(Corresponding Staff Memo V2\)](#)

(3) January 19, 2007

[\(Corresponding Staff Memo V3\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

- 2. PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward I to include recently annexed property described as: Annex #07-01: an 11,160 square foot parcel of property described as Lot 3, Block 7, Kimble Subdivision, Second Filing and located at 215 Garden Ave. and including all adjacent right-of-way of Garden Avenue. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)

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

- 3. PUBLIC HEARING AND RESOLUTION OF INTENT** to adopt the Highland Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy. Planning Board recommends approval. (Action: approval or disapproval of Planning Board recommendation.)

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

- 4. PUBLIC HEARING AND RESOLUTION** portions of Marbara Lane, Silver Lane, Yucca St. and North Rim Rd. MSU-Billings, petitioner, \$115,164.99. Staff recommends approval of: (a) the vacation, (b) the Quit Claim Deed to MSU-B for Normal Avenue, and (c) a right-of-way Easement for public utilities running through the vacated streets and Normal Ave. (Action: approval or disapproval of Staff recommendation.)

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

- 5. PUBLIC HEARING AND RESOLUTION** creating SID 1377: water, sewer, curb & gutter and street improvements to Greenbriar Rd. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

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

- 6. 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)

FEBRUARY:

2/12/2007	Energy & Conservation Commission	3:00 p.m.	Billings Operations Ctr. 4848 Midland Rd.
	REGULAR Council Meeting	6:30 p.m.	Council Chambers
2/13/2007	Council Agenda Setting Meeting	5:30 p.m.	CH Conference Room
	Planning Board	6:00 p.m.	4 th Floor Library
2/14/2007	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.
2/15/2007	Committee on Homelessness	1:30 p.m.	YCCHD Conf. Rm. 123 S. 27 th St.
	Public Utilities Board	6:30 p.m.	Public Works-Belknap 2251 Belknap Ave
2/19/2007	PRESIDENT'S DAY – CITY OFFICES CLOSED		
2/20/2007	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
	Parking Advisory Board	4:00 p.m.	CH Conference Room
	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
2/22/2007	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 th Street
2/26/2007	REGULAR Council Meeting	6:30 p.m.	Council Chambers
2/27/2007	Council Agenda Setting Meeting	5:30 p.m.	CH Conference Room
	Planning Board	6:00 p.m.	4 th Floor Library
2/28/2007	Housing Authority	NOON	2415 1 st Avenue North
	Development Process Advisory		
	Review Board (DPARB)	1:00 p.m.	CH Conference Room
	Traffic Control Board	NOON	4 th Floor Library

MARCH:

3/01/2007	EMS Commission Human Relations Commission	7:30 a.m. 12:15 p.m.	Main Fire Station CH Conference Room
3/05/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
3/06/2007	Community Development Board Zoning Commission Aviation & Transit Commission	3:00 p.m. 4:30 p.m. 5:30 p.m.	4 th Floor Library Council Chambers Airport Terminal
3/07/2007	Board of Adjustment	6:00 p.m.	Council Chambers
3/08/2007	Library Board Committee on Homelessness	11:30 a.m. 1:30 p.m.	Library 3 rd Floor Library
3/09/2007	Community Development Board	3:00 p.m.	Tentative – Call for Info.
3/12/2007	Energy & Conservation Commission Parking Advisory Board REGULAR Council Meeting	3:00 p.m. 4:00 p.m. 6:30 p.m.	Billings Operations Ctr. 4848 Midland Rd. CH Conference Room Council Chambers
3/13/2007	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 th Floor Library
3/14/2007	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.
3/19/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
3/20/2007	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
3/22/2007	Yellowstone County Board of Health Community Development Board	7:00 a.m. 9:00 a.m.	Community Health Center 123 So. 27 th Street 4 th Floor Library
3/23/2007	Community Development Board	9:00 a.m.	4 th Floor Library
3/26/2007	REGULAR Council Meeting	6:30 p.m.	Council Chambers
3/27/2007	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 th Floor Library
3/28/2007	Development Process Advisory Review Board (DPARB) Traffic Control Board Housing Authority	1:00 p.m. NOON NOON	CH Conference Room 4 th Floor Library 2415 1 st Avenue North



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, FEBRUARY 12, 2007

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

PROBLEM/ISSUE STATEMENT: Confirmation of appointments for Boards and Commission positions for the Human Relations Commission and the Yellowstone County Board of Planning was approved on January 8, 2007 with the incorrect dates. The correct terms are listed below.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following corrections:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Skip Godfrey	Human Relations Commission	01/01/07	12/31/09
2.	Bill Iverson	Yellowstone County Board of Planning (Ward 1)	01/01/07	12/31/08
3.	Donna Forbes	Yellowstone County Board of Planning (Ward 3)	01/01/07	12/31/08
4.	Bill Lucas	Yellowstone County Board of Planning (Ward 4)	01/01/07	12/31/08
5.	Fred Rogers	Yellowstone County Board of Planning (Ward 5)	01/01/07	12/31/08

3. Beginning term was listed as 12/31/09

4. Yellowstone County Board of Planning terms were listed as 4 year terms instead of 2 year terms.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Work Order 06-20, Downtown Billings Wayfinding Signage – Bid Award
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The Wayfinding Signage project was originally bid in November 2006. The City received only one bid, which exceeded the budgeted amount. The bid award was delayed so City Staff could revise the bid documents. Bids were again received on January 23, 2007. This project will install 24 wayfinding signs in the downtown area to direct pedestrians and drivers to points of cultural interest. Included in the project are 24 wayfinding directional signs in the downtown area, plus a gateway monument sign at 4th Avenue South and South 27th Street.

FINANCIAL IMPACT: Funding for the estimated \$197,000 cost to fabricate and install the signs is budgeted by the Downtown Billings Partnership.

Approved Dollar Amount for Project: \$202,000.00
Contract Award (this memo): \$191,567.80
Funding Balance: \$ 10,432.20

Bids were opened on January 23, 2007 with the following results:

Firm	Bid
Color-Ad	Non-Responsive
Epcon Sign Company	\$191,567.80
Serigraphics Sign Systems	\$194,280.00
Sign Products, Inc	\$221,533.75
Billings Construction Supply	\$271,321.66
Engineer's Estimate	\$197,000.00

The bid received from Color-Ad was deemed non-responsive as the bid bond was not signed by a representative of the company; the unit price values entered on Schedule No. 1 of the bid form were noted as estimates; and the total bid in words was significantly different from the total bid indicated in figures.

RECOMMENDATION

Staff recommends that Council award a construction contract for W.O. 06-20, Downtown Billings Wayfinding Signage, with Epcon Sign Company for the amount of \$191,567.80.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Work Order 06-11, Heated Storage Addition
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Proposals were received and evaluated for W.O. 06-11 Heated Storage Addition on January 12, 2007. This project will add an addition to the existing equipment storage building and break room located at Public Works Belknap.

ALTERNATIVES ANALYZED:

1. Award Work Order 06-11, Heated Storage Addition, Base Bid and Alternate 1, to High Tech Construction in the amount of \$547,400.00; or
2. Not award Work Order 06-11, Heated Storage Addition.

FINANCIAL IMPACT: Funding for the Heated Storage Addition, will be provided from Water Revenues and Sanitary Sewer Revenues. We received 2 proposal for this project and the costs are as follows:

	<u>High Tech</u>	<u>Williams Brothers</u>	<u>Engineers</u>
	<u>Construction</u>	<u>Construction</u>	<u>Estimate</u>
Building Addition – (Base Bid)	\$513,700.00	\$624,125.00	\$525,000.00
Alternate 1 - (Break Room Add'n)	\$ 33,700.00	\$ 53,500.00	\$ N/A
Alternate 2 – (Overhead Doors)	\$ 32,000.00	\$109,000.00	\$ N/A
Alternate 3 – (New Roof)	<u>\$135,000.00</u>	<u>\$ 65,750.00</u>	<u>\$ N/A</u>
Total	\$714,400.00	\$852,375.00	\$525,000.00
<u>CIP Project #PWU- W015</u>			
CIP Budgeted Amount		\$550,000.00	
Previous Encumbrances		\$000,000.00	
This Contract (Base Bid + Alt. 1)		\$547,400.00	
Budget Fund Balance		\$ 2,600.00	

RECOMMENDATION

Staff recommends that Council approve the Base Bid and Alternate 1 for the construction contract for the Heated Storage Addition with High Tech Construction in the amount of \$547,400.00.

Approved By: City Administrator _____ City Attorney _____

INTRODUCTION

Proposals were received for W.O. 06-11 Heated Storage Addition on January 12, 2007. Bids were submitted as part of the proposal. The total bid consisted of a base bid for an addition to the existing building plus 3 additional alternates. Alternate 1 was for a break room addition, Alternate 2 was for retrofitting additional overhead doors to the existing building, and Alternate 3 was for retrofitting a new roof onto the existing building. High Tech Construction is the apparent low bidder.

PROCEDURAL HISTORY

A Design Build process was utilized to solicit proposals for the construction of an addition to the existing heated storage building. Under Montana Code MCA 18-2-503, the City of Billings has the authority to utilize this process. Under this process, an advertisement for the Request for Qualifications (RFQs) was run in the Billings Times. Two design build teams submitted their Statement of Qualifications (SOQs). A selection committee determined both teams were qualified for the project. Request for Proposals (RFPs) were then sent out to both teams. Both teams submitted proposals that included a bid price, for the project. The selection committee then selected High Tech Construction as the winning team based on conceptual design, project schedule, and cost. If City Council chooses to award the W.O. 06-11, the project will move forward and be completed this summer.

BACKGROUND

The existing heated storage building at Public Works Belknap is used for the storage of equipment and vehicles and is currently at capacity. Public Works Belknap needs room for additional equipment and vehicles and the addition to the existing heated storage building will provide the additional storage needed. In addition, upgrades to the existing building and break room were desired. The project was bid in such a way that it would allow for the base bid plus any number of the alternates to be awarded up to the available budget.

ALTERNATIVES ANALYSIS

Proposals were received on January 12, 2007, with High Tech Construction being selected as the winner. High Tech Construction was also the low bidder in the amount of \$547,400.00.

RECOMMENDATION

Staff recommends that Council approve the Base Bid and Alternate 1 for the construction contract for the Heated Storage Addition with High Tech Construction in the amount of \$547,400.00.

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

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Approval of Change Order One with Empire Sand and Gravel, Airport Improvement Program (AIP) 29 Project, Taxiway G Improvements

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: One of the projects included in the City's approved Capital Improvement Program, is the Taxiway G Improvement Project. This Project was also approved by the Federal Aviation Administration (FAA), as an Airport Improvement Program (AIP) Project. This is the final balancing Change Order, which corrects the bid quantities to match the installed quantities for this Project. The comparison of the quantities resulted in a deduction to the original contract amount. Other major changes to this contract are as follows:

- Extension of an existing electrical duct bank across the taxiway for future use, and eliminating the need to trench through the new pavement.
- Relocation of two manholes to an area where they would not be hazards during snow removal operations.
- Change five heavy duty manhole covers to medium duty, as the manholes are not located in heavy aircraft operation areas.
- Increase the size of a manhole ring from 48" to 60" to match existing conditions.
- Replacement of directional box sign panels on the airfield that were faded, as per the request of an FAA Part 139 Inspector.
- Installation of erosion fabric on newly seeded areas along Taxiway G to reduce washouts and promote grass growth.

FINANCIAL IMPACT: These changes will result in a deduction of \$54,585.11. The original contract amount of \$1,486,988.05 will be reduced to \$1,432,402.94. This AIP Project is funded Federally at 95% and locally at 5%. The City's portion of the Change Order deduct is approximately \$2,729.25.

RECOMMENDATION

Staff recommends that the City Council approve Change Order One to Empire Sand and Gravel, for AIP 29 Project Taxiway G Improvement.

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

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

AGENDA ITEM: **D**



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Amendment 1 to the Scheduled Airline Operating Agreement and Terminal Building Lease

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: On June 30, 2006, the two-year Scheduled Airline Operating Agreement and Terminal Building Lease (the Agreement) with the signatory airlines expired. Due to the bankruptcies, and other financial difficulties that the airline industry has suffered, the airlines will only look at short-term agreements, so staff subsequently negotiated a contract amendment extension through June 30, 2007. Big Sky Airlines, Horizon Air, Northwest Airlines, SkyWest Airlines and United Airlines have signed Amendment 1 to the Scheduled Airline Operating Agreement and Terminal Lease. Frontier Airlines and Allegiant Air have opted to not sign the Agreement and will operate under City Ordinance, which requires a higher landing fee. The Signatory landing fee is \$.76 per 1,000 pounds of landed weight, whereas the Non-Signatory landing fee calculated by Ordinance is \$1.06 per 1,000 pounds of landed weight. Staff opted to wait until all of the Amendments were returned before seeking approval from Council. Receiving the final document from Northwest Airlines was delayed due to their bankruptcy situation.

FINANCIAL IMPACT: This Agreement extends the term and helps to ensure the Airport's fiscal viability through June 30, 2007. The total budgeted airline revenue for the City is approximately \$2,900,000 for this fiscal year.

RECOMMENDATION

Staff recommends that Council approve Amendment 1 to the Airline Scheduled Operating Agreement with Big Sky Airlines, Horizon Air, Northwest Airlines, SkyWest Airlines, and United Airlines; extending the contract expiration date to June 30, 2007.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A. Amendment 1 to Scheduled Airline Operating Agreement and Terminal Building Lease

RK/013007

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged this _____ day of _____, 2007, the undersigned, the CITY OF BILLINGS, MONTANA, Grantor, do hereby grant, convey, release and forever quitclaim its interest unto Montana University System for the use and benefit of Montana State University - Billings, 1500 University Drive, Billings, Montana 59101, as Grantee, in the following described real property situated in the City of Billings, Yellowstone County, Montana:

NORMAL AVENUE RIGHT-OF-WAY DESCRIPTION:

A tract of land being situated in the NW1/4 of Section 32, T. 1 N., R. 26 E., P.M.M., Yellowstone County, Montana, said tract being more particularly described as follows, to-wit:

Beginning at a point which is the southeast corner of Lot 1 of Babcock Subdivision, First Filing; thence NORTH a distance of 1024.20 feet to the southerly right-of-way of Rimrock Road; thence, following said southerly right-of-way, along a non-tangent curve to the left with a radius of 1230.75 feet a distance of 60.09 feet (chord bearing, N 86°59'26" E, chord length, 60.08 feet); thence, leaving said southerly right-of-way, SOUTH a distance of 1192.60 feet; thence S 89°58'00" W a distance of 60.00 feet; thence NORTH a distance of 165.27 feet to the point of beginning; said tract having an area of 71,448 SF and being as shown on attached EXHIBIT A.

TO HAVE AND TO HOLD unto the Grantee, and to its assigns and successors forever.

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

CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 2007, before me, a Notary Public in and for the State of Montana, personally appeared _____ and

_____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

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

_____ (Signature)

(NOTARIAL SEAL)

_____ (Printed Name)

Notary Public for the State of _____
Residing in _____, _____
My Commission Expires: _____

AMENDMENT 1

BILLINGS LOGAN INTERNATIONAL AIRPORT
SCHEDULED AIRLINE OPERATING AGREEMENT

AND

TERMINAL BUILDING LEASE

BY AND BETWEEN

CITY OF BILLINGS, MONTANA

AND

WITNESSETH

WHEREAS, the City of Billings, Montana and _____
entered into the Scheduled Airline Operating Agreement and Terminal Building Lease (the
Agreement) for term commencing July 1, 2004 and ending at midnight on June 30, 2006, and,

WHEREAS, both parties desire to amend the current Scheduled Airline Operating
Agreement and Terminal Building Lease to extend the term for an additional twelve (12)
months.

NOW THEREFORE, in consideration for the continued payment of Terminal
Building rentals, fees and charges, as specified in the Agreement, the parties hereto covenant and
agree to amend said Agreement, effective July 1, 2006, as follows:

This Agreement shall be for the term commencing on the Effective Date designated in Section 16.01 and ending at midnight on June 30, 2007, subject to termination as provided in Article 14 herein.

FURTHER, all other terms and conditions of the Scheduled Airline Operating Agreement and Terminal Building Lease by and between the City of Billings and _____, commencing on the 1st day of July 2004, remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hand this _____ day of _____ 2006.

ATTEST:

CITY OF BILLINGS

BY _____
CITY CLERK

BY _____
MAYOR

APPROVED AS TO FORM

BY _____
CITY ATTORNEY

BY _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: WO 05-20 Aronson Avenue Professional Services Contract Amendment
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: This contract amendment for HKM Engineering, Inc. is to complete the final design and bidding for Aronson Avenue. HKM Engineering, Inc. was awarded the contract for the 30% Design Study on the July 24th, 2006 City Council Meeting. HKM Engineering, Inc. has completed the 30% Design Study for Aronson Avenue. Aronson Avenue is classified as a minor arterial street within the Billings Urban Area Functional Classification Map. The City of Billings Transportation Plan shows Aronson Avenue complete from Hilltop Road to Airport Road. Currently, the street is constructed from Hilltop Road to just north of the BBWA Canal. Work Order 05-20 will construct Aronson Avenue from just north of the BBWA Canal to Airport Road. Funding for construction is included in the FY '08 CIP.

FINANCIAL IMPACT: This contract amendment is for \$316,199.00 and brings the total professional services contract with HKM Engineering, Inc. to \$494,797.00. The CIP amount for FY '07 included \$500,000.

RECOMMENDATION

Staff recommends that Council approve the professional services contract amendment for WO 05-20 Aronson Avenue with HKM Engineering, Inc. in the amount of \$316,199.00.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #81, a Portion of Lot 15, Block 1 of Arrowhead Subdivision with Gary A. Leapoldt

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #81 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$2,450.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$2,450.00. The cost of this acquisition is equal to the concluded appraisal value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #81, a portion of Lot 15, Block 1 of Arrowhead Subdivision with Gary A. Leapoldt in the amount of \$2,450.00, and authorize the Mayor to execute these documents.

ATTACHMENT

A. Right-of-Way Agreement and Warranty Deed (5 pages)

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

BACKGROUND

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

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #81, a portion of Lot 15, Block 1 of Arrowhead Subdivision with Gary A. Leapoldt in the amount of \$2,450.00, and authorize the Mayor to execute these documents.

ATTACHMENT

- A. Right-of-Way Agreement and Warranty Deed (5 pages)

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

Lake Elmo Road Hilltop Road to Wicks Lane Work Order: 04-33 Yellowstone
DESIGNATION Project No. 05153 COUNTY

Parcel No.	Parcel Description	Section	Township	Range
81	Lot 15, Block 1 of Arrowhead Subdivision,	22	1N	26E

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

GARY A. LEAPOLDT
1545 LAKE ELMO DRIVE
BILLINGS, MT. 59105
256-8864

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

375 square feet by deed	\$1,125.00
Improvements (Shrubs, bushes, fence, concrete driveway, sod)	\$1,187.00
- OTHER COMPENSATION:

375 square feet Temporary Construction Permit	\$ 112.00
---	-----------
- TOTAL COMPENSATION (includes all damages to the remainder): ~~\$2,400.00~~ *\$2,450.00 Red*
- IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of ~~\$2,400.00~~ *\$2,450.00 Red*, to be made payable to GARY A. LEAPOLDT and mailed to 1545 LAKE ELMO DRIVE, BILLINGS, MT. 59105
- IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
- The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
- 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

(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 *Gary A. Leopoldt* 12-13-06 501-66-1870
Signature: GARY A. LEAPOLDT (Date) Tax ID No.

Signature: (Date) Tax ID No.

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 12-13-06
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

Nicholas J. Bailey 12/10/07
City of Billings, Public Works Department (Date)

ATTEST:

City Clerk (Date)

LER-081.200 Leapoldt

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

Project No. W.O. 04-33 Parcel No. 81 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 13th day of December, 2006.

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

GARY A. LEAPOLDT
1545 LAKE ELMO DRIVE
BILLINGS, MT. 59105

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

Parcel No. 81 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 15, Block 1 of Arrowhead Subdivision, in the City of Billings, on file under Document No. 452936, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 375 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 375 sq. ft..

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

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

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

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

RK/013007

Project No. : W.O. 04-33

Parcel No. 81

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

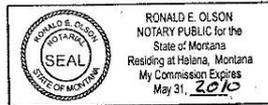
Mary A. Leopoldt

State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on December 13, 2006
(date)

by Sally A. Leopoldt
(names)

Ronald E. Olson
Notary Signature Line



Notary Printed Name

Notary Public for State of _____
Residing at: _____
My Commission Expires: _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

Date

ATTEST: _____
City Clerk

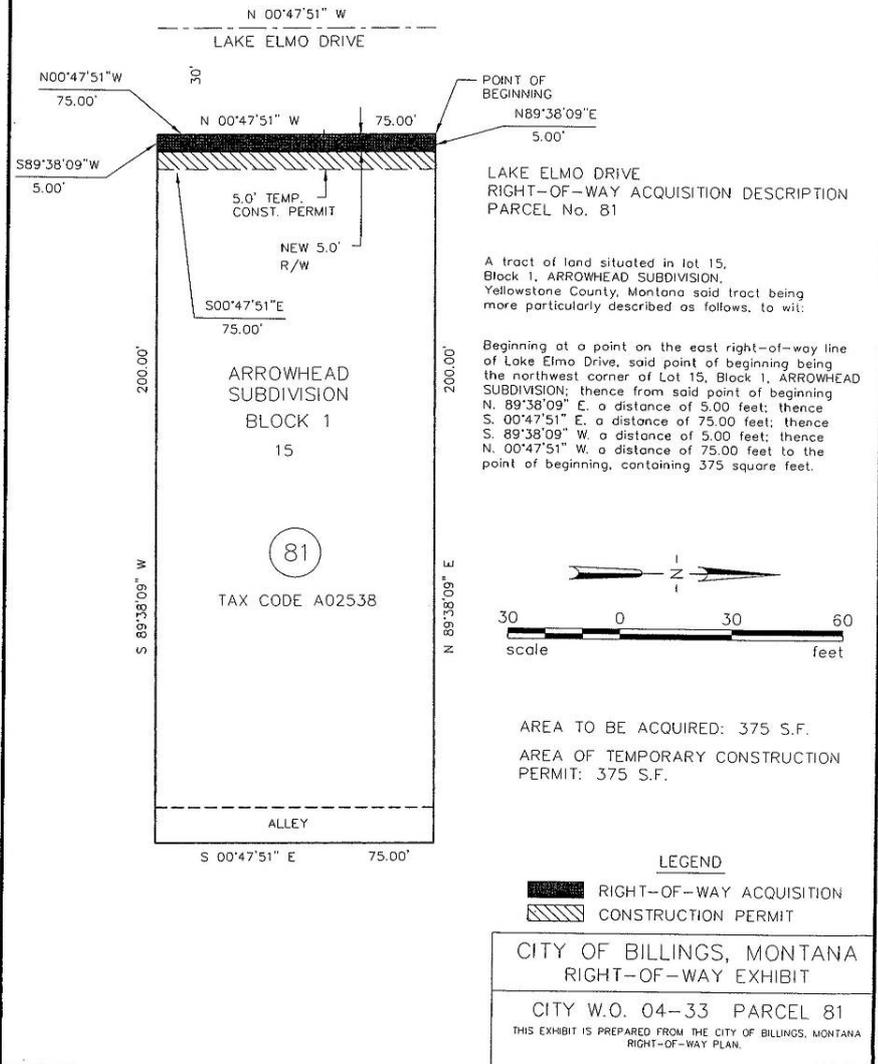
STATE OF MONTANA)
:ss
County of Yellowstone)

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

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

Print Name

EXHIBIT A
RIGHT-OF-WAY ACQUISITION
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN LOT 15,
BLOCK 1,
ARROWHEAD SUBDIVISION,
YELLOWSTONE COUNTY, MONTANA



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #80, a Portion of Lot 16, Block 1 of Arrowhead Subdivision with Troy C. Wolff

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #80 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$2,550.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$2,550.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #80, a portion of Lot 16, Block 1 of Arrowhead Subdivision with Troy C. Wolff in the amount of \$2,550.00, and authorize the Mayor to execute these documents.

ATTACHMENT

A. Right-of-Way Agreement and Warranty Deed (5 pages)

Approved By: City Administrator _____ City Attorney _____

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

- January 9, 2006 – Award of Contract for Professional Services for Right-of-Way Acquisition to Right-of-Way Acquisition Group, LLC
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- December 2006 – Right-of-way negotiations began with property owners

Future Items

- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

BACKGROUND

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

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #80, a portion of Lot 16, Block 1 of Arrowhead Subdivision with Troy C. Wolff in the amount of \$2,550.00, and authorize the Mayor to execute these documents.

ATTACHMENT

- A. Right-of-Way Agreement and Warranty Deed (5 pages)

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

Lake Elmo Road Hilltop Road to Wicks Lane Work Order: 04-33 Yellowstone
DESIGNATION Project No. 05153 COUNTY

Parcel No.	Parcel Description	Section	Township	Range
80	Lot 16, Block 1 of Arrowhead Subdivision,	22	1N	26E

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

TROY C. WOLFF
P.O. BOX 50149
BILLINGS, MT. 59105-0149
672-8602

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

375 square feet by deed	\$1,125.00
Improvements (Tree, asphalt driveway, sod)	\$1,125.00
	<i>NB</i> \$1,165.00
- OTHER COMPENSATION:

750 square feet Temporary Construction Permit	\$ 225.00
---	-----------
- TOTAL COMPENSATION (includes all damages to the remainder): **\$2,550.00**.
- IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

\$2,550.00	<i>NB 012907 see memo to file</i>
------------	-----------------------------------

 A warrant in the amount of ~~\$2,550.00~~ to be made payable to TROY C. WOLFF and mailed to P.O. BOX 50149, BILLINGS, MT. 59105-0149
- IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
- The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the ~~Deed and Sale Deed~~ *Deed and Sale Deed*, and made for the period of the street improvements construction project plus the one-year warranty period.
- 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

9. City of Billings agrees to remove the deciduous tree in front of the house AND GRIND the stump. NB

RW Project: Lake Elmo Road Hilltop Road to Wicks Lane

Parcel No.: 80

(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).

[Signature] 12-13-06 517-88-2880
Signature: TROY C. WOLFF (Date) Tax ID No.

Signature: (Date) Tax ID No.

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

[Signature] 12-13-06
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

[Signature] 11/8/07
City of Billings, Public Works Department (Date)

City Clerk (Date)

LER-080.200 Wolff

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

Project No. W.O. 04-33 Parcel No. 80 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 13th day of December, 2006.

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

TROY C. WOLFF
P.O. BOX 50149
BILLINGS, MT. 59105-0149

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

Parcel No. 80 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 16, Block 1 of Arrowhead Subdivision, in the City of Billings, on file under Document No. 452936, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 375 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 750 sq. ft..

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

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

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

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

RK/013007

Project No. : W.O. 04-33

Parcel No. 80

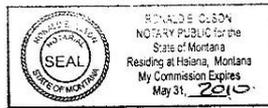
Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

[Handwritten Signature]

State of MONTANA)
County of Yellowstone)

This instrument was acknowledged before me on December 13, 2006
(date)

by Troy C. Wolff
(names)



[Handwritten Signature]
Notary Signature Line

Notary Printed Name _____
Notary Public for State of _____
Residing at: _____
My Commission Expires: _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings Date

ATTEST: _____
City Clerk

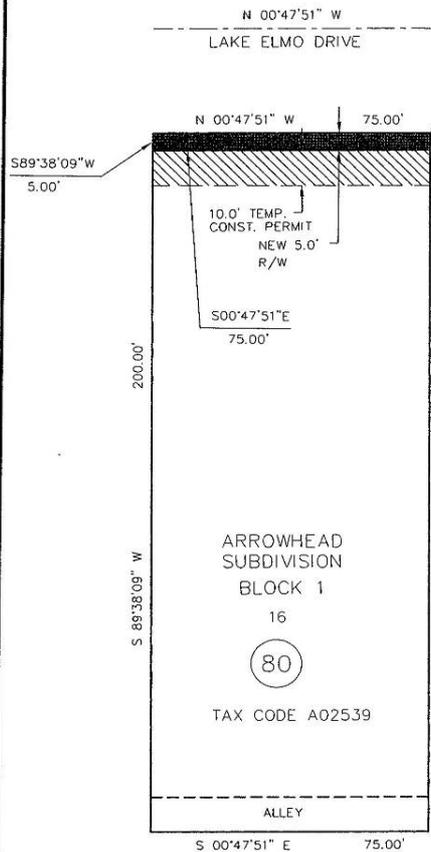
STATE OF MONTANA)
:SS
County of Yellowstone)

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

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

Print Name

EXHIBIT A
RIGHT-OF-WAY ACQUISITION
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN LOT 16,
BLOCK 1,
ARROWHEAD SUBDIVISION,
YELLOWSTONE COUNTY, MONTANA

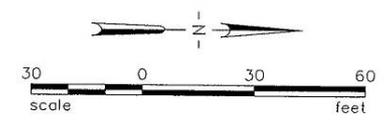


POINT OF BEGINNING
N 89°38'09\" E
5.00'

LAKE ELMO DRIVE
RIGHT-OF-WAY ACQUISITION DESCRIPTION
PARCEL No. 80

A tract of land situated in lot 16, Block 1, ARROWHEAD SUBDIVISION, Yellowstone County, Montana said tract being more particularly described as follows, to wit:

Beginning at a point on the east right-of-way line of Lake Elmo Drive, said point of beginning being the northwest corner of Lot 16, Block 1, ARROWHEAD SUBDIVISION; thence from said point of beginning N. 89°38'09\" E. a distance of 5.00 feet; thence S. 00°47'51\" E. a distance of 75.00 feet; thence S. 89°38'09\" W. a distance of 5.00 feet; thence N. 00°47'51\" W. a distance of 75.00 feet to the point of beginning, containing 375 square feet.



AREA TO BE ACQUIRED: 375 S.F.
AREA OF TEMPORARY CONSTRUCTION PERMIT: 750 S.F.

LEGEND

RIGHT-OF-WAY ACQUISITION

CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 80
 THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA RIGHT-OF-WAY PLAN.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #79, a Portion of Lot 17, Block 1 of Arrowhead Subdivision with Clarence H. Hein

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #79 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$1,750.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$1,750.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #79, a portion of Lot 17, Block 1 of Arrowhead Subdivision with Clarence H. Hein in the amount of \$1,750.00, and authorize the Mayor to execute these documents.

ATTACHMENT

A. Right-of-Way Agreement and Warranty Deed (5 pages)

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

BACKGROUND

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

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #79, a portion of Lot 17, Block 1 of Arrowhead Subdivision with Clarence H. Hein in the amount of \$1,750.00, and authorize the Mayor to execute these documents.

ATTACHMENT

- A. Right-of-Way Agreement and Warranty Deed (5 pages)

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

Lake Elmo Road Hilltop Road to Wicks Lane Work Order: 04-33 Yellowstone
DESIGNATION Project No. 05153 COUNTY

Parcel No.	Parcel Description	Section	Township	Range
79	Lot 17, Block 1 of Arrowhead Subdivision,	22	1N	26E

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

CLARENCE H. HEIN
143 STILLWATER LANE
BILLINGS, MT. 59105
672-8909

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

375 square feet by deed	\$1,125.00
Improvements (Concrete driveway)	\$ 400.00
- OTHER COMPENSATION:

750 square feet Temporary Construction Permit	\$ 225.00
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- TOTAL COMPENSATION (includes all damages to the remainder): \$1,750.00.
- IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of \$1,750.00, to be made payable to CLARENCE H. HEIN and mailed to 143 STILLWATER LANE, BILLINGS, MT. 59105
- IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
- The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
- 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

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

Parcel No.: 79

(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).

Clarence H. Hein 12-20-06 7516-24-0097
Signature: CLARENCE H. HEIN (Date) Tax ID No.

Signature: ~~CLARENCE H. HEIN~~ (Date) Tax ID No.

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Ronald E. Olson 12-20-06
Ronald E. Olson, Olson Land Services (Date) Mayor, City of Billings (Date)

ATTEST:

Nicholas V. Dalko 11/8/07
City of Billings, Public Works Department (Date) City Clerk (Date)

LER-079.200 Hein

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

Project No. W.O. 04-33 Parcel No. 79 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 20th day of December, 2006

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

CLARENCE H. HEIN
143 STILLWATER LANE
BILLINGS, MT. 59105

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

Parcel No. 79 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 17, Block 1 of Arrowhead Subdivision, in the City of Billings, on file under Document No. 452936, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 375 sq. ft.

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 750 sq. ft..

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

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

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

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

Project No. : W.O. 04-33

Parcel No. 79

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

X Clarence H. Hein

State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on December 10, 2006
(date)

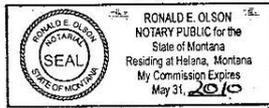
by Clarence H. Hein

(names)

R. Olson

Notary Signature Line

Notary Printed Name



Notary Public for State of _____
Residing at: _____
My Commission Expires: _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

Date

ATTEST: _____

City Clerk

STATE OF MONTANA)

:ss

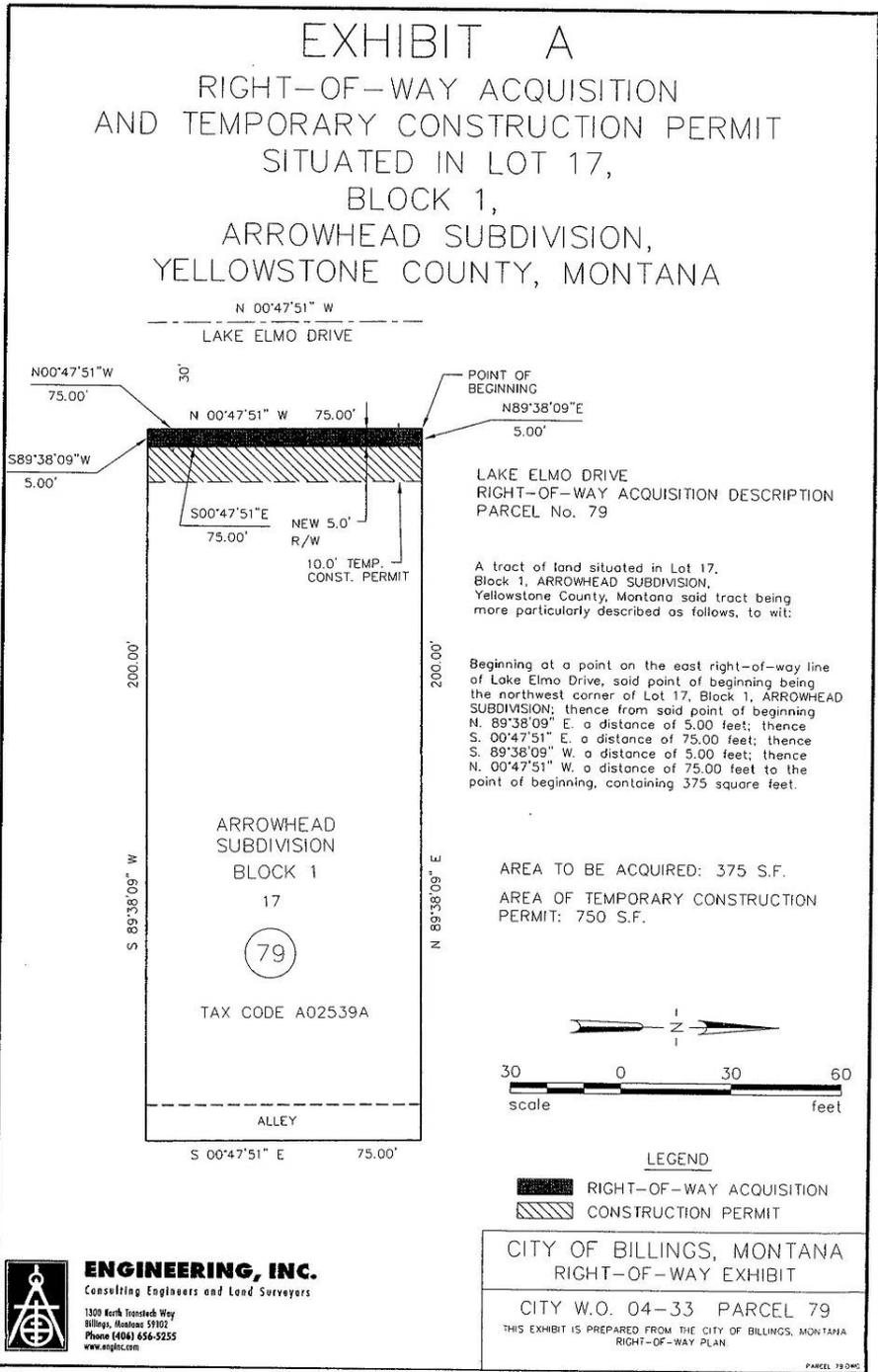
County of Yellowstone)

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

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

Print Name

EXHIBIT A
RIGHT-OF-WAY ACQUISITION
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN LOT 17,
BLOCK 1,
ARROWHEAD SUBDIVISION,
YELLOWSTONE COUNTY, MONTANA



ENGINEERING, INC.
 Consulting Engineers and Land Surveyors
 1300 North Teasdale Way
 Billings, Montana 59102
 Phone (406) 656-9255
 www.enpic.com

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #69, a Portion of Lot 3, Block 4 of Arrowhead Subdivision with Joseph A. Deigert

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #69 of the parcels to be acquired. The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$2,250.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$2,250.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #69, a portion of Lot 3, Block 4 of Arrowhead Subdivision with Joseph A. Deigert in the amount of \$2,250.00, and authorize the Mayor to execute these documents.

ATTACHMENT:

- A. Right-of-Way Agreement and Warranty Deed (5 pages)

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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- 2009-2010 – Design and construction of street improvements (in draft CIP)

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Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
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Current traffic counts along the section of Lake Elmo Drive between Hilltop and Wicks show approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #69, a portion of Lot 3, Block 4 of Arrowhead Subdivision with Joseph A. Deigert in the amount of \$2,250.00, and authorize the Mayor to execute these documents.

ATTACHMENT

- A. Right-of-Way Agreement and Warranty Deed (5 pages)

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

Lake Elmo Road Hilltop Road to Wicks Lane Work Order: 04-33 Yellowstone
DESIGNATION Project No. 05153 COUNTY

Parcel No.	Parcel Description	Section	Township	Range
69	Lot 3, Block 4 of Arrowhead Subdivision,	22	1N	26E

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

JOSEPH A. DEIGERT
1439 LAKE ELMO DRIVE
BILLINGS, MT. 59105
248-5040(h); 860-3360(c)

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

375 square feet by deed	\$1,125.00
Improvements (Tree, shrubs, railroad ties, fence, sod)	\$ 899.00
3. OTHER COMPENSATION:

750 square feet Temporary Construction Permit	\$ 225.00
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4. TOTAL COMPENSATION (includes all damages to the remainder): **\$2,250.00.**
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of \$2,250.00, to be made payable to JOSEPH A. DEIGERT and mailed to 1439 LAKE ELMO DRIVE, BILLINGS, MT. 59105
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
8. 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
9. At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

Reconfigure and repair sprinkler system affected by project.

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

RW Project: Lake Elmo Road Hilltop Road to Wicks Lane

Parcel No.: 69

(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 Joseph A. Diegart 12-12-06 X 617-96-1481
Signature: JOSEPH A. DIEGART (Date) Tax ID No.

Signature: (Date) Tax ID No.

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 12-12-06
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

Michelle L. Bailey 1/8/07
City of Billings, Public Works Department (Date)

City Clerk (Date)

LER-069.200 Diegart

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

Project No. W.O. 04-33 Parcel No. 69 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 12th day of December, 2006

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

JOSEPH A. DEIGERT
1439 LAKE ELMO DRIVE
BILLINGS, MT. 59105

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

Parcel No. 69 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 3, Block 4 of Arrowhead Subdivision, in the City of Billings, on file under Document No. 452936, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 375 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 750 sq. ft..

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

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

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

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

RK/013007

Project No. : W.O. 04-33

Parcel No. 69

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Joseph A Degeat

State of Montana)

County of Yellowstone)

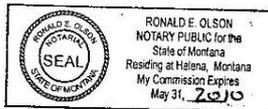
This instrument was acknowledged before me on December 12, 2006
(date)

by Joseph A Degeat
(names)

Ronald E Olson

Notary Signature Line

Notary Printed Name



Notary Public for State of _____

Residing at: _____

My Commission Expires: _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

Date

ATTEST: _____

City Clerk

STATE OF MONTANA)

:ss

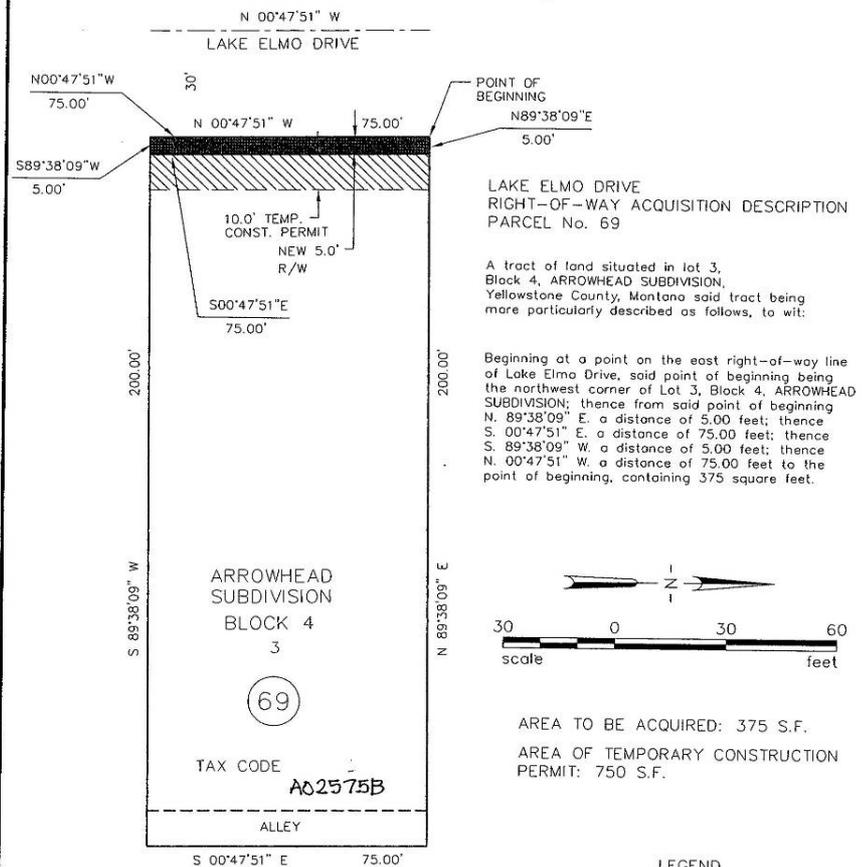
County of Yellowstone)

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

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

Print Name

EXHIBIT A
RIGHT-OF-WAY ACQUISITION
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN LOT 3,
BLOCK 4,
ARROWHEAD SUBDIVISION,
YELLOWSTONE COUNTY, MONTANA



LEGEND

RIGHT-OF-WAY ACQUISITION

CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 69

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

PARCEL 69 DWG

ENGINEERING, INC.
 Consulting Engineers and Land Surveyors

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #72, a Portion of Lot 6, Block 4 of Arrowhead Subdivision with Roberta A. Mee

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #72 of the parcels to be acquired. The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$2,400.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$2,400.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #72, a portion of Lot 6, Block 4 of Arrowhead Subdivision with Roberta A. Mee in the amount of \$2,400.00, and authorize the Mayor to execute these documents.

RK/013007

ATTACHMENT

A. Right-of-Way Agreement and Warranty Deed (5 pages)

Approved By: City Administrator _____ City Attorney _____

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

BACKGROUND

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

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #72, a portion of Lot 6, Block 4 of Arrowhead Subdivision with Roberta A. Mee in the amount of \$2,400.00, and authorize the Mayor to execute these documents.

ATTACHMENT

- A. Right-of-Way Agreement and Warranty Deed (5 pages)

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

Lake Elmo Road Hilltop Road to Wicks Lane Work Order: 04-33 Yellowstone
DESIGNATION Project No. 05153 COUNTY

Parcel No.	Parcel Description	Section	Township	Range
72	Lot 6, Block 4 of Arrowhead Subdivision,	22	1N	26E

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

ROBERTA A. MEE
1509 LAKE ELMO DRIVE
BILLINGS, MT. 59105
671-0508

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

375 square feet by deed	\$1,125.00
Improvements (Trees, fence, sod)	\$1,023.00
3. OTHER COMPENSATION:

750 square feet Temporary Construction Permit	\$ 225.00
---	-----------
4. TOTAL COMPENSATION (includes all damages to the remainder): \$2,400.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of \$2,400.00, to be made payable to ROBERTA A. MEE and mailed to 1509 LAKE ELMO DRIVE, BILLINGS, MT. 59105
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
8. 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

(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 Roberta A. Mee 12/20/09 1516-80-0856
Signature: ROBERTA A. MEE (Date) Tax ID No.

Signature: (Date) Tax ID No.

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 12-20-06
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

Nicholas J. Bailey 1/9/07
City of Billings, Public Works Department (Date)

City Clerk (Date)

LER-072.200 Mee

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

Project No. W.O. 04-33 Parcel No. 72 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 20th day of December, 2006.

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

ROBERTA A. MEE
1509 LAKE ELMO DRIVE
BILLINGS, MT. 59105

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

Parcel No. 72 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 6, Block 4 of Arrowhead Subdivision, in the City of Billings, on file under Document No. 452936, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 375 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 750 sq. ft..

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

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

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

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

RK/013007

Project No. : W.O. 04-33

Parcel No. 69

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Joseph A. Degeat

State of Montana)

County of Yellowstone)

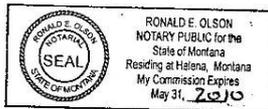
This instrument was acknowledged before me on December 12, 2006
(date)

by Joseph A. Degeat
(names)

Ronald E. Olson

Notary Signature Line

Notary Printed Name



Notary Public for State of _____

Residing at: _____

My Commission Expires: _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings Date

ATTEST: _____

City Clerk

STATE OF MONTANA)

:ss

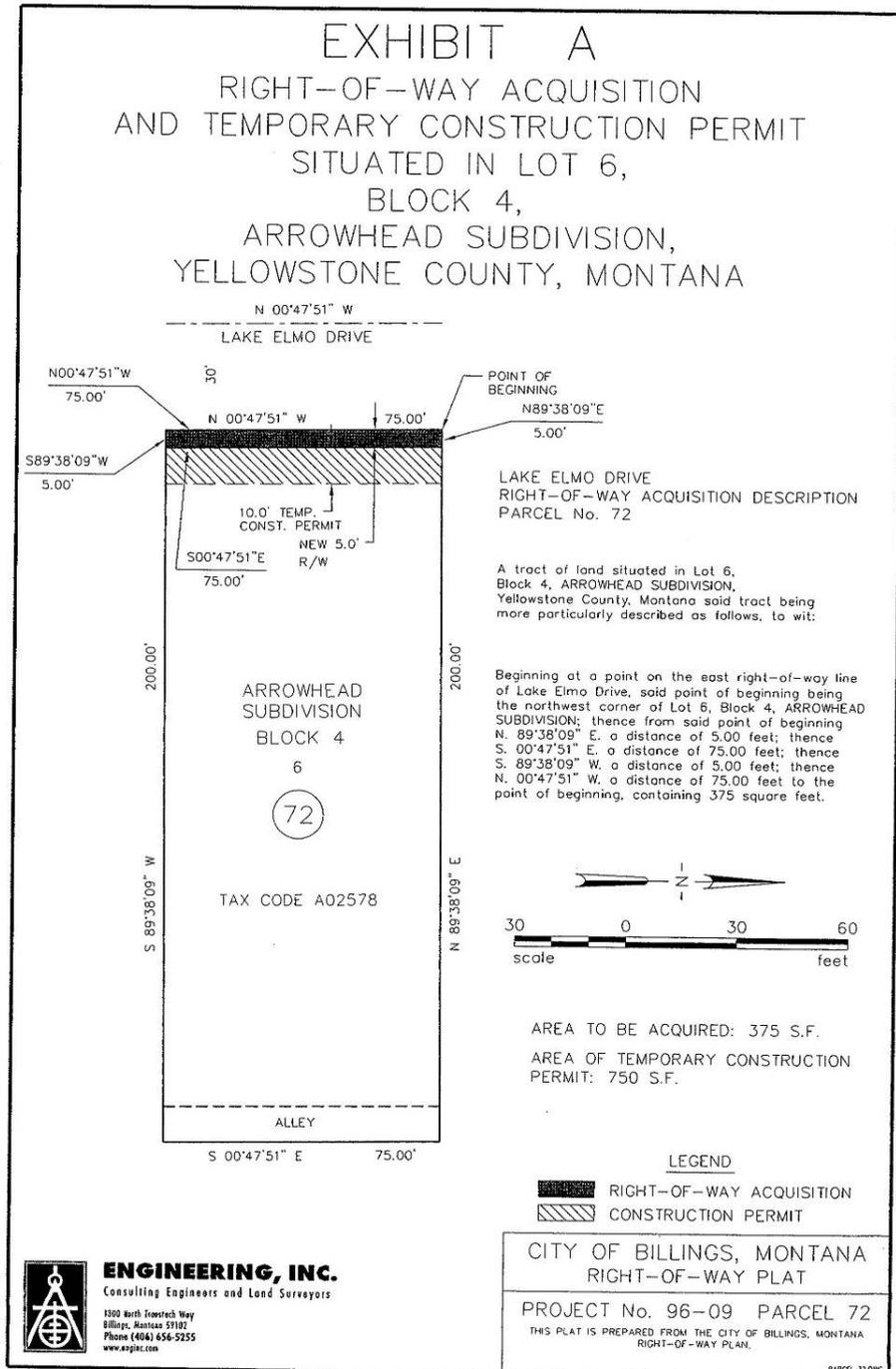
County of Yellowstone)

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

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

Print Name

EXHIBIT A
RIGHT-OF-WAY ACQUISITION
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN LOT 6,
BLOCK 4,
ARROWHEAD SUBDIVISION,
YELLOWSTONE COUNTY, MONTANA



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



ENGINEERING, INC.
 Consulting Engineers and Land Surveyors
 1300 North Fourteenth Way
 Billings, Montana 59102
 Phone (404) 656-5255
 www.enjinc.com

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #36, a Portion of Lot 16 of Barkley Subdivision with Richard A. Fox and Judy K. Fox

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #36 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$3,950.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$3,950.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #36, a portion of Lot 16 of Barkley Subdivision with Richard A. Fox and Judy K. Fox in the amount of \$3,950.00, and authorize the Mayor to execute these documents.

ATTACHMENT
RK/013007

A. Right-of-Way Agreement and Warranty Deed (5 pages)

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

BACKGROUND

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

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #36, a portion of Lot 16 of Barkley Subdivision with Richard A. Fox and Judy K. Fox in the amount of \$3,950.00, and authorize the Mayor to execute these documents.

ATTACHMENT

- A. Right-of-Way Agreement and Warranty Deed (5 pages)

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

Lake Elmo Road Hilltop Road to Wicks Lane Work Order: 04-33 Yellowstone
DESIGNATION Project No. 05153 COUNTY

Parcel No.	Parcel Description	Section	Township	Range
36	Lot 16 of Barkley Subdivision	22	1N	26E

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

RICHARD A. FOX AND JUDY K. FOX
P.O. BOX 22941
BILLINGS, MT 59105-2941
591-5010

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

747 square feet by deed	\$3,175.00
Improvements (Sod)	\$ 411.00
3. OTHER COMPENSATION:

751 square feet Temporary Construction Permit	\$ 319.00
---	-----------
4. TOTAL COMPENSATION (includes all damages to the remainder): ~~\$3,950.00~~.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
 A warrant in the amount of \$3,950.00, to be made payable to RICHARD A. FOX AND JUDY K. FOX and mailed to P.O. BOX 22941, BILLINGS, MT 59105-2941
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Bargain and Sale Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors

(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 Richard A. Fox 12/20/06 517-50-6374
Signature: RICHARD A. FOX (Date) Tax ID No.

X Judy K. Fox 12/20/2006 517-58-7198
Signature: JUDY K. FOX (Date) Tax ID No.

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 12-20-06
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

City of Billings, Public Works Department (Date)

City Clerk (Date)

LER-036.200 Fox

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

Project No. W.O. 04-33 Parcel No. 36 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 10th day of JANUARY, 2007.

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

RICHARD A. FOX AND JUDY K. FOX
P.O. BOX 22941
BILLINGS, MT 59105-2941

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

Parcel No. 36 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 16 of Barkley Subdivision, in the City of Billings, on file under Document No. 819766, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 747 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 751 sq. ft..

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

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

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

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

Project No. : W.O. 04-33

Parcel No. 36

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

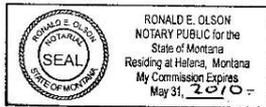
X Richard A. Fox X Judy K. Fox

State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on January 10, 2007
(date)

by Richard A. Fox And Judy K. Fox
(names)

[Signature]
Notary Signature Line



Notary Printed Name _____
Notary Public for State of _____
Residing at: _____
My Commission Expires: _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings Date

ATTEST: _____
City Clerk

STATE OF MONTANA)
:ss
County of Yellowstone)

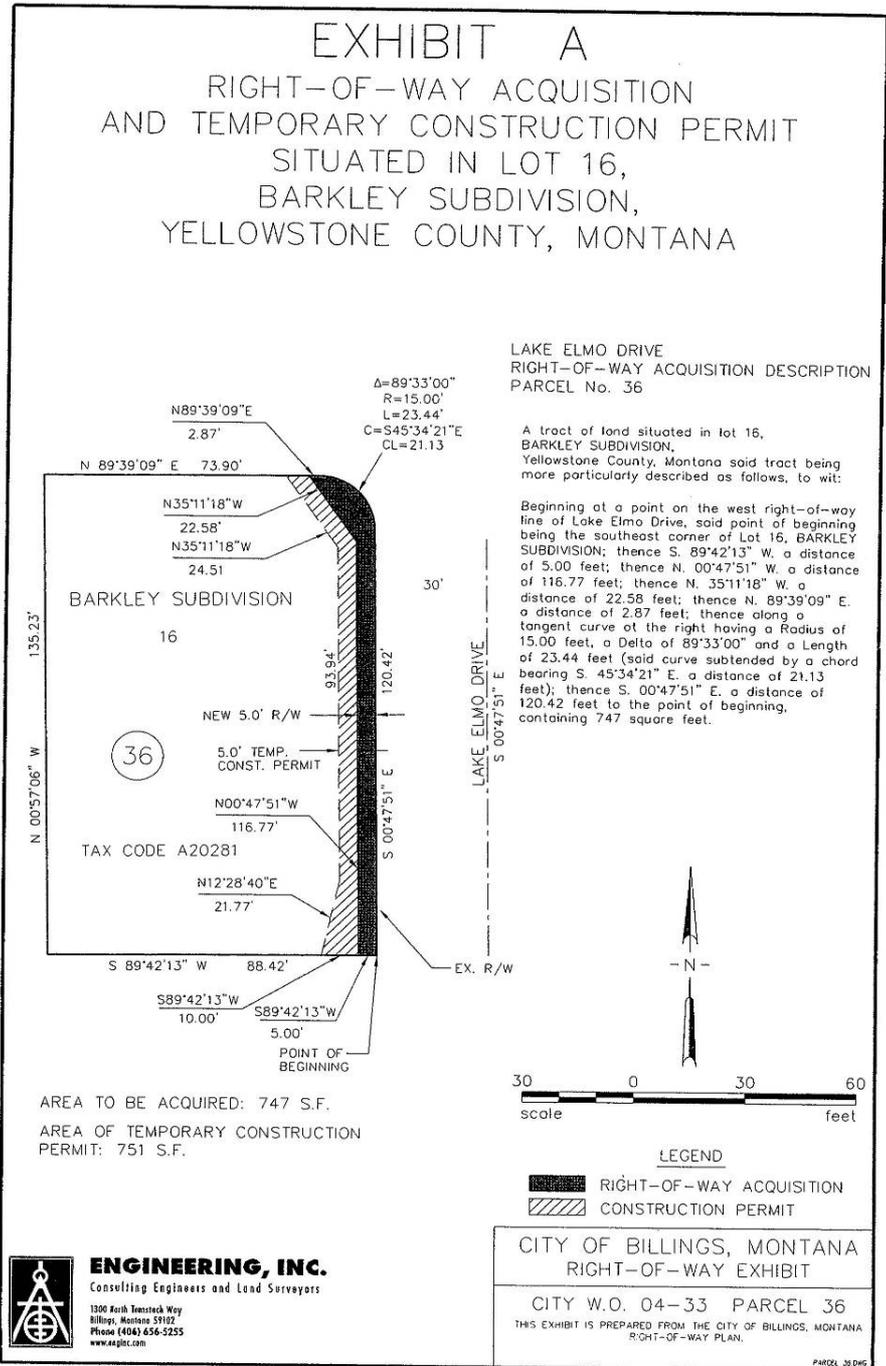
On this _____ day of _____, 200__, before me, a Notary Public in and for the State of Montana, personally appeared _____ as Mayor and _____ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF,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

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

Print Name

EXHIBIT A

RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 16, BARKLEY SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



ENGINEERING, INC.
 Consulting Engineers and Land Surveyors
 1300 Keith Tenstock Way
 Billings, Montana 59102
 Phone (406) 656-5255
 www.eagllc.com

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

F7

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #5, a Portion of Lot 2 of Windsor Subdivision with Hanson Brothers

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #5 of the parcels to be acquired. The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$6,200.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$6,200.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #5, a portion of Lot 2 of Windsor Subdivision with Hanson Brothers in the amount of \$6,200.00, and authorize the Mayor to execute these documents.

RK/013007

ATTACHMENT

A. Right-of-Way Agreement and Warranty Deed (5 pages)

Approved By: City Administrator _____ City Attorney _____

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

- January 9, 2006 – Award of Contract for Professional Services for Right-of-Way Acquisition to Right-of-Way Acquisition Group, LLC
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- December 2006 – Right-of-way negotiations began with property owners

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- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

BACKGROUND

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

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #5, a portion of Lot 2 of Windsor Subdivision with Hanson Brothers in the amount of \$6,200.00, and authorize the Mayor to execute these documents.

ATTACHMENT

- A. Right-of-Way Agreement and Warranty Deed (5 pages)

CITY OF BILLINGS

(hereinafter referred to as City)

RIGHT-OF-WAY AGREEMENT

Lake Elmo Road Hilltop Road to Wicks Lane
DESIGNATION

Work Order: 04-33
Project No. 05153

Yellowstone
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
5	Lot 2 of Windsor Subdivision	22	1N	26E

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

Hanson Brothers, a Co-Partnership consisting of Clarence E. Hanson and
Harry P. Hanson
1102 Harvard Avenue
Billings, MT 59105

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

1,399 square feet by deed	\$4,547.00
Improvements (sod)	\$ 770.00
- OTHER COMPENSATION:

2,594 square feet Temporary Construction Permit	\$ 843.00
---	-----------
- TOTAL COMPENSATION (includes all damages to the remainder): \$6,200.00
- IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$6,200.00, to be made payable to Hanson Brothers, a Co-Partnership consisting of Clarence E. Hanson and Harry P. Hanson and mailed to 1102 Harvard Avenue, Billings, MT. 59105.
- IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
- The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
- 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
- At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

Reconfigure and repair sprinkler system affected by project.

SELF DRAINING SPRINKLER SYSTEM - DISCUSS WITH LANDOWNER

*MB see memo to file
Telecon with Harry Hanson on 1/31/07. taken care of during construction*
Grantors understand and agree that upon completion of the construction of this item located upon the Grantors' land, they shall be considered the sole property of the Grantors, and the maintenance and repair of said property shall be the responsibility of the Grantors.

(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).

Signature: <u>Harry P. Hanson, Common Partner</u>	<u>12-20-06</u> (Date)	<u>81-6035673</u> Tax ID No.
Signature: <u>Cherise E. Hanson, Common Partner</u>	<u>12-20-06</u> (Date)	<u>81-6035673</u> Tax ID No.
Signature: _____	(Date)	Tax ID No.

RECOMMENDED FOR APPROVAL:

Boyd Darlow
Boyd Darlow, Olson Land Services 12/20/07
(Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

Nicholas P. Bailin 1/8/07
City of Billings, Public Works Department (Date)

City Clerk (Date)

LER-005.200 Hanson

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

Project No. W.O. 04-33 Parcel No. 5 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 20 day of June, 2006

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

HANSON BROTHERS, A CO-PARTNERSHIP CONSISTING OF
CLARENCE E. HANSON AND HARRY P. HANSON
1102 HARVARD AVENUE
BILLINGS, MT 59104

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

Parcel No. 5 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 2 of Windsor Subdivision, on file under Document No. 885311, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 1,399 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 2,594 sq. ft..

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

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

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

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

RK/013007

Project No. : W.O. 04-33

Parcel No. 5

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Henry P. Hanson Common Partner
Clarence E. Hanson Common Partner

State of Montana)

County of Yellowstone)

This instrument was acknowledged before me on December 20, 2006
(date)

by Henry P. Hanson and Clarence E. Hanson, doing business as Hanson Brothers, a co-partnership
(names)

[Signature]
Notary Signature Line

Boyd Deschert
Notary Printed Name

Notary Public for State of Montana

Residing at: Helena

My Commission Expires: February 3, 2008

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings Date

ATTEST: _____
City Clerk

STATE OF MONTANA)

:ss

County of Yellowstone)

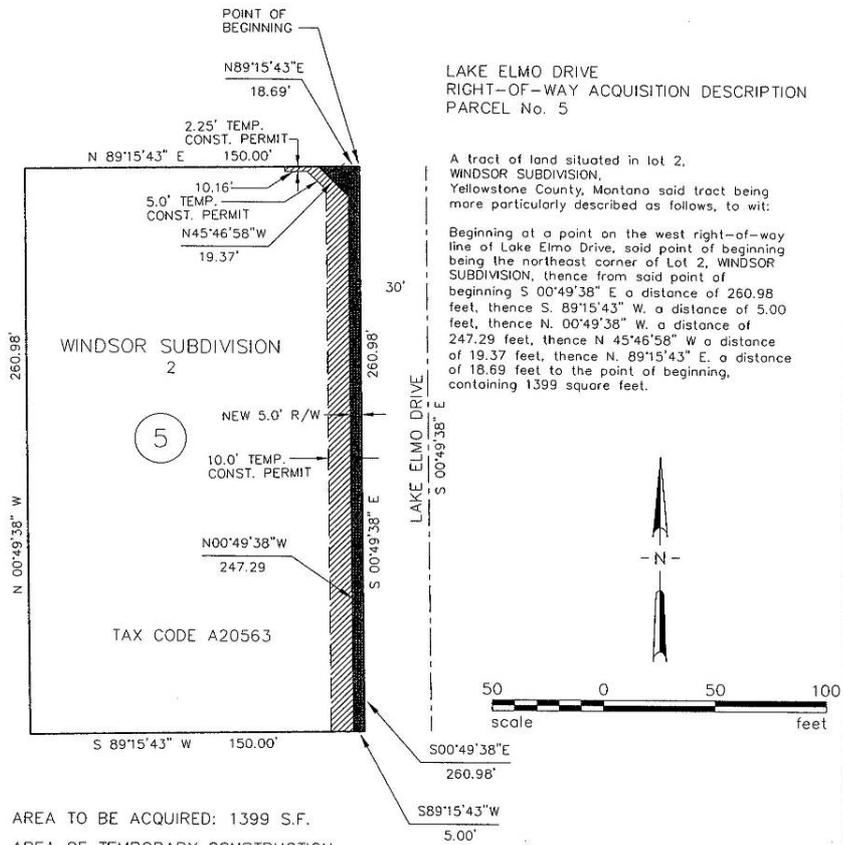
On this _____ day of _____, 200__, before me, a Notary Public in and for the State of Montana, personally appeared _____ as Mayor and _____ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF,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

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

Print Name

EXHIBIT A

RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 2, WINDSOR SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



AREA TO BE ACQUIRED: 1399 S.F.
AREA OF TEMPORARY CONSTRUCTION PERMIT: 2594 S.F.

LEGEND

RIGHT-OF-WAY ACQUISITION

CONSTRUCTION PERMIT

ENGINEERING, INC.
Consulting Engineers and Land Surveyors

1300 Keith Trossack Way
Billings, Montana 59102
Phone (406) 456-5255
www.enginc.com

CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 5

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

PARCEL 528G

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G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Memorandum of Understanding – Beartooth RC&D Economic Development District

DEPARTMENT: City Council/City Administrator’s Office

PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: At the January 29, 2007, City Council meeting, the annual Memorandum of Understanding (MOU) with the Beartooth Resource Conservation and Development (RC&D) Area Economic Development District was presented for approval by its coordinator, Chris Brink.

Beartooth RC&D was established in 1969 as a forum for exchanging ideas, developing projects and assisting in the enhancement of five Montana counties: Sweet Grass, Stillwater, Carbon, Big Horn and Yellowstone. It includes an economic development district, a foundation, an agricultural innovation center, a revolving loan fund, a national carbon offset coalition and a Montana cooperative development center, among other projects. Among its past projects was the Sysco distribution center in Billings, but many of its projects are rural. The City of Billings has a member on its board.

ALTERNATIVES ANALYZED: The City Council may:

- Appoint the MOU;
- Delay the MOU; or
- Decide not to participate.

FINANCIAL IMPACT: The City of Billings contributes on a pro-rated basis with Yellowstone County, the City of Laurel and Big Sky Economic Development Authority in funding Yellowstone County’s share of the \$23,381 match for Federal funds for the project. The City of Billings’ share is 36% of the Yellowstone County total, or \$8,380, which traditionally has come from Council Contingency.

RECOMMENDATION

Staff recommends that the Council approve the MOU with Beartooth RC&D Economic Development District.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Acceptance of Easement on Lots 1 and 2, Block 1, Cellan Acre Tracts – Gammy Group, LLC, Owners

DEPARTMENT: Public Works Department – Engineering Division

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

PROBLEM/ISSUE STATEMENT: With construction of the New Dairy Queen at 1045 Grand Avenue, it was determined that their property line actually extends into the existing sidewalk about 3 feet. The owners of the Dairy Queen, Gammy Group, LLC, have agreed to grant the City of Billings a right of way easement for the existing sidewalk and the construction of the new sidewalk with the Grand Avenue Widening Project from 8th Street West to 12th Street West.

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

RECOMMENDATION

Staff recommends that Council accept the easement from Gammy Group, LLC, owner of the Dairy Queen at 1045 Grand Avenue on a portion of Lots 1 and 2, Block 1, Cellan Acre Tracts.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A. Right of Way Easement

RIGHT-OF-WAY EASEMENT

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

Gammy Group, LLP
1212 Romelda Lane
Billings, Montana 59102,
hereinafter referred to as **GRANTOR**

and

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

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

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

A tract being in the SW1/4 of Section 31, T.1N., R.26E., P.M.M., City of Billings, Yellowstone County, Montana, said tract being more particularly described as follows:

Beginning at the southwest corner of Block 1, Cellan Acre Tracts, recorded December 21, 1940, under document no. 356809, records of Yellowstone County, Montana; thence N00°16'00"W for a distance of 10.89 feet; thence S51°06'44"E for a distance of 10.20 feet; thence S89°54'00"E for a distance of 92.09 feet; thence S00°16'00"E for a distance of 4.50 feet; thence N89°54'00"W for a distance of 100.00 feet to the point of beginning. Said tract contains 450 square feet.

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

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

GAMMY GROUP, LLP

BY: _____

PRINTED
NAME: _____

ITS: _____

STATE OF MONTANA)
 :SS
County of Yellowstone)

On this _____ day of _____, 20 __, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the _____ of GAMMY GROUP, LLP whose name is subscribed to the foregoing instrument, and acknowledged to me that they duly executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

Notary Public in and for the State of Montana

Printed Name: _____

Residing at _____

My commission expires _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

ATTEST:

City Clerk

STATE OF MONTANA)
 :ss
County of Yellowstone)

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

Notary Public in and for the State of Montana

Printed Name: _____

Residing at _____

My commission expires _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Revolving Loan Fund Recommendations for Kimberly A. Pettit, dba The Rims Montessori Academy for Children

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The Downtown Revolving Loan Committee met on January 12, 2007, and approved a loan to Kimberly A. Pettit, dba as The Rims Montessori Academy for Children (Academy), in the amount of \$19,575. Mrs. Pettit is opening the Academy to provide an innovative private education alternative for the children of Billings. The Academy will educate students, three to twelve years of age, using Dr. Montessori’s teaching philosophy and practice. The Academy will lease the building located at 116 North 29th (the old Exploration Store in downtown Billings) to serve as its classroom facility. The purpose of this request is to remodel the bathrooms to accommodate the maximum capacity of students as required by local health regulations.

FINANCIAL IMPACT: Subsequent to approval of this loan, the loan fund will have a balance available of approximately \$1,000,000.

RECOMMENDATION

The Downtown Revolving Loan Committee recommends that council approve the loan to Kimberly A. Pettit in the amount of \$19,575.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A-Loan Description

Attachment A

Revolving Loan Fund Loan

Monday, February 12, 2007

The Kimberly A. Pettit loan terms are as follows:

Loan	Not to exceed \$19,575.
Interest Rate	6.188% Adjusted annually.
Term	Amortized over seven years.
Payments	Minimum Payments calculated at the current rate to provide for 84 equal payments. Loan payments will be adjusted annually as interest rates change.
Collateral	Personal guarantee of all business owners with an interest of 20% or more. Currently, Mrs. Pettit is the sole owner.
Disbursement	The City will disburse funds after it receives documentation supporting the actual project costs.

This loan is to finance the remodel of education facility bathrooms in the leased building located at 116 North 29th in downtown Billings.

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J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Application Submittal and Finalization of Grant-
Stop Violence Against Women Act (VAWA) Funds- RFP #07-02

DEPARTMENT: Police Department

PRESENTED BY: Rich St John, Chief of Police

PROBLEM/ISSUE STATEMENT: An RFP from the Montana Board of Crime Control was posted in late December, 2006. We would like to pursue this subgrant for Domestic Violence training and continuation of the “Domestic Violence Investigator” program. The estimated amount for this grant totals \$60,000. Staff recommends Council’s approval in pursuing this grant application and when notified of its acceptance, City staff be authorized to finalize the grant.

FINANCIAL IMPACT: This grant requires a 25% match of hard and/or soft cash. The City of Billings will contribute \$18,000, which includes a hard match of \$2,000 and a soft match of \$16,000.00. The soft match will come from office space, telephone, training facilities, and staff time. The hard match will be included in the FY 08 training budget.

RECOMMENDATION

Staff recommends Council’s approval in pursuing this grant application and when notified of its acceptance, City staff be authorized to finalize the grant.

Approved By: City Administrator _____ City Attorney ____

INTRODUCTION

Through the cooperative efforts of the Police Department and the City Attorney's office, a significant need for more intensive investigation is needed in domestic violence cases. Once again, we would like to apply for the Domestic Violence grant including funds to pay for follow-up investigation of domestic violence cases being prosecuted through the City Attorney's Office.

The domestic violence follow-up investigation pilot project that was implemented last year has proven to be effective. This component of the grant allows the City prosecutors to have police officers available specifically for investigation of domestic violence cases.

Grant funding would continue to pay officers to work as domestic violence follow-up investigators in the form of extra duty assignments (during their off-time). These investigators are selected from a pool of volunteer officers who have previously received domestic violence training through "Stop Violence Against Women Act" grants funded by the Montana Board of Crime Control.

BACKGROUND

For the past five years the Billings Police Department applied for the "Violence Against Women Act (VAWA) grant through the Montana Board of Crime Control. Each year we have received grant funds to provide domestic violence training for our officers.

Last year the funds requested for domestic violence training were granted with additional funding for the "Domestic Violence Investigator" pilot project.

This year we would like to continue to apply for funding of the training seminar and the domestic violence investigators.

RECOMMENDATION

Staff recommends Council's approval in pursuing this grant application and when notified of its acceptance, City staff be authorized to finalize the grant.

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

K

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Acceptance and Recognition of Donation to the Billings Animal Shelter
DEPARTMENT: Police Department, Animal Shelter Division
PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On January 10, 2007, the Billings Animal Shelter received a \$500.00 donation from Donald and Carol Roberts Foundation in Memory of Virginia K. Weston, Inc. The donation has been placed in the Animal Shelter General Donation account. A letter has been sent to Donald and Carol Roberts asking for further information on how they would like the donation used. We now come before City Council for authorization to accept and deposit this generous donation into the City of Billings, Animal Shelter General Donation Account. Funds will be transferred to appropriate accounts if further direction is received from Donald and Carol on how they would like the funds spent.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: This donation to the General Donation Account will be used where ever it may be needed to benefit our community's animals.

RECOMMENDATION

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

Approved By: City Administrator ____ City Attorney ____

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Acceptance of \$3,000 Donation from Jim Brown for Southwest Cop Shop
DEPARTMENT: City Council/City Administrator’s Office
PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: The Southwest Task Force has requested that the City reopen the Southwest Cop Shop, 801 Hallowell. The location will serve as a meeting place for various groups, including the task force and scouting groups. The Police Department will have an officer at the facility for an hour twice a week, and other City departments may use it in the future for interaction with the community. The facility will be staffed by volunteers trained by RSVP.

The task force has requested Community Development Block Grant Funds for operation in FY 2007-08. Originally, a request for \$3,000 to operate from February through June 2007 was to be requested from Council Contingency. However, Jim Brown, an area business owner, has stepped forward with a \$3,000 donation to install a security system, pay rent and utilities, and provide some office supplies.

ALTERNATIVES ANALYZED: The City Council may:

- Accept the donation; or
- Not accept the donation.

FINANCIAL IMPACT: Until the CDBG grant is considered, the City of Billings will cover the facility for liability at no additional premium cost, deploy some employees to the site for a few hours a week and donate a used computer and stored equipment from the former Cop Shop on the site.

RECOMMENDATION

Staff recommends that the Council accept with appreciation the donation of \$3,000 from Jim Brown for the Southwest Cop Shop.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Certified Local Government Program
DEPARTMENT: Planning and Community Services
PRESENTED BY: Lora Mattox, AICP, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: The State of Montana Historic Preservation Office has designated the City of Billings as a Certified Local Government (CLG) for historic preservation activities. As a CLG the City is eligible to receive state funding to coordinate historic preservation efforts in our area. Applications for FY2007-08 funding from the State are due on January 31, 2007. The City of Billings has been utilizing Certified Local Government funding for activities in support of the efforts of the Yellowstone Historic Preservation Board since 1997. A description of these activities is provided in Attachment A.

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

FINANCIAL IMPACT: City Council approval would allow the City of Billings to apply for \$4,031 in State of Montana Certified Local Government funding. The local match for the Certified Local Government is \$7,969. The total funding package is \$12,000 that is used for consulting services provided by the Western Heritage Center to perform activities identified in the Yellowstone Historic Preservation Board Work Plan. The Planning Division will provide \$6,500 towards the local match. The Yellowstone Historic Preservation Board will request \$1,000 from Yellowstone County and \$469 from the City of Laurel towards the remaining local match. The Yellowstone Historic Preservation Board has also submitted an application for \$1,469 through Community Development Block Grant (CDBG) funds. If CDBG funds are granted the City of Billings match contribution will be lowered to \$5,031.

RECOMMENDATION

Staff recommends that the City Council authorize the submission of an application for a \$4,031 Certified Local Government grant from the Montana State Historic Preservation Office.

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

ATTACHMENT

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

Attachment A

<p>Yellowstone Historic Preservation Board Work Plan 2007-2008</p>

Goals & Objectives:

- I. Promote the preservation of historic buildings, sites or neighborhoods.
- II. Increase community awareness on the benefits of historic preservation activities.
- III. Promote increased awareness of preservation activities and the work of the YHPB by the four governing bodies represented on the Board.
- IV. Comply with the duties and responsibilities of historic preservation organizations under the State Certified Local Government Program and the requirements of the Inter-local Agreement.

Existing Projects

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

Time Frame: Spring 2007
Who: YHPB Committee and HPO/WHC
Status: The board may incorporate this project into a review and update of the existing Historic Preservation Ordinance.

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

Time Frame: Winter 2006/Spring 2007
Who: WHC
Status: In development

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

Time Frame: Spring/Summer 2007

Who: WHC/Publicity Committee
Status: Not started

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

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

New Projects

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

Time Frame: Winter 2006/Spring 2007
Who: YHPB Committee/HPO/WHC
Status: Information gathering/compiling. It is anticipated that the board will begin this review later this winter (2006).

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

Time Frame: Spring 2007 or Fall 2007
Who: WHC/HPO
Status: The board will review this goal and time frame in the Spring of 2007.

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

Time Frame: Spring 2007
Who: WHC

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

Time Frame: 2007-2008
Who: WHC

Ongoing/Yearly Projects

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

Time Frame: Ongoing
Who: Committee and HPO

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

Time Frame: Ongoing
Who: WHC/HPO

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

Time Frame: Ongoing
Who: WHC

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

Time Frame: Ongoing
Who: YHPB Board/HPO/WHC

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

Time Frame: Ongoing
Who: HPO/WHC

6. Due to a loss of potential historic buildings within the City of Billings, an effort is being made to notify WHC and a member of the board about upcoming demolitions. The Building Department notifies HPO on the release of demolition permits, HPO notifies members of the demolition and a determination is made to either document/photograph building.

Time Frame: Ongoing
Who: HPO/WHC/Board

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

Time Frame: Ongoing
Who: HPO/WHC

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

Time Frame: Ongoing
Who: WHC/HPO

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

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

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

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

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

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

Certified Local Government
Grant Application

1 April 2007 to 31 March 2008

Application Deadline

31 January 2007

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

2007-2008 GRANT APPLICATION

CERTIFIED LOCAL GOVERNMENT PROGRAM

Certified Local Government: City of Billings, Montana

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

Contact Person: Lora Mattox, Historic Preservation Officer, Planner II

Period of Grant Request: 1 April 2007 to 31 March 2008

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

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

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

- Assist Board and Historic Preservation Officer in undertaking actions to meet short and long-range goals established by the Board. See Attachment A.
- Provide professional services to assist Board, Officer, and the City in performing duties and responsibility identified in the City's Historic Preservation Ordinance MCA 27-500.
- Act as a historic preservation center by providing technical assistance, direction, and literature on the following:

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

BUDGET

4-1-2007 to 3-31-2008 Budget	Cash Amount	Cash Source	In-kind Amount	In-kind Source	Total
A. Salaries & Wages			*	CI	
B. Office Rental			*	CI	
C. Equipment			*	CI	
D. Supplies & Materials Itemize Major Categories			*	CI	*
E. Postage			*	CI	
F. Telephone & Long Distance			*	CI	
G. Photocopy			*	CI	
H. Film Processing			*	CI	
I. Preservation Commission Number of hours X * rate X number of			*	PR	

members X number of meetings					
J. Volunteers Hours X * rate X number of volunteers.			*	PR	
K. Travel Mileage Number of miles X \$.44.5 cents. Include funds for HPO and/or Commissioners to attend annual training.			*	CI	
L. Travel Meals # of Meals X rate: Breakfast - \$5.00 Lunch - \$6.00 Dinner - \$12.00			*	CI	
M. Lodging (state rate) \$ 55.00 plus tax X number of nights			*	CI	
N. Other Expenses – itemized	\$4,031	F			\$12,000
Contract Services	\$7,969	CI/CO			
M. Total Expenses					\$12,000

SOURCE KEY:

F-Federal

CI-City

CO-County

NP- Private/Non-Profit

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

SOURCES OF REVENUE AMOUNT

Itemized Cash Match Source

City of Billings/City of Laurel/Yellowstone County \$ 7,969

Itemized In-Kind Match Source *

Federal HPF Grant Request from SHPO \$ 4,031

TOTAL REVENUE \$12,000

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

Certified Local Government

Historic Preservation Commission Chairperson or President

Signature:

Date:

Name (typed): Brian Roberts

Address: 244 Parkhill, Billings, Montana 59101

Telephone: (406) 256-1056

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

Signature:

Date:

Name (typed): Ron Tussing

Title: Mayor

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

Telephone: (406) 657-8296

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Certified Local Government
Historic Preservation Officer

Signature:

Date:

Name (typed): Lora Mattox

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

Telephone: (406) 247-8622

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

Please attach a list of the historic preservation board members and their contact information.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Annexation Petition #07-02: Acknowledge receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: Owner and petitioner, Mary Kramer, is requesting annexation of an approximate 13.01 acre property legally described as Lot 65A-4, Amended Plat of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms located in the SE 1/4, Section 31, Township 1N, Range 25E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is on the northwest corner of the intersection of Grand Avenue and 54th Street West south of Cottonwood Grove Subdivision. The petitioner is requesting annexation in order to obtain city water and sewer services for completion of a minor commercial subdivision including a zone changes on the property. The subject property is currently vacant agricultural land and is zoned Agricultural Open Space (AO). A concurrent zone change has been submitted from Agricultural Open Space to Neighborhood Commercial and Community Commercial. At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for February 26, 2007. The Council will vote on the petition at that public hearing.

ALTERNATIVES ANALYZED: Section 7-2-4600, MCA, permits owners of more than 50% of a property to petition the City for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date. The subject property is bordered on the west and southwest by properties within the City limits and is depicted on the adopted Limits of Annexations Map in an area proposed to be annexed within the next six (6) years.

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

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for February 26, 2007, to consider annexing this property.

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

ATTACHMENTS

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

ATTACHMENT A

Property Data

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	Mary Kramer
Purpose of annexation:	To obtain City Services
Property included:	Lot 65A-4, Amended Plat of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms
Location:	The northwest intersection of Grand Avenue and 54 th Street West.
Total area:	13.01 acres
Current zoning:	Agricultural Open Space
Current land use:	Vacant
Future zoning:	Community Commercial and Neighborhood Commercial
Future land use:	Commercial Development

ATTACHMENT B
Annexation Petition

PETITION FOR ANNEXATION TO THE CITY OF BILLINGS

NOTICE TO PETITIONER

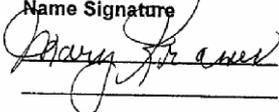
This is a Petition to the City of Billings requesting the annexation of property to the City, pursuant to MCA Title 7, Chapter 2, Part 46. Procedures for annexation are governed by the Statutes of the State of Montana. This Petition requires the signatures of more than 50% of the Resident Freeholder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

INSTRUCTIONS

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.

The map must show:
 - a. The present and proposed boundaries of the municipality;
 - b. The present streets, major trunk water mains and sewer mains;
 - c. The zoning of the property requesting annexation and the property immediately adjacent to it.
3. The Petition may be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parmlly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, and Finance Department. If no problems with the Petition have been noted by the departments, the City Clerk will schedule the Petition for City Council action.
4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
<u>12/12/06</u>	<u>Mary Kramer</u>		<u>3011 Reimers Park Drive</u> <u>Billings, MT 59102</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(continued on separate page)

07-007

(Should be completed prior to obtaining signatures of resident freeholder electors)
DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS

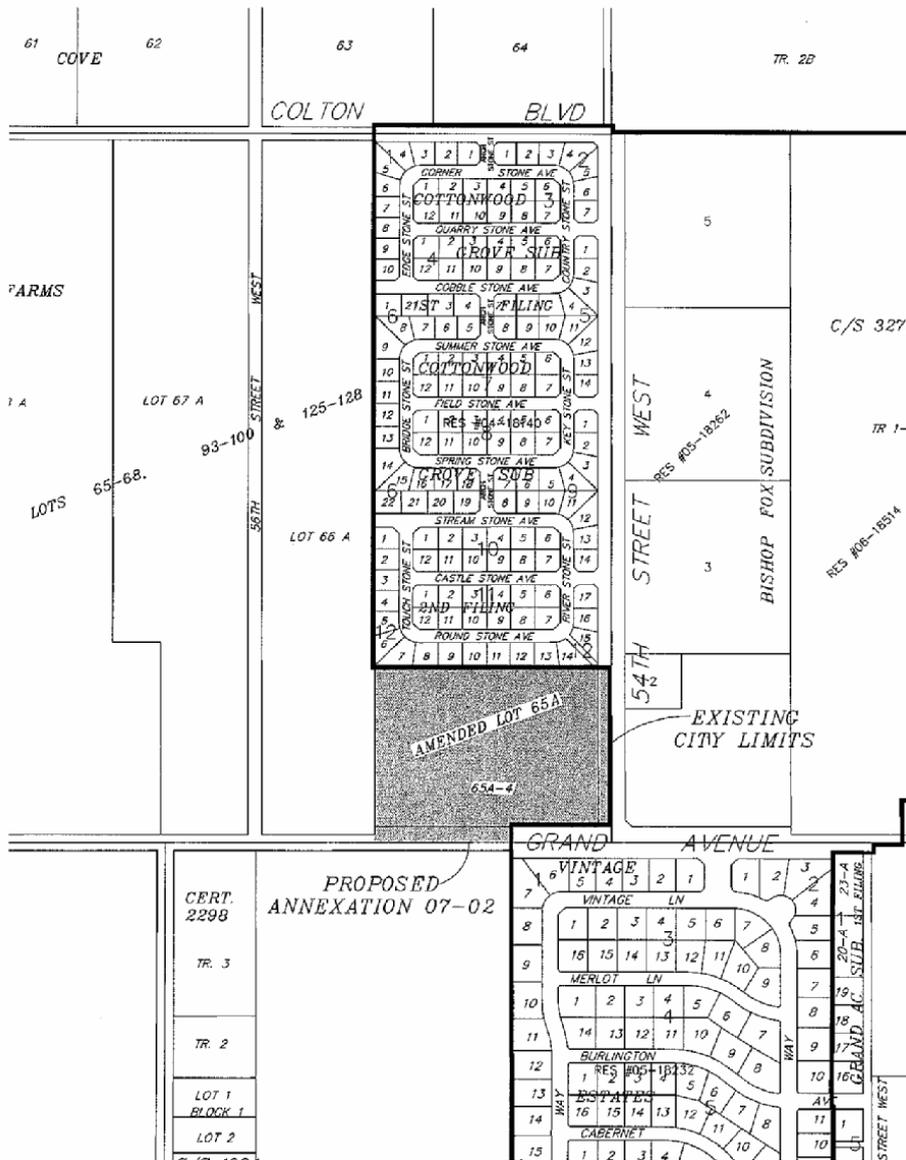
Legal Description	Tax Code	Address of General Location	Use of Property	Legal Property Owners	Address	Phone
Lot 65A-4 Sunny Cove Fruit Farms Amd 11.582 AC, 01.0 N, 25.0 E, Section 31	A31805	Northwest corner of 54th Street West/Grand Avenue intersection	Vacant	Mary Kramer	3011 Reimers Park Drive Billings, MT 59102	c/o Charlie Gamble 406/245-7495

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: 1/3/07 Received By: *Anna J. J. J.* Petition Number: 07-01
 Fee Paid: \$800.00

ATTACHMENT C
Annexation Map

EXHIBIT A



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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Annexation Request #07-03 Acknowledge Request, Approve Resolution of Intent to Annex, and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The City of Billings, property owner, submitted a letter of request to annex land to the City of Billings under 7-2-4403 MCA. There are three parcels of land the City wishes to annex. The 2.44-acre properties are located at 23 Charlene Street, 63 Charlene Street and 65 Charlene Street east of the Interstate 90 Corridor and west of the City of Billings Water Treatment Plan property. The property is vacant with the exception of one storage building the City has constructed on the site. The City is requesting annexation in order to rezone the property to Public zoning and further utilize the property as part of the Water Treatment Plant facilities and plan for future Plant expansion. The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting the Council conducts the hearing and decides if it will annex the property.

To comply with State Law in also requesting a rezoning of the property, the City has filed a zone change application to rezone the properties from Residential-15000 to Public. The City Council may hear the annexation request and zone change request at the same public hearing. Staff is coordinating these two processes to allow the dual hearing to take place.

ALTERNATIVES ANALYZED: MCA, Section 7-2-4403 allows government officials to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

FINANCIAL IMPACT: Since the City already owns the subject properties, and the City does not tax itself, there is not expected to be a financial impact analysis completed when staff prepares its review and recommendation to present at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for March 26, 2007, to consider annexing these properties and rezoning these properties.

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

ATTACHMENTS

- A. Property data
- B. Resolution of Intent to Annex and Set Public Hearing
- C. Map

ATTACHMENT A

Annexation #07-03 Property Data

Type of annexation:	Government Official - MCA 7-2-4403
Request from:	Christina Volek, Billings City Administrator
Purpose of annexation:	Bring property into the City that is being used for City Water Plant operations and planned expansion
Property included:	North 1/2, Lot 3 & All of Lot 4, Sandra Subdivision and 63,784-square-feet combined with Lot 15A South 1/2, Lot 7, Sandra Subdivision North 1/2, Lot 7, Sandra Subdivision
Location:	23 Charlene Street, 63 Charlene Street, 65 Charlene Street
Total area:	2.44 acres
Current zoning:	Residential-15,000
Current land use:	Vacant, one storage building
Future land use:	Water Plan operations and expansion

ATTACHMENT B
RESOLUTION NO. 07-

A RESOLUTION OF THE CITY OF BILLINGS
TO CONSIDER ANNEXING TERRITORY
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE
MONTANA CODE ANNOTATED, AND FIXING
A DATE FOR A PUBLIC HEARING ON THE
QUESTION OF ANNEXATION

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, the City of Billings is the owner of the territory; and

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

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

Tracts of land situated in the SW1/4 of Section 2, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

The N ½ Lot 3, Lots 4 and 7, of Sandra Subdivision, Recorded December 13, 1946, Under Document No. 421189, Records of Yellowstone County, Montana. Including all adjacent Right-Of-Way of Charlene Street.

Containing 2.927 gross acres, and 2.440 net acres.

(# 07-03) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.

2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on March 26, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 12th day of February, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

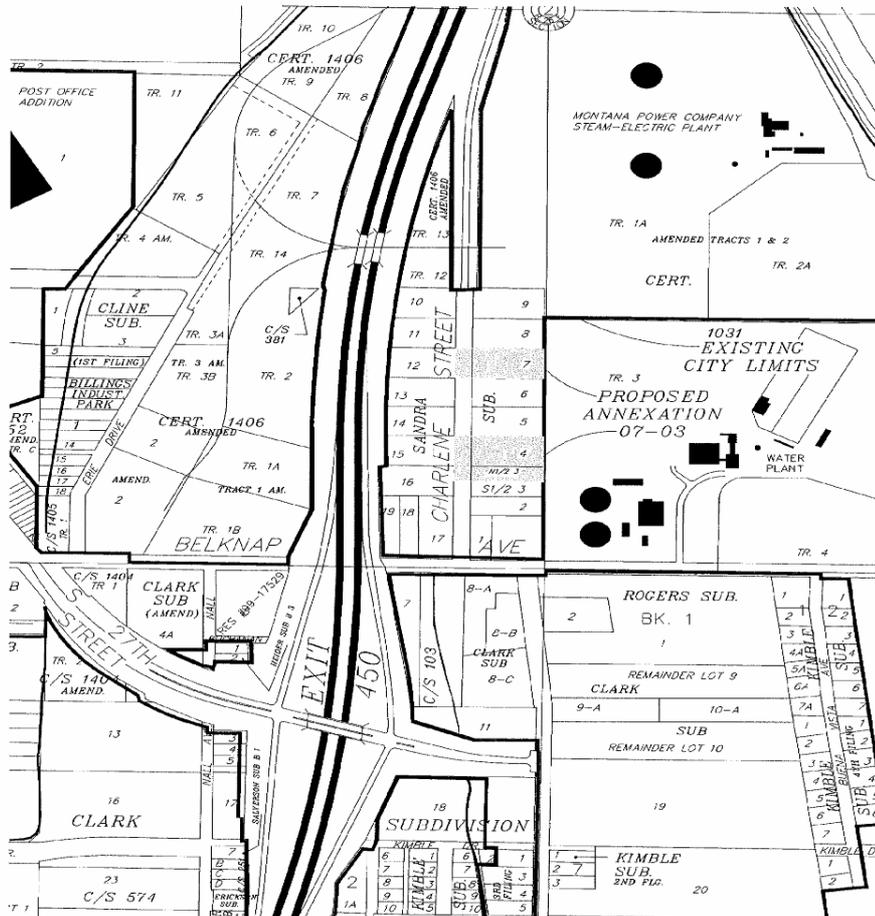
BY: _____

Marita Herold, MMC CITY CLERK

(AN #07-03)

ATTACHMENT C
Annexation Map – Annexation #07-03

EXHIBIT A



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Resolution of Intent to Create - Park Maint. District No. 4036, Josephine Crossing Subdivision

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Mike Whitaker, Director

PROBLEM/ISSUE STATEMENT: Josephine Crossing Subdivision, Phase I, contains approximately 4 acres of dedicated park and public open space. It includes 7 pocket parks located in the residential blocks throughout the Phase I subdivision plat, and a park-trail dedication of 1.55 acres bordering the river bottom and channel in the south east section of the subdivision known as Block 5, Lot 20. The development and improvement of the parks will be by the developer through private contract. The Park Maintenance District needs to be created at this time to provide for the maintenance of the public area improvements as they are completed. As a condition of the Josephine Crossing Subdivision, Phase I, plat approval, the subdivision must establish a park maintenance district. A Homeowners Association will be created to maintain the pocket parks in Blocks 1 – 5, in the Phase I residential section. The Park Maintenance District will maintain the park – trail, and, should the Homeowners Association fail to maintain the pocket park areas, the Park Maintenance District will have the authority to assume control over and maintain those parks, too. The Resolution of Intent to Create the District is the first step in the process to include all lots of Josephine Crossing Subdivision in Park Maintenance District No. 4036.

ALTERNATIVES ANALYZED:

- Create Park Maintenance District 4036 now to assure assessments can be collected in November, 2007, to pay costs of maintenance as park areas are developed. This is the requirement approved in the Subdivision Improvement Agreement and the staff recommendation.
- Do not create Park Maintenance District 4036 at this time.

FINANCIAL IMPACT: The maintenance costs for the public area improvements are estimated to be \$9,090.00 for the first year. The assessment of the maintenance costs will be determined per square foot of property. The assessment amount is \$0.01445 per square foot of lot area. The

assessment for the coming year for the phase I lots is shown in “Exhibit D” of the attached PMD documents.

RECOMMENDATION

Staff recommends Council approve the Resolution of Intent to Create Park Maintenance District No. 4036 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the March 12th, 2007, City Council meeting.

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

ATTACHMENTS:

- A. Resolution of Intent to Create Park Maintenance District No. 4036 (Including Exhibits “A” through “D”).

INTRODUCTION

Approval of the Resolution of Intent to Create Park Maintenance District No. 4036 for the maintenance of Josephine Crossing Subdivision parks and public areas is the first step in creating the Park Maintenance District by setting a date for the Public Hearing and consideration of the Resolution to Create the district, and by notifying the property owners included within the district of the intended action.

PROCEDURAL HISTORY

- The preliminary plat of Josephine Crossing Subdivision was considered and approved by the City Council on May 22, 2006.
- The final plat of Josephine Crossing Subdivision was approved on November 27, 2006. The subdivision pocket parks will be appropriately developed with trees, walks, and open grass areas to compliment the surrounding residential lots opening onto them. The lineal park – railway corridor dedicated in Lot 20 of Block 5 will be planned and developed according to the revised Master Plan being done for Riverfront Park, which it is adjacent to.
- The Resolution of Intent To Create the Park Maintenance District provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and protest period and setting a date for a Public Hearing and Council consideration of the Resolution to Create the district at the March 12th, 2007, regular City Council meeting.

BACKGROUND

To provide the funding needed to develop and to maintain park areas in new subdivisions, subdivisions annexed and platted since 1982 have been required to develop parks and to create a Park Maintenance District to maintain them. It assures that there are well maintained parks in new areas of Billings without increasing the demand on the expenditures of the city general fund and to relieve the pressures on existing developed parks that adding new subdivisions to the city results in. The Josephine Crossing Subdivision Improvement Agreements call for the park improvements to the subdivision pocket parks to be made by the developer. The Park Maintenance District will be created to maintain the railway and park area in Block 5, Lot 20, adjacent to Riverfront Park. The proposed maintenance district includes all lots included in Josephine Crossing Subdivision. Said lots shall not be eligible for assessment until such time as the final plat of that phase is filed and the Restrictions on Transfers and Conveyances are lifted. All filings have or will have on file Waivers of Protest for the formation of the park maintenance district for all lots within Josephine Crossing Subdivision.

Approval of the Resolution of Intent to Create Park Maintenance District No. 4036 for Josephine Crossing Subdivision is the first step in the creation process. The Resolution of Intent to Create the district provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures. The Public Hearing and consideration of the Resolution to Create the district will take place at the March 12th, 2007, City Council Meeting.

ALTERNATIVES ANALYSIS

- Create the Park Maintenance District now to assure assessments can be collected in November 2007, to pay costs of maintenance for the spring and summer of 2008 as the park development commences. The approved Subdivision Improvements Agreements call for development at this time and requires a Park Maintenance District to be created for maintaining it. This is the staff recommendation.
- Do not create the Park Maintenance District at this time.

STAKEHOLDERS

- The developers have agreed to the development and maintenance of the public areas in Josephine Crossing Subdivision.
- The 126 lots initially included in the PMD in Josephine Crossing Subdivision consist of single-family residences. The residents and property owners have agreed to the development. Many are strongly supportive of the parks and funding its ongoing maintenance. The rapid build out that is taking place is attributed to the fact that the open space and park amenities will be quickly developed.
- Billings residents would see increasingly heavy use of the existing developed parks and park facilities if not for the requirement that new subdivisions provide developed parks for their residents to mitigate that problem.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

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

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

RECOMMENDATION

Staff recommends Council approve the Resolution of Intent to Create Park Maintenance District No. 4036 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the March 12th, 2007, City Council meeting.

ATTACHMENTS:

A. Resolution of Intent to Create Park Maintenance District No. 4036 (Including Exhibits “A” through “D”).

ATTACHMENT A

RESOLUTION NO. 07-_____

A RESOLUTION DECLARING IT TO BE THE INTENTION OF
THE CITY COUNCIL TO CREATE PARK MAINTENANCE
DISTRICT NO. 4036 FOR THE PURPOSE OF MAINTAINING
EXISTING AND FUTURE PUBLIC AREA IMPROVEMENTS
IN *JOSEPHINE CROSSING SUBDIVISION*

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

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

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as the Park Maintenance District No.4036 of the City of Billings, Montana.

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

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

Section 5. General Character of the Improvements to be Maintained. The general character of the Improvements to be maintained is as follows: landscaping, trails, trees, irrigation systems, irrigation system water services, drainageways, storm water detention facilities, lighting and other park equipment and public area improvements installed by the developer, Parks Department and/or as part of a future Special Improvement District. The Homeowner's Association shall maintain the public "pocket parks" within the subdivision. In the event that the Homeowner's Association does not fulfill said maintenance responsibilities, Park Maintenance District No. 4036 shall accept said maintenance responsibilities and adjust assessments accordingly.

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

Section 7. Assessable Area. All eligible properties in the District will be assessed for their proportionate share of the costs of maintaining the Josephine Crossing Subdivision public area improvements. The total square footage in the District to be assessed for the first year is 628,867 square feet. The costs of maintaining the Improvements per unit for the first year shall be \$0.01445/square foot, as shown in Exhibit "D" (which is hereby incorporated herein and made a part hereof).

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

Section 9. Public Hearing; Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the proposed District subject to assessment and taxation for the cost and expense of maintaining the Josephine Crossing Subdivision public area improvements may make and file with the City Clerk until 5:00 p.m. M.D.T., March 2nd, 2007 on the expiration date of said 15-day period, written protest against the proposed Park Maintenance District No. 4036, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said regular meeting will be held Monday, March 12th, 2007, at 6:30 p.m. M.D.T., in the Council Chambers, located on the Second Floor of the City Hall at 220 North 27th Street, in Billings, Montana.

Section 10. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of this Resolution in the Billings Times, a newspaper of general circulation in the County on February 15th and February 22nd, 2007, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said Notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name

upon the last completed assessment roll for State, County, and school district taxes, at his last-known address, on or before the same day such notice is first published.

APPROVED by the City Council of the City of Billings, Montana, this __ day of _____, 2007.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, MMC CITY CLERK

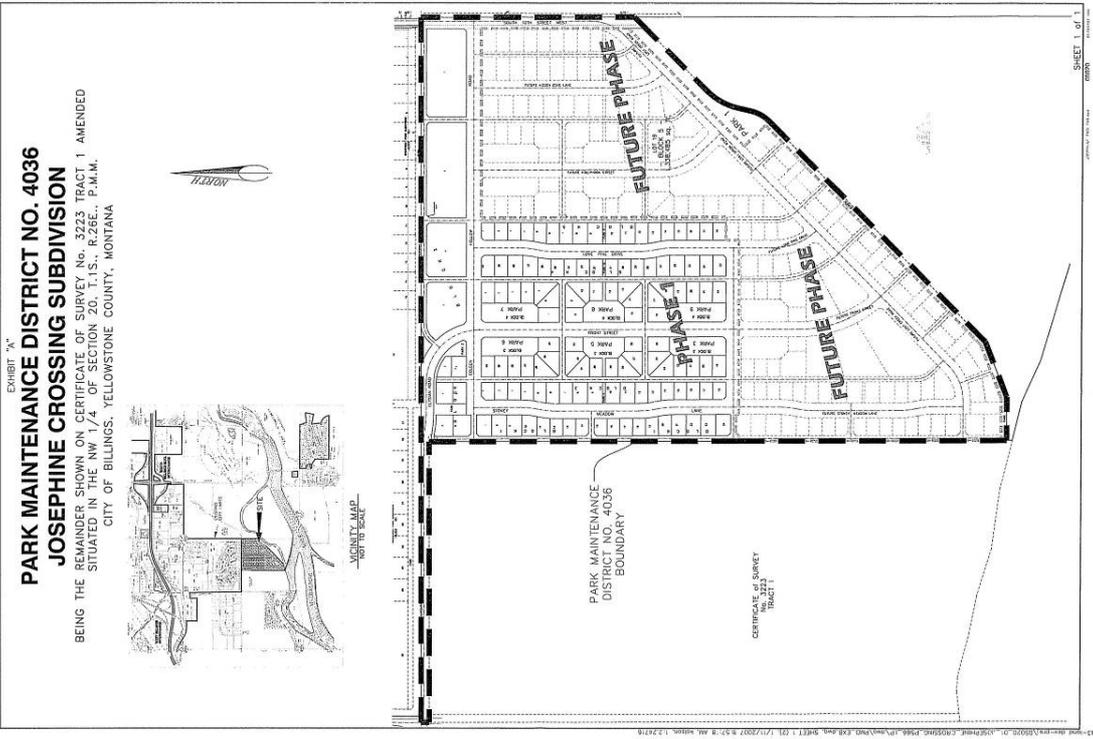


EXHIBIT "B"

BOUNDARY DESCRIPTION SPECIAL IMPROVEMENT MAINTENANCE DISTRICT No. 4036 JOSEPHINE CROSSING SUBDIVISION PARK MAINTENANCE DISTRICT

Metes and Bounds Description:

Beginning at a point which is the Northwest corner of Section 20, T. 1 S., R 26 E., P.M.M.;

thence, from said point of beginning, along the north line of said Section 20, N 89°49'46" E a distance of 2641.45 feet to the north 1/4 corner of said Section 20; thence, along the midsection line of said Section 20, S 00°09'50" E a distance of 793.29; thence, S 45°40'15" W a distance of 386.30 feet; thence, on a non-tangent curve to the left with a radius of 240.00 feet a distance of 136.03 feet (chord bearing N 29°26'02" E, chord length 134.21 feet); thence, S 13°11'49" W a distance of 49.01 feet; thence, on a non-tangent curve to the right with a radius of 141.72 feet a distance of 80.32 feet (chord bearing N 29°26'02" E, chord length 79.25 feet);thence, the following courses and distances:

S 45°40'15" W a distance of 1150.27 feet,

S 69°24'21" W a distance of 223.07 feet,

S 89°49'46" W a distance of 162.51 feet,

Thence, N 00°11'11" W a distance of 2144.86 feet to the northeast corner of Tract 1A of Corrected Certificate of Survey No.3223; thence, along the north line of said Tract 1A, S 89°49'46" W a distance of 1050.06 feet to a point on the west line of said Section 20;

thence, along said west section line, N 00°11'11" W a distance of 30.00 feet, to the point of beginning; said described tract containing an area of approximately 60.28 acres.

EXHIBIT "C"

**OWNERSHIP RECORDS
SPECIAL IMPROVEMENT MAINTENANCE DISTRICT No. 4036
JOSEPHINE CROSSING SUBDIVISION
PARK MAINTENANCE DISTRICT**

STATE OF MONTANA
COUNTY OF YELLOWSTONE

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I HAVE CHECKED THE RECORDS IN MY OFFICE FROM October 13, 2006 TO January 2, 2006 AND THE LISTED PERSON ARE THE OWNERS OF RECORD FOR THE LISTED PROPERTY.

SIGNED AND SEALED THIS 5th DAY OF JANUARY, 2007

1 NAMES \$.50

CERT \$ 2.00

TOTAL \$ 2.50

1 PAGES

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CLERK & RECORDER

BY *Tina Iversen*
DEPUTY

Date: 01/05/2007 Time: 10:33:37

Yellowstone County
TA Reports - Parcel Master List

Operator: bcoons

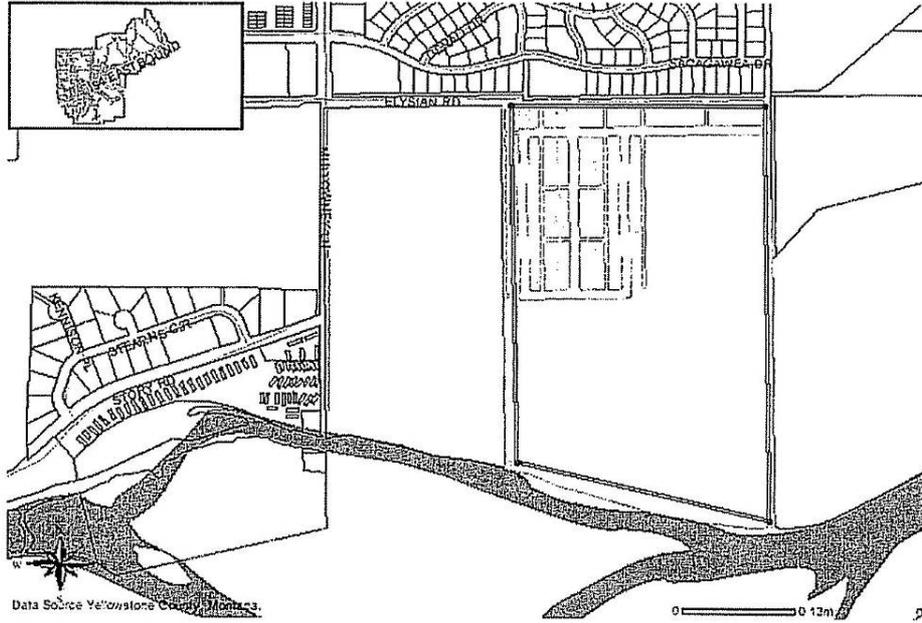
Page: 1

RANGES: TAX YEAR: (R) 2006 - 2006
ASSESSOR#: (L) *JOSEPHINE 06* D01936
TAX TYPE: (A)
LEVY DISTRICT: (A)
SUB-LEVY DIST: (A)
SPECIAL DISTRICT: (A)
LIST CODE: (A)

Certified Thru
10/13/06
Dept of Revenue
Babe

OPTIONS: SORT ORDER: N # OF COPIES: 1

Assessor#	Owner/Mailing Address	Legal Description	Levy Dist	Sub Dist	Tax Type	Key #1
D01936	MCCALL DEVELOPMENT INC ✓ 2751 ENTERPRISE AVE STE 2 BILLINGS MT 59102-7413	03-0027-20-2-01-01-0000 NENRHW4 S2NWRW4 & LOT 1-1 LESS COS J223 SEC 20 T1S R26 E	023		RE	



JOSEPHINE CROSSING SUBDIVISION

Variance List - CERTIFIED OWNERSHIP

Kjersten OLSON - ENGINEERING INC 656-5255

Parcel					
Highlight on Map	GEOCODE	Tax Id	Address	Property Tax Data	CAMA Data
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[Zoom to these records](#)

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CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Second Reading of an Ordinance for Amended Section 23-1101 of the City Subdivision Regulations

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: In February of 2006, the City Council approved an ordinance amending Chapter 23, BMCC, the City Subdivision Regulations, in their entirety. Since that time, the new regulations have been successfully implemented. It has become apparent, however, that a couple of items in the regulations are in need of change and clarification.

Section 23-1101 of the City Subdivision Regulations provides procedures for requesting a variance from those regulations. The suggested amendments would ensure the Planning Board has authority to review and make recommendations to the governing body regarding all variance requests. They would also assign a fee to the variance application, since variance requests are to be considered separate applications, which may be reviewed prior to or concurrently with the preliminary plat review.

The City-County Planning Board held a public hearing and reviewed the proposed amendments to Sections 23-1101 of the City Subdivision Regulations on January 9, 2006. The City Council held a public hearing on the proposed amendments and voted to approve the amendments on first reading. At this meeting the Council is being asked to act on the second reading of the ordinance amending Section 23-1101 of the Subdivision Regulations

FINANCIAL IMPACT: There are no foreseen financial impacts to the City for adopting the Amendments to Section 23-1101 of the City Subdivision Regulations.

RECOMMENDATION

The Planning Board recommends, on a 10-0 vote, that the City Council approve the proposed amendments to Section 23-1101 of the City Subdivision Regulations.

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

ATTACHMENTS

A: Ordinance

INTRODUCTION

On February 15, 2006, the City Council approved Ordinance 06-5359, amending the City Subdivision Regulations in their entirety. Section 23-1101 provides procedures for requesting a variance from the subdivision regulations. These new procedures require the subdivider to address specific findings of hardship in order provide the necessary information for the governing body's evaluation of the variance request. The suggested amendment would ensure the Planning Board has authority to review and make recommendations to the governing body regarding all variance requests. It would also assign a fee to the variance application, since variance requests are to be considered separate applications, which may be reviewed prior to or concurrently with the preliminary plat review.

BACKGROUND

Section 23-1101 provides procedures for requesting a variance from the subdivision regulations. As they are currently written, the procedures require the subdivider to address specific findings in order provide the necessary information for the governing body's evaluation of the variance request.

The Planning Board's review and recommendation of variances is not explicitly required by the current regulations, though they currently review variances submitted as part of the preliminary major plat application. Recent requests to process variance requests prior to the preliminary plat submittal have raised questions on the Board's reviewing authority. Since the Planning Board reviews subdivisions in detail, and holds the public hearings for major subdivisions, it seems appropriate that the Board should also review and make recommendations to the Council regarding requested variances from the subdivision regulations, regardless of whether they are processed concurrently or prior to a preliminary plat review. As indicated in Attachment A, the suggested amendment would provide the Planning Board the authority to review and make recommendations to the governing body regarding all variance requests.

The other suggested amendment to this Section would assign a fee to the variance application, since variance requests are considered separate applications. As a separate application, the variance request may be reviewed prior to or concurrently with the preliminary plat review, and requires staff review time and research and Planning Board and City Council consideration. Staff has recommended a fee of \$325 for this application. This is the same fee charged for the processing of a residential zoning variance in the City, which is a similar process in terms of time, research, and meetings. Therefore, staff and the Planning Board felt it was an appropriate fee.

PROCEDURAL HISTORY

- February 15, 2006—the City Council approved, on second reading, Ordinance 06-5359 amending the City Subdivision Regulations in their entirety.
- January 9, 2007: Planning Board held a Public Hearing on the proposed amendments to Section 23-1101 of the City Subdivision Regulations.
- January 22, 2007: City Council held a Public Hearing and voted to approve the 1st Reading of Ordinance.
- February 12, 2007: City Council may act on the 2nd Reading of Ordinance.

STAKEHOLDERS

There were no public comments received at the Planning Board's Public Hearing held on January 9, 2007 or at the City Council's Public Hearing on January 22, 2007.

RECOMMENDATION

The Planning Board recommends, on a 10-0 vote, that the City Council approve the proposed amendments to Section 23-1101 of the City Subdivision Regulations.

ATTACHMENTS

A: Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 23-1101; PROVIDING UPDATES TO REGULATIONS ON REQUESTING A VARIANCE FROM THE SUBDIVISION REGULATIONS.

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

Section 1. That Section 23-1101 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-1101. Variances.

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

A. **Requesting a Variance.** The subdivider shall include with the submission of the ~~preliminary plat variance request~~, a written statement describing the facts of hardship upon which the request for the variance is based. Each requested variance shall be deemed a separate application, for which a fee of \$325 shall be required, ~~to be processed concurrently with the preliminary plat~~. Information addressing each of the following findings shall accompany the application, ~~to be approved by the City Council~~. The Planning Board shall review the submitted findings and make a recommendation to the City Council. The City Council shall not approve variances unless the subdivider has demonstrated that the request satisfies the following findings:

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced;
3. The variance will not result in an increase in taxpayer burden;
4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy; and

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

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

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

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

PASSED by the City Council on first reading this 22nd day of January, 2007.

PASSED, ADOPTED and APPROVED on second reading this 12th day of February, 2007.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk

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R

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Zone Change #793, 2nd Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Lora Mattox, AICP, Planner II, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Residential Multi-family to Neighborhood Commercial on the Southwest half of Lots 13 – 21, Block 59, Foster’s Addition. The subject property is located at 632 North 26th Street. The owners are Thomas Towe and Court E. Ball Partnership and the agent is Susan Lovely. The Zoning Commission conducted a public hearing on December 5, 2006, and voted 4-0 to recommend approval to the City Council. The City Council held a public hearing and approved the first reading of this zone change on January 8, 2007. At the January 22, 2007 second reading of the zone change request, the City Council voted to delay action until the February 12, 2007 City Council meeting.

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

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

FINANCIAL IMPACT: The proposed zone change should have little impact on the City’s tax base.

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #793 on 2nd reading and adopt the determinations of the 12 criteria.

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

ATTACHMENTS:

A: Ordinance

ATTACHMENT A

ORDINANCE NO. 07-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR the Southwest ½ of Lots 13 – 21, Block 59, Foster’s Addition,
containing approximately 14,000 square feet

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

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

2. DESCRIPTION. A tract of land known as the Southwest ½ of Lots 13 – 21, Block 59, Foster’s Addition, containing approximately 14,000 square feet and is presently zoned Residential Multi-family and is shown on the official zoning maps within this zone.

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

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

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

PASSED by the City Council on first reading January 8, 2007.

PASSED, ADOPTED AND APPROVED on second reading January 22, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Marita Herold, MMC, City Clerk

ZC#793

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Zone Change #795, 2nd Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a zone change request from Residential-7,000 to Neighborhood Commercial and Residential Multi-family-Restricted on Tracts 1-5 of Brittain Acres located at 803 Yellowstone River Road and 821 and 823 Bench Boulevard. The property is owned by Big Sky Floral Supply, LLC and the representative is Todd Gainan. The Zoning Commission conducted a public hearing on January 2, 2007, and voted 3-0 to recommend approval to the City Council. The City Council held a public hearing on January 22, 2007, and approved the first reading of this zone change.

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

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

FINANCIAL IMPACT: The proposed zone change will increase the City's tax base when the property is re-developed.

RECOMMENDATION

The Zoning Commission recommends by a 3-0 vote that the City Council approve Zone Change #795 and adopt the determinations of the 12 criteria.

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

ATTACHMENTS:

A: Ordinance

ATTACHMENT D

ORDINANCE NO. 07-_____
AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Tracts 1, 2, 3, 4 and 5 of Brittain Acres Subdivision,
containing approximately 4.69 acres.

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

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

2. **DESCRIPTION.** A tract of land known as Tracts 1, 2, 3, 4 and 5 of Brittain Acres Subdivision, containing approximately 4.69 acres of land and is presently zoned Residential-7,000 and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the west 225 feet of Tracts 1, 2, 3, 4, and 5 of Brittain Acres Subdivision** is hereby changed from **Residential-7,000** to **Neighborhood Commercial** and **the remaining eastern portion of Tracts 1, 2, 3, 4, and 5 of Brittain Acres Subdivision** is hereby changed from **Residential-7,000** to **Residential Multi-family-Restricted** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Neighborhood Commercial** and **Residential Multi-family-Restricted** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading January 22, 2007.

PASSED, ADOPTED AND APPROVED on second reading February 12, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Marita Herold, MMC, City Clerk

ZC#795 – Brittain Acres, Tracts 1 - 5

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T

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Subdivision Plats for Scott Subdivision, Lots 1, 2, 4, 6 and the Vacated Portions of Zimmerman Trail

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The City of Billings recently vacated portions of Zimmerman Trail abutting Lots 1, 2, 4, and 6, Scott Subdivision. The City Engineer's Office has completed subdivision plats aggregating the vacated portions of Zimmerman Trail with the adjacent Lots in Scott Subdivision. The subdivision plats require council approval due to the fact that recently vacated portions of right of way were under city control.

ALTERNATIVES ANALYZED:

1. Authorize the Mayor to sign the exempt plats aggregating the recently vacated portions of Zimmerman Trail with Lots 1, 2, 4, and 6, Scott Subdivision.
2. Do not authorize the Mayor to sign the above mentioned subdivision plats.

FINANCIAL IMPACT: There is no significant financial impact associated with these subdivision plats.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign the exempt plats for Amended Lots 1, 2, 4, and 6, Scott Subdivision aggregating the recently vacated portions of Zimmerman Trail.

Approved By: City Administrator _____ City Attorney ____

ATTACHMENT

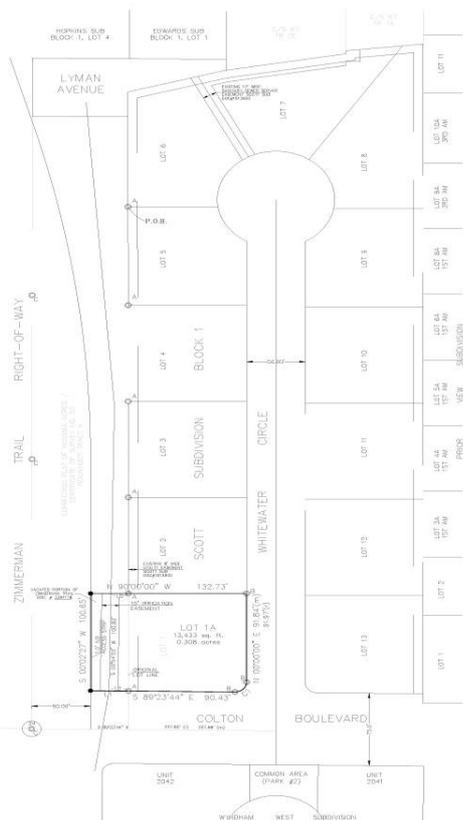
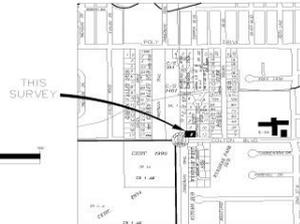
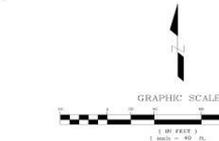
- A. Copy of Subdivision Plats

AMENDED PLAT OF
 LOT 1, BLOCK 1 OF SCOTT SUBDIVISION AND
 A PORTION OF VACATED RIGHT-OF-WAY OF ZIMMERMAN TRAIL DOC# 3391178
 LOCATED IN THE NE1/4, SECTION 34, T.1N., R.25E., P.M.M.,
 CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: Kevin J Nelson & Lorri W Nelson
 & the City of Billings
 PREPARED BY: The City of Billings
 JAMES L FLETCHER (SURVEYOR)
 SCALE: 1"=40'
 DATE: SEPTEMBER, 2006

BASE OF BEARINGS:
 MD SECTION 1811, 11N., R.25E.,
 SECTION 34 FROM SCOTT SUBDIVISION
 (S. 89°23'44" E)

LEGEND
 ○ - PROPERTY CORNER AS SHOWN IN MONUMENT LEGEND.
 ● - 1/2" DIA. 1" W. BRASS WITH CAP
 OF "100" BEARING AND "20" DEPTH"



MONUMENT LEGEND
 A FOUND YPC ENG INC BLOS MT
 5/8" BEARING SET PREVIOUS SURVEY
 FOUND BRASS CAP MONUMENTS SET BY:
 ENGINEERING INC. CITY PROJECT NO. 01-06
 ARLENE CORRIDOR IMPROVEMENTS

PROPERTY LINE TABLE			EASEMENT OFFSET LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
L1	37.37	S89°23'44"E	L2	18.03	S89°23'44"E
			L3	14.93	N90°00'00"W

CURVE TABLE					
CURVE	Delta	LENGTH	RADIUS	Chord Bear	CHORD LENGTH
C1	80.4636°	12.81	10.00	S44°42'59"E	14.22

CERTIFICATE OF SURVEYOR
 STATE OF MONTANA)
 County of Yellowstone) ss

I, the undersigned, a Montana Registered Land Surveyor being first duly sworn, depose and say that during the month of September, 2006, a survey was performed under my supervision of a tract of land to be shown as indicated in Lot 1, Block 1, of SCOTT SUBDIVISION AND A PORTION OF VACATED RIGHT-OF-WAY OF ZIMMERMAN TRAIL DOC#3391178, said tract being situated in the NE1/4 of Section 34, T. 1 N., R. 25 E., S. 34. The City of Billings, Yellowstone County, Montana, in accordance with the request of the owner thereof and in conformance with Montana Subdivision and Platting Act, said tract being more particularly described as follows:

Beginning at the SW corner of Lot 1, Block 1, Scott Subdivision, Recorded March 11, 1998, under Document Number 1913900 in the office and records of Yellowstone County, Montana, corner being on the north right of way line of Colton Boulevard Thence S 89°23'44" E for a distance of 90.42 feet; thence on a curve to the left with a radius of 10.00 feet and an arc length of 10.80 feet (Chord bearing N 44°42'59" E and a chord length of 14.22 feet) to a point on the west right of way line of White Water Circle; thence along north right of way line S 0°00'00" E for a distance of 0.00 feet; thence N 90°00'00" W for a distance of 1.07 feet to a point on the west right of way line of Zimmerman Trail; thence S 89°23'44" E for a distance of 37.37 feet to a point on the north right of way line of Colton Boulevard; thence S 89°23'44" E for a distance of 32.37 feet to the Point of Beginning.

The monuments found and set out of the character and occupy the positions shown thereon and that the gross and net area is 0.006 acres (0.4283 sq. ft.).

CITY OF BILLINGS
 By: _____
 Montana Registration No. 3206-ES
 Title: _____

On this _____ day of _____, 2006, before me the undersigned Notary Public for the State of Montana, personally appeared James L. Fletcher, known to me to be the person who signed the foregoing Certificate of Surveyor and acknowledged to me that he executed the same, Witness my hand and seal the day and year herein above written.

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

LAND OWNER STATEMENT - RELOCATION OF LOT LINE

The undersigned hereby certifies that the purpose of this survey is to relocate the common boundary line between a lot line within a plat subdivision and adjoining lot line of a plat subdivision whereby a Portion of Vacated Right-of-Way of Zimmerman Trail DOC#3391178 as shown herein will be forever merged with Lot 1, Block 1, Scott Subdivision.

Therefore this plat is exempt from review on a subdivision pursuant to 76-3-2071(a) M.C.A., Zimmerman Trail vacated is not subject to review by the Department of Environment Quality pursuant to 76-3-2066(2)(b) since it is a parcel that has no existing zoning for water supply, wastewater disposal, or solid waste disposal other than those that were previously approved by the reviewing authority.

By: Kevin J Nelson (Owner))
 Lorri W Nelson (Owner))

On this _____ day of _____, 2006, before me the undersigned Notary Public for the State of Montana, personally appeared Kevin J Nelson and Lorri W Nelson, known to me to be the persons who signed the foregoing instrument, and acknowledged to me that said persons executed the same, Witness my hand and seal the day and year herein above written.

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

CITY OF BILLINGS
 By: _____

MAYOR
 On this _____ day of _____, 2006, before me the undersigned Notary Public for the State of Montana, personally appeared _____, known to me to be the person who signed the foregoing instrument on behalf of the CITY OF BILLINGS, and acknowledged to me that said corporation executed the same, Witness my hand and seal the day and year herein above written.

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

CERTIFICATE OF CITY ATTORNEY
 STATE OF MONTANA)
 County of Yellowstone) ss

This document has been reviewed by the City Attorney's office and is acceptable as to form.
 Reviewed by: _____
 DATE: _____

CERTIFICATE OF APPROVAL FOR ERRORS AND OMISSIONS
 I hereby certify that I have compared the original and foregoing AMENDED PLAT OF LOT 1, BLOCK 1 OF SCOTT SUBDIVISION AND A PORTION OF VACATED RIGHT-OF-WAY OF ZIMMERMAN TRAIL, DOC# 3391178, for errors and omissions in compilation and drafting and find said plat conforms with the requirements of the laws of the State of Montana, and that said plat conforms to the existing conditions and plats of the City of Billings already placed on record as circumstances will permit.

IN WITNESS WHEREOF, I have executed this CERTIFICATE OF APPROVAL this _____ day of _____, 2006.

Examining Land Surveyor _____

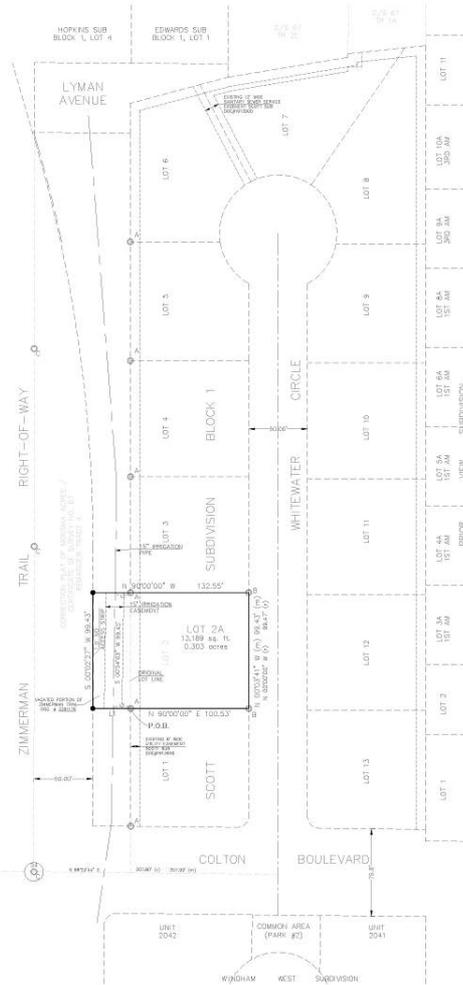
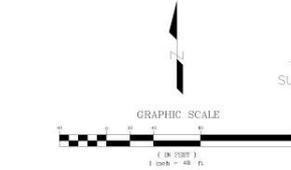
CERTIFICATE OF COUNTY TREASURER
 I hereby certify that all real property taxes and special assessments have been paid per 76-3-611(c), 76-3-201(2) M.C.A.
 Date: _____
 Yellowstone County Treasurer
 By: _____
 Deputy

AMENDED PLAT OF
 LOT 2, BLOCK 1 OF SCOTT SUBDIVISION AND
 A PORTION OF VACATED RIGHT-OF-WAY OF ZIMMERMAN TRAIL DOC# 3391176
 LOCATED IN THE NE1/4, SECTION 34, T.1N., R.25E., P.M.M.,
 CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: The City of Billings &
 Robert D Reyes & Laura C Reyes
 PREPARED BY: The City of Billings
 JAMES L FLETCHER (SURVEYOR)
 SCALE: 1"=40'
 DATE: SEPTEMBER, 2006

BASIS OF BEARING: MD SECTION LINE T.1N., R.25E.,
 SECTION 34 FROM SCOTT SUBDIVISION
 (S. 89° 23' 44" E)

LEGEND
 ○ - PROPERTY CORNER AS NOTED IN MONUMENT LOCATION
 ● - SET 5/8" x 3/4" REBAR WITH CAP MARKED WITH THE CORNER NUMBER OF UNDERSEEN LAND SURVEY



MONUMENT LEGEND
 A FOUND YPC ENG INC BLOSS MT
 B 5/8" REBAR SET PREVIOUS SURVEY
 C FOUND BRASS CAP MONUMENTS SET BY
 ENGINEERING INC., CITY PROJECT W.D. 01-06
 ARLENE CORRIDOR IMPROVEMENTS

LINE	LENGTH	BEARING
L1	32.20	N90°00'00"E

LINE	LENGTH	BEARING
L2	13.28	N80°00'00"W
L3	14.93	N90°00'00"E

CERTIFICATE OF SURVEYOR
 STATE OF MONTANA }
 County of Yellowstone }

The undersigned, a Montana Registered Land Surveyor being first duly sworn, deposes and says that during the month of September, 2006, a survey was performed under my supervision of a tract of land to be known as AMENDED PLAT OF LOT 2, BLOCK 1 OF SCOTT SUBDIVISION AND A PORTION OF VACATED RIGHT-OF-WAY OF ZIMMERMAN TRAIL, DOC# 3391176, said tract being situated in the NE1/4 of Section 34, T.1N., R.25E., P.M.M., City of Billings, Yellowstone County, Montana, in accordance with the request of the owner thereof and in conformance with Montana Subdivision and Platting Act; said tract being more particularly described as follows:

Beginning at the SW corner of Lot 2, Block 1, Scott Subdivision, Recorded March 11, 1998, under Document Number 1913900 in the office of the Clerk and Recorder of Yellowstone County, Montana, Thence N 90°00'00" E for a distance of 102.53 feet to the east right of way line of Whitewater Circle, Thence along said right of way line N 02°04'11" W for a distance of 99.43 feet, Thence N 80°00'00" W for a distance of 13.28 feet to a point on this east right of way line of Zimmerman Trail, Thence along said right of way line S 02°02'27" W for a distance of 99.43 feet, Thence N 90°00'00" E for a distance of 32.20 feet to the Point of Beginning.

The monuments found and set are of the character and occupy the positions shown thereon and that the gross and net area is 0.203 acres, (13,169 sq. ft.).

CITY OF BILLINGS
 By: _____
 Montana Registration No. 52065
 Date: _____

On this _____ day of _____, 2006, before me the undersigned Notary Public for the State of Montana, personally appeared James L. Fletcher, known to me to be the person who signed the foregoing Certificate of Survey and acknowledged to me that he executed the same. Witness my hand and seal the day and year herein above written.

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

LAND OWNER STATEMENT - RELOCATION OF LOT LINE

The undersigned hereby certifies that the purpose of this survey is to relocate the common boundary line between a lot within a platted subdivision and adjoining land outside of a platted subdivision whereby a Portion of Vacated Right-of-Way of Zimmerman Trail DOC# 3391176 as shown hereon will be forever merged with Lot 2, Block 1, Scott Subdivision.

Therefore this plat is exempt from review as a subdivision pursuant to 76-3-207(1)(c) M.C.A.; Zimmerman Trail vacation is not subject to review by the Department of Environment Quality pursuant to 206-17-36-202(2)(a) and (b) since it is a parcel that has no existing facilities for water supply, wastewater disposal, and solid waste disposal, and no new facilities will be constructed on the parcel, and Lot 2, Block 1 Scott Subdivision is not subject to review by the Department of Environment Quality pursuant to 206-17-36-202(2)(a) since it is a parcel that has no existing facilities for water supply, wastewater disposal, or solid waste disposal other than those that were previously approved by the reviewing authority.

By: Robert D Reyes (Owner) _____ By: Laura C Reyes (Owner) _____

On this _____ day of _____, 2006, before me the undersigned Notary Public for the State of Montana, personally appeared Robert D Reyes and Laura C Reyes, known to me to be the persons who signed the foregoing instrument, and acknowledged to me that said persons executed the same. Witness my hand and seal the day and year herein above written.

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

By: _____
 MAYOR

On this _____ day of _____, 2006, before me the undersigned Notary Public for the State of Montana, personally appeared _____ known to me to be the person who signed the foregoing instrument on behalf of the CITY OF BILLINGS, and acknowledged to me that said corporation executed the same. Witness my hand and seal the day and year herein above written.

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

CERTIFICATE OF APPROVAL FOR ERRORS AND OMISSIONS

I hereby certify that I have examined the amended and foregoing AMENDED PLAT OF LOT 2, BLOCK 1 OF SCOTT SUBDIVISION AND A PORTION OF VACATED RIGHT-OF-WAY OF ZIMMERMAN TRAIL, DOC# 3391176, for errors and omissions in computations and drafting and find that said plat conforms with the requirements of the laws of the State of Montana, and that said plat conforms to the adjoining additions and plats of the City of Billings already platted as hereby on circumstances set permit.

In WITNESS WHEREOF, I have executed this CERTIFICATE OF APPROVAL this _____ day of _____, 2006.

Examining Land Surveyor _____

CERTIFICATE OF CITY ATTORNEY

STATE OF MONTANA }
 County of Yellowstone }

This document has been reviewed by the City Attorney's office and is acceptable as to form.

Reviewed by: _____

DATE: _____

CERTIFICATE OF COUNTY TREASURER

I hereby certify that all real property taxes and special assessments have been paid per 76-3-611(1)(b)/76-3-207(3) M.C.A.

Date: _____

Yellowstone County Treasurer

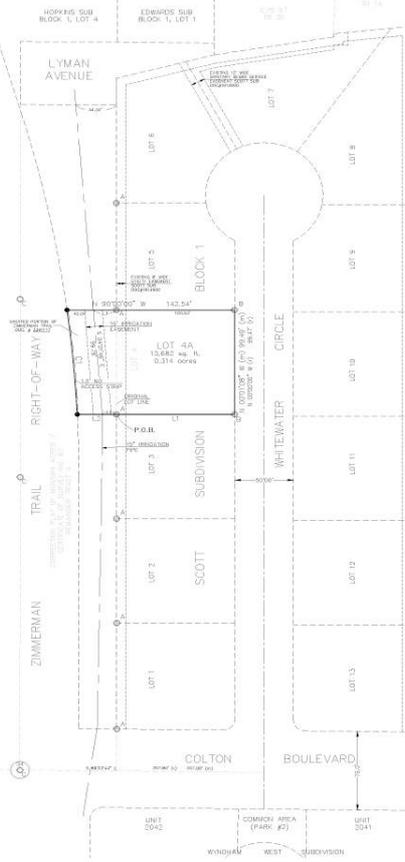
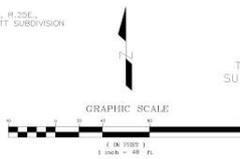
By: _____
 Deputy

AMENDED PLAT OF
 LOT 4, BLOCK 1 OF SCOTT SUBDIVISION AND
 A PORTION OF VACATED RIGHT-OF-WAY OF ZIMMERMAN TRAIL DOC# 3391177
 LOCATED IN THE NE1/4, SECTION 34, T.1N., R.25E., P.M.M.,
 CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: The City Of Billings & Thomas G Sawatzke & Lynette D Sawatzke
 PREPARED BY: THE CITY OF BILLINGS, JAMES L FLETCHER (SURVEYOR)
 SCALE: 1"=40'
 DATE: SEPTEMBER, 2006

BASIS OF BEARINGS: MD SECTION LINE T.1N., R.25E., SECTION 34 FROM SCOTT SUBDIVISION (S. 89° 23' 44" E)

LEGEND
 ○ = PROPERTY CORNER AS NOTED IN WORKMENT LEGEND.
 ● = 1/2" x 3/4" x 1/2" BRASS WITH CAP MARKED WITH THE CORNER NUMBER OF ADJACENT LAND SURVEY



MONUMENT LEGEND

A	FOUND YPC ENG INC BLOSS MT
B	5/8" BRASS SET PREVIOUS SURVEY
C	FOUND BRASS CAP MONUMENTS SET BY ENGINEERING INC. CITY PROJECT M.O. 01-06 ARLENE CORRIDOR IMPROVEMENTS

PROPERTY LINE TABLE		EASEMENT OFF-SET LINE TABLE	
LINE	LENGTH	LINE	BEARING
L1	100.33	L3	19.60
L2	33.30	L4	12.04

CURVE	Delta	LENGTH	RADIUS	Chord	
				Bearg	Length
C1	4°18'52"	99.90	11531.22	S00°01'47"E	99.88'

CERTIFICATE OF SURVEYOR
 STATE OF MONTANA)
 County of Yellowstone) ss
 I, James L Fletcher, a Montana Registered Land Surveyor being first duly sworn, depose and say that during the month of September, 2006, a survey was performed under my supervision of a tract of land to be known as AMENDED PLAT OF LOT 4, BLOCK 1 OF SCOTT SUBDIVISION AND A PORTION OF VACATED RIGHT-OF-WAY OF ZIMMERMAN TRAIL, DOC#3391177, said tract being situated in the NE1/4 of Section 34, T. 1 N., R. 25 E., P.M.M., City of Billings, Yellowstone County, Montana, in accordance with the request of the owner thereof and in conformance with Montana Subdivision and Platting Act; said tract being more particularly described as follows:

Beginning at the SW corner at Lot 4, Block 1, Scott Subdivision, Recorded March 11, 1998, under Document Number 1813400 in the office of Jack and Rosemarie of Yellowstone County, Montana, Thence N 80°05'00" E for a distance of 100.33 feet to the east right of way line of Whitewater Circle; thence along the said right of way line N 02°15'00" E for a distance of 99.49 feet; thence N 90°05'00" W for a distance of 102.54 feet to a point on a curve of this said right of way line of Whitewater Circle; thence along said right of way line on a curve to the right with a radius of 1281.22 feet and an arc length of 99.90 feet (chord bearing S 02°01'47" E and a chord length of 99.88 feet); thence N 80°05'00" E for a distance of 33.30 feet to the Point of Beginning.

The monuments found and set are of the character and occupy the positions shown thereon and that the gross and net area is 0.214 acres, 0.1565 ac. ±.

CITY OF BILLINGS
 By: _____
 Montana Registration No. 5301 ES
 Date: _____

On this _____ day of _____, 2006, before me the undersigned Notary Public for the State of Montana, personally appeared James L Fletcher, known to me to be the person who signed the foregoing Certificate of Surveyor and acknowledged to me that he executed the same. Witness my hand and seal the day and year herein above written.

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

LAND OWNER STATEMENT - RELOCATION OF LOT LINE
 The undersigned hereby certifies that the purpose of this survey is to relocate the common boundary line between a lot within a platted subdivision and adjoining land outside of a platted subdivision whereby a Portion of Vacated Right-of-Way of Zimmerman Trail DOC#3391177 or above parcel will be forever merged with Lot 4, Block 1, Scott Subdivision.
 Therefore this plat is exempt from review as a subdivision pursuant to 76-2-207(1)(a) M.C.A., Zimmerman Trail section is not subject to review by the Department of Environment Quality pursuant to 17-2-205(2)(a) since it is a parcel that has no existing facilities for water supply, wastewater disposal, and solid waste disposal, and no new facilities will be constructed on the parcel and Lot 4, Block 1, Scott Subdivision is not subject to review by the Department of Environment Quality pursuant to 17-2-205(2)(b) since it is a parcel that has no existing facilities for water supply, wastewater disposal, and solid waste disposal other than those that were previously approved by the reviewing authority.

By: Thomas G Sawatzke (Owner) By: Lynette D Sawatzke (Owner)
 On this _____ day of _____, 2006, before me the undersigned Notary Public for the State of Montana, personally appeared Thomas G Sawatzke and Lynette D Sawatzke, known to me to be the persons who signed the foregoing instrument, and acknowledged to me that said persons executed the same. Witness my hand and seal the day and year herein above written.

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

CITY OF BILLINGS
 By: MAYOR
 On this _____ day of _____, 2006, before me the undersigned Notary Public for the State of Montana, personally appeared _____, known to me to be the person who signed the foregoing instrument as Mayor of the City of Billings, and acknowledged to me that said corporation executed the same. Witness my hand and seal the day and year herein above written.

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

CERTIFICATE OF CITY ATTORNEY
 STATE OF MONTANA)
 County of Yellowstone) ss
 This document has been reviewed by the City Attorney's office and is acceptable as to form.
 Reviewed by: _____
 DATE: _____

CERTIFICATE OF APPROVAL FOR ERRORS AND OMISSIONS
 I hereby certify that I have examined the annexed and foregoing AMENDED PLAT OF LOT 4, BLOCK 1 OF SCOTT SUBDIVISION AND A PORTION OF VACATED RIGHT-OF-WAY OF ZIMMERMAN TRAIL, DOC#3391177, for errors and omissions in computations and drawings and find that said plat conforms with the requirements of the laws of the State of Montana, and that said plat conforms to the adjoining sections and plats of the City of Billings already platted as nearly as circumstances will permit.

IN WITNESS WHEREOF, I have executed this CERTIFICATE OF APPROVAL this _____ day of _____, 2006.

 Examining Land Surveyor

CERTIFICATE OF COUNTY TREASURER
 I hereby certify that all real property taxes and special assessments have been paid per 76-3-011(1)(b), 76-3-207(3) M.C.A.
 Date: _____
 Yellowstone County Treasurer
 By: _____
 Deputy

(Back to Consent Agenda)

U

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007**

TITLE: Preliminary Major Plat of Grand Peaks Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On November 1, 2006, the subdivider applied for preliminary major plat approval for Grand Peaks Subdivision, which contains 11 lots on approximately 48.66 acres of land. The subject property is generally located east of the intersection of Grand Avenue and 54th Street West adjacent to Bishop Fox Subdivision and is zoned Residential 9600 (R-9600) Agricultural Suburban (AS). The subject property was annexed into the city on December 11, 2006, and was rezoned to Residential 7000 (R-7000), Residential 5000 (R-5000), and Residential Multi-Family Restricted (RMF-R) on January 8, 2007.

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 60 working days to act upon this preliminary major plat. The 60-working day review period for this subdivision will end on February 12, 2007, as the applicant submitted a 30-day extension request on November 16, 2006, due to holiday conflicts with the originally scheduled Planning Board public hearing. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 60 day review period, the City Council is required to:

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

FINANCIAL IMPACT: Upon development of the property, additional tax revenue for the City may be provided.

RECOMMENDATION

The Planning Board recommends that the City Council grant conditional approval of the preliminary plat of Grand Peaks Subdivision, approval of the variance, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

ATTACHMENTS

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

INTRODUCTION

On November 1, 2006, the subdivider applied for preliminary major plat approval for Grand Peaks Subdivision, which contains 11 lots on approximately 48.66 acres of land. The property is generally located east of the intersection of Grand Avenue and 54th Street West adjacent to Bishop Fox Subdivision and is zoned Residential 9600 (R-9600) Agricultural Suburban (AS). The subject property is bordered on the west by single-family residences within Vintage Estates (city); on the west by vacant and developing land within Bishop Fox Subdivision (city); and on the north and east by low density agricultural land within the county.

PROCEDURAL HISTORY

- On September 26, 2006, a pre-application meeting was conducted for proposed major plat.
- On October 25, 2006, the Annexation Petition was submitted to the Planning Department.
- On November 1, 2006, the preliminary major plat application was submitted to the planning department.
- On November 6, 2006, the rezone application was submitted to the Planning Department.
- On November 16, 2006, the departmental review meeting for the preliminary plat was conducted.
- On November 27, 2006, the City Council acknowledged the annexation petition and set a public hearing date for December 11, 2006. The preliminary plat was also resubmitted with revisions based on the departmental review meeting.
- On December 5, 2006, the City Zoning Commission conducted a public hearing for several zone changes on the subject property including Residential Multi-Family Restricted (RMF-R), Residential 5000 (R-5000), and Residential 7000 (R-7000). There is no recommendation from the Zoning Commission, as the public hearing resulted in a tie vote.
- On December 11, 2006, the City Council conducted the public hearing and adopted a resolution annexing the subject property.
- On December 18, 2006, the first reading to expand Ward Boundary I was approved by the City Council.
- On January 8, 2006, the second and final reading for ward boundary expansion was approved and Zone Change #794 was approved on first reading by the City Council.
- On January 9, 2006, the Planning Board conducted a public hearing on the proposed major subdivision and recommended conditional approval to the City Council on a 10-0 vote.
- On January 22, 2006, the City Council approved the 2nd reading of the zone change.

BACKGROUND

General location:	East of the intersection of Grand Avenue and 54 th Street West adjacent to Bishop Fox Subdivision
Legal Description:	Tract 1A of Certificate of Survey 3279 Amended and Lot 5, Block 1, Bishop Fox Subdivision
Subdivider:	Grand Peaks, LLC
Owner:	Same
Engineer and Surveyor:	Engineering Inc.
Existing Zoning:	R-9600 and Agricultural Suburban
Existing land use:	Vacant Land
Proposed land use:	Multi-Family Residential, Duplexes, and Single-Family Residences
Gross area:	48.66 acres
Net area:	41.90 acres
Proposed number of lots:	11
Lot size:	Max: 6.89 acres Min.: 2.43 acres
Parkland requirements:	Subdivider is proposing a cash-in-lieu of parkland dedication.

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To ensure the provision of parks and open space, Section III.F of the SIA shall state that the 8-foot wide pedestrian trails will be constructed to the City Trails and Bikeways Design Standards. *(Recommended by City-County Planning)*
3. To ensure ownership and maintenance of the proposed entry parks, all references to public dedicated parkland shall be removed from Sections V and VII of the SIA. The maintenance of the private parks through a Homeowner's Association or other private mechanism shall be specified within the SIA. *(Recommended by the Parks and Recreation Department and City-County Planning)*
4. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mailbox carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
5. To ensure compatibility with the surrounding low density residential uses and to inform future lot owners of land uses, the following Conditions that Run with Land shall be added as F, G, and H of Section 2 of the SIA: *(Recommended by the Subdivider and the Planning Board)*
 - *The subdivider, developer, and/or builder shall limit the first row of housing along the northern border of Lot 2, Block 4, Grand Peaks Subdivision to single-family units only. The single-family residential units within this portion of the subdivision shall be developed in accordance with the densities permitted per the Residential 9600 (R-9600) zoning district specified within Section 27-308 of the Unified Zoning Regulations.*
 - *The subdivider, developer, and/or builder shall limit construction on Lots 1-4, Block 2, Grand Peaks Subdivision to residential condominium units not to exceed six units per building. The height of these building shall not exceed two stories in height. All other restrictions, including setbacks and lot coverage requirements set forth in Section 27-308 of the Unified Zoning Regulations shall apply.*
 - *Grand Peaks subdivision was divided for the purpose of creating condominiums.*

6. To ensure compliance with Table 23-406.B.1, BMCC, Section III.B of the SIA shall be revised to 10-foot wide boulevard walks shall be provided along the Grand Avenue and 54th Street West frontages of the subdivision. (*Recommended by the Planning Board*)
7. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
8. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

VARIANCE REQUESTED

A variance to permit a 60-foot half width right-of-way for Grand Avenue where Section 23-406(b)(6), BMCC, requires a 65-foot half right-of-way for principal arterial streets. Engineering staff is supportive of this variance, as the 60-foot half width will maintain consistency with other recently developed properties along Grand Avenue. For further justification, the applicant did submit responses to the five required variance criteria (please see Attachment C).

STAKEHOLDERS

On January 9, 2007, the Planning Board conducted a public hearing regarding this subdivision. The Planning Board discussion focused on the proposed density, since this property will develop further as condominiums, which does not require further subdivision review. In response to the density concerns raised during the zone change public hearings and by the Planning Board, the subdivider has proposed restrictions on development within the subdivision, which will be added as Conditions that Run with the Land in the SIA per Condition #5. The first restriction includes only constructing single-family residences to a Residential 9600 density for the northernmost portion of Lot 2, Block 4, to address the lower density residential use to the north. The second restriction would limit the development on Lots 1-4, Block 2, to attached residential condominiums, not to exceed six units per building or above two stories in height. The final condition advises future lot owners that this subdivision is being created for the purpose of condominium development.

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

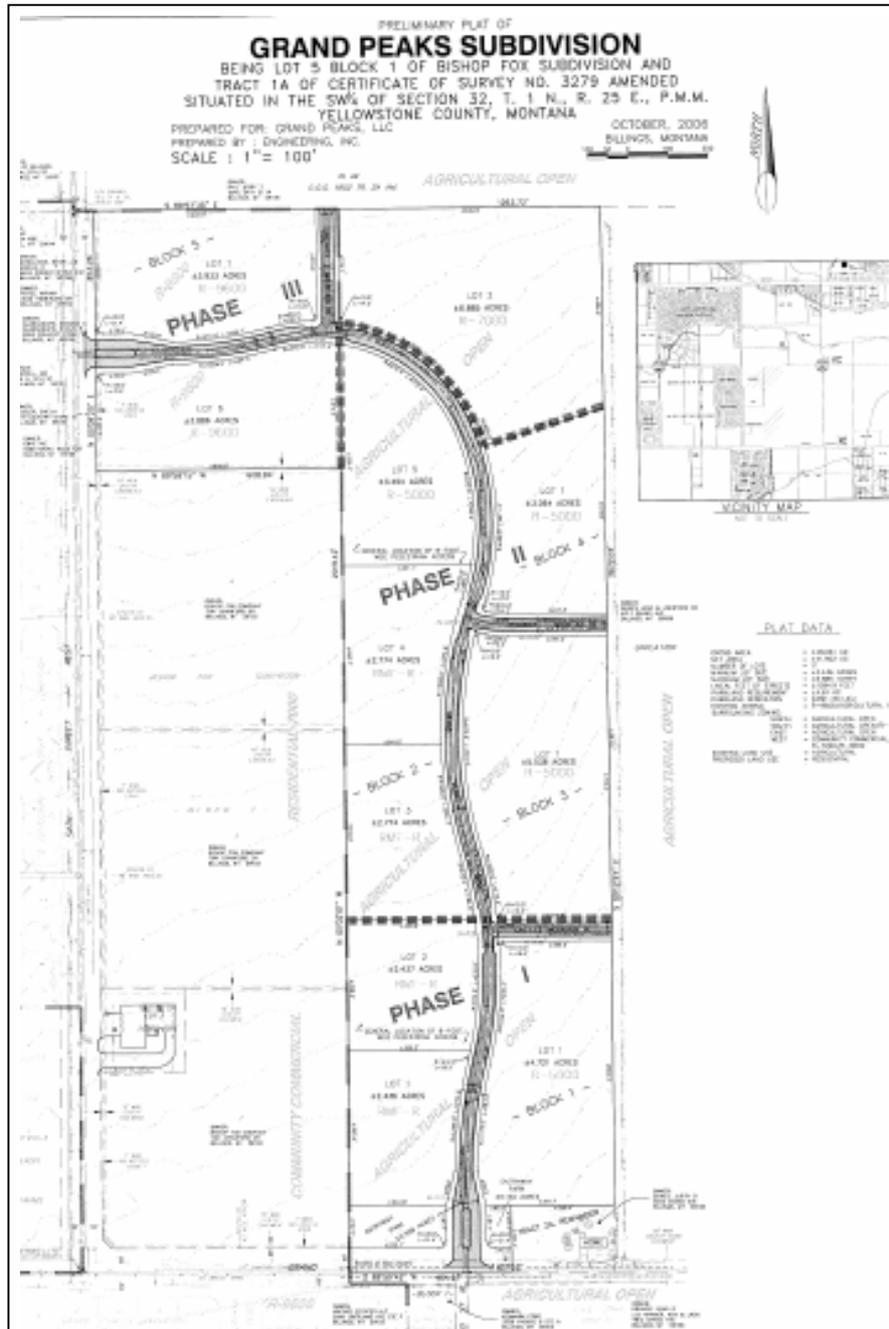
RECOMMENDATION

The Planning Board recommends that the City Council grant conditional approval of the preliminary plat of Grand Peaks Subdivision, approval of the variance, and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

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

ATTACHMENT A
Preliminary Plat



ATTACHMENT B
Site Photographs



Figure 1: View east along Grand Avenue from the property, which is located to the left in the photograph.

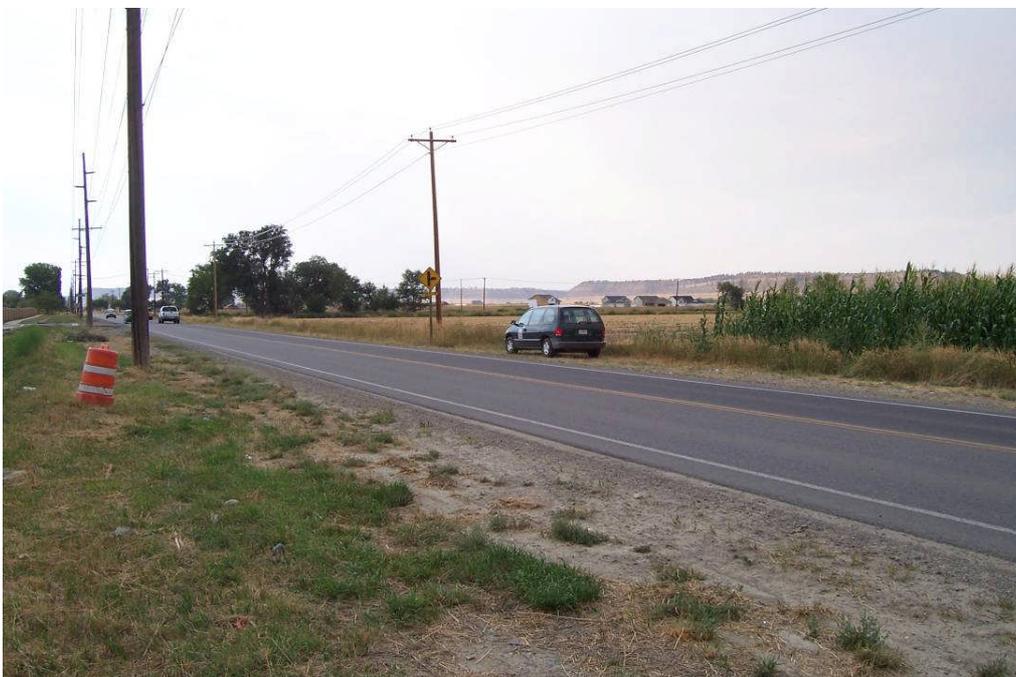


Figure 2: View northwest from Grand across the subject property. Cottonwood Grove Subdivision is in the far west portion of the photo, north of the planning van.



Figure 3: View from the intersection of 54th Street West and Grand Avenue northeast across the subject property.



Figure 4: View from Grand Avenue northwest across the subject property. Cottonwood Grove Subdivision, 1st and 2nd Filings are pictured in the distance.

ATTACHMENT C
Variance Criteria



ENGINEERING, INC.
Consulting Engineers and Land Surveyors

November 22, 2006

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

Reference: Variance Request
 Grand Peaks Subdivision
 E.I. No. 06024

Dear Aura:

We are requesting a variance from the provisions of Section 23-406(b)(6) of the City of Billings Subdivision Regulations requiring the half Right-of-Way of a Principal Arterial be 65-feet. To be consistent with the neighboring subdivisions of Grand Peaks Subdivision a variance to a 60-foot half Right-of-Way is being requested. The following information has been provided to address the variance request:

1. The variance will not be detrimental to the public health, safety, or general welfare, or injurious to other adjoining properties in any way.
2. Currently, the neighboring subdivisions of Grand Peaks Subdivision have dedicated half Right-of-Way of 60-feet. Having the owners of Grand Peaks Subdivision dedicate the full 65-foot half right-of-way would be inconsistent with neighboring properties and would cause an undue hardship to the owner.
3. The variance will not result in an increase to taxpayers.
4. The variance will not place the subdivision in nonconformance with any zoning regulations or Growth Policies.
5. The road design would remain unchanged as a full Principal Arterial street width and boulevard walk will fit within the requested right of way.

Please review the above information, and feel free to contact me if you have any questions.

Sincerely,


Gary T. Owen
Staff Engineer

/ccg
encls
P:06024_Lindstrand_Variance_Ltr_112206

1300 North Transtech Way ▪ Billings, MT 59102 ▪ Phone (406) 656-5255 ▪ Fax (406) 656-0967 ▪ www.enginc.com

ATTACHMENT D

Findings of Fact

The Planning Board is forwarding the recommended Findings of Fact for Grand Peaks Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Article 23-100, BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The subject property has historically been utilized for crop production. The proposed subdivision will take approximately 48 acres out of agricultural production, which could have a cumulative effect as more subdivisions on the west end occur. No irrigation ditches, laterals, or irrigation easements exist on the site.

2. Effect on local services

- a. **Utilities** – Water to the subject property will be extended from the 20-inch main in Grand Avenue and the 12-inch main in 54th Street West. An additional 8-inch water line will be installed within the interior subdivision street.

Sanitary sewer will be extended from the 27-inch main within Grand Avenue to the south and the 15-inch main within 54th Street West to the west. An additional 8-inch sanitary sewer line will be installed within the interior subdivision street.

- b. **Stormwater** – Storm drainage for the proposed subdivision will be provided by a combination of surface drainage and curbs and gutters drained to an underground system to discharge to a stormwater detention facility located within the private entry park to the subdivision.

All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.

- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** - Access to the proposed subdivision will be via Grand Peaks Drive, the main street that connects the subdivision from Grand Avenue (south) to 54th Street West (northwest). All internal streets will be constructed to city standards with 56-feet of

right-of-way and 34-feet back to back of curb pavement width and 5-foot wide boulevard style sidewalks on both sides of the street. There are three additional streets within the subdivision that will connect to the properties to the east and north upon development. These streets will have temporary gravel turnaround easements until such time that development occurs; the Fire Department has reviewed the proposed turnarounds and finds them acceptable. The subdivider has proposed traffic calming along Grand Peaks Drive in the form of “bulbouts” at the t-intersections. The street width does not change at these locations, however the curb and sidewalk is extended for approximately 30-feet at each intersection to create the appearance of a narrower driving lane. A variance is not necessary for this type of technique, as only the parking is eliminated for the length of these “bulbouts.”

Grand Avenue (south) is classified as a principal arterial, which requires a 65-foot wide half width dedication for a full width of 130-feet per Section 23-406(B)(6). The subdivider has requested a variance to permit a 60-foot half width dedication for Grand Avenue. Engineering and staff is supportive of this variance, as the 60-foot half width will maintain consistency with other recently developed properties along Grand Avenue. At this location, 54th Street West is classified as a minor arterial which requires a 50-foot half width dedication for a full width of 100-feet per Section 23-406(B)(6). The subdivider is proposing to dedicate the full 50 feet. The sidewalk requirement along both Grand Avenue and 54th Street west is 10-foot wide boulevard sidewalks, however the SIA states that 5-foot wide boulevard sidewalks will be provided. Condition #6 requires that Section III.B of the SIA be revised to reflect the correct width of the boulevard sidewalks.

The subject property is to be developed in three (3) phases. The first phase includes lots located on the southern portion of the property including Grand Peaks Drive and Castle Mountain Trail (connection to the east). The second phase includes the center portion of the property including a continuation of Grand Peaks Drive and Thunder Mountain Trail (connection to the east). The third phase includes the connection of Grand Peaks Trail to 54th Street West and the construction of Sundance Mountain Trail (connection to the north).

A Traffic Accessibility Study (TAS) was submitted to the Engineering Department for review and approval. The TAS determined the traffic generation for Grand Peaks Subdivision will be approximately 3,559 trips per day. The applicant will be required to provide a monetary contribution for the future improvements to the intersection of Grand Avenue and 54th Street West and potentially the intersection of Rimrock Road and 54th Street West.

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24th Street West (Station #5). The proposed fire station on 54th Street West is to be located directly adjacent to the west of the subject property on Lot 2, Bishop Fox

Subdivision. The subdivision is located within the ambulance service area of American Medical Response (AMR); no comments were received.

- f. **Schools** – The subdivision is located within School District #2. No comments were received from the School District; however the subdivision was submitted for review by the local schools that will be affected by this subdivision. Students from the proposed subdivision will attend Burlington Elementary School, Lewis and Clark Middle School and Senior High School. No comments were received from the schools impacted by this development; however, in past reviews, they have stated that all schools are near or at capacity.
- g. **Parks and Recreation** – As part of this major plat, the subdivider is required to provide 4.61 acres of dedicated parkland. The subdivider is proposing a cash-in-lieu of parkland dedication, as the subject property is adjacent to the southeast of the property planned for Cottonwood Park.

The subdivider has depicted two entry parks on the plat to be dedicated to the public and maintained by the city; both contain approximately 32,670 square feet. The Parks and Recreation Department has reviewed these proposed parks and will not be accepting them for dedication or maintenance. As stated in their review, due to the small size of the lots, it would be difficult to create useable open space for a park, especially since the lot on the west is proposed for stormwater detention. They also expressed concerns regarding the safety of children within these parks due to the close proximity to Grand Avenue (a principal arterial) and 54th Street West (a minor arterial). Therefore, Condition #3 requires all references to the public dedication in regard to stormwater detention and parkland dedication within the SIA needs to be removed. Furthermore, the SIA shall state the mechanism for maintenance of the entryway parks.

- h. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #3. The location of the mail box shall be reviewed and approved by the post office.

3. Effect on the natural environment

A geotechnical report was submitted with this application and indicates that there are variable soil conditions throughout the subdivision with a potential for collapsible soils. As specified by the Building Official's review of the submitted geotechnical report, verification from a qualified engineer regarding structural designs and preparation of the building site are required prior to installing footings. A compaction test will be required prior to framing. These requirements will be satisfied with the submission of building permits on the property.

4. Effect on wildlife and wildlife habitat

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

5. Effect on the public health, safety and welfare

There are two conditions that exist on the subject property that may potentially create problems for future landowners: collapsible soils and interactions with wildlife.

- **Was an Environmental Assessment required? (76-3-210, MCA) (23-901, BMCC)**

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

- **Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the 2005 Transportation Plan Update, and the Heritage Trail Plan? (23-301, BMCC)**

1. Yellowstone County-City of Billings 2003 Growth Policy

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

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

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

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

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

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

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

The subdivision is inconsistent with the following goal of the Growth Policy:

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

While the subject property is adjacent to the east and north of annexed portions of the City, the property is not located within an area surrounded by an existing population center and could be considered sprawl.

2. Urban Area 2005 Transportation Plan Update

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

3. Heritage Trail Plan

Though the proposed subdivision is within the jurisdiction of the Heritage Trail Plan, a corridor within the subdivision is not identified. In order to provide pedestrian connectivity, the subdivider has depicted two 20-foot wide easements on the western portion of the site for access to the adjacent commercially zoned properties within Bishop Fox Subdivision. Within the 20-foot wide easements, 8-foot wide pedestrian accesses will be constructed to City Trails and Bikeways Design Standards, as specified by Condition #2. Both 54th Street West and Grand Avenue are identified within the plan as primary bikeways and will eventually be striped in the future; no striping is proposed at this time.

4. West Billings Plan

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

- Development in the West End planning area shall provide for a variety of residential types and densities.
- Condition approval of new development in the West Billings Plan area on the ability to provide infrastructure and public services, including streets, sidewalks, curb, gutter or alternative standards, police, fire, public water and sewer services.

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

- Medium and high-density residential development should be located nearby and within walking distance to commercial centers, medical facilities, and parks.
- Development of non-irrigated farmland (generally lands located north of the Big Ditch) within the appropriate zoning designation is considered a priority.

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

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

- Does the subdivision conform to sanitary requirements? (23-408, BMCC)

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

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

The subdivider shall satisfy the requirements set forth in Section 27-308 of the Unified Zoning Regulations for the Residential 9600, Residential 7000, and Residential 5000, and Residential Multi-Family Restricted zoning districts. In response to concerns during the zone change public hearings and by Planning Board during the subdivision review process, the subdivider has proposed restrictions on development within the subdivision, which will be added as Conditions that Run with the Land in the SIA per Condition #5. The first restriction includes only constructing single-family residences to a Residential 9600 density for the northernmost portion of Lot 2, Block 4, to address the lower density residential use to the north. The second restriction would limit the development on Lots 1-4, Block 2, to attached residential condominium units, not to exceed six units per building or above two stories in height. The final condition advises future lot owners that this subdivision is being created for the purpose of condominium development.

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

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

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

Legal and physical access to the proposed subdivision will be via an internal subdivision street from Grand Avenue and 54th Street West.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Grand Peaks Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, February 12, 2007.

Ron Tussing, Mayor

ATTACHMENT D
Mayor's Approval Letter

February 12, 2007

Grand Peaks, LLC
Attn: Rod Wilson
100 Emerald Drive
Billings, MT 59101

Dear Mr. Wilson:

On February 12, 2007, the Billings City Council conditionally approved the preliminary plat of Grand Peaks Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To ensure the provision of parks and open space, Section III.F of the SIA shall state that the 8-foot wide pedestrian trails will be constructed to the City Trails and Bikeways Design Standards. *(Recommended by City-County Planning)*
3. To ensure ownership and maintenance of the proposed entry parks, all references to public dedicated parkland shall be removed from Sections V and VII of the SIA. The maintenance of the private parks through a Homeowner's Association or other private mechanism shall be specified within the SIA. *(Recommended by the Parks and Recreation Department and City-County Planning)*
4. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mailbox carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
5. To ensure compatibility with the surrounding low density residential uses and to inform future lot owners of land uses, the following Conditions that Run with Land shall be added as F, G, and H of Section 2 of the SIA: *(Recommended by the Subdivider and the Planning Board)*
 - *The subdivider, developer, and/or builder shall limit the first row of housing along the northern border of Lot 2, Block 4, Grand Peaks Subdivision to single-family units only. The single-family residential units within this portion of the subdivision shall be developed in accordance with the densities permitted per the*

Residential 9600 (R-9600) zoning district specified within Section 27-308 of the Unified Zoning Regulations.

- *The subdivider, developer, and/or builder shall limit construction on Lots 1-4, Block 2, Grand Peaks Subdivision to residential condominium/townhome units not to exceed six units per building. The height of these building shall not exceed two stories in height. All other restrictions, including setbacks and lot coverage requirements set forth in Section 27-308 of the Unified Zoning Regulations shall apply.*
 - *Grand Peaks subdivision was divided for the purpose of creating condominiums.*
6. To ensure compliance with Table 23-406.B.1, BMCC, Section III.B of the SIA shall be revised to 10-foot wide boulevard walks shall be provided along the Grand Avenue and 54th Street West frontages of the subdivision. *(Recommended by the Planning Board)*
 7. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
 8. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

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

A variance to permit a 60-foot half width right-of-way for Grand Avenue where Section 23-406(b)(6), BMCC, requires a 65-foot half right-of-way for principal arterial streets.

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

Sincerely,

Ron Tussing, Mayor

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

V1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,208,303.92 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 5, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator _____ City Attorney _____

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

V2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$812,381.05 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 12, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator _____ City Attorney _____

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

V3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,112,827.07 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 19, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Public Hearing and First Reading of an Ordinance Expanding Ward I for Annexation 07-01 Property

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planner II

PROBLEM/ISSUE STATEMENT: On January 22, 2007, the City Council approved the annexation of Lot 3, Block 7, of Kimble Subdivision, Second Filing, (Annexation #07-01) containing 0.256 acres. The property is located at 215 Garden Avenue. Property owners Herbert and Laura Alvin requested the annexation. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward I will be held on February 12, 2007. The second reading of the ordinance is scheduled for Council action on February 26, 2007.

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

RECOMMENDATION

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

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

- A. Ward Ordinance and Exhibit A

ORDINANCE NO. 07-_____

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 I 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:

Portions of land situated in the NE1/4 and the NW1/4 of Section 11, T.1S., R.26E., P.M.M.,

Yellowstone County, Montana, more particularly described as:

Lot 3, Block 7 of Kimble Subdivision, Second Filing, Recorded March 1, 1956, Under

Document No. 558883, Records of Yellowstone County, Montana; including all adjacent right-

of-way of Garden Avenue. Containing 0.342 gross and 0.256 net acres, more or less.

(# 07-01) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 12th day of February, 2007.

PASSED by the City Council on the second reading this 26th day of February, 2007.

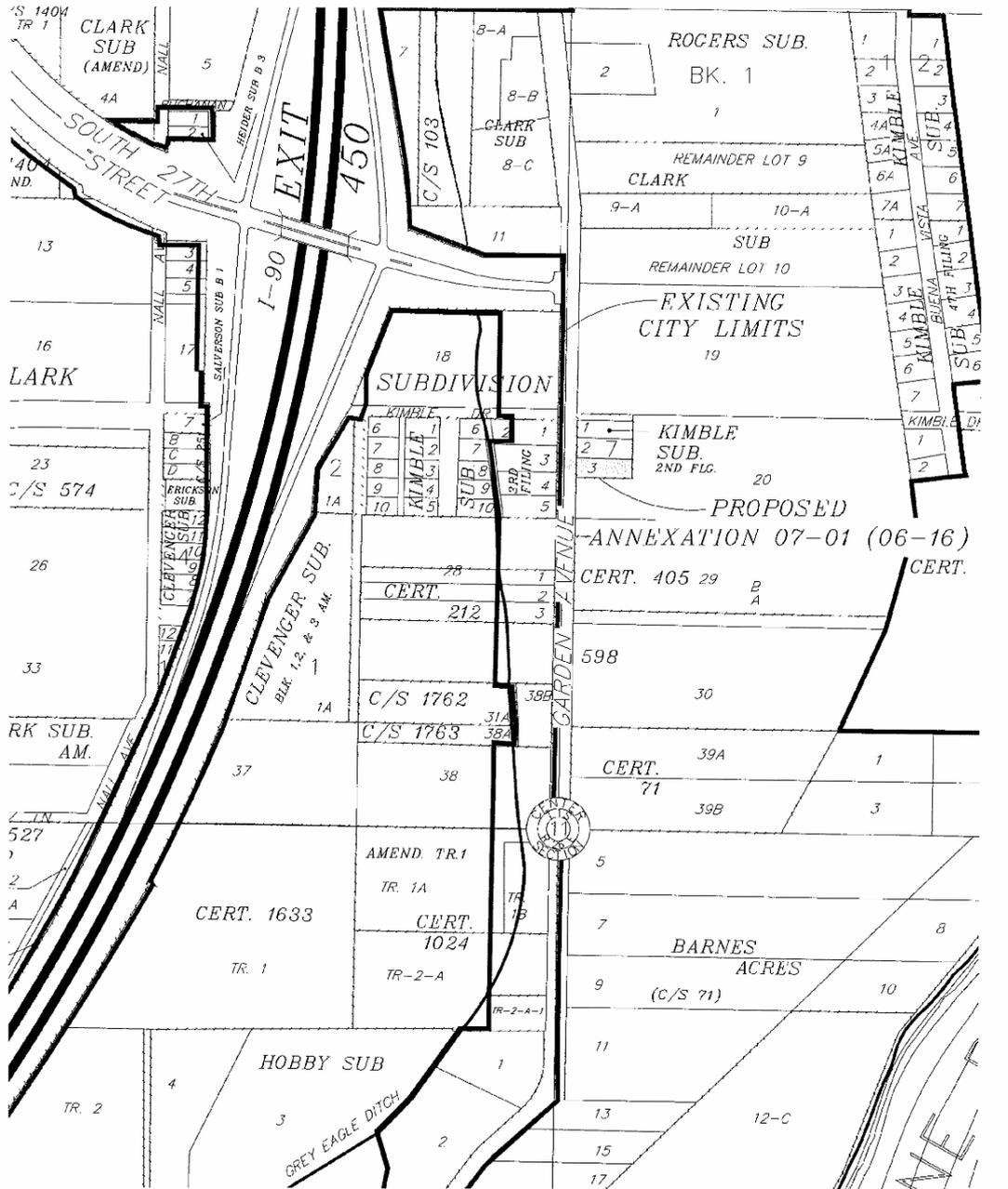
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, MMC CITY CLERK

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 12, 2007

TITLE: Highland Neighborhood Plan - Public Hearing and Resolution of Intent to Adopt

DEPARTMENT: Planning & Community Services

PRESENTED BY: Lora Mattox, Neighborhood Planner, Planner II

PROBLEM/ISSUE STATEMENT: The Highland Neighborhood Plan is a guide for land use and community development and will serve as a guiding document for making decisions that will affect the future of the Highland Neighborhood. Extensive research, public input and local government review ensures that this Neighborhood Plan sets forth attainable goals based on current public values. The strategies to achieve these goals rely on commonly-accepted planning, engineering and organizational practices, as well as, state-of-the-art approaches to contemporary issues.

FINANCIAL IMPACT: A primary objective of community planning is to reduce the cost of services by assessing future public needs and establishing cost-effective methods to address those needs. This Neighborhood Plan sets out a rational course for managing City resources wisely. Examples of cost-effective policies and strategies include:

- Promote infill through development incentives
- Foster partnerships to leverage public funds

RECOMMENDATION

The Yellowstone County Board of Planning recommends that City Council approve the Resolution of Intent to Adopt the Highland Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy. A copy of the plan is on file in the City Clerk's Office.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Yellowstone County Board of Planning Resolution 07-01
- B. Resolution of Intent to Adopt the Highland Neighborhood Plan

INTRODUCTION

The 2003 Growth Policy states as a land use issue that the existing neighborhood plans lack sufficient detail to address neighborhood character and preferred land use patterns. To address this need, the City Council instructed the Planning and Community Services Department to initiate the neighborhood planning process for neighborhoods located within the city.

The neighborhood planning process involved local residents to identify issues impacting the area and works towards goals, objectives and actions to address these issues. Also, as part of the Highland Neighborhood Plan, residents identified preferred land use patterns and created a map to help guide this future land use. The goals and objectives, which describe desired future conditions, are implemented through policies and future capital improvement planning. Policies are commitments to the residents that the elected officials shall acknowledge and attempt to achieve those goals and objectives.

PROCEDURAL HISTORY

- 2/15/2005 Planning Division hosts a neighborhood planning kickoff meeting in the Highland Neighborhood. Residents identify issues affecting neighborhood and discuss neighborhood planning boundaries.
- 3/8/2005 Planning Division began researching, assembling and compiling background data and begins public involvement process.
- 5/23/2005 The Planning Division sends 2,730 individual household letters informing residents of the planning process and information regarding meetings.
- 6/2005 Began draft neighborhood plan.
- 10/04/2006 Volunteer steering committee draft plan review begins.
- 11/01/2006 First neighborhood wide meeting to review draft plan with residents.
- 11/04/2006 Second neighborhood wide meeting to review draft plan with residents.
- 1/09/2007 The Yellowstone County Planning Board adopts resolution 07-01 recommending adoption of the Highland Neighborhood Plan as part of the 2003 Growth Policy to the City Council and the Board of County Commissioners.

BACKGROUND

In 2003, the Yellowstone County and City of Billings Growth Policy was adopted by the Billings City Council. As part of the Growth Policy, the governing body may include one or more neighborhood plans (76-1-601(2)(4)(a), MCA). A neighborhood plan must be consistent with the growth policy. The Highland Neighborhood Plan contains the following elements:

1. Neighborhood goals, objectives and actions
2. Information describing an inventory of the existing characteristics and features of the neighborhood, including land uses, population, housing needs, economic conditions, local services, public facilities, natural resources, other characteristics and features proposed by the neighborhood residents, planning board and adopted by the governing bodies

3. Projected trends for the life of the growth policy for each of the following elements: land use; population; housing needs; economic conditions; local services; natural resources; and other elements proposed by the neighborhood residents, planning board and adopted by the governing bodies
4. A description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives above
5. A strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges
6. An implementation strategy that includes:
 - a) a timetable for implementing the neighborhood plan;
 - b) a timetable for reviewing the neighborhood plan at least once every 5 years and revising the policy if necessary

In developing the Highland Neighborhood Plan, the Planning Department relied heavily on public input to establish the issues, goals, objectives and policies set forth in the document. To identify neighborhood issues, the Planning Department held a series of meetings with area residents.

The Department also worked with the Highland Neighborhood Steering Committee to develop a timeline of neighborhood meetings dedicated to the Highland Neighborhood Planning effort. A letter outlining the meeting dates, times and locations with identified neighborhood issues and focus areas was mailed to every household within the neighborhood. The six focus areas of discussion include:

- Transportation
- Institutional Facilities
- Land Use
- Housing
- Parks & Recreation
- Schools & Education

Neighborhood wide meetings were held on November 1, 2006 and November 4, 2006 to review the draft neighborhood plan with residents. The meeting contained a PowerPoint® presentation on the issues, objectives, goals and actions identified in the neighborhood. Residents also participated in review and creation of a preferred future land use map. Over 40 people attended these two meetings.

The Planning Board held a formal public hearing on the Neighborhood Plan on January 9, 2007. Taking into consideration the comments received at the public hearing, the Planning Board is forwarding a recommendation of approval to the Yellowstone County Commissioners and the City Council of Billings (Planning Board Resolution No. 07-01).

STAKEHOLDERS All Highland residents, landowners and business owners have a stake in the adoption and implementation of the Billings Heights Neighborhood Plan. The Planning & Community Services Department received written comments from individuals. The comments have been taken into consideration and the document was modified as appropriate.

RECOMMENDATION

The Yellowstone County Board of Planning recommends that City Council approve the Resolution of Intent to Adopt the Highland Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy.

ATTACHMENTS

- A. Yellowstone County Board of Planning Resolution 07-01
- B. Resolution of Intent to Adopt the Highland Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy.

ATTACHMENT A

RESOLUTION NO. 07- 01

**RESOLUTION TO RECOMMEND ADOPTION OF THE
HIGHLAND NEIGHBORHOOD PLAN**

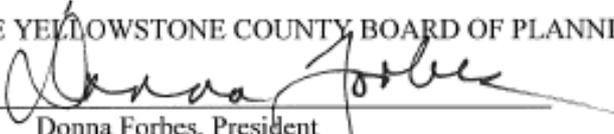
WHEREAS, pursuant to Title 76, Chapter 1, PART 601, Montana Codes Annotated, the Yellowstone County Board of Planning, desires to adopt a Neighborhood Plan consistent with the 2003 Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction:

WHEREAS, on the 9th day of January, 2007, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Highland Neighborhood:

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Yellowstone County Board of Planning recommends adoption of the Highland Neighborhood Plan.

APPROVED AND PASSED by the Yellowstone County Board of Planning this 9th day of January, 2007.

THE YELLOWSTONE COUNTY BOARD OF PLANNING:

BY: 
Donna Forbes, President

ATTEST:

BY: 
Candi Beaudry, Executive Secretary

ATTACHMENT B

RESOLUTION NO. 07-_____

RESOLUTION OF INTENT TO ADOPT THE HIGHLAND NEIGHBORHOOD PLAN AS PART OF THE YELLOWSTONE COUNTY - CITY OF BILLINGS 2003 GROWTH POLICY.

WHEREAS, pursuant to Title 76, Chapter 1, PART 601, Montana Codes Annotated, the Billings City Council, desires to adopt a Neighborhood Plan consistent with the 2003 Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction:

WHEREAS, on the 9th day of January, 2007, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Neighborhood Plan and on the 12th day of February, 2007, the Billings City Council held a public hearing for the same purpose:

WHEREAS, The Yellowstone County Board of Planning by Resolution 07-01, recommends the Billings City Council adopt the proposed Neighborhood Plan and any ordinances and resolution for its implementation:

NOW, THEREFORE, BE IT HEREBY RESOLVED that it is the intent of the Billings City Council to adopt the Highland Neighborhood Plan as part of the Yellowstone County – City of Billings 2003 Growth Policy.

APPROVED AND PASSED by the City Council of the City of Billings this 12th day of February, 2007.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, MMC CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: Public Hearing to Vacate Portions of Marbara Lane, Silver Lane, Yucca Street, and North Rim Road and Quitclaim Deed Normal Avenue

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Montana State University-Billings (MSU-B) has petitioned to vacate Marbara and Silver Lanes, a portion of Yucca Street, and North Rim Road and has requested that the City deed Normal Avenue to them. MSU-B owns all of the property except for two properties abutting the right-of-way. Both property owners are aware of the vacation and deed requests, and MSU-B will grant them access easements. MSU-B has no current plans to develop the right-of-way but would like to reconstruct and maintain it to their standards. The streets in this area are currently non-maintainable and do not have sufficient right-of-way to be constructed to City standards. Currently, there are water, sanitary sewer, and storm drain lines running through the proposed vacated area. MSU-B will enter into an easement agreement allowing full access to these lines and will be required to relocate or take over maintenance of the utilities if they ever propose to construct a structure over the lines. Normal Avenue was deeded to the City of Billings in 1954. The deed states that if Normal Avenue ever ceases to function as a street, the City of Billings will be required to deed Normal Avenue back to MSU-B. Once the bridge was taken out near Poly Drive, Normal Avenue ceased to function as a city street and became more of an access to MSU-B from Rimrock Road.

ALTERNATIVES ANALYZED:

- After holding a public hearing, approve the vacation of the above-mentioned right-of-way and the quitclaim deed of Normal Avenue to MSU-B.
- After holding a public hearing, do not approve the vacation of the above-mentioned right-of-way and the quitclaim deed of Normal Avenue to MSU-B.

FINANCIAL IMPACT: MSU-B has offered the City \$2.49 per square foot. This price was provided by Charles Rutherford, a local appraiser. The right-of-way totals 46,251 square feet. The total property value is \$115,164.99, which will be deposited into the Gas Tax Fund.

RECOMMENDATION

Staff recommends Council approve the vacation of portions of Marbara and Silver Lanes, Yucca Street, and North Rim Road, the quitclaim deed for Normal Avenue to MSU-B, and approve a right of way easement agreement for the public utilities running through the vacated streets and Normal Avenue.

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

ATTACHMENTS

- B. Map Depicting Area to be Vacated and Deeded
- C. Letter from MSU-B establishing value of land
- D. Resolution to Vacate
- E. Quitclaim Deed
- F. Right of Way Easement Agreement



Facilities Services
1500 North 30th Street
Billings, Montana 59101-0298
Office: (406) 657-2306
Fax: (406) 657-1719

Telephones (406)
Administration 657-2306
Maintenance 657-2197
Custodial 657-2256
Grounds 657-1702
Shop Fax 657-1759

Access & Excellence

November 20, 2006

City of Billings (Engineering Division)
510 North Broadway
Billings, MT 59101

Subj: Request to Vacate Public Right-of-Way

Mr. Chris Hertz;

As per our meeting with Mr. Charles Rutherford on April 13, 2006 and based on his Appraisal Consulting report of April 27, 2006, we believe \$2.49/sf to be a fair market value for the subject properties. The subject property descriptions are attached and include: Boundary #1 – Yucca Street & North Rim Road @ 18,027 sf; Boundary #2 – Marbara Lane @ 10,500 sf; Boundary #3 – Silver Lane @ 17,724 sf; and Boundary #4 - Normal Avenue (deed transfer).

Please feel free to give me a call should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "O.E. Barfield".

O.E. Barfield
Director

Attachments:

- 1) MSU-B Right-of-Way Vacation
- 2) Descriptions
- 3) Exhibit "A"
- 4) Exhibit "B"
- 5) Exhibit "C"
- 6) Normal Avenue
- 7) Purchase Order #38898

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 12, 2007

TITLE: SID 1377 Greenbriar Road Public Hearing and Resolution Creating District

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Ron Hill, owner of 5 of the 8 lots proposed in the SID district boundary, has the desire to construct public improvements on Greenbriar Road between Lake Hills Drive and Hillcrest Drive. These improvements generally consist of water, sanitary sewer, curb and gutter, and street improvements to Greenbriar Road as shown on the attached exhibit. The protest period for SID 1377 will end on February 9th. The protest count will be announced at the Council Meeting.

ALTERNATIVES ANALYZED:

- After holding a public hearing, approve Resolution Creating SID 1377; or
- After holding a public hearing do not approve the Resolution Creating SID 1377.

FINANCIAL IMPACT: The total estimated costs of the Improvements are \$158,449.80. The costs of the Improvements are to be paid from the following sources: (1) \$58,000.00 of Special Improvement District bonds hereinafter described; and (2) \$100,449.80 of cash contribution by Ron Hill, owner of 5 of the 8 lots in the District.

RECOMMENDATION

Staff recommends that Council approve the Resolution Creating SID 1377.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1377 Greenbriar Road Resolution Creating District

INTRODUCTION

Ron Hill, owner of 5 of the 8 lots within the proposed boundary of the SID, has a desire to develop lots on Greenbriar Road. In order to develop these lots, all the necessary street improvements need to be constructed on Greenbriar Road. These improvements generally consist of water, sanitary sewer, curb and gutter, and street improvements. To complete the project, it is necessary to create a Special Improvement District.

PROCEDURAL HISTORY

- January 22, 2007 – Resolution of Intent to Create SID 1377.
- February 12, 2007 – Public Hearing and Resolution Creating SID 1377.
- Spring 2007 – Professional Services Contract Award, Resolution Authorizing for Construction Bids and Construction Contract Award. (Proposed Schedule)

BACKGROUND

The boundary of this proposed special improvement district is as indicated on the attached map. The public improvements contemplated under the terms of this project include water, sanitary sewer, curb and gutter, street improvements to Greenbriar Road. Ron Hill, owner of 5 of the 8 lots in the District will pay a cash contribution to the project. The total cash contribution is equal to \$100,449.80 and represents 63 percent of the construction and administrative costs of the Improvements. This condition is necessary to satisfy the City's Special Improvement District Policy regarding raw land subdivision.

If approved, it is anticipated that construction of SID 1377 will begin in the spring of 2007 and be completed by the summer of 2007.

RECOMMENDATION

Staff recommends that Council approve the Resolution Creating SID 1377.

ATTACHMENTS

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1377 Greenbriar Road Resolution Creating District

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 07-_____, entitled: "RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. **1377**; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on **February 12, 2007**, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: _____

_____ ; voted against the same: _____

_____ ; abstained from voting thereon: _____

_____ ; or were absent: _____

WITNESS my hand officially this _____ day of _____.

Marita Herold, MMC CITY CLERK

RESOLUTION NO. 07-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1377; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE.

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

Section 1. Passage of Resolution of Intention. This Council, on **January 22, 2007**, adopted Resolution No. **XXXXXX** (the "Resolution of Intention"), pursuant to which this Council declared its intention to create a special improvement district, designated as Special Improvement District No. **1377** of the City, under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing the costs of certain local improvements described generally therein (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and the security of special improvement district bonds drawn on the District (the "Bonds"), the creating and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund").

Section 2. Notice and Public Hearing. Notice of passage of the Resolution of Intention was duly published and mailed in all respects in accordance with the law, and on **February 12, 2007**, this Council conducted a public hearing on the creation or extension of the District and the making of the Improvements. The meeting of this Council at which this resolution was adopted is the first regular meeting of the Council following the expiration of the period ended 15 days after the first date of publication of the notice of passage of the Resolution of Intention (the "Protest Period").

Section 3. Protests. Within the Protest Period, _____ protest was filed with the City Clerk and not withdrawn by the owners of property in the District subject to assessment for 100% of the total costs of the Improvements or representing 100% of the area of the District to be assessed for the cost of the Improvements. **The protest represents ___% of the assessed cost.**

Section 4. Creation of the District; Insufficiency of Protests. The District is hereby created on the terms and conditions set forth in, and otherwise in accordance with, the Resolution of Intention. The protests against the creation or extension of the District or the making of the Improvements filed during the Protest Period, if any, are hereby found to be insufficient. The

findings and determinations made in the Resolution of Intention are hereby ratified and confirmed.

Section 5. Reimbursement Expenditures.

5.01. Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

5.02. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2 (j) (2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2 (f) (2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2 (f) (1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

5.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs for the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of **\$58,000** after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2 (d) (3) of the Regulations.

5.04. Budgetary Matters. As of the date hereof, there are not City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

5.05. Reimbursement Allocations. The City’s financial officer shall be responsible for making the “reimbursement allocations” described in the Regulations, being

generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this **12th Day of February, 2007**.

THE CITY OF BILLINGS:

BY _____
Ron Tussing MAYOR

ATTEST:

BY _____
Marita Herold, MMC CITY CLERK

