

CITY OF BILLINGS

CITY OF BILLINGS' VISION STATEMENT:

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

AGENDA

COUNCIL CHAMBERS

February 25, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember McCall

ROLL CALL

MINUTES – February 11, 2008

COURTESIES

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 2, 3, 4, 5, 6, 10b, 13, and 20 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. Bid Awards:

(1) New Rotating Assembly for the Alpha Laval DS-401 Centrifuge – Wastewater Plant. (Opened 2/12/08) Recommend Alpha Laval, Inc., \$210,000.00.

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

(2) Scoreboard at Billings New Baseball and Multi-Use Stadium. (Opened 2/5/08) Delayed from 2/11/08. Recommend Sign Products, Inc., \$189,253.00.

[\(Corresponding Staff Memo A2\)](#)

(3) Revolving Door Replacement for Billings Logan International Airport. (Opened 2/12/08) Recommend General Contractors, Inc., \$526,183.00.

[\(Corresponding Staff Memo A3\)](#)

(4) 2008 Miscellaneous Improvement Projects – Airport. (Opened

2/12/08). Recommend delay of award until 3/10/08.

[\(Corresponding Staff Memo A4\)](#)

B. Change Order #3, New Baseball and Multi-Use Stadium at Athletic Park, Langlas & Associates, Inc., decrease of \$21,860.00.

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

C. Professional Services Contract for Mixing Zone/TMDL Study, Wastewater Plant, Great West Engineering, \$182,000.00.

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

D. Professional Services Contract for Water Treatment Facility L-Structure Improvements, HDR Engineering, \$206,743.00.

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

E. Contract for MT Department of Public Health and Human Services funding for a Housing First Project, CDFA 10.561, \$300,000.00.

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

F. Utilities Agreement and City/State Storm Drain Agreement with MT Department of Transportation for W.O. 03-25, Rimrock Road Construction from Shiloh Road to 54th Street West, Utilities Agreement - \$49,273.64 cost to the City; Storm Drain Agreement - no cost to the City.

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

G. Amendment #1, Airport Restaurant and Lounge Concession Agreement, Air Host Billings, Inc., extending agreement until 10/31/2014, approximate \$105,000 annual revenue.

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

H. Amendment #3, Scheduled Airline Operating Agreement and Terminal Building Lease, United Airlines, \$10,207.56 annual revenue.

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

I. Approval of west end hangar ground lease with Brian Taylor, Lot 14, 20-year lease, \$1,531.12 first year revenue, subsequent years adjusted by CPI.

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

J. Acknowledge receipt of petition to vacate a portion of alley within Block 261, Billings Original Townsite, generally located between North 19th and 20th Streets and 4th and 6th Avenues North, Turnbull ITC LLC, owner and petitioner; and setting a public hearing for March 24, 2008.

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

K. W.O. 05-20, Aronson Avenue Extension Right-of-Way Acquisition:

(1) Tract 1B of Amended Tract 1, C/S 2055, Best Development Corporation, Inc., \$0.00.

[\(Corresponding Staff Memo K1\)](#)

(2) Tract 2B of Amended Tract 2, C/S 2592, Harry and Sara Jo Axline, \$11,340.00.

[\(Corresponding Staff Memo K2\)](#)

(3) Lot 5B of Amended Lot 5, Block 16, Hilltop Subdivision, 2nd Filing, Richard L. and Patricia M. Nixon, \$0.00.

[\(Corresponding Staff Memo K3\)](#)

L. Street Closure: St. Vincent's Health Care Foundation "World Water Day – Walk for Water", March 29, 2008, 8:00 a.m. to 12:00 noon, commencing at the Student Union Building at MSU-B, west on Marbara Lane, south on Virginia Lane, west on Highland Park Drive, south on Raymond, west on Poly Drive, north on Upper Highwood Drive, east on Park Lane, south on Virginia Lane, across the MSU-B campus, through the North 27th Street Tunnel, around Mountain View Boulevard, through the North 27th Street Tunnel, and back to the Student Union Building.

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

M. Acceptance and approval of donations:

(1) Donation from Mr. Dave Pauli, Regional Director, The Humane Society of the United States, Northern Rockies Region, toward the establishment of a dog park, \$1,000.00.

[\(Corresponding Staff Memo M1\)](#)

(2) In-kind donation from Tell Net Systems for installation of upgraded wiring for voice and data networking infrastructure at the New Baseball and Multi-Use Stadium, \$7,920.00 value.

[\(Corresponding Staff Memo M2\)](#)

N. Approval of pre-application for U.S. Department of Commerce – Economic Development Administration Grant for Public Works and Economic Development Facilities Program, up to \$350,000.00.

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

O. Resolution of Intent to adopt the North Park Neighborhood Plan, setting a public hearing date for March 10, 2008.

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

P. Second/final reading ordinance expanding the boundaries of Ward I to include recently-annexed property in Annex #08-02: an approximate 54-acre parcel described as Tract 2-B-1, C/S 1121; King Business Park LLC, Richard Dorn, Samuel Rankin, and Hannah Elletson, owners.

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

Q. Preliminary Plat of Amended Lot 3B, Block 14, Sunnyside Subdivision, 3rd Filing, generally located on the northeast corner of the intersection of North 23rd Street and 10th Avenue North, conditional approval of the plat and adoption of the Findings of Fact.

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

R. Final Plat of Trailhead Subdivision.

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

S. Final Plat of E.D. King Subdivision, 2nd Filing.

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

T. Bills and Payroll.

(1) January 25, 2008

[\(Corresponding Staff Memo T1\)](#)

(2) February 1, 2008

[\(Corresponding Staff Memo T2\)](#)

(3) September 1 – September 30, 2007 (Municipal Court)

[\(Corresponding Staff Memo T3\)](#)

(4) October 1 – October 31, 2007 (Municipal Court)

[\(Corresponding Staff Memo T4\)](#)

(5) November 1 – November 30, 2007 (Municipal Court)

[\(Corresponding Staff Memo T5\)](#)

(6) December 1 – December 31, 2007 (Municipal Court)

[\(Corresponding Staff Memo T6\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. BALLPARK AGREEMENT WITH BILLINGS MUSTANGS, Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

3. MAINTENANCE AND TRANSFER OF RIGHT-OF-WAY AGREEMENT for the Shiloh Road Corridor between Montana Department of Transportation and City of Billings. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

4. RESOLUTION approving up to \$2,000 of council contingency funds for Branding Billings. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

5. RESOLUTION amending Resolution #07-18636 and amendment to the City of Billings/Downtown Billings Partnership Development Agreement allocating remaining funds in the 1976 downtown Tax Increment District. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

6. 2008 ANNUAL BUDGET for Exchange City Golf Corporation. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

7. PUBLIC HEARING AND RESOLUTION approving the FY09-FY13 Capital Improvement Plan (CIP); Equipment Replacement Plan (ERP); and Technology Replacement Plan (TRP) Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

8. PUBLIC HEARING AND RESOLUTION amending FY08 Budget for Airport Capital Projects. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 8\)](#)

9. PUBLIC HEARING AND RESOLUTION creating SILMD 304 – Downtown Area. Staff recommends continuing the public hearing and delaying action until March 10, 2008. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 9\)](#)

10. (a) PUBLIC HEARING AND RESOLUTION creating SID 1383, Cherry Hills Road Improvements. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 10a\)](#)

(b) PROFESSIONAL SERVICES CONTRACT for SID 1383, Cherry Hills Road - water, sanitary sewer, storm drain, curb and gutter, and street improvements, Engineering, Inc., \$119,562.41.

[\(Corresponding Staff Memo 10b\)](#)

11. PUBLIC HEARING AND RESOLUTION vacating portions of S. 24th Street, 4th, 5th, and 6th Avenues South, and alleys within Blocks 173 and 179 of Billings Old Town for a value of \$121,123.70; ConocoPhillips, petitioner. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 11\)](#)

12. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property in Annex #08-05: property described as Lot 1, Sylvia Subdivision, 1094 Lincoln Lane, generally located on the west side of Lincoln Lane, north of the Target Shopping Center in Billings Heights, First Citizens Bank, owner and petitioner. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 12\)](#)

13. FIRST READING ORDINANCE FOR ZONE CHANGE #831: A zone change from Controlled Industrial to Central Business District in an area with general boundaries from the east side of North 25th Street to North 20th Street, and the south side of 6th Avenue North generally south to the railroad right-of-way. Public Hearing was held on January 28, 2008; action delayed until February 25, 2008. Staff recommends

withdrawing the application and allowing the Salvation Army to pursue the variance request. (**Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 13\)](#)

14. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#832: A zone change from Residential 9600 to Residential 7000, and located on the southeast corner of the intersection of Hilltop Road and Agate Avenue in Billings Heights; Steve Zimmerer, owner and applicant. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 13\)](#)

15. (a) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #833:

A zone change from Residential 7000 to Residential 6000 on the southern half of Tract 2, C/S 3303, located at 927 Bench Boulevard; Gene and Joy Culver, owners; Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 15a\)](#)

(b) PUBLIC HEARING AND SPECIAL REVIEW #855: A special review to allow 10 four-plex, multi-family dwellings on a 3.978 acre parcel in a proposed Residential 6000 zone and an existing R60 zone on Tract 2 of C/S 3303, located at 927 Bench Boulevard; Gene and Joy Culver, owners; Engineering, Inc., agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 15b\)](#)

16. (a) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #834:

A zone change from Residential 7000 to Residential 6000 on Tract 1, C/S 1531, located at 1442 Bench Boulevard. Gene and Joy Culver, owners; Engineering, Inc. agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 16a\)](#)

(b) PUBLIC HEARING AND SPECIAL REVIEW #856: A special review to allow seven four-plex, multi-family dwellings on a 3.055 acre parcel in a proposed Residential 6000 zone and an existing R60 zone on Tract 2 of C/S 193 and Tract 1 of C/S 1531; Gene and Joy Culver, owners; Engineering, Inc., agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 16b\)](#)

17. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#835: A zone change from Entryway Light Industrial to Controlled Industrial on Tract 1, C/S 2560, located on the southeast corner of King Avenue West and Shiloh Road. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 17\)](#)

18. PUBLIC HEARING AND SPECIAL REVIEW #854: A special review for an all beverage license for the sale of alcohol beverages with gaming and a restaurant on a 1.92 acre parcel of land in the Controlled Industrial zone on property legally described as Lot 1, Block 1A, Tierra Yellowstone Industrial Subdivision generally located at 3178 Gabel Road. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 18\)](#)

19. (a) PUBLIC HEARING AND RESOLUTION accepting the Lenhardt Square Property Urban Planning Study and maintaining the boundaries of the Billings Urban Planning area to include a 114-acre property legally described as Tracts 1-5, C/S 2063; Lenhardt Property, LP, Lenhardt Farm, LLC, and Lenhardt Enterprises, LLC, property owners. Yellowstone County Board of Planning recommends acceptance of the Lenhardt Square Property Urban Planning Study, approval of the Urban Planning Area boundary to include the subject property, and approval to include the subject property within the Red Limits of the Annexation Map. (**Action:** approval or disapproval of Yellowstone County Board of Planning recommendation.)

[\(Corresponding Staff Memo 19a\)](#)

(b) PUBLIC HEARING AND RESOLUTION revising the 2007 Limits of Annexation Map to include the Lenhardt Square Property. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 19b\)](#)

(c) PUBLIC HEARING AND RESOLUTION annexing a 114-acre property located north of King Avenue West between 48th Street West and Shiloh Road and described as: Tracts 1-5, C/S 2063, (Annex #08-01). Lenhardt Property, LP; Lenhardt Farm, LLC; and Lenhardt Enterprises, LLC, owners and petitioners. Staff recommends conditional approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 19c\)](#)

(d) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #829: A zone change from Agriculture-Open Space (A-1), a county zoning district, to Planned Development with three underlying zoning districts - Mixed Use (MU); Multi-family Residential (MF-R); and Single Family, Residential Multi-Family (Four-Plex) (MF-4) located at 4345 King Avenue West. Lenhardt Property, LP; Lenhardt Farm, LLC; and Lenhardt Enterprises, LLC, owners, Engineering, Inc. and Bill Cole agents. Zoning Commission recommends approval and adoption and determinations of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 19d\)](#)

20. RIMROCK FOUNDATION SPECIAL REVIEW #800 AND FINANCIAL SETTLEMENT. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 20\)](#)

21. **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>**

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
February 25, 2008

TITLE: Bid Award - New Rotating Assembly for the Alpha Laval DS-401 Centrifuge – Wastewater Plant

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: In order to help ensure the uninterrupted processing of biosolids at the wastewater treatment plant, the purchase of a duplicate rotating assembly for the centrifuges was identified in the 2006 Wastewater Master Plan and is included in the FY08 budget. The rotating assembly will be an exact retrofit for both centrifuges and will provide the necessary redundancy during periods when mechanical maintenance is required.

FINANCIAL IMPACT: Bids were publicly advertised for the purchase of the rotating assembly on January 31 and February 7, 2008. One bid was received on February 12, 2008. There is adequate funding in the wastewater construction fund for this expenditure. The bid result was as follows:

Alpha Laval, Inc.....\$210,000.00

Because of the specialty nature of the centrifuges, the single bid from Alpha Laval was not unexpected.

RECOMMENDATION

Staff recommends that Council award the New Rotating Assembly for the Alpha Laval DS-401 Centrifuge for the wastewater plant to Alpha Laval, Inc. in the amount of \$210,000.00.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

TITLE: Award of Contract for Scoreboard at Billings New Baseball and Multi-Use Stadium

DEPARTMENT: Parks, Recreation, and Public Lands Department

PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: When the contract to construct the New Baseball and Multi-Use Stadium was awarded, provisions for a scoreboard were not included in that contract. Therefore on January 25, 2008, an Invitation to Bid containing a base bid and 3 alternates was sent out. Each alternate contains additional or upgraded features from the base bid.

The construction of the scoreboard is scheduled to be awarded approximately February 25, 2008. The scheduled substantial completion date is June 23, 2008. Bids were opened for the project at 2:00 p.m., on February 5, 2008 at City Hall. Bids were received from 3 firms. The bidding documents called for a base bid with 3 alternates, see attached Bid Tabulation. On February 12, 2008 the Steering Committee met and discussed the base bid and alternatives. Their recommendation is to accept Alternate #1 which contains the Base Bid elements (including a scoreboard, 4 sponsor panels and a full color message display) plus a 13' monochrome electronic message display which will be used by PRPL to advertise special events at the stadium and recreational programs.

FINANCIAL IMPACT: Funding will come from the Brick Campaign which will be reimbursed when the Federal Appropriations Funds are received.

Location of Work: At Athletic Park comprising the entire block bounded by North 27th Street, North 25th Street, 9th Avenue North and 10th Avenue North.

Funding Sources: From the Brick Campaign which will be reimbursed when the Federal Appropriations Funds are received.

The lowest and best bid received was from Sign Products Inc. of Billings for a total amount of \$189,253.00. The bid tabulation summary is attached.

ALTERNATIVES ANALYZED:

- Accept the recommendation of the Steering Committee and award base bid/alternate contract to the apparent low bidder,
- Accept another base bid/alternate,
- Reject all bid proposals

RECOMMENDATION:

Staff recommends awarding Alternate #1 to Sign Products Inc.

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

Attachment A: Bid Form (5 pages)

Attachment B: Bid Tabulation (1 page)

Attachment C: Alternate #1 (1 page)

BID FORM

Construction Bid For

SCOREBOARD AT BILLINGS NEW BASEBALL AND MULTI-USE STADIUM

TO: HONORABLE MAYOR AND COUNCIL MEMBERS
CITY OF BILLINGS, MONTANA

BID FROM: Sign Products Inc.
1425 Monad Road Billings, MT 59101

THE UNDERSIGNED BIDDER, having familiarized himself with the work required by the contract documents, the site where the work is to be performed, local labor conditions and all laws, regulations, and other factors affecting performance of the work, and having satisfied himself of the expense and difficulties attending performance of the work;

HEREBY PROPOSES and agrees, if this bid is accepted, to enter into an Agreement in the form attached to perform all work, including the assumption of all obligations, duties, and responsibilities necessary to the successful completion of the contract and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the work; tools, equipment, supplies, transportation, facilities, labor, superintendence, and services required to perform the work; bonds, insurance and submittals; all as indicated or specified in the Contract Documents to be performed or furnished by Contractor for the prices set forth in the following lump sum.

TOTAL BID \$ 185,087.00
(Figures)

TOTAL BID One hundred eighty-five thousand eighty-seven & no/100

(Words)

I will include the following alternates as specified substitutes for the costs listed:

ALTERNATE ONE (1) lump sum price of:

One hundred eighty-nine thousand _____ dollars (\$ 189,253.00).
two hundred fifty-three & no/100

ALTERNATE TWO (2) lump sum price of:

Two hundred thirty-seven thousand _____ dollars (\$ 237,766.00).
seven hundred sixty-six & no/100

ALTERNATE THREE (3) lump sum price of:

Two hundred twelve thousand & no/100 _____ dollars (\$ 212,000.00).

The undersigned bidder agrees to accomplish the work by June 23, 2008.

The undersigned bidder agrees to be bound by this bid for a period not to exceed that specified in the Invitation to Bid.

The undersigned bidder agrees to furnish the required bonds and to enter into a contract within ten (10) days after Owner's acceptance of this bid, and further agrees to complete all work as specified in the contract Agreement Form after the commencement of contract time, as defined in the General Conditions.

Liquidated damages shall be as specified in the Liquidated Damages Acknowledgement form bound herein.

The undersigned agrees that the unit prices shall govern in checking the bid and, should a discrepancy exist in the total prices and total amount of bid as listed above, after extensions are checked and corrections made, if any, the total amount of the bid as corrected shall be used in awarding the contract.

The undersigned bidder hereby certifies (a) that this bid is genuine and is not made in the interest of, or on the behalf of, any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; (b) that he has not directly or indirectly solicited any other bidder to put in a false or sham bid; (c) that he has not solicited or induced any person, firm, or corporation to refrain from bidding; and (d) that he has not sought by collusion to obtain for himself any advantage over any other bidder or over the Owner.

The undersigned bidder acknowledges receipt of the following addenda, which have been considered in preparation of this bid:

No. (1) _____ Dated January 29, 2008

No. _____ Dated _____

No. _____ Dated _____

No. _____ Dated _____

No. _____ Dated _____

Submitted this 4th day of February, 2008.

SIGNATURE OF BIDDER:

If an individual: _____, doing business as

If a Partnership: _____

by _____, partner

If a Corporation: Sign Products, Inc.

(a Montana Corporation)

by  Paul L. Cox

Title President (SEAL & ATTEST)

Business Address of Bidder 1425 Monad Road
Billings, MT 59101

If bidder is a joint venture, other party must sign below.

If an Individual: _____, doing business
as _____

If a Partnership: _____

by _____, partner

If a Corporation:

(a _____, Corporation)

by _____

Title _____ (SEAL &
ATTEST)

LIQUIDATED DAMAGES

ACKNOWLEDGEMENT

This acknowledgement, dated this 4th day of February, 2008, by Sign Products Inc. (CONTRACTOR) wherein Sign Products, Inc. (CONTRACTOR) acknowledges and agrees that the public improvement contract, which is the subject of this submitted bid, contains a liquidated damages clause. Sign Products Inc. (CONTRACTOR) acknowledges and agrees that because the project involves the construction of public improvements, said liquidated damages clause is necessary. Sign Products Inc. (CONTRACTOR) acknowledges and agrees that the City of Billings is damaged in the amount of **\$500.00 per day** for each day past the contract's final completion date that this project is not completed.

Sign Products Inc. (CONTRACTOR) acknowledges and agrees that because this is a public improvement project, it is extremely difficult to calculate the City of Billings' actual damages for delay in completing the project, but that this mutually agreed upon figure for liquidated damages of **\$500.00 per day** is the best approximation possible, is reasonable, and is not a penalty. This mutually agreed upon liquidated damages amount has been specifically taken into account in arriving at the dollar amount of \$18,509.00 (CONTRACTOR'S) submitted bid. This liquidated damages amount shall be included in the public improvement project contract and Sign Products Inc. (CONTRACTOR) acknowledges and agrees to be bound by this amount should Sign Products Inc. (CONTRACTOR) be awarded the public improvement contract.

This mutually agreed upon amount may be deducted from money due or to become due Sign Products Inc. (CONTRACTOR) should Sign Products Inc. (CONTRACTOR) be awarded the public improvement contract and should Sign Products, Inc. (CONTRACTOR) fail to complete the work within the time specified in this contract.

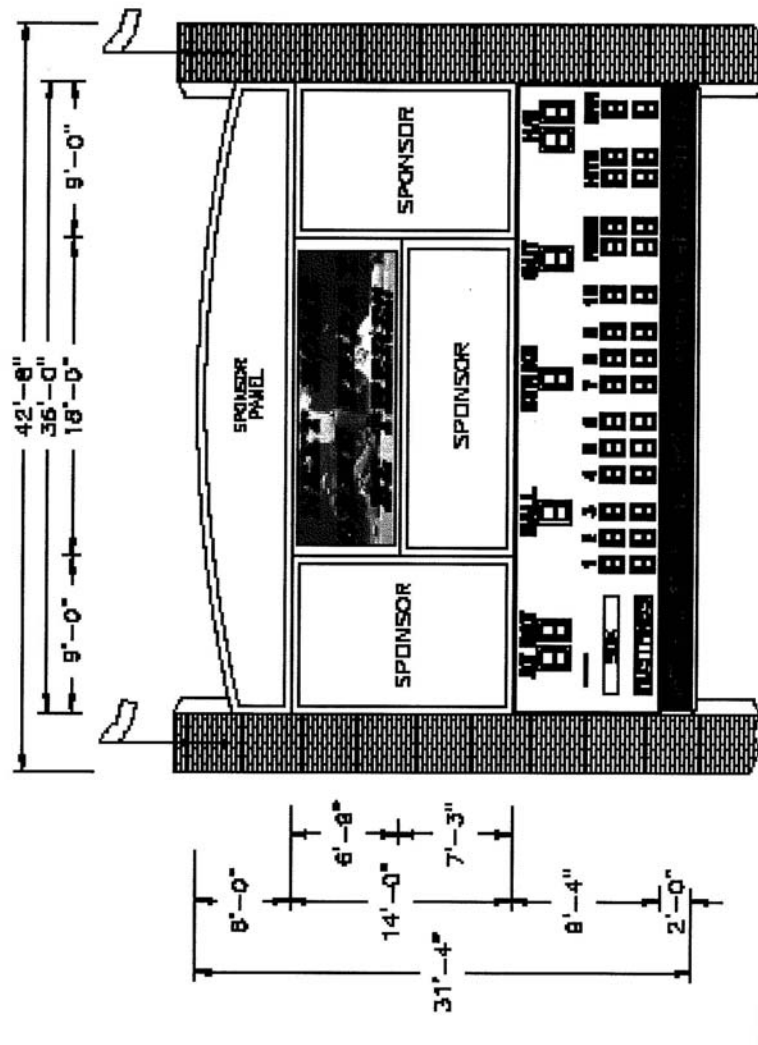
Sign Products, Inc.
By: 
(CONTRACTOR)

Its: President

Attachment B

| | | | | | | | |
|------------------------|-------------------|--|------------------|---|---|---|--|
| | | Scoreboard at Billings New Baseball and Multi-Use Stadium Bid Tab | | | | | |
| Date: February 5, 2008 | | | | | | | |
| Time: 2:00 pm | | | | | | | |
| Location: City Hall | | | | | | | |
| | | | | | | | |
| Bidders | 1 | 2 | 3 | 4 | 5 | 6 | |
| | Sign Products Inc | Daktronics | Texas Star Corp. | | | | |
| Bid Security | Check | Bid Bond | Bid Bond | | | | |
| Liquidated Damages | Yes | Yes | Yes | | | | |
| Addendum #1 | Yes | Yes | Yes | | | | |
| | | | | | | | |
| Base Bid | \$185,087.00 | \$321,960.00 | N/A | | | | |
| Alternate #1 | \$189,253.00 | \$344,820.00 | N/A | | | | |
| Alternate #2 | \$237,766.00 | \$437,950.00 | N/A | | | | |
| Alternate #3 | \$212,000.00 | \$403,170.00 | \$313,936.00 | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

ALTERNATE #1



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 25, 2008

TITLE: Approval of Award of the Revolving Door Replacement for Billings Logan International Airport

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Included in the City's Capital Improvement Program is the Replacement of the Airport Terminal Building's Revolving Door Project. The four wing revolving doors at the main entrances to the Terminal were installed during the Terminal Renovation Project completed in 1992. These doors are near the end of their useful life and require significant maintenance. Also, with most passengers now using tow behind, wheeled luggage the existing doors' four wing design does not allow smooth passenger flow as the towed luggage activates a safety devise causing the doors to stop. This project will provide new, two wing revolving doors that have more room for passengers and luggage, subsequently allowing better access and egress to and from the Terminal. This project was advertised in the *Billings Times* on January 24, 31 and February 7, 2008, and was listed on the City's Web site. On February 12, 2008, the following bids for this project were received:

| <u>CONTRACTOR</u> | <u>BID</u> |
|---------------------------|-------------------|
| General Contractors, Inc. | \$526,183 |
| Fisher Construction | \$547,750 |
| Hardy Construction | \$549,500 |
| Cucancic Construction | \$558,955 |
| High Tech Construction | \$583,200 |
| DPS Construction | \$588,800 |
| ESTIMATE | \$750,000 |

FINANCIAL IMPACT: The total cost of this project is \$526,183. The source of funding for this project is the Department's Capital Budget.

RECOMMENDATION

Staff recommends that City Council approve the award of the Replacement of the Airport Terminal Building's Revolving Door Project to the low bidder General Contractors, Inc., for the amount of \$526,183

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

TITLE: Delaying Award of the 2008 Miscellaneous Improvement Projects

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The 2008 Miscellaneous Improvement Projects consist of four schedules:

Schedule 1 – Overlook Drive (2" Mill and Overlay, 1,000 LF Sanitary Sewer)

The pavement on Overlook Drive is over 20 years old, is badly cracked, beginning to break apart, and needs to be replaced. This project will remove the top two inches of pavement and replace it with new asphalt surfacing. The project also includes the extension of the sanitary sewer 1,000 feet to the west to accommodate anticipated future development. Staff would like to get this project completed ahead of the State's Airport Road Project, which will impact the Airport's main entrance. This road will become the main entrance to the Airport from the west during the highway project.

Schedule 2 – General Aviation Area Fire Safety Upgrades (Five Hydrants)

See description below.

Schedule 3 – General Aviation Area Storm Drain

See description below.

Schedule 4 – Taxilane "D" Construction

See description below.

The T-hangar area has been developed to a point where the Airport needs to provide a new taxilane, storm drainage, and fire protection, in the form of more hydrants, in order to provide additional sites for hangar development. This project will provide a new taxilane for the next two rows of hangar sites, additional hydrants to comply with fire codes, and improved storm water drainage. This project was advertised in the *Billings Times* on January 24, 31 and

February 7, 2008, and was listed on the City's Web site. On February 12, 2008, bids for these projects were received and are being evaluated by staff.

FINANCIAL IMPACT: The total cost of this project is estimated at \$700,000. The source of funding for this project is the Department's Capital Budget.

RECOMMENDATION

Staff recommends the delay of this bid award of the 2008 Miscellaneous Improvement Projects to March 10, 2008, in order for staff to have sufficient time to evaluate the bids received.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Award of Change Order #3 to Contract for the New Baseball and Multi-Use Stadium at Athletic Park

DEPARTMENT: Parks, Recreation, and Public Lands Department

PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: Changes in technology caused a review of the voice and data networking infrastructure at the New Baseball and Multi-Use Stadium. In doing the review of the wiring and equipment, we were able to find alternatives to the existing contract that would allow us to save money on the project. Langlas and Associates has agreed to give a credit of \$20,500.00 to delete the voice and data cabling system from the contract. The voice and data cabling system and equipment will be installed by Tel Net Systems, Inc. outside the Langlas and Associates contract. Also, Langlas and Associates is giving a credit to the project of (\$1,360.00) for a single innerduct that can not be used (see Attachment A Exhibit A).

The revised costs are reflected in Change Order No. Three (3) (see Attachment A).

FINANCIAL IMPACT: The financial impact will be a net *decrease* to the project of \$21,860.00.

Location of Work: At Athletic Park comprising the entire block bounded by North 27th Street, North 25th Street, 9th Avenue North and 10th Avenue North.

Funding Sources: None needed.

ALTERNATIVES ANALYZED:

- Accept Change Order #3 (Three)

RECOMMENDATION:

Staff recommends accepting the cost reductions in Change Order No. Three (3).

Approved By: City Administrator _____ City Attorney _____

CHANGE ORDER

No. Three(3)

| | | |
|-----------------------------------|--|--|
| PROJECT: | Billings Baseball And Multi-Use Stadium | DATE OF ISSUANCE: February 25, 2008 |
| OWNER: (Name & Address) | City of Billings 510 N. Broadway, 4 th Floor Billings, MT 59101 | OWNER'S PROJECT NO. _____ |
| CONTRACTOR: | Langlas and Associates, Inc. 2270 Grant Road Billings, MT 59102 | ARCHITECT: HNTB Montana ARCHITECT'S PROJECT NO. _____ |
| CONTRACT FOR: | Construction of a new baseball and multi-use stadium at Athletic Park | |

You are directed to make the following changes in the Contract Documents.

Purpose of Change Order: To remove all of the Voice/Data Cabling system, racks and 66 blocks; conduits and rough-ins shall remain. Cost is a credit of (\$20,500.00). Also, a credit for a single innerduct that can not be used, in the amount of (\$1360.00). The net **decrease** to the project is \$21,860.00.

Attachments: Exhibit A: Letter from Langlas and Associates (October 9, 2007) Proposal #3 Remove all of the Voice/Data Cabling system, racks and 66 blocks; conduits and rough-ins shall remain. Also, Letter from Langlas and Associates (October 9, 2007) Identifying a change request for a credit for an innerduct that can not be used in the amount of (\$1,360.00).

CHANGE IN CONTRACT PRICE:

Original Contract Price

\$ 11,459,800.00

Previous Change Orders:

- No. 1 \$(279,358.00)
- NO. 2 \$79,970.00

Contract Price prior to this Change Order

\$ 11,260,412.00**CHANGE IN CONTRACT TIME:**

Original Contract Time

June 30, 2008
days or dateNet Change from previous Change
OrdersNone
daysContract Time prior to this Change
OrderJune 30, 2008
days or date

Net *decrease* of this Change Order

\$ (21,860.00)

Net Increase (decrease) of this Change Order

None
Days

Contract Price with approved Change Order

\$ 11,238,552.00

Contract Time with approved Change Order

June 30, 2008
days or date

APPROVED:

By _____
Owner

RECOMMENDED:

By _____
Architect

APPROVED:

By _____
Contractor

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

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Mixing Zone/TMDL Study – Contract for Professional Services
DEPARTMENT: Public Works
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The City's current wastewater plant discharge permit requires that the City submit a mixing zone study plan by May 1, 2008; an interim status report by December 31, 2008; and complete a mixing zone study by December 31, 2009. In addition, the State is in the process of developing Total Maximum Daily Loads (TMDL) for all waters of the state, including the Yellowstone River. Because the outcome of the TMDL process will most likely have significant impacts on the discharge from the wastewater plant, staff believes it is important to undertake efforts to develop information that will ultimately benefit the City in the TMDL process. Staff foresees the TMDL process taking place in phases over the next one to three years. The subject professional services contract provides for the services necessary to complete the mixing zone study and for Phase 1 of the TMDL study. Because of the impending deadlines for the mixing zone study, it is necessary to consider the contract in a timely fashion.

FINANCIAL IMPACT: Money for the subject studies is in the approved FY08 budget in the wastewater O & M and major capital funds. While the amounts are yet to be determined, staff anticipates the need to budget additional money over the next one to three years for additional phases of the TMDL study.

RECOMMENDATION

Staff recommends that Council approve the contract for professional services with Great West Engineering for the mixing zone study and Phase 1 of the TMDL study in the amount of \$182,000.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

Attachment A – Contract for Professional Services

INTRODUCTION

The City's current wastewater plant discharge permit requires that the City submit a mixing zone study plan by May 1, 2008; an interim status report by December 31, 2008; and complete a mixing zone study by December 31, 2009. In addition, the State is in the process of developing Total Maximum Daily Loads (TMDL) for all waters of the state, including the Yellowstone River. Because the outcome of the TMDL process will most likely have significant impacts on the discharge from the wastewater plant, staff believes it is important to undertake efforts to develop information that will ultimately benefit the City in the TMDL process. Staff foresees the TMDL process taking place in phases over the next one to three years. The subject professional services contract provides for the services necessary to complete the mixing zone study and for Phase 1 of the TMDL study. Because of the impending deadlines for the mixing zone study, it is necessary to consider the contract in a timely fashion.

Staff recommends that Council approve the contract for professional services with Great West Engineering for the mixing zone study and Phase 1 of the TMDL study in the amount of \$182,000.

BACKGROUND

A committee consisting of Alan Towlerton, Public Works, Mike Rubich, Public Works, Susan Stanley, Public Works, and Kim Annin, Aviation & Transit, reviewed proposals from four firms submitted in response to a Request for Proposals. The firms submitting proposals were HDR Engineering, CDM, Brown & Caldwell and Great West Engineering.

The current wastewater plant discharge permit requires that the City complete a mixing zone study plan by May 1, 2008, an interim status report by December 31, 2008 and complete a mixing zone plan by December 31, 2009. Such a study determines the extent of mixing between the wastewater discharge and the flow in the river. This in turn determines how much dilution is allowed when establishing the discharge limits contained within the permit, which is necessary to assure that water quality standards are being met. The study consists of reviewing historical water quality, beneficial uses, sampling and testing at various locations, and determining the physical characteristics of the river, such as depth, width and streambed details. This information will then be used to develop a computer model to predict the mixing characteristics of the wastewater under various flow conditions.

The Total Maximum Daily Load (TMDL) process is an EPA-mandated, nationwide effort to restore water bodies to beneficial uses by identifying and limiting the amount of pollutant that can be discharged to that stream. The total study consists generally of characterizing the existing river quality, identifying contributors of pollutants and their relative contributions of pollutants, and ultimately determining the amount of pollutants the various dischargers will be able to discharge to the river. The process is intended to involve various stakeholders that have an interest in the river system, such as environmental groups, agricultural groups, and those that discharge, such as the City or the Exxon refinery. While the state DEQ is the agency ultimately responsible for approving the final TMDL plan, city staff believes it is in the City's best interest to be proactive and gather data that may ultimately benefit our position. Staff hopes that

additional data will allow the development of better end results but may also provide stronger grounds for rebuttal should a disagreement arise.

Until better background information is developed and the full extent of the effort is better understood and the State's direction is better understood, it is difficult to define a full work scope at this point. Therefore, the TMDL study will be done in phases over the next one to three years with the subject professional services agreement being the first phase.

RECOMMENDATION

Staff recommends that Council approve the contract for professional services with Great West Engineering for the mixing zone study and Phase 1 of the TMDL study in the amount of \$182,000.

ATTACHMENT

A – Contract for Professional Services

Contract for Professional Architectural and Engineering Services

Mixing Zone Study & Phase 1 TMDL Study

In consideration of the mutual promises herein, City of Billings and Great West Engineering agree as follows. This Contract consists of:

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 11 Sections of General Provisions;

Appendix A consisting of _9_ pages (Basic Services of Contractor);

Appendix B consisting of _1_ pages (Methods and Times of Payment);

Appendix C consisting of _0_ pages (Additional Services of Contractor);

Appendix D consisting of _0_ pages (Schedule of Professional Fees);

Appendix E consisting of _1_ pages (Project Schedule);

Appendix F consisting of _8_ pages (Certificate(s) of Insurance); and

**PART I
SPECIAL PROVISIONS**

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the Deputy Director of the Administration Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means Great West Engineering.

Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Contractor in accordance with Appendix B and incorporated herein by reference for services actually performed under this Contract.

- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.
- D. The Contractor shall provide as-built drawings on mylars and in digital format, as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- E. The Contractor shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.
- F. The scope of services for the TMDL study contained herein represents the initial phase of this work. This Contract may be amended from time to time to add subsequent phases of work with the scope and fee to be determined at that time.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on July 1, 2011.

Section 4. Compensation; Method of Payment.

- A. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay Contractor within 30 days of receiving an acceptable invoice.
- B. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- C. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

The Contractor's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to

the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

Section 6. Duties Upon Termination

- A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination and Billings shall pay for services rendered prior to termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.
- B. If the Contractor's services are terminated for cause, Billings shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed ninety percent (90%) of the total compensation allowable under Section 4 of this Part. Any finished or unfinished documents or materials prepared by the Contractor under this Contract shall become the property of Billings at its option.
- C. If the Contractor receives payments exceeding the amount to which it is entitled under Subsections A or B of this Section, he shall remit the excess to the Administrator within 30 days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this Section until the Contractor has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Contractor's services are terminated for whatever reason the Contractor shall not claim any compensation under this Contract, other than that allowed under this Section.
- F. If a final audit has not been performed before the Contractor's services are terminated, Billings may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Contractor's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:
 - 1. Workers' compensation and employer's liability coverage as required by Montana law.
 - 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.

3. Commercial automobile liability -- \$500,000 per accident.
 4. Professional liability in the amount of \$1,500,000 per claim.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

Unless otherwise allowed by this Contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this Contract shall give Billings the right immediately to terminate this Contract without any liability for Work performed.

Section 9. Ownership; Publication, Reproduction and Use of Material.

- A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this Contract shall be the property of Billings, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright. Contractor shall retain rights to pre-existing proprietary property including but not limited to interactive models. The Contractor shall have the right to include photographic or artistic representations of the design and construction of the Project among the Contractor's promotional and professional materials. The Contractor's materials shall not include Billings' confidential or proprietary information regardless of whether Billings has previously advised the Contractor in writing of the specific information considered by Billings to be confidential and proprietary.
- B. Equipment purchased by the Contractor with Contract funds: See Appendix A, Section 3. Scope of Work.
- C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will indemnify and hold harmless the Contractor from any and all claims, demands and causes of action of any kind or character arising as a result of reusing the documents developed under this contract. Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Contractor's or subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

Section 10. Notices.

Any notice required pertaining to the subject matter of this Contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Billings: Alan Towlerton
City of Billings
Public Works Department
PO Box 30958
Billings, Montana 59111 FAX: (406) 657-8319

Contractor: David Aune
Great West Engineering
2501 Belt View Dr
Helena, MT 59601 FAX: (406) 449-8631

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or 5 days after proof of proper posting.

Section 11. Contract Budget.

In connection with its performance under this Contract, the Contractor shall not make expenditures other than as provided in line items in the Contract budget.

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
 - 1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
 - 2. Strikes or Work stoppages.
 - 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
 - 4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

The Contractor shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

In the event that any funding source for this Contract should impose additional requirements upon Billings for the use of those funds, the Contractor agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings.

Section 15. Subcontracts.

The Contractor may enter into subcontracts for the purchase of goods and services necessary for the performance of this Contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

PART II

GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

The Contractor shall perform its obligations hereunder as an independent Contractor of Billings. Billings may administer the Contract and monitor the Contractor's compliance with its obligations hereunder. Billings shall not supervise or direct the Contractor other than as provided in this Section.

Section 2. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Contractor shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Contractor shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this Contract.
- E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

Section 3. Permits, Laws, and Taxes.

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Contract. All actions taken by the Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

The failure of either party at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 5. Amendment.

- A. This Contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, with the same formality as this Contract was executed.
- B. For the purposes of any amendment modification or change to the terms and conditions of this Contract, the only authorized representatives of the parties are:

Contractor: David Aune
Principal

Billings: City Council or Authorized Designee

- C. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this Contract shall be brought in the District Court for the Thirteenth Judicial District of the State of Montana, Billings. The law of the State of Montana shall govern the rights and obligations of the parties under this Contract.

Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

The Contractor shall indemnify, defend, save, and hold Billings harmless from any and all claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any agent, employee or subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

- A. The Contractor shall not indemnify, defend, save and hold Billings harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Contractor, the Contractor shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result from the Contractor's performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

The Contractor shall, at any time during normal business hours and as often as Billings may deem necessary, make available to Billings, for examination, all of its records with respect to all matters covered by this Contract for a period ending three years after the date the Contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this Contract, to Billings, in such form and at such times as Billings may reasonably require. The Contractor shall permit Billings to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Contract. Billings may, at its option, permit the Contractor to submit its records to Billings in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to Billings; and Billings shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.

IN WITNESS WHEREOF, the parties have executed this Contract on the date and at the place shown below.

City of Billings

Contractor

City Council or Designee

Date: _____

Name: _____

Title: _____

Date: _____

ATTEST:

IRS Tax ID # _____

City Clerk

Date: _____

STATE OF MONTANA)
 :ss.
COUNTY OF YELLOWSTONE)

On this _____ day of _____, 2004, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: _____

Note: Final contract documents will require the Contractor's signature to be notarized.

Appendix A

Basic Services of Contractor

Section 1. Contractor's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Contractor's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Contractor shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Contractor's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.
- E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. The Contractor shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.
- G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will

include any problems, potential problems, and delays as foreseen by the Contractor. Reports will be submitted in a timely manner to permit prompt resolution of problems.

- J. Contract administration duties will include review of contractor certified payrolls for wage rate compliance. Discrepancies in certified payrolls will be resolved with the Contractor. A signed Contractor's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.
- K. Name a Task Director who shall be the liaison between Billings and the Contractor. For this project the Task Director designated for the Contractor is David Aune, Principal.

Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Contractor and Billings. For this project, the Task Director designated is Alan Towler, Deputy Public Works Director.

Section 3. Scope of Work.

MIXING ZONE STUDY AND TMDL STUDY SCOPE OF WORK

General Background

State regulations (ARM 17.30.505(1)(a)) allow mixing zones to be granted for individual parameters, provided that the discharge meets the requirements in ARM 17.30.506 and 17.30.507. These regulations address the potential to impair designated uses and compliance with water quality standards. The recent permit renewal denied a mixing zone for acute whole effluent toxicity (WET), E. coli, and total residual chlorine (TRC) and only granted a limited mixing zone for ammonia. However, in the "Response to Comments" on the final permit, MDEQ suggested that a greater *chronic* mixing zone allowance could be authorized if additional supporting data were provided but it was unlikely that any additional *acute* dilution would be authorized.

More specifically, MDEQ noted that mixing zones were not granted for WET, E. coli, and TRC due to a lack of information on upstream water quality and alleged prohibitions in the regulations. If the City decides to investigate whether a mixing zone should be granted for these parameters, we will investigate the regulatory requirements (e.g., prohibitions) and define the data requirements necessary to overcome MDEQ's objections. With regard to ammonia, the Department has rejected the initial evaluation demonstrating the relationship between mixing and pH. However, the basis for this rejection was the assertion that "EPA guidance requires that the

background in-stream pollutant concentration be used to calculate waste load allocations, not the downstream concentration of the mixed effluent and receiving water”. This is factually incorrect and we will pursue this issue with the Department so that the proper consideration is made.

Consequently, the mixing zone study may be thought of as consisting of two aspects. The first part of the mixing zone study encompasses the evaluations necessary to define the extent to which the effluent mixes with the receiving water upon discharge. This mixing is purely a function of the physical characteristics of the river and the outfall. The study will define the extent of mixing as a function of distance from the outfall under standardized conditions (e.g., 7Q10 river flow and design WWTP flow) in accordance with MDEQ regulations. Using the information developed for this evaluation, a conceptual diffuser design will be developed to achieve nearly instantaneous mixing as defined at ARM 17.30.516(d). This data will serve as the basis for all subsequent parameter-specific mixing zones.

The second aspect of the mixing zone study includes the parameter-specific data collection necessary to address the water quality assessment and restrictions specified in the regulations. This part is most critical for this scope of work. Regardless of the actual mixing demonstrated in the first part, MDEQ will not grant a parameter-specific mixing zone unless these additional data are presented to its satisfaction. The nature and quantity of data necessary to make this demonstration will be determined through a careful evaluation of the regulatory requirements and negotiation with the Department once the specific parameters are identified by the City of Billings.

As discussed in our response to the RFP, the facility is currently meeting permit limits for acute WET, E. coli and TRC, and it will not need to provide additional treatment if mixing zones are not granted for these parameters. However, the limited mixing zone granted for ammonia will require the City to install treatment to provide year-round nitrification. An enhanced mixing zone for ammonia can substantially reduce the cost associated with this treatment requirement provided that the City is not otherwise required to reduce nutrients in the discharge. Therefore, the focus of the mixing zone study will be to:

- Collect the physical data necessary to characterize mixing of the City of Billings effluent with the Yellowstone River;
- Collect the data necessary to assess the potential for chemical constituents, in the City’s effluent, to impair beneficial uses;
- Complete dilution modeling of the effluent in the river using the collected data to calibrate/support the modeling; and
- Complete preliminary design of a diffuser to optimize mixing and dilution of the effluent in the river as necessary to meet the City’s objectives.

The following mixing zone study tasks are proposed to address the issues presented above.

The State of Montana is mandated to have a TMDL process completed by 2012 state-wide and is in the process of developing a TMDL for the Yellowstone River. The final TMDL developed

could have significant impact on the wastewater treatment plant processes and therefore, the City desires to develop a TMDL strategy that is proactive such that impacts to the wastewater treatment process is minimized, but still provides reasonable protection of beneficial uses on the Yellowstone River.

To the maximum extent possible the Mixing Zone Study work should be coordinated with the TMDL work.

Task 1 – Kick-off Meeting with the City

We will schedule a kick-off meeting with the City of Billings to discuss and review available data that will be required to complete the mixing study, to conduct a site tour in preparation for subsequent field studies to collect additional data, and to identify the parameters for which mixing zones will be sought.

Task 2 – Regulatory Review

Based on the parameters identified by the City, we will conduct a thorough review of the applicable regulations and supporting documents to determine the data requirements necessary to obtain a mixing zone. This assessment will include, but is not limited to, a review of background data requirements, use designations, and prohibitions identified in ARM 17.30 Sub-chapter 5 [e.g., 505 – General Considerations for Mixing Zone Designations; 506 – Water Quality Assessment; 507 – Specific Restrictions for Surface Water Mixing Zones; 515 – Department Procedures; and, 516 – Standard Mixing Zones for Surface Waters], ARM 17.30 Sub-chapter 6 (Water Quality), and Circular DEQ-7 (Numeric Water Quality Standards).

Task 3 – Compile and Analyze Existing River and Effluent Information

Readily available data and reports will be compiled to evaluate background river ammonia, temperature, pH, alkalinity and flow. Effluent data will also be reviewed for the same parameters and also to determine the typical variability of the discharge. Also, existing information on the current discharge configuration and river geometry will be reviewed. It is expected that this information can be obtained from the USEPA, MDEQ, USGS and City of Billings. As appropriate, data figures will be developed to present the available data to help in understanding the information and also to help identify data that will need to be collected to support the mixing zone study. In addition, an updated 7Q10 low flow analysis will be completed for the Yellowstone River using flow data from the USGS gage at Billings (#06214500).

A compilation and review of existing data on the characteristics/uses of the river as necessary to authorize parameter-specific mixing zones will also be completed. It is anticipated that these characteristics/uses are those identified at ARM 17.30.506 and will be needed to request a parameter specific mixing zone. Specifically, the 1996 303(d) List indicated the Yellowstone River was impaired for unionized ammonia but it has not been reassessed for unionized ammonia since that time and we have reason to believe that it is no longer impaired for this parameter. In 1999, USEPA revised its fresh water ambient water quality criteria for ammonia, making the criteria less restrictive than the 1984 criteria. MDEQ adopted the less restrictive criteria as its

water quality standards, including the 30-day averaging period for chronic toxicity. Upstream water quality monitoring, conducted by the City for its preliminary investigation of effluent mixing, suggests that the background concentration of ammonia is below the current water quality standards. Together these factors suggest that the river is not impaired for ammonia, and an expanded mixing zone could be authorized pending a demonstration that the ammonia standards are met at the edge of the mixing zone and further downstream.

Task 4. Teleconference Meeting with the City

Upon completion of the above Tasks 1 through 3 and prior to meeting with the MDEQ as outlined in Task 5, the Engineer will meet with the City to present the results of the analysis to date and to develop a strategy for the MDEQ meeting. The preliminary work plan to be presented to MDEQ as part of Task 5 will be presented to the City for review and comment. The preliminary work plan will be submitted to the City in advance of the teleconference to allow the City the opportunity to be better prepared for the meeting. The revised preliminary work plan will also be submitted to the City prior to the MDEQ meeting along with a technical memorandum summarizing the discussion in the City meeting to ensure there are no misunderstandings prior to meeting with MDEQ as outlined in Task 5.

Task 5 – Negotiation with MDEQ

The information obtained in Tasks 2 & 3 will be used to develop a strategy for obtaining parameter-specific mixing zones. We will assemble the regulatory requirements, with supporting information from EPA Headquarters, into a preliminary workplan and present it to MDEQ as the basis for providing the demonstrations necessary to authorize a mixing zone. Following submittal, we will address specific concerns raised by the Department so that the parameter-specific aspects of the mixing zone assessment are pre-approved in advance. These aspects will then be incorporated into the final mixing zone study workplan.

The meeting with MDEQ will also include a discussion of TMDL issues in preparation of the development of a TMDL strategy. The Engineer will prepare a specific agenda for the TMDL portion of the meeting and will provide the City with this agenda prior to meeting for City review and comment. Appropriate changes to agenda will be made prior to the meeting with MDEQ.

To ensure a common understanding of the results of the MDEQ meeting, a technical memorandum will be prepared and submitted to the City following the MDEQ meeting summarizing the discussion and decisions or input received.

Task 6 – Develop Mixing Zone Study Workplan

After review of the available information and discussions with the City, we will develop a mixing zone study work plan for the development of parameter specific mixing zones. This work plan will include any strategies developed when meeting with the City (Task 1 &4), the data analyses and information review completed in Task 3 and the parameter-specific aspects negotiated with MDEQ (Task 5). The work plan will identify the dilution model that will be used for calibration against the observed mixing and for projecting mixing with a diffuser. It

will also include a monitoring program aimed at the critical flow conditions to gather the information needed to develop a parameter specific mixing zone. This monitoring program will include:

- A tracer study; either dye or a natural effluent tracer (e.g., total nitrogen or ammonia) will be used to map the effluent plume in the river so that this information can be used to determine the mixing characteristics of the existing outfall and calibrate the dilution model. It is anticipated that monitoring will be completed at transects across the river with 7-8 samples collected along the transect. The samples along the transect may not necessarily be evenly spaced but more closely spaced within the effluent plume and then with greater spacing across the river. This evaluation will continue downstream to approximately 10 river widths (roughly 1250 meters) with transect locations similar to those used for the bathymetric survey outlined below.
- Bathymetric surveys to define the river geometry in the vicinity of the discharge for use in modeling the existing discharge but also for analyzing dilution associated with a proposed diffuser in the river. It is anticipated that cross-sections will be completed at the following locations: 100 and 200 meters upstream from the outfall; 0, 50, 100, 150, 200, 250, 300, 400, 500, 750, 1000 and 1250 meters downstream from the outfall.
- Gathering of relevant information to address the water quality assessment requirements contained in ARM 17.30.506 (i.e., biologically important areas, drinking water or recreational activities, aquatic life, toxicity, free passage, and multiple mixing zones). This data will be obtained from readily available information and field reconnaissance.
- Parameter-specific data collection necessary to support authorization of a mixing zone by MDEQ. It is anticipated that the following water quality parameters will be collected: nitrogen (total, ammonia, nitrite+nitrate); phosphorus (total, orthophosphate); chlorophyll-a; total and volatile suspended solids; BOD₅; dissolved oxygen, temperature, pH, specific conductance; and alkalinity. Not all of these parameters are required for the mixing zone study but were included to support monitoring related to the TMDL efforts.

The above work plan will be revised based on the comments received from the City and MDEQ and resubmitted to the City for final approval prior to implementation. The City will issue an approval of the work plan and a notice to proceed prior to initiating work outlined in Tasks 7 through 9.

Task 7 – Perform Field Monitoring Activities

Once the mixing zone study workplan is approved by MDEQ, we will initiate the field monitoring activities. The field monitoring will be scheduled to gather information during critical times of the year (i.e., low flow conditions when the discharge impact will be at its greatest). The data collected will undergo proper QA/QC review before using in any subsequent modeling or assessment tasks. All data will be available in both electronic and hard copy form and presented in draft and final reports documenting the field monitoring activities.

Task 8 – Dilution Model and Mixing Zone Development

The USEPA supports several dilution models that are appropriate for characterizing the mixing characteristics of the effluent in the Yellowstone River. At this point, the USEPA supported dilution model CORMIX is recommended but will be finalized after discussions with MDEQ. The USEPA supported CORMIX dilution model (Version 4.2GT) can analyze mixing and dilution associated with discharges from surface or submerged diffusers due to both jet and buoyancy momentum in addition to ambient mixing. The CORMIX initial dilution model package contains three different CORMIX programs to analyze submerged single- and multi-port diffusers (CORMIX1 and CORMIX2, respectively) and surface discharges (CORMIX3). This dilution model is typically used in mixing zone determinations and has been applied by the Project Team to many discharge settings around the country.

Based on the existing and new information gathered, various CORMIX model inputs will be developed to analyze the effluent mixing in the river. These inputs include: river geometry (width, depth), flow or velocity and temperature; discharge flow, temperature, and outfall characteristics. The model will be set up for the existing discharge condition for calibration to the data collected around the effluent plume. Model output will be compared to observed data in various formats to present the calibration (i.e., concentration versus distance, spatial maps of model and data).

Once the model is calibrated to reproduce the observed data, it will be used to determine effluent mixing and dilution at 7Q10 low flow conditions for which the mixing characteristics need to be defined. This will involve adjusting the river flow and geometry, and the design conditions for the discharge (e.g., design flow and monthly average discharge).

At a minimum, we assume that the City will seek a mixing zone for ammonia. The model projections of mixing with distance from the outfall will be used to assess the resulting pH and ammonia standards, based on the data collected in Task 7 and the procedures developed in Task 5. The blended pH of the effluent in the river (based on river/effluent characteristics and calculated dilution) will be used to determine the ammonia wasteload allocation necessary to achieve compliance with the criteria. This allocation will be compared against facility performance to determine whether additional treatment and/or mixing are required to achieve compliance.

If the existing discharge configuration (bank discharge) does not produce sufficient mixing and dilution of the effluent in the river to comply with the ammonia criteria, a preliminary diffuser design will be completed. The preliminary diffuser design will analyze a number of different submerged diffuser configurations with the goal of optimizing effluent dilution in the river. Ideally, the diffuser will spread the effluent over the width of the river but practical limitations may require an alternate diffuser configuration based on river geometry. Once a submerged diffuser has been selected, the size of both the *acute* and *chronic* mixing zones that achieve compliance with the ammonia criteria will again be developed for the diffuser. In both cases, graphics will be developed to depict effluent dilution/concentration versus distance downstream and also spatial maps of dilution/concentration developed along with the appropriate mixing zone boundaries.

Task 9 – Mixing Zone Study Report

At the completion of Task 1-8, we will prepare a draft report in accordance with the approved workplan summarizing the data, findings, and recommendations of the mixing zone study. This report will include the parameter-specific information necessary to support allocation of mixing zones, including documentation from USEPA Headquarters as necessary to support the interpretations presented in the report.

The draft report will be submitted to the City for review prior to presenting the report to the City in a teleconference meeting. A technical memorandum will be prepared and submitted to the City following the draft report teleconference meeting to ensure a common understanding of the results of the meeting. The City will review the report and submit comments. Agreed upon comments will be incorporated into a final draft report. We will meet with MDEQ to present the findings and recommendations in the final draft report. This will include an interim report to MDEQ by December 31, 2008 and a final report to MDEQ by December 31, 2009.

Task 10. Preliminary Water Quality Characterization of the Yellowstone River for TMDL Study.

The most significant concern for the City of Billings with regard to a TMDL action concerns the anticipated development of nutrient water quality standards by MDEQ. Currently, MDEQ is conducting a Quality Assurance Project Plan (QAPP) for the lower Yellowstone River (between Forsyth and Glendive) in an effort to develop nutrient standards for large rivers. The QAPP is likely to target TN, TP, benthic algae, and dissolved oxygen for water quality standards. Closer to the outfall, the river is listed as partially supporting designated uses for aquatic life due to un-ionized ammonia from point sources. Thus, it would be prudent for the City to characterize the Yellowstone River, from a point immediately upstream of the City's outfall to Forsyth, with regard to these parameters. This segment of the river extends over 130 miles.

The primary objective of this characterization would be to determine the fate of nutrients from the City as they are transported downstream. The characterization would also assess the river for aquatic plant growth below the outfall, as this is the primary manifestation of nutrient impairment. The load characterization at the upstream end of the QAPP study area would help to characterize the relative influence of the City's discharge on downstream impairments.

Such an analysis is complicated by the addition of nutrients from other sources. Thus, we will need to identify other loading sources along the river. The first cut at loading source identification will be through a review of the map for population centers and tributaries. A more detailed evaluation could entail a review of MPDES permit files for point source dischargers in the watershed. However, this more detailed analysis may not be necessary and would only be conducted after the initial assessment of water quality data as outlined in this Task recommends such. The more detailed MPDES Permit review is outlined in Task 11.

The initial water quality characterization will consist of an analysis of readily available data from multiple sources (e.g., STORET, MDEQ, etc.). Plant growth along the river would be characterized from prior surveys conducted by MDEQ and others. These data will be evaluated to assess water quality characteristics of the river below Billings and to assess data gaps that

require augmentation. The evaluation will also provide a first cut assessment of the influence of non-point sources on the nutrient load in the river.

A preliminary water quality characterization will be completed and summarized in a report to the City

Task 11. Review of MPDES Permit Files for Point Sources

If determined to be necessary in Task 10 and as directed by the City, the Engineer will consult with MDEQ regarding MPDES permits and will conduct a detailed review of MPDES permit files for point source dischargers in the watershed. This information will be submitted to the City in summary report that may or may not be included with the summary report required in Task 10.

Task 12. Develop a TMDL Study Work Plan or Strategy

The Engineer will meet with the City to present the results of the analysis in Task 10 and possibly Task 11 and to strategize on a TMDL study work plan. The Engineer will present a preliminary TMDL study work plan for consideration by the City in this meeting. The preliminary TMDL study work plan will be submitted to the City in advance of the meeting. A follow-up technical memorandum summarizing the results of this meeting will be prepared by the Engineer and submitted to the City. Pending approval by the City, the Engineer will prepare a scope of work along with a cost estimate to implement the TMDL work plan developed in this Task.

Appendix B

Methods and Times of Payment

Section 4. Payments for Basic Services.

Billings shall authorize payment to the Contractor for services performed under Appendix A of this Agreement. Partial payment shall be due the Contractor upon receipt of the Contractor's pay estimate, said estimate being proportioned to the work completed by the Contractor.

Partial payment shall be made to the Contractor upon receipt of the Contractor's pay estimate, said estimate being proportioned to the work completed by the Contractor. Billings shall deduct ten percent (10%) from each monthly pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

- A. For services outlined in Appendix A, the Contractor shall be paid a lump sum amount of \$182,000.

Billings Mixing Zone and TMDL Study Costs

| Task | Engineering Fee |
|--|-----------------|
| 1. Kick-off Meeting with the City | \$10,800 |
| 2. Regulatory Review | \$5,500 |
| 3. Compile and analyze Existing River and Effluent Information | \$9,300 |
| 4. Teleconference Meeting with City | \$3,450 |
| 5. Negotiations with MDEQ | \$8,950 |
| 6. Develop Mixing Zone Study Workplan | \$5,300 |
| 7. Perform Field Survey & Monitoring Activities | \$19,000 |
| 8. Dilution Model and MZ Development | \$13,600 |
| 9. MZ Study Report | \$15,600 |

| | |
|--|------------------|
| Project Management | \$8,800 |
| Mixing Zone Total Cost | \$100,300 |
| 10. Preliminary WQ Characterization for TMDL Study | \$35,600 |
| 11. MPDES Permit File Review | \$3,200 |
| 12. Develop TMDL Study Work Plan | \$35,700 |
| Project Management | 7,200 |
| TMDL Phase 1 Total Cost | \$81,700 |
| Total Engineering Fee | \$182,000 |

B. Final payment shall be the above stated basic fee less all previous payments.

Section 5. Corrections.

Costs of Billings work that is required for corrections to the Contractor's work which requires redoing by Billings shall be deducted from any payments due the Contractor, if the Contractor fails to make the required corrections.

Appendix E

Project Schedule

Based on a notice to proceed by Billings date no later than March 10, 2008, the completion date for the Contractor's work shall be:

A. Mixing Zone Study

- i. Submittal of work plan to DEQ – May 1, 2008
- ii. Submittal of interim status report to DEQ – December 31, 2008
- iii. Submittal of final mixing zone plan to DEQ – December 31, 2009

B. TMDL Study

- i. Phase 1 – July 1, 2009
- ii. Future phases – to be specified in future contract amendments

Delays affecting the completion of the work within the time specified of more than ninety (90) days, not attributable to or caused by the Parties hereto, may be considered as cause for the renegotiation or termination of this Contract.

If the Contractor is behind on this Contract due to no fault of Billings, then the Contractor hereby acknowledges the right of Billings to withhold future contracts to the Contractor in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

Appendix F

Certificate(s) of Insurance

(Attach Certificate(s) of Insurance)

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: W.O. 06-22—Water Treatment Facility L-Structure Improvements,
 Services Agreement with HDR Engineering

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The L-Structure serves as the main water intake for the Billings Water Treatment Facility (WTF). The intake was originally constructed in the 1880's, has been modified several times in the past century, and is typically very reliable. Several options have been evaluated in the past, but none have proven to be as reliable or cost effective.

However, some improvements can be made to further increase the reliability and effectiveness of the existing L-Structure. Some of these improvements include abandoning the “tubes” that are no longer structurally sound; providing a new flow path to the L-Structure from the intake; pouring concrete in the floor of the intake to facilitate maintenance; widening the road between the L-Structure and the intake; expanding the existing building to allow the electronics to be relocated to a higher and safer elevation; and replacing the mixer baffle. These improvements need to be completed in a manner that avoids compromising existing water rights while keeping the WTF in operation to provide water to the people of Billings. HDR Engineering was selected through the RFP process to design and oversee the construction of improvements to the WTF L-Structure.

FINANCIAL IMPACT: The project is included in the FY-08 and FY-09 CIP and utilizes funds from Water revenues.

| | |
|--|-----------------|
| Approved Budget Amount in FY-08 CIP (PWU-W002) | \$ 207,000.00 |
| Approved Budget Amount in FY-09 CIP (PWU-W002) | \$ 812,000.00 |
| Proposed Professional Engineering Services | (\$ 206,743.00) |
| Remaining Funds | \$ 812,257.00 |

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the Contract for Professional Services with HDR Engineering, Inc. in the amount of \$206,743.00.

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

ATTACHMENTS

- A. Contract for Professional Architectural and Engineering Services
 (available for viewing in the City Clerk's Office)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Approval of Contract for MT Department of Public Health and Human Services funding for a Housing First Project, CDFA 10.561

DEPARTMENT: Planning and Community Services

PRESENTED BY: Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: The Community Development Division has been offered a \$300,000 contract from the Montana Department of Public Health and Human Services through the Mayor's Committee on Homelessness to begin the 10-year planning process with the goal of creating a replicable plan to end chronic homelessness in Billings. The Mayor's Committee on Homelessness proposes to utilize the funding to facilitate the development of a "Housing First" project, which would provide housing to homeless individuals / families prior to service implementation. Housing First is a national best practice which has been shown to greatly reduce the costs cities incur due to homelessness.

The contract would provide funding for planning and development of a Housing First project in Billings and would be combined with a federal appropriation of \$262,640. Additional funding may be allocated if the proposed project is located in the downtown TIF district. The Community Development Division would implement the City's Request for Proposal process to facilitate project proposals. The Mayor's Committee on Homelessness would review proposals and provide the City Council with recommendations for a project. The Montana Department of Public Health and Human Services has indicated a willingness to negotiate for administrative assistance.

ALTERNATIVES ANALYZED: 1) Not approve the \$300,000 contract to facilitate the development of a Housing First project in Billings. 2) Approve \$300,000 and facilitate the development of a Housing First project which may be replicated in other areas of Montana.

FINANCIAL IMPACT: The City of Billings would be responsible for contract provisions and would be reimbursed for expenditures made to further the project. Impact to the City of Billings would include a one-month lapse between expenditure and reimbursement.

RECOMMENDATION

Staff recommends that Council approve the attached \$300,000 contract from the Montana Department of Public Health and Human Services for the development of a Housing First Project in Billings.

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

ATTACHMENT

- A. Montana Department of Public Health and Human Services Contract - CDFA 10.561
(copy available in City Clerk's office).

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Rimrock Road Project Utility Agreement and City/State Storm Drain Agreement with Montana Department of Transportation

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The City and MDT have entered into an agreement to construct Rimrock Road from Shiloh Road to 54th Street West. An amended agreement between the City and MDT was approved at the December 17, 2007, City Council Meeting. This agreement outlined and updated cost shares associated with the Rimrock Road Project. Two additional agreements are needed prior to construction: the Utility Agreement and the City/State Storm Drain Agreement. With this project, it becomes necessary to relocate a portion of the water main located in Rimrock Road. The relocation of this water main will be done with the construction project administered by MDT. The city and the state have a cost share in the relocation of the water main which is outlined in the Utility Agreement. The project will also include a storm drainage system which will be constructed and maintained as per the City/State Storm Drain Agreement.

ALTERNATIVES ANALYZED:

1. Approve the Utility Agreement and City/State Storm Drain Agreement with MDT for the Rimrock Road Project.
2. Do not approve the Utility Agreement and City/State Storm Drain Agreement with MDT for the Rimrock Road Project.

FINANCIAL IMPACT: The total estimated costs of the water main relocation are \$162,798.69. The city's share of these costs is estimated to be \$49,273.64, utilizing water funds.

RECOMMENDATION

Staff recommends that Council approve the Utility Agreement and the City/State Storm Drain Agreement with MDT for the Rimrock Road Project.

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

ATTACHMENTS

- A. Utility Agreement
- B. City/State Storm Drain Agreement

**STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION
UTILITIES AGREEMENT**

WHEREAS, on or about December 19, 2003, the Montana Department of Transportation (STATE) and the City of Billings, Montana (CITY), entered into an agreement whereby the parties agreed to the reconstruction of an Urban system road in the City of Billings and thereafter developed a project titled RIMROCK RD-SHILOH TO 54TH –BLGS; and

WHEREAS, the aforementioned agreement included, by separate agreement between the STATE and the CITY, an URBAN HIGHWAY PILOT IMPROVEMENT PROGRAM MAINTAINENCE AGREEMENT, which was executed by the parties on the same date as the original project agreement: and,

WHEREAS, on or about December 17, 2007, the parties executed AMENDMENT NUMBER ONE to the RIMROCK RD-SHILOH TO 54TH-BLGS agreement dated December 19, 2003, which amendment reflected changes on the funding availability for the construction project, the funding limitations and obligations of the parties, the billing process for the construction project, and the recovery by the STATE of Indirect Costs for the project: and

WHEREAS, the STATE believing that, in accordance with paragraph G of the December 19, 2003 agreement, the STATE and the CITY should clarify their respective responsibilities as related to the relocation, adjustment or modification of any CITY owned utilities;

NOW THEREFORE, the parties agree to the following specific roles and responsibilities regarding the relocation, adjustment or modification of the city utilities:

DESIGN:

1. The cost for the design of the utility relocation, adjustment or modification shall be split between the parties as follows: the CITY is responsible for 13.42% using city finds (which may include Urban funds) plus the statutory indirect cost share which is currently 12.25%; and the STATE is responsible for 86.58% of the design cost using State appropriated Federal funds.

UTILITY CONSTRUCTION COST:

1. The parties agree that as of the date of this agreement, the estimated cost of the construction required for the relocation, adjustment or modification of the city utilities is \$151,366.73. In accordance with current state law, the STATE is responsible for 75% of the construction costs (estimated at \$113,525.05) and the CITY is responsible for 25% of the construction costs (estimated at \$37,841.68)
 - a. In addition to the actual cost of construction, the parties understand and agree that the CITY shall pay an additional 8% of their construction cost share for mobilization and 8% of their construction cost share for Traffic Control necessitated by the utility construction determined as follows:
$$\$37,841.68 \times .08 = \$3,027.33 \text{ for mobilization}$$
$$\$37,841.68 \times .08 = \$3,027.33 \text{ for traffic control}$$
 - b. In addition, as set forth in the amendment one to the original agreement between the STATE and the CITY dated December 17, 2007, in Section 8, page 3 of the amendment, the CITY shall pay the indirect cost rate of 12.25% (for current fiscal year July 1, 2007-June 30, 2008, and subject to change per the amendment section 8) of the CITY construction cost share plus mobilization and traffic control.
 - c. In accordance with the above sections 1 (a) and (b), the CITY's estimated cost share at this time is \$49,273.64. $(\$37,841.68 + \$3,027.33 + 3,027.33 = \$43,896.34 * 12.25\% = \$5,377.30; \text{ therefore } \$43,896.34 + \$5,377.30 = \$49,273.64)$ [See attached summary.]
2. Pursuant to the authority granted to CITY by the laws of Montana, CITY grants to STATE the authority to adjust, replace, repair and relocate those facilities under the jurisdiction of CITY which presently occupy part of the proposed right-of-way.
3. All construction performed pursuant to this Agreement shall be done in accordance with the then-current Standard Specifications for Road and Bridge Construction, Montana

Public Works Standard Specifications, and the Plans, Specifications and Special Provisions of the construction or improvements for the project prepared by CITY, all of which are by this reference incorporated and made a part of this Agreement.

4. The adjustments to the facilities referred to in this Agreement cover only that segment of the water and sanitary sewer system of CITY directly affected by the construction of the highway and STATE and CITY will determine which adjustments to facilities of CITY are necessary; and the STATE shall, in accordance with the plans, construct the most economical type of facilities in the new location that will meet the same service requirements of the old facilities in the old location.

5. The STATE will stake and inspect the installation of the new water line. The STATE's contractor will chlorinate and pressure test the new water line. The CITY will pay the STATE for the actual cost of work accomplished on the CITY's line based on contract bid prices.

6. By statute, STATE will not reimburse CITY for engineering costs for designing, locating, staking, inspecting or any other incidental costs for engineering.

7. The adjustments agreed to in Section No. 1 above are based on the STATE paying 75% of relocation costs, excepting betterments, if any, where facilities occupy public road or street rights-of-way. The CITY will be billed in advance for its portion of the estimated total costs of the project at least sixty (60) days before bid opening. Although the anticipated expenses will have been discussed with CITY representatives before that time, the STATE will provide a detailed breakdown of all estimated costs with the billing.

The CITY will submit payment to the STATE within thirty (30) days of billing, or an escrow may be created within (30) days after the first billing from which the CITY's share of the project may be withdrawn. Should the escrow option be chosen, the CITY will enter into an additional agreement with the STATE spelling out the conditions of the escrow

account. The STATE will not proceed further with the project's development if payment is not made within (30) days of billing. If the federal government requires a reimbursement or return of any federal funds because a project doesn't advance due to CITY's failure to make any scheduled payment, the CITY agrees that it will reimburse the STATE for those federal funds within thirty (30) days of billing.

If, after initial payment is made, bid opening or contract award by the STATE is delayed or postponed by 30 days or more, or canceled for any reason, the STATE agrees to immediately refund the CITY's initial payment upon the CITY's request. If the CITY's share of the cost of the awarded project exceeds the amount paid by the CITY, the CITY will pay the excess.

The contact for billing, accounting and change order questions for the CITY shall be:

City of Billings
Attn: Chris Hertz
510 North Broadway 4th Floor
Billings, MT 59101

Within six (6) months after the project has been finally accepted with the final costs submitted, the STATE will submit a final statement to the CITY. The final statement will provide details of any expenses that may be identified as "miscellaneous". The final statement will include a refund of unspent portions of the CITY's initial payment, payable to the CITY in an amount equaling the difference between that payment and the CITY's share of the final costs. If the final statement exceeds the CITY's payments thus far, the CITY will remit to the STATE within thirty (30) days of the final statement the difference between CITY's share of final costs and CITY's earlier payment. If payment is not made within that

thirty (30) day period, interest on the unpaid amount will accrue at the rate of 10% per year, and continue to accrue until paid in full. If the CITY is billed for additional funds, STATE will not participate in any future funding agreements with the CITY until full payment, including interest, is received from the CITY.

Payments to this project will be coordinated through the STATE's Administration Division (to be directed to MDT's Accounts Receivable Collections Technician and Accounting Systems Operations Supervisor). Payments to this project will be provided to the above STATE staff in the form of a check to be credited to this project.

8. The award of the contract including the highway construction and city water line relocation will be based on the successful bidder of the combined contract, as determined and accepted by STATE.
9. CITY agrees to cooperate fully with the STATE in all aspects of the work contemplated by this Agreement.
10. CITY acknowledges that it has reviewed the plans for the proposed construction of the facilities covered by this Agreement.
11. STATE and CITY agree that when the construction encompassed by this Agreement is completed and accepted by STATE and concurred in by CITY all responsibility of STATE ceases.
12. Records of the CITY pertaining to this project will be subject to inspection at any time by representatives of the STATE, including the legislative auditor and fiscal analyst, and the Federal Highway Administration. Project records must be retained for a period of not less than three years from the date of final payment.
13. Inspection for all phases of work on CITY's facility will be provided by CITY.

Contact, questions, or discussions about contractor work will be directed to the STATE's Project Manager. No direct contact shall occur between CITY and Contractor.

14. This Agreement is subject to the terms and provisions of Volume 23 Code of Federal Regulations, Part 645, Subpart A and B, and subsequent amendments, Title 48 Code of Federal Regulations in existence on the date of execution of this Agreement. The Code of Federal Regulations are hereby incorporated in and made a part of this Agreement by reference to the extent that is applicable to this Agreement and not inconsistent therewith.

15. NONDISCRIMINATION

If the CITY enters into a contract or agreement with a contractor to perform any of the work which the CITY is required to perform under the terms of this agreement, the CITY, for itself, its assigns, and successors in interest, agrees that it will not discriminate in the choice of contractors and will include all the nondiscrimination provisions set forth in Exhibit "B" attached hereto and made a part hereof, in any such contract or agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

It is understood that the CITY is responsible for obtaining any permits required for adjustment of its facility.

CITY OF BILLINGS

STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION

Authorized Signature

Approved for Legal Content
MDT Legal Services

EXHIBIT “B”
NONDISCRIMINATION NOTICE

During the performance of this Agreement, City of Billings (hereafter in this Section “the Party”), for itself, its assignees and successors in interest, agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

(1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.

(2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.

(3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.

(4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,

(a) Withholding payments to the Party under the Agreement until the Party complies, and/or

(b) Cancellation, termination or suspension of the Agreement, in whole or in part.

- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued

Revised November 17, 2005

pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

(1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.

(2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**

(3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate

Revised November 17, 2005

Summary of Costs

for

City of Billings

Water and sanitary sewer adjustments

Subject CM1034(1) P/E
 Rimrock Rd-Shiloh to 54th - Blgs
 Control No. 5035

| Item No. | Quantities | Description | Unit | Unit Cost | Total Unit Cost |
|---------------------------|------------|-----------------------|-------|------------|-----------------|
| 601-011-190 | 7 | Water Service 19mm | Each | \$800.00 | \$5,600.00 |
| 601-014-150 | 1 | Connection 150mm | Each | \$1,350.00 | \$1,350.00 |
| 601-014-300 | 14 | Connection 300mm | Each | \$1,750.00 | \$24,500.00 |
| 603-610-155 | 4 | Pipe-PVC 150mm Water | Meter | \$164.00 | \$656.00 |
| 603-610-350 | 298 | Pipe-PVC 300mm Water | Meter | \$262.00 | \$78,076.00 |
| 603-711-000 | 1552 | Ductile Iron Fittings | Kg | \$16.00 | \$24,832.00 |
| 603-903-000 | 1 | 300mm Gate Valve | Each | \$2,200.00 | \$2,200.00 |
| 621-412-000 | 28 | Adjust Valve Boxes | Each | \$326.39 | \$9,138.92 |
| 621-430-000 | 9 | Adjust Manholes | Each | \$557.09 | \$5,013.81 |
| | | | | | \$0.00 |
| | | | | | \$0.00 |
| | | | | | \$0.00 |
| Total | | | | | \$151,366.73 |
| | | | | | |
| City/FHW A Cost Share 75% | | | | | \$113,525.05 |
| City Cost Share 25% | | | | | \$37,841.68 |
| | | | | | |
| City Mobilization 8% | | | | | \$3,027.33 |
| City Traffic Control 8% | | | | | \$3,027.33 |
| | | | | | |
| City/FHWA TOTAL COST | | | | | \$113,525.05 |
| CITY SUB TOTAL | | | | | \$43,896.34 |
| ICAP 12.25% | | | | | \$5,377.30 |
| City TOTAL COST | | | | | \$49,273.64 |
| | | | | | |
| Total | | | | | \$162,798.69 |

Note: There will be no State Share as per the City agreement

SG: jw

EXHIBIT A

CITY/STATE STORM DRAIN AGREEMENT

THIS AGREEMENT is entered into between the Montana Department of Transportation, "STATE," and the City of Billings, "CITY."

WITNESSETH:

THAT, WHEREAS, the State proposes to reconstruct a portion of Urban Route 1034 through a project identified as Rimrock Road – Shiloh Road to 54th Street West; Project No. CM 1034 (1); CN 5035; City of Billings W.O. 03-25; and

WHEREAS, the Project will include construction of new storm drainage features and modifications to an existing storm drainage system to collect, convey, and discharge surface runoff from the project corridor and those drainage areas presently draining to Rimrock Road; and

WHEREAS, the storm drainage facilities to be constructed are illustrated in Exhibit A (Construction Plans) and are generally describes as follows:

- **Storm Drain Pipe**
 - The storm drain pipe within this project ranges in size from 300 mm PVC lateral pipes to 1050 mm RCP.
- **Manholes**
 - Manholes along this project range in size from 1200 mm to 1800 mm and include some combination manhole inlets.
- **Inlets**
 - *Type II Curb Inlets*
 - Type II Curb Inlets will be installed along the full and partial urban curb sections of Rimrock Road (Sta. 16+00 to 33+00).
 - *Type I Drop Inlet*
 - The Type I Drop Inlet is located between Rimrock Road and the Frontage Road just south of the Rimpoint Drive to collect runoff from the west.
 - *Type III Drop Inlets*
 - Type III Drop Inlets are located along the entire project and are installed along the north side of Rimrock Road to collect runoff collected in the Frontage Road and the roadside ditch.
 - *Median Inlets*

- Median inlets are located along the north intersecting streets. One median inlet is located within the Rimpoint Park detention pond and functions as a secondary spillway.
 - *Existing Inlets*
 - Existing City of Billings Standard Inlets are located at the intersection of Rimpoint Drive and Rimrock Road.
 - *Special Type II Double Inlet Box with Double Curb Box*
 - This inlet structure is located along the west side of Pine Crest Road to collect runoff from the area to the west that drains onto the Frontage road as well as overflow from the Alleyway drainage inlet.
 - *Type II Double Combo Manhole/Inlet Box*
 - These structures are located along both curblines in Rimrock Road at Sta. 21+40.
 - *Slotted Drain*
 - Slotted Drain is located along the project is certain strategic locations.
- **Detention Pond**
 - Rimpoint Park functions as a detention pond. Runoff collected in the storm drain from the west along with runoff collected on Pine Crest and Aspen Way Drives discharges into the pond. An outlet structure routes a regulated amount of flow back into the existing storm drain system.
- **Spillway Berm**
 - The spillway berm located in the alley way drainage (Sta. 24+90) functions along with a Type III Drop Inlet to prevent runoff from minor storm events from discharging onto the Frontage Road. The paved spillway allows runoff from larger events to spill onto the Frontage road and to be carried to the detention pond.
- **Culverts**
 - There are a number of drainage culverts located on the rural road section of the project.
 - Sta. 41+89 – 600 mm RCP Crossing (Connected to 2 curb inlets and 1 median inlet)
 - Sta. 40+39 – 725 mm x 460 mm RCPA Approach
 - Sta. 40+25 – 450 mm RCP Approach
 - Sta. 39+39 – 450 mm RCP Approach
 - Sta. 38+67 – 450 mm RCP Approach
 - Sta. 36+55 – 450 mm RCP Crossing
 - Sta. 34+10 – 450 mm RCP Approach

and

WHEREAS, the proposed urban street project is located within the City limits;
and

WHEREAS, the contributing areas to the storm drainage system are illustrated in Exhibit B on Figures No. 1 and No. 7 of the report entitled "Rimrock Road Reconstruction Project; CM 1034 (1); CN 5035; Final Hydraulics Report"; and

WHEREAS, storm drainage for the Project relies, in part, on a pre-existing storm drain main constructed by the City of Billings as well as a City Park utilized for detention storage,

WHEREAS, the storm drainage system has been designed to accommodate future development within the planned drainage area with runoff from currently undeveloped areas being restricted to predevelopment levels utilizing detention storage and/or other means to limit flows; and

WHEREAS, the City and the State want the construction done; and

WHEREAS, the State's financial participation for the Project Storm Drain System which is to be allocated to the proposed urban highway street project will be financed by Federal Aid Urban Funds; and

WHEREAS, the Federal Highway Administration of the U.S. Department of Transportation will not participate in the construction of said storm drain system unless the City and the State agree to equitable financial participation; and

WHEREAS, it is the policy of the State for Federal Aid Funds to be used to finance only an equitable share of a storm drain system serving no more than the federal aid project; and

WHEREAS, this document must be executed and filed with the State before the final design of the Storm Drain System is completed and prior to awarding the contract for construction.

NOW, THEREFORE, in consideration of the covenants herein contained, the parties agree as follows:

1. That the City shall restrict development of currently undeveloped areas within the drainage areas contributing runoff to the storm drainage system

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

Jim Lynch
Director of Transportation

By: _____, 2008
Montana Department of Transportation

By: _____, 2008
MDT Legal Services

ATTEST: CITY OF BILLINGS

By: _____
Mayor

RESOLUTION

I, _____, Clerk of the City of Billings, do hereby certify that the above-mentioned agreement was regularly adopted by the Council of the City at a meeting thereof held on the _____ day of _____, 2008, and that the Council of the City of Billings authorized the City Mayor to sign this agreement on behalf of said Council.

Regulations are hereby incorporated in and made a part of this Agreement by reference to the extent that is applicable to this Agreement and not inconsistent therewith.

15. NONDISCRIMINATION

If the CITY enters into a contract or agreement with a contractor to perform any of the work which the CITY is required to perform under the terms of this agreement, the CITY, for itself, its assigns, and successors in interest, agrees that it will not discriminate in the choice of contractors and will include all the nondiscrimination provisions set forth in Exhibit "B" attached hereto and made a part hereof, in any such contract or agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

It is understood that the CITY is responsible for obtaining any permits required for adjustment of its facility.

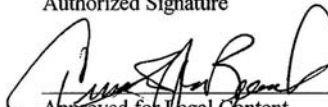
CITY OF BILLINGS

STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION

↑
**PLEASE SIGN
DO NOT DATE**

WFS:s

Authorized Signature


Approved for Legal Content
MDT Legal Services

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Approval of Amendment One to Airport's Restaurant/Lounge Concession Agreement

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: On October 28, 2002, the City entered into a Restaurant/Lounge Concession Agreement with Air Host Billings, Inc. to operate the restaurant, lounge, and concourse deli in the Airport Terminal Building. This Agreement includes a Mid-Term Refurbishment Clause that requires Air Host to spend at least \$50,000 to maintain the appearance and furnishings of the facilities. Air Host had previously spent \$25,000 of the original \$50,000 refurbishment amount on equipment upgrades. Staff and Air Host have compiled a list of items required to return the restaurant facilities to near new condition, as required in the Agreement. These improvements include mostly furnishings such as carpet, flooring, wall coverings, and counter finishes, plus some cabinet work and small construction items. Air Host's cost for these additional items has been estimated at \$70,000. Since this is approximately \$45,000 more than the remaining refurbishment amount that was originally required by the original Agreement, Air Host has asked for an additional two years of term over which to amortize the added costs. This would extend the term to October 31, 2014. A copy of Amendment One is available for viewing in the City Clerk's office.

FINANCIAL IMPACT: There would be no financial impact to the City other than guaranteeing the collection of an additional two years of concession revenues from Air Host. Current annual concession revenues for the Restaurant/Lounge Concession Agreement are approximately \$105,000 and have been increasing annually by 6 to 9%.

RECOMMENDATION

Staff recommends that Council approve Amendment One to the Restaurant/Lounge Concession Agreement extending the term for an additional two years and amending the expiration date to October 31, 2014.

Approved By: City Administrator ____ City Attorney ____

AMENDMENT ONE

RESTAURANT/LOUNGE CONCESSION AGREEMENT

BILLINGS LOGAN INTERNATIONAL AIRPORT TERMINAL BUILDING

W I T N E S S E T H:

WHEREAS, the City of Billings, Montana (City) and Air Host Billings, Inc. (Concessionaire) entered into a Restaurant/Lounge Concession Agreement Billings Logan International Airport Terminal Building (the Agreement) on October 28, 2002 for a term commencing on the 1st day of November 2002 and terminating on the 31st day of October 2007, and

WHEREAS, on March 3, 2007, Concessionaire exercised its option under Article I, Paragraph B (Option), to extend the Agreement for an additional five year period from and after October 31, 2007, thereby extending the termination date to October 31, 2012, and

WHEREAS, Article IV, Paragraph H (Mid-Term Refurbishment) requires Concessionaire to refurbish the facilities to keep the facilities in first class condition and to spend no less than \$50,000 for the required mid-term refurbishment, and

WHEREAS, Concessionaire has previously spent \$25,000 of the \$50,000 mid-term refurbishment requirement on equipment upgrades, leaving an Agreement requirement of \$25,000 in mid-term refurbishments, and

WHEREAS, Concessionaire desires to proceed with the mid-term refurbishment required under the Agreement; said refurbishment being estimated at \$70,000, or an additional \$45,000 above the Agreement requirement, and

WHEREAS, Concessionaire has requested an additional two years of term over which to amortize the estimated additional \$45,000 refurbishment costs, and

WHEREAS, both parties desire to further amend the current Agreement to extend the term for an additional two years and amending the expiration date to October 31, 2014.

NOW THEREFORE, in consideration for the continued payment of Concession Fees and Charges as specified in Article III of the Agreement, the parties hereto covenant and agree to amend said Agreement, effective March 1, 2008, extending the termination date of the Agreement to October 31, 2014.

FURTHER, all other terms and conditions of the Agreement by and between the City of Billings and Air Host Billings, Inc., which commenced on November 1, 2002, remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hand this _____ day of _____ 2008.

ATTEST:

CITY OF BILLINGS

BY _____
CITY CLERK

BY _____
MAYOR

APPROVED AS TO FORM

AIR HOST BILLINGS, INC.

BY _____
CITY ATTORNEY

BY _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Amendment 3 to the Scheduled Airline Operating Agreement and Terminal Building Lease with United Airlines

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: On January 28, 2008, the City Council approved Amendment 2 to the Scheduled Airline Operating Agreements and Terminal Building Leases with the four signatory airlines, Horizon Air, Northwest Airlines, SkyWest Airlines and United Airlines. Since the Airport is undergoing a Master Plan process, which is anticipated to take approximately two years to complete, staff approached the airlines with a two-year extension to the Agreement. Staff worked with the signatory airlines to negotiate another extension to the Agreement. Amendment 2 extended the expiration date of the Operating Agreement until June 30, 2009. United Airlines has opted to increase its leased space in the Terminal Building, by adding 242 square feet of office space on the second floor of the Terminal. A separate amendment, Amendment 3, was prepared for this change in space, since only United Airlines would be affected by the change.

FINANCIAL IMPACT: This Amendment adds 242 square feet to United Airlines' leasehold for an annual increase of \$10,207.56.

RECOMMENDATION

Staff recommends that Council approve Amendment 3 to the Airline Scheduled Operating Agreement and Terminal Building Lease with United Airlines; increasing the Airline's leasehold by 242 square feet, effective November 1, 2007.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Approval of a West End Hangar Ground Lease with Brian Taylor, Lot 14
DEPARTMENT: Aviation and Transit
PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: Mr. Brian Taylor desires to construct a sixty-foot (60') by sixty-foot (60') aircraft hangar in the City's West End General Aviation area located at Billings Logan International Airport. This area was specifically developed in the early 1990's to accommodate the general aviation tenants with this type of lease and hangar construction. The proposed hangar will complete this row of general aviation hangar lots. The twenty (20) year ground Lease will be for an 8,670 square foot parcel on the south side of general aviation Taxilane "C." The ground lease rate of \$.1766 per square foot per annum is very similar to the rate being paid by the other ground lease tenants in this area. We have compared our ground lease rates with other commercial service airports and have found that our ground lease rates are comparable. The Lease identifies that the tenant is responsible for maintaining the leasehold, and includes the appropriate insurance coverage requirements and indemnification language.

FINANCIAL IMPACT: The ground Lease will generate \$1,531.12 in the first year of the Lease. Future lease year rentals will be adjusted annually by the Consumer Price Index (CPI-U) on the anniversary date of the Lease.

RECOMMENDATION

Staff recommends that Council approve the authorization for the Mayor to execute a new twenty-year West End Hangar Ground Lease at Billings Logan International Airport with Brian Taylor, for a term beginning February 1, 2008, and ending January 31, 2028.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Acknowledge Receipt of Petition to Vacate a portion of the alley within Block 261 of Billings Original Townsite and Set a Public Hearing

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Turnbull ITC LLC, owner of the property within Block 261 of Billings Original Townsite, has petitioned to vacate a portion of the alley within Block 261. Turnbull ITC LLC owns all of the property abutting the proposed right-of-way and is proposing to develop the property in the future. The total amount of right of way to be vacated is 2,500 square feet.

ALTERNATIVES ANALYZED:

3. Approve acknowledgement of petition to vacate the above-mentioned right-of-way and set a public hearing for March 24, 2008.
4. Do not approve acknowledgement of petition.

FINANCIAL IMPACT: A comparison land sales report was done by Charles H. Hamwey, which valued the right-of-way at \$1.25 per square foot. With 2,500 square feet of right of way proposed to be vacated, Turnbull ITC LLC is offering the city \$3,125.00.

RECOMMENDATION

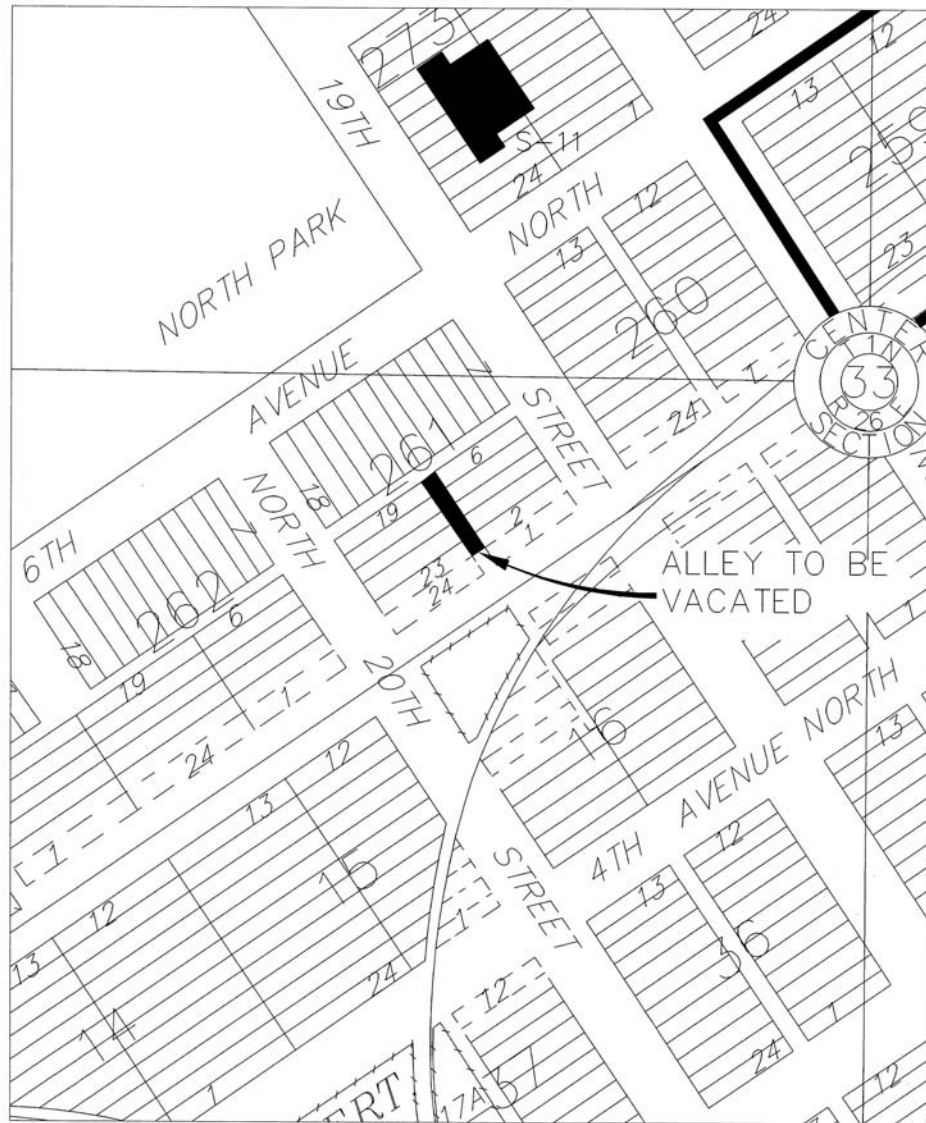
Staff recommends that Council acknowledge the receipt of petition to vacate a portion of the alley within Block 261 of Billings Original Townsite and set a public hearing for March 24, 2008.

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

ATTACHMENTS

- A. Map Depicting Areas to be Vacated
- B. Letter from Charles H. Hamwey establishing value of land

EXHIBIT "A"





1010 Grand Ave.
Billings, Montana 59102

(406) 248-2020
FAX (406) 248-3949
www.hamwey.com

January 29th 2008

Public Works/Engineering Dept.
City of Billings
Chris Hertz
510 N. Broadway
Billings, MT 59101

RE: Original Town of Billings Block 261
Vacation of Alleyways

Dear Chris,


On January 28, 2008 I reviewed the above subject property in determining an Estimated Fair Market Value of the land that is going to be vacated in these alleyways, one of which is 20x300 or 6,000 sq. ft. and the other 20x120 or 2,400 sq. ft. for a total of 8,400 sq. ft.

In reviewing comparable sales in this area- that has full usability of the land with no sewer lines or water lines that would obstruct the use of the land to be built on, ranged in value from \$2.25 to \$3.50 per sq. ft. As these are the back acres of the land in this block and without the usability of the land to be built on, it is my opinion that the land is worth \$1.25 per sq. ft. or a total of:

\$10,500.00

If you have any further questions, please feel free to call.

Sincerely,


Charlie Hamwey



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: W.O. 05-20 Aronson Avenue - Quitclaim Deed with Best Development Corporation, Inc.

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Work Order 05-20 Aronson Avenue will construct Aronson Avenue from near its current terminus to Alkali Creek Road. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners for the last year. The Right-of-Way needed was identified on the design plans for the project. Best Development Corporation, Inc. owns the portion of the property that must be acquired. The right-of-way will be acquired through a Quitclaim Deed. Under the 1997 Annexation Agreement between the City of Billings and Best Development Corporation, Inc., the right-of-way for Aronson Avenue is to be dedicated at no cost.

ALTERNATIVES ANALYZED:

5. Accept the Quitclaim Deed with Best Development Corporation, Inc.
6. Do not accept the Quitclaim Deed with Best Development Corporation, Inc.

FINANCIAL IMPACT: There is no cost associated with the Quitclaim Deed.

RECOMMENDATION

Staff requests that Council accept the Quitclaim Deed with Best Development Corporation, Inc.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Quitclaim Deed with Best Development Corporation, Inc.

INTRODUCTION

Work Order 05-20 Aronson Avenue will construct Aronson from near its current terminus to Alkali Creek Road. The extension of Aronson Avenue will include streets, curb and gutter, sidewalks, multi-use path, a Bridge over the BBWA Canal and a Bridge over Alkali Creek. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners for the last year. The Right-of-Way needed was identified on the design plans for the project.

PROCEDURAL HISTORY

On December 22, 1997 an Annexation Agreement was signed by Best Development Corporation, Inc. Under this agreement, it states the right-of-way shall be dedicated without cost to the City in the event the City elects to proceed with construction of the extension of Aronson Avenue. Best Development Corporation, Inc. has executed the Quitclaim Deed and Amended Certificate of Survey.

BACKGROUND

The City Engineer's Office has been negotiating with property owners on Aronson Avenue for the necessary right-of-way to extend Aronson Avenue from near its current terminus to Alkali Creek Road. The design for this project has been completed by HKM Engineering and has identified the right-of-way need for the project.

ALTERNATIVES ANALYSIS

Accept the Quitclaim Deed with Best Development Corporation, Inc. Under this option, the City Engineer's Office will complete the certificate of survey and Quitclaim Deed and they will be recorded with the Clerk and Recorder's Office.

Do not accept the Quitclaim Deed with Best Development Corporation, Inc. Under this option, the necessary right-of-way will not be acquired.

RECOMMENDATION

Staff requests that Council accept the Quitclaim Deed with Best Development Corporation, Inc.

ATTACHMENT

A. Quitclaim Deed with Best Development Corporation, Inc

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

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, the receipt of which is acknowledged, the undersigned,

Best Development Corporation, Inc.
1925 Central Avenue
Billings, MT 59102

Does hereby remise, release, and quitclaims unto

City of Billings.
P.O. Box 1178
Billings, MT 59103

All of their right, title, and interest in and to said real property, described as follows, to-wit:

That part of the NE 1/4 and SE 1/4 of Section 28, Township 1 North, Range 26 East, of the Principle Montana Meridian, in Yellowstone County, Montana, more particularly described as Tract 1B of Amended Tract 1 of Certificate of Survey 2055, as recorded in the official records of the Clerk and Recorder of Yellowstone County, Montana, under Document No. _____.

IN WITNESS WHEREOF, the undersigned has executed this instrument this _____ day of _____, 20____.

Best Development Corporation, Inc.

By: _____

Title: _____

STATE OF MONTANA)

County of Yellowstone)^{ss}

On this _____ day of _____, 20____, before me the undersigned Notary Public for the State of Montana, personally appeared _____, known to me to be the person that signed the foregoing instrument as _____ of Best Development Corporation, Inc., and who 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 _____
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 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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: W.O. 05-20 Aronson Avenue - Right-of-Way Agreement and Quitclaim Deed with Harry and Sara Jo Axline

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Work Order 05-20 Aronson Avenue will construct Aronson Avenue from near its current terminus to Alkali Creek Road. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners for the last year. The Right-of-Way needed was identified on the design plans for the project. Harry and Sara Jo Axline own the portion of the property that must be acquired. Harry and Sara Jo Axline have agreed to sell the necessary right-of-way and grant a temporary construction easement as shown on the attachment for \$11,340.00

ALTERNATIVES ANALYZED:

7. Approve the Right-of-Way Agreement and accept the quitclaim deed with Harry and Sara Jo Axline.
8. Do not approve the Right-of-Way Agreement and quitclaim deed with Harry and Sara Jo Axline.

FINANCIAL IMPACT: The cost of the right-of-way and construction easement from Harry and Sara Jo Axline \$11,340.00 and will be paid out of Arterial Funds.

RECOMMENDATION

Staff requests that Council approve the Right-of-Way Agreement and accept the Quitclaim Deed with Harry and Sara Jo Axline.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Right-of-Way Agreement and Quitclaim Deed with Harry and Sara Jo Axline.

INTRODUCTION

Work Order 05-20 Aronson Avenue will construct Aronson from near its current terminus to Alkali Creek Road. The extension of Aronson Avenue will include streets, curb and gutter, sidewalks, multi-use path, a Bridge over the BBWA Canal and a Bridge over Alkali Creek. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners for the last year. The Right-of-Way needed was identified on the design plans for the project.

PROCEDURAL HISTORY

The City Engineer's Office obtained appraisals for all the necessary right-of-way on Aronson Avenue and started negotiations with the property owners. Harry and Sara Jo Axline have signed the Right-of-Way Agreement and executed the Quitclaim Deed.

BACKGROUND

The City Engineer's Office has been negotiating with property owners on Aronson Avenue for the necessary right-of-way to extend Aronson Avenue from near its current terminus to Alkali Creek Road. The design for this project has been completed by HKM Engineering and has identified the right-of-way needed for this project. COP Construction has been awarded the construction of this project.

ALTERNATIVES ANALYSIS

Approve the Right-of-Way Agreement with Harry and Sara Jo Axline. Under this option, the City Engineer's Office will complete the amended certificate of survey and the Quitclaim Deed will dedicate the right-of-way. The right-of-way agreement, certificate of survey, and Quitclaim Deed will be recorded with the Clerk and Recorder's Office.

Do not approve the Right-of-Way Agreement with Harry and Sara Jo Axline. Under this option, the necessary right-of-way will not be acquired.

RECOMMENDATION

Staff requests that Council approve the Right-of-Way Agreement and accept the Quitclaim Deed with Harry and Sara Jo Axline.

ATTACHMENT

A. Quitclaim Deed with Harry and Sara Jo Axline.

QUITCLAIM DEED

For valuable consideration, **Harry and Sara Jo Axline**, as **GRANTOR**, does hereby release and forever quitclaim his interest unto the **CITY OF BILLINGS, MONTANA**, a Municipal Corporation, of P.O. Box 1178, Billings, Montana 59103, as **GRANTEE**, the following described real property situated in Yellowstone County, Montana:

Tract 2B, Amended Tract 2, Certificate of Survey 2592 recorded on _____ day of _____, 2008 under Document Number _____ in the office of the Clerk and Recorder of Yellowstone County.

Said Tract containing 0.207 acres.

THE PURPOSE OF THIS QUITCLAIM DEED is to create a parcel for construction and use for a public road, utilities, and related appurtenant structures, which is exempt from the provisions of the Montana Subdivision and Platting Act pursuant to §76-3-201(1)(h), M.C.A. as a division of land that creates rights-of-way or utility sites and 24.183.1104 A.R.M.

Dated this ____ day of _____, 2008.

Harry Axline

Sara Jo Axline

STATE OF MONTANA)

: ss.

County of Yellowstone)

On this ____ day of _____, 2008, before me, a Notary Public for the State of Montana, personally appeared **Harry and Sara Jo Axline**, known to me to be the person who signed the foregoing instrument and who acknowledged to me that he executed the same.

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

(NOTARIAL SEAL)

(Signature)

(Printed Name)

Notary Public for the State of Montana

Residing in Billings, Montana

My Commission Expires: _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

RON TUSSING, Mayor
CITY OF BILLINGS

ATTEST:

By: _____
_____, City Clerk

STATE OF MONTANA) : ss.
County of Yellowstone)

On this _____ day of _____, 2008, before me, a Notary Public for the State of Montana, personally appeared **RON TUSSING** and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

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

(NOTARIAL SEAL)

_____ (Signature)

_____(Printed Name)
Notary Public for the State of Montana
Residing in Billings, Montana
My Commission Expires: _____

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

K3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: W.O. 05-20 Aronson Avenue - Right-of-Way Agreement and Quitclaim Deed with Richard L. and Patricia M. Nixon

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Work Order 05-20 Aronson Avenue will construct Aronson Avenue from near its current terminus to Alkali Creek Road. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners for the last year. The Right-of-Way needed was identified on the design plans for the project. Richard L. and Patricia M. Nixon own the portion of the property that must be acquired. The appraised value for the right-of-way and construction easement was \$5,250.00. The City staff has proposed to extend low pressure sewer service to the property for an estimated \$5,322.00. Richard L. and Patricia M. Nixon have agreed to sell the necessary right-of-way and grant a temporary construction easement as shown on the attachment for \$0.00.

ALTERNATIVES ANALYZED:

9. Approve the Right-of-Way Agreement and accept the Quitclaim Deed with Richard L. and Patricia M. Nixon
10. Do not approve the Right-of-Way Agreement and Quitclaim Deed with Richard L. and Patricia M. Nixon

FINANCIAL IMPACT: The cost of the right-of-way and construction easement from Richard L. and Patricia M. Nixon \$0.00. The construction of the low pressure sewer service is estimated at \$5,322.00 and will be paid out of Arterial Funds.

RECOMMENDATION

Staff requests that Council approve the Right-of-Way Agreement and accept the Quitclaim Deed with Richard L. and Patricia M. Nixon.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A. Right-of-Way Agreement and Quitclaim Deed with Richard L. and Patricia M. Nixon.

INTRODUCTION

Work Order 05-20 Aronson Avenue will construct Aronson from near its current terminus to Alkali Creek Road. The extension of Aronson Avenue will include streets, curb and gutter, sidewalks, multi-use path, a Bridge over the BBWA Canal and a Bridge over Alkali Creek. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners for the last year. The Right-of-Way needed was identified on the design plans for the project and must be acquired prior to construction.

PROCEDURAL HISTORY

The City Engineer's Office obtained appraisals for all the necessary right-of-way on Aronson Avenue and started negotiations with the property owners. The City staff has proposed to extend a low pressure sanitary sewer service to the property in lieu of payment for the right-of-way and construction easement.

BACKGROUND

The City Engineer's Office has been negotiating with property owners on Aronson Avenue for the necessary right-of-way to extend Aronson Avenue from near its current terminus to Alkali Creek Road. The design for this project has been completed by HKM Engineering and COP Construction has been awarded the construction.

ALTERNATIVES ANALYSIS

Approve the Right-of-Way Agreement with Richard L. and Patricia M. Nixon. Under this option, the City Engineer's Office will complete the certificate of survey dedicating the right-of-way and the right-of-way agreement and the certificate of survey will be recorded with the Clerk and Recorder's Office.

Do not approve the Right-of-Way Agreement with Richard L. and Patricia M. Nixon. Under this option, the necessary right-of-way will not be acquired.

RECOMMENDATION

Staff requests that Council approve the Right-of-Way Agreement and accept the Quitclaim Deed with Richard L. and Patricia M. Nixon.

ATTACHMENTS

- A. Right-of-Way Agreement and Quitclaim Deed with Richard L. and Patricia M. Nixon.

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

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, the receipt of which is acknowledged, the undersigned,

Richard L. & Patricia M. Nixon
32 Antelope Trail
Billings, MT 59105

Does hereby remise, release, and quitclaims unto

City of Billings.
P.O. Box 1178
Billings, MT 59103

All of their right, title, and interest in and to said real property, described as follows, to-wit:

That part of the NW 1/4 of Section 27, Township 1 North, Range 26 East, of the Principle Montana Meridian, in Yellowstone County, Montana, more particularly described as Lot 5B of Amended Lot 5, Block 16, Hilltop Subdivision 2nd Filing, as recorded in the official records of the Clerk and Recorder of Yellowstone County, Montana, under Document No. _____.

IN WITNESS WHEREOF, the undersigned has executed this instrument this _____ day of _____, 20____.

Richard L. Nixon

Patricia M. Nixon

STATE OF MONTANA)
 :SS
County of Yellowstone)

On this _____ day of _____, 20____, before me the undersigned Notary Public for the State of Montana, personally appeared Richard L. Nixon & Patricia M. Nixon known to me to be the persons that signed the foregoing instrument and who acknowledged to me that they executed the same. Witness my hand and seal the day and year herein above written.

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

L

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

TITLE: St. Vincent's Health Care Foundation "World Water Day – Walk for Water"

DEPARTMENT: Parks, Recreation and Public Lands

PRESENTED BY: Mike Whitaker, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: St. Vincent's Health Care Foundation requests temporary street closures as outlined in the attached event route maps for March 29th, 2008, from 8:00 am to 12:00 pm for the World Water Day - Walk for Water.

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

1. Have no alcohol consumption in the right of way
2. Clean the area to be used and provide and empty waste cans
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide and install adequate traffic barricades and signs directing motorists around closure
5. Provide a certificate of insurance naming City of Billings as additional insured
6. Stay on sidewalks were they are available
7. Follow all traffic control
8. Follow all guidelines from Traffic Engineer Terry Smith (Attachment E)

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: There are no costs to the City of Billings for this event other than administrative time to process the permit. Police, traffic control and litter removal are to be paid for by St. Vincent's Health Care Foundation.

RECOMMENDATION

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

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

ATTACHMENTS

- A. Letter from St. Vincent Health Care outlining event (1 page)
- B. Right of Way Special Activity Permit (2 pages)
- C. Course map and supporting document (3 pages)
- D. Certificate of Insurance (1 page)
- E. Guidelines from Traffic Engineer Terry Smith (1 page)



St. Vincent Healthcare Foundation

Benefiting the Healing Ministry of St. Vincent Healthcare

December 17, 2007

City of Billings
Department of Parks, Recreation & Public Lands
Attention: Melonie
390 N. 23rd Street
Billings, Montana 59101

Dear Melanie:

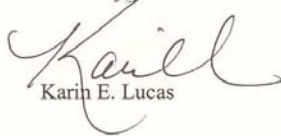
I am pleased to submit the enclosed application for a Right-of-Way Special Activity Permit. Attached, you should find:

- Completed Application
- Map outlining Walk Routes
- Certificate of Insurance

St. Vincent Healthcare Foundation, Inc. is the lead sponsor of World Water Day, March 29, 2007, here in Billings. This is a free event open to the public to create awareness about the Water Crisis throughout the world. The event will begin at 9 a.m. at MSU-Billings with a walk (either 1 mile or 5K) and will follow with water well demonstrations at MSU-Billings. As you will note on the enclosed map, participants will not cross North 27th Street; instead, they will access the tunnel which runs underneath that street. The committee will hire City Police to help monitor Virginia Lane.

Should you have any questions regarding the application or the event, please contact me at 237-3608. We appreciate the City of Billings for reviewing this application.

Sincerely,



Karin E. Lucas

Enclosures

*Please consider including St. Vincent Healthcare in your Will or Estate Planning...
your legacy will live on in the lives of grateful patients for years to come.*
1106 North 30th Street, Billings, Montana 59101
406-237-3600 Fax 406-237-3619 www.svfoundation.org



City of Billings
RIGHT-OF-WAY ACTIVITY PERMIT
APPLICATION

Please check the type of activity you are applying for:

☐ Parade ☒ Run/Walk/Procession ☐ Street/Alley Closure ☐ Block Party

Submit this application with attachments to either the: Parks, Recreation and Public Lands office, 390 North 23rd Street, Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Karin Lucas

ORGANIZATION MAKING APPLICATION St. Vincent Healthcare Foundation, Inc.

PHONE 237-3608

ADDRESS 1106 N 30th St. Billings MT 59101

CITY STATE ZIP

EMAIL ADDRESS ~~KAREN~~ Karin.Lucas@svh-mt.org

APPROXIMATE TIME EVENT WILL:

Assemble 8:00 a.m. Start 9:00 a.m. Disband 11:30 a.m. - Noon

DATE OF EVENT March 29, 2007

PURPOSE/DESCRIPTION OF EVENT: (Description and detail of the event.)

To raise awareness about Water Crisis on
World Water Day, an international day of
observance. More than 1 billion people worldwide
lack access to clean, safe drinking water. There is
no charge for people to walk in this event. See
attached flyer.

EVENT ROUTE DESIRED (IF APPLICABLE): (Please attach map.)

attached

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

CLEAN UP IMPLEMENTAION: (Company contracted or services you will provide)

Volunteers will pickup any water bottles
that may be discarded along the route. All
other activities will take place at MSU-B.
We also will provide porta potties. Committee
will handle all cleanup.

CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per claim/ \$1.5 million per occurrence general liability, and (2) the City of Billings named on the Certificate of Insurance as the additional insured. (Refer to the sample insurance copy. Please note a certificate of insurance is not required for Block Parties)

NOTICE: ANY MARKINGS (NO PAINT ALLOWED) TO BE PLACED ON PUBLIC RIGHT-OF-WAY MUST BE APPROVED BY THE CITY TRAFFIC/ENGINEERING DEPARTMENT PRIOR TO PLACEMENT, BE ENVIRONMENTALLY SAFE, AND NOT CONFLICT WITH EXISTING MARKINGS.

FOR DOWNTOWN EVENTS: YOU OR THE ORGANIZATION YOU REPRESENT MUST "ASSIGN" THE FIRST TWO BLOCKS OF THE DOWNTOWN EVENT ROUTE FOR NO PARKING TWO HOURS PRIOR TO YOUR EVENT USING THE ROUTE SIGNS PROVIDED BY THE CITY. IT IS YOUR RESPONSIBILITY TO PROVIDE THE APPROPRIATE BARRICADES FOR THE STREET CLOSURE.

IF USING THE ESTABLISHED EVENT ROUTE, THE CITY WILL PROVIDE TWO POLICE OFFICERS WITH VEHICLES TO START THE EVENT, AND A STREET SWEEPER, IF NECESSARY, TO FOLLOW THE EVENT.

COORDINATOR OF EVENTS AT WHICH ALCOHOL WILL BE CONSUMED IN PUBLIC RIGHT-OF-WAY ARE REQUIRED TO OBTAIN AN OPEN-CONTAINER PERMIT FROM THE POLICE DEPARTMENT

UPON SIGNING OF THIS APPLICATION, THE APPLICANT AGREES NOT TO VIOLATE ANY STATE OR CITY CODES IN THE PRESENTATION OF THE REQUESTED SPECIAL ACTIVITY.

In consideration for permission to conduct its activity as requested, applicant agrees to indemnify, defend and hold harmless the City of Billings, its officers, agents, employees and volunteers from damage to property and for injury to or death of any person and from all liability claims, actions or judgments which may arise from the activity.

Applicants also agree to obtain valid "save or hold harmless agreements" from all participants in its activity, protecting the City of Billings from all losses arising out of its activity, including damages of any kind or nature.

APPLICANT SIGNATURE Karl DATE 12/12/07

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

ADDITIONAL RESTRICTIONS OR SPECIAL CONDITIONS: YES [] NO ☒
(IF YES, ATTACH COPY)

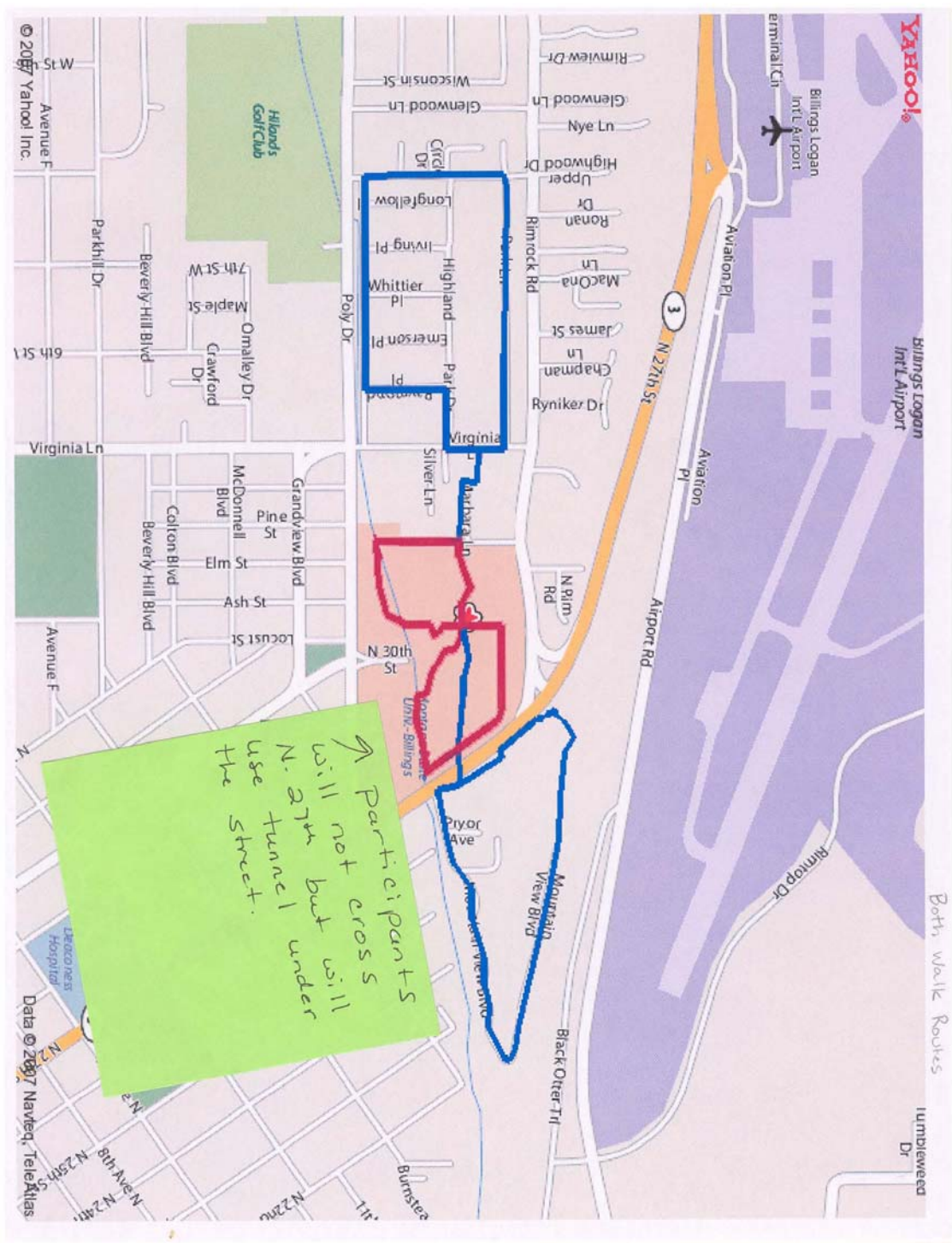
FOR CITY USE ONLY

FEE: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

COPIES TO:
CITY ADMINISTRATOR
DEPUTY CITY ADMINISTRATOR
POLICE CHIEF
FIRE CHIEF
FIRE MARSHALL
MET TRANSIT MANAGER
STREET/TRAFFIC SUPERINTENDANT
TRAFFIC ENGINEER
PRPL DIRECTOR
PARKING SUPERVISOR
CITY ATTORNEY





Attachment D

| ACORD™ CERTIFICATE OF LIABILITY INSURANCE 03/01/2008 DATE (MM/DD/YYYY) 12/28/2007 | | | | | |
|---|--|--|------------------------------------|--|---|
| PRODUCER Marsh Management Services Cayman, Ltd. Governors Square, Building 4, 2nd Floor 23 Lime Tree Bay Avenue P.O. Box 1051 Grand Cayman KY1-1102 CAYMAN ISLANDS | | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. | | | |
| INSURED 1078249 ST. VINCENT HEALTHCARE 1233 N. 30TH ST. PO BOX 35200 BILLINGS MT 59107-5200 | | INSURERS AFFORDING COVERAGE INSURER A: SELF - INSURED TRUST RE-INSURED* INSURER B: *BY LEAVEN INSURER C: INSURER D: INSURER E: | | | |
| COVERAGES SISOF01-M O2 THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER AND THE CERTIFICATE HOLDER. | | | | | |
| THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. | | | | | |
| INSR LTR | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YYYY) | POLICY EXPIRATION DATE (MM/DD/YYYY) | LIMITS |
| A | <input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR | SELF-INSURED TRUST RE-INSURED BY LEAVEN | 03/01/2007 | 03/01/2008 | EACH OCCURRENCE \$ 1,000,000 |
| | FIRE DAMAGE (Any one fire) \$ XXXXXXXX | | | | |
| A | <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC | NOT APPLICABLE | | | MED EXP (Any one person) \$ XXXXXXXX |
| | | | | | PERSONAL & ADV INJURY \$ 1,000,000 |
| | | | | | GENERAL AGGREGATE \$ 3,000,000 |
| | | | | | PRODUCTS - COMPIOP AGG \$ 3,000,000 |
| | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | NOT APPLICABLE | | | COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX |
| | BODILY INJURY (Per person) \$ XXXXXXXX | | | | |
| | BODILY INJURY (Per accident) \$ XXXXXXXX | | | | |
| | PROPERTY DAMAGE (Per accident) \$ XXXXXXXX | | | | |
| | GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | NOT APPLICABLE | | | AUTO ONLY - EA ACCIDENT \$ XXXXXXXX |
| | OTHER THAN AUTO ONLY: EA AGG \$ XXXXXXXX AGG \$ XXXXXXXX | | | | |
| A | EXCESS LIABILITY <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> RETENTION \$ | SELF-INSURED TRUST RE-INSURED BY LEAVEN | 03/01/2007 | 03/01/2008 | EACH OCCURRENCE \$ 10,000,000 |
| | | | | | AGGREGATE \$ 10,000,000 |
| A | <input type="checkbox"/> RETENTION \$ | NOT APPLICABLE | | | \$ XXXXXXXX |
| | | | | | \$ XXXXXXXX |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | NOT APPLICABLE | | | WC STATUTORY LIMITS OTHER \$ XXXXXXXX |
| | E.L. EACH ACCIDENT \$ XXXXXXXX | | | | |
| | E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX | | | | |
| | E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX | | | | |
| | OTHER | | | | |
| DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS: THE CERTHOLDER IS AN ADDITIONAL INSURED WITH RESPECT TO THE LIABILITY COVERAGE, ONLY AS REQUIRED BY WRITTEN CONTRACT. RE: WITH REGARDS TO THE WORLD WATER DAY EVENT | | | | | |
| CERTIFICATE HOLDER 3011172 SVH & CITY OF BILLINGS DEPT. OF PARKS RECREATION & PUBLIC LANDS ATTN: JOE SEDIN PO BOX 1178 BILLINGS, MT 59101 | | ADDITIONAL INSURED; INSURER LETTER: | | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>[Signature]</i> | |

ACORD 25-S (7/97)

For questions regarding this certificate, contact the number listed in the "Producer" section above and specify the client code "SISOF01-M".

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Attachment E

Because this is a first time event and they are not charging a registration fee, they do not have any feeling for how many people may participate in the walk. My primary concerns with the event are that the majority of City streets along the route do not have sidewalks, and that Woodland Drive and Mountain View Boulevard are particularly narrow streets. Based on my discussion with Karin, I would like to offer the following draft conditions of approval for the event. These would amend or be in addition to any standard conditions we normally take forward:

- At locations where sidewalk is not available, participants will walk on the left-hand side of the roadway facing on-coming traffic
- Participants will be required to walk as a group. Late arrivals will not be allowed to walk the 5K route as individuals.
- Leading and trailing walkers in the group shall wear orange or green safety vests.
- Warning signs and course guards shall be placed at strategic locations along the route to warn motorists the event is in progress. At a minimum signing will be required coming into the event route off major roadways (Poly, Virginia, Rimrock, and N. 27th) and at the base of the hill where Mountain View Boulevard becomes a single lane roadway.
- The event sponsor shall notify the residents along the upper portion of Mountain View Boulevard of the date and approximate times for the event at least two weeks prior to the event.
 - *NOTE: I'm specifically suggesting this because the upper portion of Mountain View is a single lane roadway and the event could prevent people from getting in or out of their properties until all the walkers have passed. It would be nice to notify individual residents along the entire walking route, but I'm not sure that is practical.*
- The event sponsor shall make arrangements for the use of off-duty law enforcement officers or State certified flaggers where the event route crosses Virginia Lane. All costs therefore shall be the responsibility of the event sponsor.
- Participants shall not be allowed to walk within the roadway on N. 27th. They will be required to use trails or sidewalks adjacent to 27th, and to cross N. 27th using the pedestrian underpass.

Terry

H. Terry Smith, P.E., PTOE
City Traffic Engineer
406-657-8234 (voice)
406-657-8252 (fax)
smitht@ci.billings.mt.us

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

M1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

TITLE: Recognition of donation for a Dog Park in the City of Billings.

DEPARTMENT: Parks, Recreation, and Public Lands Department

PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: Mr. Dave Pauli, Regional Director for The Humane Society of the United States, Northern Rockies Region has donated \$1,000.00 toward the establishment of a Dog Park in the City of Billings.

FINANCIAL IMPACT: The financial impact of this donation will provide needed funding toward the establishment of a Dog Park within the City of billings.

Location of Work: Within the City of Billings

Funding Sources: Private Donations

ALTERNATIVES ANALYZED:

- Accept the donation from The Humane Society of the United States, or,
- Not Accept the donation.

RECOMMENDATION:

Staff recommends accepting the generous donation from The Humane Society of the United States, Northern Rockies Region.

Approved By: City Administrator _____ City Attorney _____

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

M2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 25, 2008

TITLE: Recognition of Donation for the New Baseball and Multi-Use Stadium at Athletic Park

DEPARTMENT: Parks, Recreation, and Public Lands Department

PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: Tell Net Systems Inc. has stepped forward and offered to install the upgraded wiring for the voice and data networking infrastructure at the New Baseball and Multi-Use Stadium. The City will purchase the materials and equipment and Tel Net Systems will install the network infrastructure at no cost for labor. The value of their labor to do this work is \$7,920.00.

FINANCIAL IMPACT: The financial impact of this donation will be a \$7,920.00 savings to the project.

Location of Work: At Athletic Park comprising the entire block bounded by North 27th Street, North 25th Street, 9th Avenue North and 10th Avenue North.

Funding Sources: None needed.

ALTERNATIVES ANALYZED:

- Accept the donation of labor from Tel Net Systems Inc., or,
- Not accept the donation.

RECOMMENDATION:

Staff recommends accepting the generous donation from Tel Net Systems Inc.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: U.S. Dept. of Commerce – Economic Development Administration Public Works Grant for Conrad Road Improvements

DEPARTMENT: Public Works Department

PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: To accommodate the growing traffic needs of an increasingly commercial area, Conrad Road must be improved as it extends west from South 32nd Street West. The Big Sky Economic Development Authority (BSEDA)-owned Lot 6 of Gabel Subdivision, Second Filing, in the southeastern corner of the TransTech Business Park, will necessitate improvements to Conrad Road for the 45,000 square foot office building intended to house a 150-employee General Electric Financial Services Center. These improvements will include the extension of water, sanitary sewer and storm sewer services from South 32nd Street West, grading, paving and surfacing of Conrad Road, and the installation of curbs, gutters, and sidewalks along Conrad Road. BSEDA has identified the U.S. Department of Commerce – Economic Development Administration’s Grants for Public Works and Economic Development Facilities Program as a potential source of funding to help finance these and other publicly-owned infrastructure improvements. However, this funding program requires that the owner of the infrastructure proposed for improvement, in this case the City of Billings, participate as a co-applicant.

ALTERNATIVES ANALYZED:

- 1) Participate as a co-applicant with BSEDA on the grant application for the U.S. Department of Commerce – Economic Development Administration’s Public Works and Economic Development Facilities Program
- 2) Do not participate as a co-applicant with BSEDA on the grant application for the U.S. Department of Commerce – Economic Development Administration’s Public Works and Economic Development Facilities Program

FINANCIAL IMPACT: The application to the U.S. Department of Commerce – Economic Development Administration will request up to \$350,000 to help defray the cost of the Conrad Road improvements. BSEDA has identified sources of matching funds and is not requesting the

City's financial participation in this project. Should project costs exceed this amount, BSEDA will not solicit the City's financial participation and will identify further funding sources to finance project completion.

RECOMMENDATION

Staff recommends that the City Council approve the pre-application for U.S. Department of Commerce – Economic Development Administration Grants for Public Works and Economic Development Facilities Program.

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

ATTACHMENTS

A – Pre-application (Form 900-P and accompanying proposal)

B – Federal Application for Federal Assistance Form SF-424

Form ED-900P (Rev. 04/06)
OMB Control No. 0610-0094
Expires 04/30/2009



ECONOMIC DEVELOPMENT ADMINISTRATION

PRE-APPLICATION FOR INVESTMENT ASSISTANCE

The Economic Development Administration (EDA) uses the Pre-application for Investment Assistance (pre-application) to evaluate proposals for investment assistance under EDA's economic development assistance programs. If an investment proposal meets EDA's statutory, regulatory, and competitive selection criteria, the proponent may be invited by EDA to submit an Application for Investment Assistance (Form ED-900A). Please visit our Internet website at www.eda.gov for more information on EDA's programs and requirements, including current Federal Funding Opportunity (FFO) announcements.

| | Page |
|--|------|
| PWEDA Section 201 (CFDA No. 11.300) Public Works and Economic Development Program | |
| Part I: Proposals for EDA Investment Assistance | 3 |
| Part II: Regional Eligibility | 9 |
| Part III: Maximum Allowable EDA Investment Rates | 11 |
| PWEDA Section 203 (CFDA No. 11.302) Planning Program | |
| PWEDA Section 207 (CFDA No. 11.303) National, Local and University Center Technical Assistance Program | |
| PWEDA Section 207 (CFDA No. 11.312) Research and Evaluation Program | |
| PWEDA Section 209 (CFDA No. 11.307) Economic Adjustment Assistance Program | |

Pre-application for Investment Assistance (Form ED-900P)
OMB Control No. 0610-0094
Expires 04/30/2009

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless the collection of information displays a currently valid OMB Control Number.

The information requested in the Pre-application for Investment Assistance is required to obtain or retain benefits from EDA pursuant to the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*). The reasons for collecting this information are to enable proponents to submit proposals for financial assistance, and to assist EDA in determining proponents' eligibility and compliance with legal and programmatic requirements. The information submitted on the pre-application and in accompanying documents is subject to public disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552), unless exempt from disclosure as trade secrets or privileged or confidential commercial or financial information under 5 U.S.C. 552(b)(4).

The public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, gathering data, and completing the pre-application. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing paperwork burden may be sent to: Economic Development Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

I. PROPOSALS FOR EDA INVESTMENT ASSISTANCE

A. General Instructions

Please answer all questions completely and accurately and provide a concise narrative statement for each of the questions below (in the order listed). The pre-application narrative need not exceed four (4) pages in length. Proponents should consult EDA's program requirements and evaluation criteria set forth in 13 C.F.R. chapter III, as supplemented by the applicable FFO announcement, when completing the pre-application. Proponents are encouraged to contact an EDA representative for assistance in completing this pre-application. Preparation of a pre-application may involve coordination with other local, State and federal agencies.

One (1) original and two (2) copies of the entire pre-application (including all forms and attachments) must be submitted to the appropriate Economic Development Representative (EDR) or EDA regional office servicing your region, as listed in the FFO.

Public Works and Economic Development and Economic Adjustment Assistance projects must satisfy regional eligibility requirements (see 13 C.F.R. § 301.3); if applicable, complete Part II (Regional Eligibility) of the pre-application. All proponents must complete Part III (Maximum Allowable EDA Investment Rates) of the pre-application.

B. Investment (Project) Region

1. Identify the region (as defined in 13 C.F.R. § 300.3) where the project will be located and where the benefits of the EDA investment will be received.
2. Provide a detailed description of the region, including information about the project's expected economic impact.

C. Investment (Project) Description

1. Provide a detailed description of the complete scope of work for the proposed investment.
2. Describe the components of the proposed investment. For construction investments, attach an original or clear copy of a U.S. Geological Survey (USGS) topographic map clearly showing the geographical location of the project.

D. Economic Development Needs

1. Briefly describe the economic development needs for the proposed investment and how it addresses the goals and objectives of the Comprehensive Economic Development Strategy (CEDS) for the region (if any). See 13 C.F.R. part 303.
2. Briefly describe the economic conditions of the region where the project will be located, the economic adjustment problems, or the severity of the economic dislocation the region has experienced (or is about to experience) and how the economic development of the region that is being (or will be) affected.

E. Investment (Project) Impact

Discuss how the proposed investment satisfies EDA's "Investment Policy Guidelines" set forth in 13 C.F.R. § 301.8 (as supplemented by the applicable FFO announcement).

F. Funding Priorities

Discuss how the proposed investment satisfies the EDA funding priorities set forth in the applicable FFO announcement.

G. Proponent's Capability

Briefly describe the proponent's capability to administer, implement, and attract private sector investments to the project.

H. Proposed Time Schedule for the Project

Provide a proposed time schedule for completion of the project, including when (month/year) the project will begin and end and identify significant project milestones.

I. Project Beneficiaries

Identify private sector employers who will benefit from the project, and attach letters of commitment, if available.

| Company | Products and Services | Jobs Saved | Jobs Created | Private Sector Investment Capital | Indicate Committed or Interest Only |
|--------------------|-----------------------|------------|--------------|-----------------------------------|-------------------------------------|
| General Electric C | Accounting and f | | 150 | \$10,000,000 | Committed |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

J. Civil Rights

1. Does the proponent understand and agree to comply with all applicable civil rights requirements (see 13 C.F.R. § 302.20), including the requirement to provide signed assurances of compliance?

☒ Yes ☐ No (Explain)

2. Do identified "Other Parties" (as defined in 13 C.F.R. § 302.20(b)) understand and agree to comply with all applicable civil rights requirements, including the requirement to provide signed assurances of compliance?

☒ Yes ☐ No (Explain) ☐ No Other Parties Identified

K. Proposed Project Budget

| Estimated Construction Project Budget | | Estimated Non-Construction Project Budget | |
|---|---------------------|---|-----------|
| Administrative Expenses | \$ 225,000 | Personnel | \$ |
| Land, Structures, Rights of Way, Easements | \$ | Fringe Benefits | \$ |
| Relocation and Costs Incidental to Acquisition | \$ | Travel | \$ |
| Architectural and Engineering Costs and Inspection Fees | \$ 19,850 | Equipment | \$ |
| Site Work | \$ 150,000 | Supplies | \$ |
| Construction and Demolition | \$ 1,435,150 | Contractual | \$ |
| Equipment | \$ | Other | \$ |
| Contingencies | \$ 170,000 | Total Direct Charges | \$ |
| | | Indirect Charges | \$ |
| Total Estimated Project Cost | \$ 2,000,000 | Total Estimated Project Cost | \$ |

L. Non-EDA Project Funding

1. Identify each source, nature and amount of all non-EDA funds, including in-kind contributions (as defined in 13 C.F.R. § 300.3). Explain the status of all funding commitments, including the date the funds will be available from each source, and describe any conditions or restrictions on the use of such funds.

See Proposal

2. Are all non-EDA funds committed to the project, available as needed and not encumbered in any way that would preclude their use consistent with the purpose of the project? See 13 C.F.R. § 301.5.

☒ Yes ☐ No

3. Discuss the actions that need to be taken and the timing required to secure the non-EDA funds.

See Proposal

4. Does the proponent plan to seek other federal financial assistance as part of or in connection with this project? If so, please describe the source, amount and any terms and conditions of the funding, and when the funding will be available for use by the proponent.

☐ Yes ☒ No

5. Is the requested EDA investment assistance available from any other federal economic development program?

☐ Yes (identify source and provide an explanation of why EDA investment assistance is required)

☒ No

Proponents must also complete Part III of the pre-application.

M. Title, Ownership, Operation, Maintenance and Management (Construction Projects)

1. Briefly describe plans for the ownership, operation, maintenance and management of project facilities, including any land, improved land, structures, appurtenances thereto, other improvements, or personal property.

See Proposal

2. Will real property or project facilities to be acquired or improved with the EDA investment assistance be owned, operated or maintained by an entity other than the proponent?
See 13 C.F.R. § 314.7.

☒ Yes (explain) ☐ No

3. Will real property or project facilities to be acquired or improved with the EDA investment assistance, including any industrial or commercial park acreage, be mortgaged or used as collateral or is any real property to be used for this project currently mortgaged or being used for collateral? See 13 C.F.R. § 314.6.

☒ Yes (explain) ☐ No

4. Will the proponent provide EDA a security interest and/or covenant of use in the real property or significant items of tangible personal property acquired or improved with EDA investment assistance? See 13 C.F.R. § 314.9.

☒ Yes ☐ No (explain)

5. If the EDA investment assistance will be used to develop or improve an industrial or commercial park, identify the owners of the park acreage and provide an estimate of the number of acres benefiting from the proposed investment.

See Proposal

6. Discuss plans for the sale or lease of any real property or project facilities to be acquired or improved with EDA investment assistance. For privately-owned land, is the private owner of the vacant acreage willing to enter into an agreement to limit the sale price of the improved land, for a reasonable period of time, to its fair market value before improvements?

☒ Yes (explain) ☐ No

7. Is (or was) any real property to be acquired or improved with the proposed EDA investment assistance subject to eminent domain proceedings?

☐ Yes (explain) ☒ No

N. Environmental (Construction Projects)

1. Provide a brief physical description of the project site noting topography, vegetation, water bodies, and location and condition of any man-made structures or buildings. If available, provide a Geographic Information System (GIS) analysis of the sensitive environmental areas, including contaminated sites, archeological sites, properties or sites listed on the National Register of Historic Places, and wetlands, that are within a two-mile radius of the project site.
2. Will the project be located in or adjacent to a floodplain or wetland area?
☐ Yes (explain) No ☒ ☐ Not Applicable
3. Will the project be located in or adjacent to an area with known hazardous or toxic contamination?
☐ Yes (explain) No ☒ ☐ Not Applicable
4. Will there be any toxic or hazardous waste, or asbestos associated with this project?
☐ Yes (explain) No ☒ ☐ Not Applicable
5. Will the project impact any archeological sites, buildings or structures older than 50 years, or any properties listed or eligible for listing on the National Register of Historic Places?
☐ Yes (explain) No ☒ ☐ Not Applicable
6. Will this project result in any other adverse environmental impacts which could affect endangered or threatened species, scenic rivers, or other sensitive ecological habitats?
☐ Yes (explain) No ☒ ☐ Not Applicable
7. Has an environmental impact statement or other similar analysis been completed for this proposed project or for other activities in the region?
☐ Yes (explain) No ☒ ☐ Not Applicable

PART II - REGIONAL ELIGIBILITY

Public Works and Economic Development and Economic Adjustment Assistance projects must satisfy regional eligibility requirements (see 13 C.F.R. § 301.3). The below questions will assist EDA in determining whether the proposed project satisfies these requirements.

Please answer all questions completely and accurately and attach explanations and supporting documentation where applicable.

1. **General:** Identify the region in which the project is located (attach additional sheets as necessary):
2. **Economic Distress Levels:** Check all that apply below in establishing regional eligibility (see 13 C.F.R. § 301.3(a)(1):
 - A. ☐ **Unemployment:** The project is located in a region which has an unemployment rate that is, for the most recent 24-month period for which data are available, at least one (1) percent greater than the national average unemployment rate.
 - B. ☐ **Per capita income:** The project is located in a region which has a per capita income that is, for the most recent period for which data are available, eighty (80) percent or less of the national average per capita income.
 - C. ☒ **Special need:** The project is located in a region which has experienced or is about to experience a "Special Need" (as defined in 13 C.F.R. § 300.3) arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, including:
 - ☐ Substantial out-migration or population loss;
 - ☒ Underemployment; that is, employment of workers at less than full-time or at less skilled tasks than their training or abilities permit;
 - ☐ Military base closure or realignment, defense contractor reductions-in-force, or U.S. Department of Energy defense-related funding reductions;
 - ☐ Natural or other major disasters or emergencies;
 - ☐ Extraordinary depletion of natural resources;
 - ☐ Closing or restructuring of an industrial firm or loss or other major employer;
 - ☐ Negative effects of changing trade patterns; or
 - ☐ Other circumstances set forth in an FFO (describe need).
3. **Substantial Direct Benefit:** A project located within an Economic Development District, which is located in a region that is not subject to the economic distress levels set forth in question 2 above, is also eligible for EDA investment assistance if EDA determines that the project will be of "substantial direct benefit" to a geographical area within the Economic Development District that is subject to the economic distress levels set forth in question 2. above. For this purpose, a project provides a "substantial direct benefit" if it provides significant employment opportunities for unemployed, underemployed, or low-income residents of the geographical area within the Economic Development District. If applicable, identify the Economic Development District in which the proposed project will be located and explain how the proposed project will provide a substantial direct benefit to a geographical area within the Economic Development District that is subject to the economic distress levels set forth in question 2. above.
See 13 C.F.R. § 301.3(a)(2).
☒ Yes (explain) ☐ Not applicable

4. **The project region is other than one defined by political boundaries:** A project located in a geographical area of poverty or high unemployment that is subject to the economic distress levels set forth in question 2. above, but which is located in a region that overall is not subject to the economic distress levels set forth in question 2. above, is eligible for investment assistance without regard to political or other subdivisions or boundaries. If applicable, provide a description of the project region and documentation to show that the: (a) region is of sufficient size appropriate for the proposed project, and (b) project boundaries for regional eligibility are consistent with the anticipated project benefits to the region. See 13 C.F.R. § 301.3(a)(3).

☐ Yes (explain) ☒ Not applicable

5. **Source of data provided for regional eligibility determination:** Check the source of data used by the proponent to determine regional eligibility and provide an explanation and copy of such data. The explanation must: (i) identify the data used (e.g., American Community Survey (ACS)); (ii) if the data used is other than the ACS, explain why ACS was not used; and (iii) if the data used is other than federal data, explain why federal data was not used and identify the source of the non-federal data. The source of the data must satisfy the requirements of 13 C.F.R. § 301.3(a)(4).

☒ The most recent American Community Survey (ACS) data published by the U.S. Census Bureau.

☒ The most recent other federal data for the region in which the project is located (e.g., U.S. Census Bureau and the Bureaus of Economic Analysis, Labor Statistics, Indian Affairs).

☐ Data available through the State government for the region in which the project is located.

☐ Other data to substantiate regional eligibility based on a Special Need.

PART III - MAXIMUM ALLOWABLE EDA INVESTMENT RATES

EDA investment assistance may not exceed fifty (50) percent of total eligible project costs, except as determined by EDA in accordance with 13 C.F.R. § 301.4. If your proposal requests EDA investment assistance that exceeds fifty (50) percent of total eligible project costs as shown in the pre-application or application budget, then you may be asked to provide additional information concerning the relative economic development needs of the region, in accordance with EDA's regulations. Follow the instructions below as they apply to your particular project (see the table of maximum allowable investment rates on the following page).

A. For Public Works and Economic Development Investments (CFDA No. 11.300) and for Economic Adjustment Assistance Investments (CFDA No. 11.307), see 13 C.F.R. § 301.4 for maximum allowable investment rates. Enter below the provision and maximum allowable investment rate that apply to the proposed project.

- ☒ The proposed project meets the criteria set forth in 13 C.F.R. § 301.4(b) subsection for a maximum allowable investment rate of percent.
- ☐ Additional information to justify a maximum allowable investment rate greater than fifty (50) percent is attached (if applicable) as **Exhibit III.A.**
- ☐ Additional information to justify EDA investment assistance as supplemental assistance to another designated federal assistance program grant award is attached (if applicable). See 13 C.F.R. § 301.6.

B. For Planning Investments (CFDA No. 11.302), National, Local and University Center Technical Assistance Investments (CFDA No. 11.303), and for Research and Evaluation Investments (CFDA No. 11.312), attach as Exhibit III.A a narrative to justify EDA investment assistance that exceeds fifty (50) percent of total eligible project costs. See 13 C.F.R. § 301.4(b)(3) for planning investments and 13 C.F.R. § 301.4(b)(4) for technical assistance and research and evaluation investments.

| PART III (Continued) - TABLE OF MAXIMUM ALLOWABLE INVESTMENT RATES | |
|---|--|
| Type of Project | Maximum Allowable Investment Rate (Percentage) |
| Projects of Indian Tribes. | 100 |
| Projects under 13 C.F.R. part 307 located in Presidentially-Declared Disaster areas for which EDA receives an application for investment assistance for post-disaster economic recovery efforts pursuant to a supplemental appropriation within eighteen (18) months of the date of such declaration. | 100 |
| Projects of States or political subdivisions of States that the Assistant Secretary determines have exhausted their effective taxing and borrowing capacity, or Projects of non-profit organizations that the Assistant Secretary determines have exhausted their effective borrowing capacity. | 100 |
| Projects under 13 C.F.R. parts 305 or 307 that receive performance awards pursuant to 13 C.F.R. § 308.2. | 100 |
| Projects located in an Economic Development District that receive planning performance awards pursuant to 13 C.F.R. § 308.3. | 100 |
| Projects located in regions in which: The twenty-four (24) month unemployment rate is at least 225% of the national average; or The per capita income is not more than 50% of the national average. | 80 |
| Projects located in regions in which: The twenty-four (24) month unemployment rate is at least 200% of the national average; or The per capita income is not more than 60% of the national average. | 70 |
| Projects located in regions in which: The twenty-four (24) month unemployment rate is at least 175% of the national average; or The per capita income is not more than 65% of the national average. | 60 |
| Projects located in regions in which: The twenty-four (24) month unemployment rate is at least 1% greater than the national average; or The per capita income is not more than 80% of the national average. | 50 |

| Application for Federal Assistance SF-424 | | Version 02 |
|---|--|--|
| * 1. Type of Submission: <input checked="" type="radio"/> Preapplication <input type="radio"/> Application <input type="radio"/> Changed/Corrected Application | * 2. Type of Application: <input checked="" type="radio"/> New <input type="radio"/> Continuation <input type="radio"/> Revision | |
| * If Revision, select appropriate letter(s): <input type="checkbox"/> A. Increase Award <input type="checkbox"/> B. Decrease Award <input type="checkbox"/> C. Increase Duration <input type="checkbox"/> D. Decrease Duration <input type="checkbox"/> E. Other (specify) <input style="width: 150px;" type="text"/> | | |
| * 3. Date Received: <input style="width: 150px;" type="text"/> <small>Completed by Grants.gov upon submission.</small> | 4. Applicant Identifier: <input style="width: 250px;" type="text"/> | |
| 5a. Federal Entity Identifier: <input style="width: 150px;" type="text"/> | * 5b. Federal Award Identifier: <input style="width: 150px;" type="text"/> | |
| State Use Only: | | |
| 6. Date Received by State: <input style="width: 50px;" type="text"/> | 7. State Application Identifier: <input style="width: 150px;" type="text"/> | |
| 8. APPLICANT INFORMATION: | | |
| * a. Legal Name: <input style="width: 550px;" type="text" value="City of Billings"/> | | |
| * b. Employer/Taxpayer Identification Number (EIN/TIN): <input style="width: 150px;" type="text"/> | * c. Organizational DUNS: <input style="width: 100px;" type="text"/> | |
| d. Address: | | |
| * Street1: <input style="width: 500px;" type="text" value="210 North 27th Street"/> Street2: <input style="width: 500px;" type="text"/> | | |
| * City: <input style="width: 200px;" type="text" value="Billings"/> County: <input style="width: 250px;" type="text" value="Yellowstone"/> * State: <input style="width: 250px;" type="text" value="Montana"/> Province: <input style="width: 150px;" type="text"/> * Country: <input style="width: 250px;" type="text" value="United States of America"/> * Zip / Postal Code: <input style="width: 100px;" type="text" value="59101"/> | | |
| e. Organizational Unit: | | |
| Department Name: <input style="width: 300px;" type="text" value="City of Billings/Yellowstone County Planning Department"/> | | Division Name: <input style="width: 250px;" type="text" value="Community Services"/> |
| f. Name and contact information of person to be contacted on matters involving this application: | | |
| Prefix: <input style="width: 50px;" type="text"/> * First Name: <input style="width: 150px;" type="text" value="Rebekah"/> Middle Name: <input style="width: 150px;" type="text" value="Carole"/> * Last Name: <input style="width: 150px;" type="text" value="Wales"/> Suffix: <input style="width: 50px;" type="text"/> | | |
| Title: <input style="width: 300px;" type="text" value="Community Development Specialist, Big Sky EDA"/> | | |
| Organizational Affiliation: <input style="width: 500px;" type="text"/> | | |
| * Telephone Number: <input style="width: 150px;" type="text" value="406-869-8407"/> | | Fax Number: <input style="width: 150px;" type="text" value="406-256-6877"/> |
| * Email: <input style="width: 500px;" type="text" value="wales@bigskyeda.org"/> | | |

| Application for Federal Assistance SF-424 | Version 02 |
|---|------------|
| 9. Type of Applicant 1: Select Applicant Type: <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">General Purpose Unit of Local Government</div> Type of Applicant 2: Select Applicant Type: <div style="border: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Type of Applicant 3: Select Applicant Type: <div style="border: 1px solid black; height: 20px; margin-bottom: 5px;"></div> * Other (specify): <div style="border: 1px solid black; height: 20px; margin-bottom: 5px;"></div> | |
| * 10. Name of Federal Agency: <div style="border: 1px solid black; padding: 2px; margin-top: 5px;">Economic Development Administration</div> | |
| 11. Catalog of Federal Domestic Assistance Number: <div style="border: 1px solid black; padding: 2px; margin-top: 5px;">11.300</div> CFDA Title: <div style="border: 1px solid black; padding: 2px; margin-top: 5px;">Grants for Public Works and Economic Development</div> | |
| * 12. Funding Opportunity Number: <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div> * Title: <div style="border: 1px solid black; padding: 2px; margin-top: 5px;">Economic Development Assistance Programs- Availability of Funds under the Public Works and Economic Development Act of 1965, as amended, and the Trade Act of 1974, as amended.</div> | |
| 13. Competition Identification Number: <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div> Title: <div style="border: 1px solid black; height: 50px; margin-top: 5px;"></div> | |
| 14. Areas Affected by Project (Cities, Counties, States, etc.): <div style="border: 1px solid black; padding: 2px; margin-top: 5px;">Beartooth RC&D Economic Development District; Billings, MT; Yellowstone County, MT; Big Horn County, MT; Golden Valley County, MT; Musselshell County, MT</div> | |
| * 15. Descriptive Title of Applicant's Project: <div style="border: 1px solid black; padding: 2px; margin-top: 5px;">TransTech Center Phase 2 of Public Infrastructure Improvements</div> | |
| Attach supporting documents as specified in agency instructions. | |

Application for Federal Assistance SF-424

Version 02

16. Congressional Districts Of:

* a. Applicant

* b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:

* a. Start Date:

* b. End Date:

18. Estimated Funding (\$):

| | |
|---------------------|--|
| * a. Federal | <input type="text" value="\$1,000,000"/> |
| * b. Applicant | <input type="text"/> |
| * c. State | <input type="text"/> |
| * d. Local | <input type="text" value="\$1,000,000"/> |
| * e. Other | <input type="text"/> |
| * f. Program Income | <input type="text"/> |
| * g. TOTAL | <input type="text" value="\$2,000,000"/> |

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- ☐ a. This application was made available to the State under the Executive Order 12372 Process for review on .
- ☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- ☒ c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)**

☐ Yes ☒ No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)

☒ ** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: * First Name:
Middle Name:
* Last Name:
Suffix:

* Title:

* Telephone Number: Fax Number:

* Email:

* Signature of Authorized Representative:

* Date Signed:

Authorized for Local Reproduction

Standard Form 424 (Revised 10/2005)
Prescribed by OMB Circular A-102

Application for Federal Assistance SF-424

Version 02

*** Applicant Federal Debt Delinquency Explanation**

The following field should contain an explanation if the Applicant organization is delinquent on any Federal Debt. Maximum number of characters that can be entered is 4,000. Try and avoid extra spaces and carriage returns to maximize the availability of space.

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form (including the continuation sheet) required for use as a cover sheet for submission of preapplications and applications and related information under discretionary programs. Some of the items are required and some are optional at the discretion of the applicant or the Federal agency (agency). Required items are identified with an asterisk on the form and are specified in the instructions below. In addition to the instructions provided below, applicants must consult agency instructions to determine specific requirements.

| Item | Entry: | Item | Entry: |
|------|--|------|--|
| 1. | Type of Submission: (Required): Select one type of submission in accordance with agency instructions. <ul style="list-style-type: none"> • Preapplication • Application • Changed/Corrected Application – If requested by the agency, check if this submission is to change or correct a previously submitted application. Unless requested by the agency, applicants may not use this to submit changes after the closing date. | 10. | Name Of Federal Agency: (Required) Enter the name of the Federal agency from which assistance is being requested with this application. |
| 2. | Type of Application: (Required) Select one type of application in accordance with agency instructions. <ul style="list-style-type: none"> • New – An application that is being submitted to an agency for the first time. • Continuation - An extension for an additional funding/budget period for a project with a projected completion date. This can include renewals. • Revision - Any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision, enter the appropriate letter(s). More than one may be selected. If "Other" is selected, please specify in text box provided. <ul style="list-style-type: none"> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration E. Other (specify) | 11. | Catalog Of Federal Domestic Assistance Number/Title: Enter the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested, as found in the program announcement, if applicable. |
| 3. | Date Received: Leave this field blank. This date will be assigned by the Federal agency. | 12. | Funding Opportunity Number/Title: (Required) Enter the Funding Opportunity Number and title of the opportunity under which assistance is requested, as found in the program announcement. |
| 4. | Applicant Identifier: Enter the entity identifier assigned by the Federal agency, if any, or applicant's control number, if applicable. | 13. | Competition Identification Number/Title: Enter the Competition Identification Number and title of the competition under which assistance is requested, if applicable. |
| 5a. | Federal Entity Identifier: Enter the number assigned to your organization by the Federal Agency, if any. | 14. | Areas Affected By Project: List the areas or entities using the categories (e.g., cities, counties, states, etc.) specified in agency instructions. Use the continuation sheet to enter additional areas, if needed. |
| 5b. | Federal Award Identifier: For new applications leave blank. For a continuation or revision to an existing award, enter the previously assigned Federal award identifier number. If a changed/corrected application, enter the Federal Identifier in accordance with agency instructions. | 15. | Descriptive Title of Applicant's Project: (Required) Enter a brief descriptive title of the project. If appropriate, attach a map showing project location (e.g., construction or real property projects). For preapplications, attach a summary description of the project. |
| 6. | Date Received by State: Leave this field blank. This date will be assigned by the State, if applicable. | 16. | Congressional Districts Of: (Required) 16a. Enter the applicant's Congressional District, and 16b. Enter all District(s) affected by the program or project. Enter in the format: 2 characters State Abbreviation – 3 characters District Number, e.g., CA-005 for California 5 th district, CA-012 for California 12 th district, NC-103 for North Carolina's 103 rd district. <ul style="list-style-type: none"> • If all congressional districts in a state are affected, enter "all" for the district number, e.g., MD-all for all congressional districts in Maryland. • If nationwide, i.e. all districts within all states are affected, enter US-all. • If the program/project is outside the US, enter 00-000. |
| 7. | State Application Identifier: Leave this field blank. This identifier will be assigned by the State, if applicable. | 17. | Proposed Project Start and End Dates: (Required) Enter the proposed start date and end date of the project. |
| 8. | Applicant Information: Enter the following in accordance with agency instructions: <ul style="list-style-type: none"> a. Legal Name: (Required): Enter the legal name of applicant that will undertake the assistance activity. This is the name that the organization has registered with the Central Contractor Registry. Information on registering with CCR may be obtained by visiting the Grants.gov website. b. Employer/Taxpayer Number (EIN/TIN): (Required): Enter the Employer or Taxpayer Identification Number (EIN or TIN) as assigned by the Internal Revenue Service. If your organization is not in the US, enter 44-4444444. c. Organizational DUNS: (Required) Enter the organization's DUNS or DUNS+4 number received from Dun and Bradstreet. Information on obtaining a DUNS number may be obtained by visiting the Grants.gov website. d. Address: Enter the complete address as follows: Street address (Line 1 required), City (Required), County, State (Required, if country is US), Province, Country (Required), Zip/Postal Code (Required, if country is US). e. Organizational Unit: Enter the name of the primary organizational unit (and department or division, if applicable) that will undertake the | 18. | Estimated Funding: (Required) Enter the amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines, as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. |
| | | 19. | Is Application Subject to Review by State Under Executive Order 12372 Process? Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the |

| | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---------------------|--|----------------------|--|--------------------------------|--|--------------------------------|---------------|--------------------------|--|---------------------------------|-------------------|--------------------------------|---------------------------------|--|---|--|--|---|---|--|---------------------------------|------------------------------------|--------------------|--|--|
| | assistance activity, if applicable. | | State intergovernmental review process. Select the appropriate box. If "a." is selected, enter the date the application was submitted to the State | | | | | | | | | | | | | | | | | | | | | | | | |
| | f. Name and contact information of person to be contacted on matters involving this application: Enter the name (First and last name required), organizational affiliation (if affiliated with an organization other than the applicant organization), telephone number (Required), fax number, and email address (Required) of the person to contact on matters related to this application. | 20. | Is the Applicant Delinquent on any Federal Debt? (Required) Select the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. If yes, include an explanation on the continuation sheet. | | | | | | | | | | | | | | | | | | | | | | | | |
| 9. | Type of Applicant: (Required) Select up to three applicant type(s) in accordance with agency instructions. | 21. | Authorized Representative: (Required) To be signed and dated by the authorized representative of the applicant organization. Enter the name (First and last name required) title (Required), telephone number (Required), fax number, and email address (Required) of the person authorized to sign for the applicant. A copy of the governing body's authorization for you to sign this application as the official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) | | | | | | | | | | | | | | | | | | | | | | | | |
| | <table border="0"> <tr> <td>A. State Government</td><td>M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education)</td></tr> <tr> <td>B. County Government</td><td>N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education)</td></tr> <tr> <td>C. City or Township Government</td><td>O. Private Institution of Higher Education</td></tr> <tr> <td>D. Special District Government</td><td>P. Individual</td></tr> <tr> <td>E. Regional Organization</td><td>Q. For-Profit Organization (Other than Small Business)</td></tr> <tr> <td>F. U.S. Territory or Possession</td><td>R. Small Business</td></tr> <tr> <td>G. Independent School District</td><td>S. Hispanic-serving Institution</td></tr> <tr> <td>H. Public/State Controlled Institution of Higher Education</td><td>T. Historically Black Colleges and Universities (HBCUs)</td></tr> <tr> <td>I. Indian/Native American Tribal Government (Federally Recognized)</td><td>U. Tribally Controlled Colleges and Universities (TCCUs)</td></tr> <tr> <td>J. Indian/Native American Tribal Government (Other than Federally Recognized)</td><td>V. Alaska Native and Native Hawaiian Serving Institutions</td></tr> <tr> <td>K. Indian/Native American Tribally Designated Organization</td><td>W. Non-domestic (non-US) Entity</td></tr> <tr> <td>L. Public/Indian Housing Authority</td><td>X. Other (specify)</td></tr> </table> | A. State Government | M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education) | B. County Government | N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education) | C. City or Township Government | O. Private Institution of Higher Education | D. Special District Government | P. Individual | E. Regional Organization | Q. For-Profit Organization (Other than Small Business) | F. U.S. Territory or Possession | R. Small Business | G. Independent School District | S. Hispanic-serving Institution | H. Public/State Controlled Institution of Higher Education | T. Historically Black Colleges and Universities (HBCUs) | I. Indian/Native American Tribal Government (Federally Recognized) | U. Tribally Controlled Colleges and Universities (TCCUs) | J. Indian/Native American Tribal Government (Other than Federally Recognized) | V. Alaska Native and Native Hawaiian Serving Institutions | K. Indian/Native American Tribally Designated Organization | W. Non-domestic (non-US) Entity | L. Public/Indian Housing Authority | X. Other (specify) | | |
| A. State Government | M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education) | | | | | | | | | | | | | | | | | | | | | | | | | | |
| B. County Government | N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education) | | | | | | | | | | | | | | | | | | | | | | | | | | |
| C. City or Township Government | O. Private Institution of Higher Education | | | | | | | | | | | | | | | | | | | | | | | | | | |
| D. Special District Government | P. Individual | | | | | | | | | | | | | | | | | | | | | | | | | | |
| E. Regional Organization | Q. For-Profit Organization (Other than Small Business) | | | | | | | | | | | | | | | | | | | | | | | | | | |
| F. U.S. Territory or Possession | R. Small Business | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| I. Indian/Native American Tribal Government (Federally Recognized) | U. Tribally Controlled Colleges and Universities (TCCUs) | | | | | | | | | | | | | | | | | | | | | | | | | | |
| J. Indian/Native American Tribal Government (Other than Federally Recognized) | V. Alaska Native and Native Hawaiian Serving Institutions | | | | | | | | | | | | | | | | | | | | | | | | | | |
| K. Indian/Native American Tribally Designated Organization | W. Non-domestic (non-US) Entity | | | | | | | | | | | | | | | | | | | | | | | | | | |
| L. Public/Indian Housing Authority | X. Other (specify) | | | | | | | | | | | | | | | | | | | | | | | | | | |

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

TITLE: North Park Neighborhood Plan – Resolution of Intent to Adopt and Set Date of Public Hearing

DEPARTMENT: Planning & Community Services

PRESENTED BY: Lora Mattox, AICP, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: The North Park 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 North Park Neighborhood. Extensive research, public input and local government review ensures that this Neighborhood Plan sets forth attainable goals based on current public values. The strategies to achieve these goals rely on commonly-accepted planning, engineering and organizational practices, as well as, state-of-the-art approaches to contemporary issues.

The Planning Board conducted a public hearing on January 22, 2008, to receive comments on the neighborhood plan and to forward a recommendation to the City Council. The Planning Board is forwarding a recommendation of approval of the North Park Neighborhood Plan. There was one comment by a Planning Board member recommending that the North Park Neighborhood and the City Council should look at the potential of re-zoning portions of the neighborhood to accommodate residential multi-family uses. The member stated that this is an area where multi-family housing should be encouraged especially, with the potential re-development of the East End Tax Increment Finance District.

The Council at its February 19, 2008, work session will hear a presentation on the North Park Neighborhood Plan. At the regular meeting scheduled on February 25, 2008, the council will consider a Resolution of Intent to Adopt the North Park Neighborhood Plan and set a date for a public hearing to receive comment on the neighborhood plan. The public hearing is scheduled for March 10, 2008.

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 sustainable economic development within the newly formed East End TIF District
- Encourage infill development of affordable housing

RECOMMENDATION

The Yellowstone County Board of Planning recommends that the City Council approve the Resolution to Adopt the North Park 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 08-01
- B. Resolution of Intent to Adopt the North Park 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 Division to initiate the neighborhood planning process for neighborhoods within the city.

The first neighborhood plan completed by the North Park Neighborhood was in 1977 and included information on land use and zoning, housing, transportation, urban design, community facilities and environmental conditions. The plan provided an official guide to new development and redevelopment of the neighborhood over a five-year period. The plan was used by the local government and the neighborhood task force to guide development. The North Park Neighborhood Plan was updated in 1993 to review changes that had occurred in the neighborhood and address new issues affecting the neighborhood and offer actions to address these changes and issues.

PROCEDURAL HISTORY

- 1/27/2006 Neighborhood Plan Update announcement letters sent to task force members.
- 3/2/2006 Informational meeting held prior to the task force meeting to members announcing the date and time of the neighborhood planning steering meetings.
- 3/2/2006 Task Force meeting members generated a list of issues.
- 3/2/2006 - 10/4/2007 - 16 steering committee meetings held to draft neighborhood plan.
- 10/4/2007 Draft neighborhood plan presentation and review with the North Park Neighborhood Task Force.
- 11/1/2007 North Park Neighborhood Task Force votes affirmatively to approve draft neighborhood plan and to move forward with formal adoption by the City Council and Board of County Commissioners.
- 11/23/2007 Departmental review deadline.
- 1/22/2008 Yellowstone County Planning Board adopted resolution 08-01 recommending adoption of the North Park Neighborhood Plan as part of the 2003 Growth Policy to the City Council and the Board of County Commissioners.
- 2/5/2008 The Board of County Commissioners will consider a Resolution of Intent to Adopt the North Park Neighborhood Plan and set a date for a public hearing to receive comment on the neighborhood plan. The public hearing is scheduled for March 18, 2008.
- 2/25/2008 The Billings City Council will consider a Resolution of Intent to Adopt the North Park Neighborhood Plan and set a date for a public hearing to receive comment on the neighborhood plan. The public hearing is scheduled for March 10, 2008.

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 North Park 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 timetable for implementing the neighborhood plan

The neighborhood planning process involved local residents to identify issues impacting the area and works towards goals, objectives and actions to address these issues. 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.

The Planning Division worked with North Park residents to develop 10 focus areas of discussion that include:

- Land Use
- Housing
- Transportation
- Urban Design
- Community Facilities
- Historic Preservation
- Social
- Employment
- Commercial
- Environmental

The Planning Board held a formal public hearing on the Neighborhood Plan on January 22, 2008. 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 Billings City Council (See Planning Board Resolution No. 08-01).

STAKEHOLDERS

All North Park residents, landowners and business owners have a stake in the adoption and implementation of the North Park Neighborhood Plan. All comments received from individuals 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 to Adopt the North Park Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy.

ATTACHMENTS

- A. Yellowstone County Board of Planning Resolution 08-01
- B. Resolution of Intent to Adopt the North Park Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy.

ATTACHMENT A
Yellowstone County Board of Planning
Resolution to Recommend Adoption of the North Park Neighborhood Plan

RESOLUTION NO. 08- 01

**RESOLUTION TO RECOMMEND ADOPTION OF THE
NORTH PARK 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 22nd day of January, 2008, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed North Park Neighborhood Plan:

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Yellowstone County Board of Planning recommends adoption of the North Park Neighborhood Plan.

APPROVED AND PASSED by the Yellowstone County Board of Planning this 22nd day of January, 2008.

THE YELLOWSTONE COUNTY BOARD OF PLANNING:

BY: _____

Donna Forbes, President

ATTEST:

BY: _____

Candi Beaudry, Executive Secretary

ATTACHMENT B

RESOLUTION NO. 08-_____

**RESOLUTION OF INTENT TO ADOPT THE NORTH PARK 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 22nd day of January, 2008, 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 10th day of March, 2008, the Billings City Council will hold a public hearing for the same purpose:

WHEREAS, The Yellowstone County Board of Planning by Resolution 08-01, 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 North Park 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 25th day of February, 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

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P

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

TITLE: Second Reading of an Ordinance Expanding Ward I:
Annexation #08-02

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On January 28, 2008, the City Council approved the annexation of an approximate 54-acre parcel legally described as Tract 2-B-1 of Certificate of Survey 1121. The request for annexation was submitted by King Business Park, LLC, Richard Dorn, Samuel Rankin, and Hannah Elletson, the owners of property. Upon 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 was conducted by the City Council on February 11, 2008. The second reading of the ordinance will be conducted at this meeting.

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

RECOMMENDATION

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

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

A. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD 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:

A tract of land situated in the E 1/2 of Section 16, and the NW 1/4 of Section 15, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 2-B-1 of Amended Tracts 2-A and 2-B, of Amended Tract 2, Certificate of Survey No. 1121, Recorded January 14, 2008, Under Document No. 3451343, Records of Yellowstone County, Montana.

Including all adjacent right-of-way of Fenton Avenue Southwest.

Said Tract containing 54.691 gross acres and 53.624 net acres.

(# 08-02) 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 11th day of February, 2008.

PASSED by the City Council on the second reading this 25th day of February, 2008.

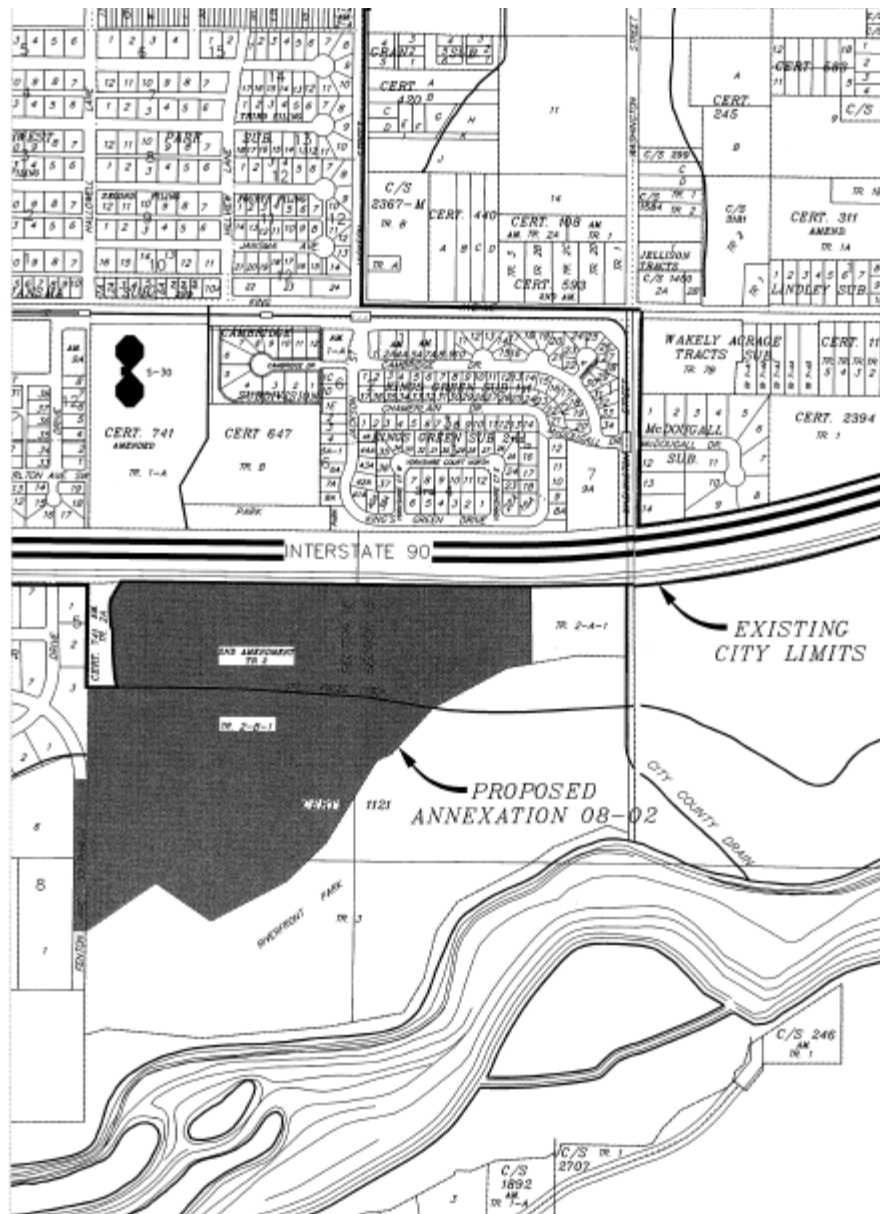
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY:_____
Cari Martin, CITY CLERK

EXHIBIT A



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Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Preliminary Plat of Amended Lot 3B, Block 14, Sunnyside Subdivision, 3rd Filing

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On January 13, 2008, the preliminary plat application for a subsequent minor subdivision was submitted to the Planning Division. The proposed plat would create two lots on approximately 14,000 square feet of land. The subject property is zoned Residential 6000 (R-60) and is located on the northeast corner of the intersection of North 23rd Street and 10th Avenue South. The property owners are Dennis, Marlene, Nikki, and Michael Olson and the representing agent is Soelter Survey.

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on March 4, 2008. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

FINANCIAL IMPACT: Upon development of the property, additional tax revenue for the City may be provided.

RECOMMENDATION

Staff recommends conditional approval of the preliminary plat of Amended Lot 3B, Block 14, Sunnyside Subdivision, 3rd Filing and adoption of the Findings of Fact as presented within the staff report to the City Council.

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

ATTACHMENTS

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

INTRODUCTION

On January 13, 2008, the preliminary plat application for a subsequent minor subdivision was submitted to the Planning Division. The proposed plat would create two lots on approximately 14,000 square feet of land. The subject property is zoned Residential R-60 and is located on the northeast corner of the intersection of North 23rd Street and 10th Avenue South. The subject property contains one duplex under construction and is proposed for an additional duplex upon subdivision. The subject property is surrounded on all sides by existing single-family residences and duplexes.

PROCEDURAL HISTORY

- The preliminary plat application for this subdivision was submitted to the Planning Division on January 13, 2008.
- The City Council will consider the preliminary plat application on February 25, 2008.

BACKGROUND

| | |
|--------------------------|---|
| General location: | Northeast corner of the intersection of North 23 rd Street and 10 th Avenue South |
| Legal Description: | Amended Lot 3-B, Block 14, Sunnyside Subdivision, 3 rd Filing |
| Subdivider/Owner: | Dennis, Marlene, Nikki, and Michael Olson |
| Engineer and Surveyor: | Soelter Survey |
| Existing Zoning: | Residential 6000 |
| Existing land use: | Duplex under construction on proposed Lot 3B-1 |
| Proposed land use: | Additional duplex on proposed Lot 3B-2 |
| Gross area: | 14,000 square feet |
| Net area: | 14,000 square feet |
| Proposed number of lots: | 2 |
| Lot size: | 7,000 square feet |
| Parkland requirements: | A parkland dedication is not required, as this is a subsequent minor subdivision. |

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To minimize impacts to local services, section III.B of the SIA shall be revised to state that "any deficient sidewalks or curb and gutter shall be replaced upon development of the lots. The subdivider shall install an ADA compliant ramp at the intersection of North 23rd Street and 10th Avenue North with the development of Lot 3B-2." (*Recommended by the Engineering Division*)
2. 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*)
3. 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.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

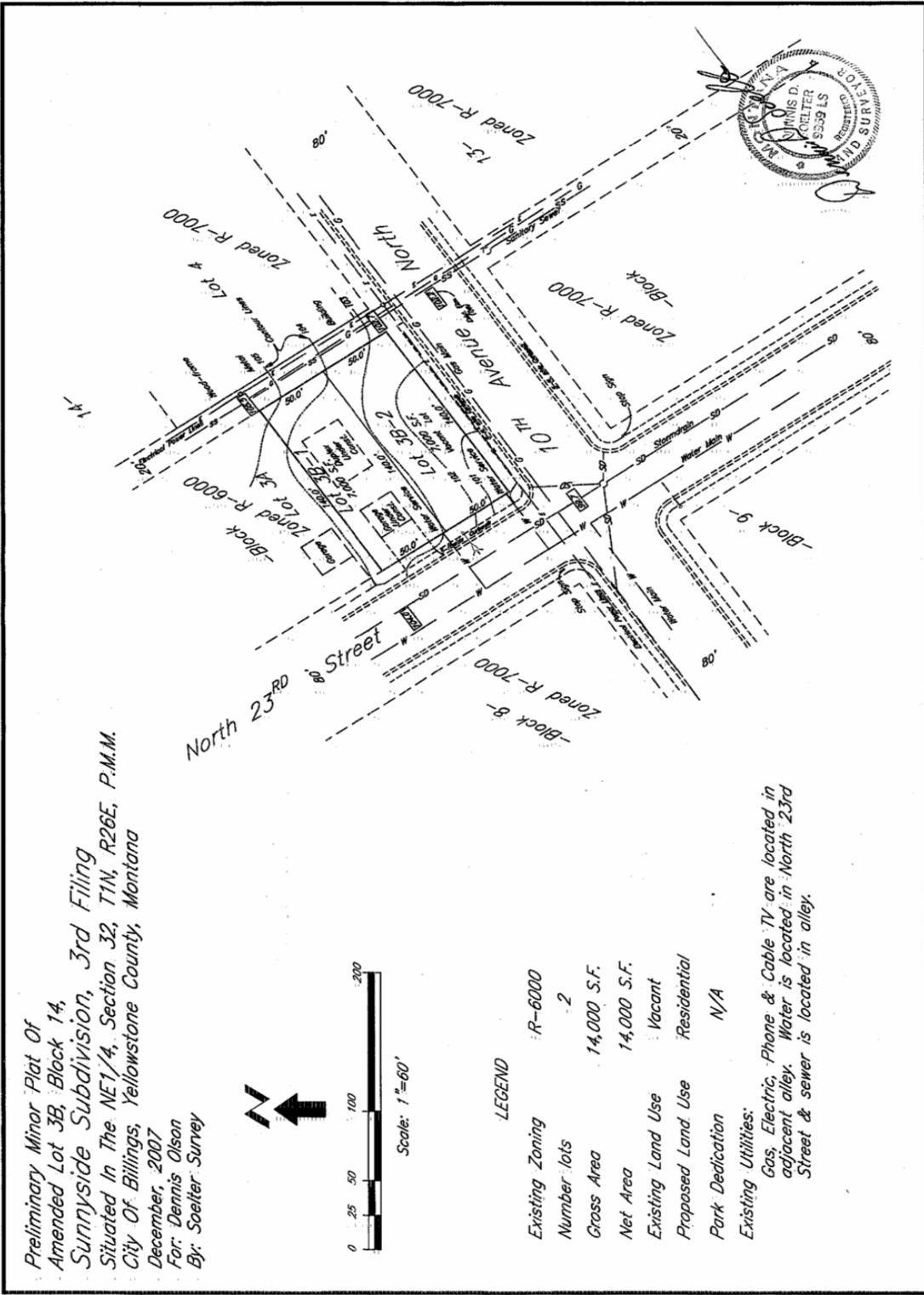
Consistency with the Growth Policy, the 2005 Transportation Plan Update, and Heritage Trail Plan are discussed within the Findings of Fact.

RECOMMENDATION

Staff recommends conditional approval of the preliminary plat of Amended Lot 3B, Block 14, Sunnyside Subdivision, 3rd Filing and adoption of the Findings of Fact as presented within the staff report to the City Council.

ATTACHMENTS

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



ATTACHMENT B
Site Photographs



Figure 1: View northeast toward proposed Lot 3B-1 and the duplex under construction.



Figure 2: View east toward proposed Lot 3B-2, which is currently vacant.

ATTACHMENT C

Findings of Fact

Staff is forwarding the recommended Findings of Fact for Amended Lot 3B, Block 14, Sunnyside Subdivision, 3rd Filing for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (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

There are no agricultural uses on this property or surrounding properties.

2. Effect on local services

- a. **Utilities** – Water and sanitary sewer mains are currently in place in both North 23rd Street and 10th Avenue North. Lines have been extended to Lot 3B-1 and will be extended to Lot 3B- 2 upon development.
- b. **Stormwater** – Storm drainage improvements have been constructed. However, if any additional stormwater improvements are necessary, all drainage improvements shall comply with the provisions of the Billings Stormwater Management Manual.
- 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 lots will be via private driveways from North 23rd Street and 10th Avenue North. The Engineering Division did express concerns regarding the condition of the existing sidewalk adjacent to the proposed subdivision. Therefore, Condition #1 requires section III.B of the SIA be revised to state that “any deficient sidewalks or curb and gutter shall be replaced upon development of the lots. The subdivider shall install an ADA compliant ramp at the intersection of North 23rd Street and 10th Avenue North with the development of Lot 3B-2.”
- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 2305 8th Avenue North (Station #1). The subdivision is located within the ambulance service area of American Medical Response (AMR).
- f. **Schools** – The subdivision is located within School District #2. No comments 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 McKinley Elementary School, Riverside Middle School and Senior High School. Senior High School responded to the request for comments and did state that they are 250 students over their maximum occupancy. Riverside Middle School specified that they have space for 60 students and that the subdivision is located on a bus route.

- g. **Parks and Recreation** –A parkland dedication is not required for this subsequent minor subdivision.

3. Effect on the natural environment

A geotechnical report was submitted to the Building Department with the subdivision. The study is sufficient for the proposed subdivision.

There may be minor increases in air pollution during construction and from additional vehicle traffic in the area. No streams, lakes or reservoirs will be altered by the subdivision.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. As indicated within the General Conditions the Run with the Land section of the submitted SIA, future property owners should be aware that the proposed subdivision is within a wildlife migratory route 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 no known health or safety hazards on the property. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties.

B. 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.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the 2005 Transportation Plan Update, and the Heritage Trail Plan? (23-301, 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 (p. 6).**

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

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

The subject property is within an urbanized portion of the City and is surrounded by residential uses.

- c. **Goal: Contiguous development focused in and around existing population centers separated by open space (p. 6).**

The subject property is a replat of an existing subdivision within the city and can be considered infill development.

2. Urban Area 2005 Transportation Plan Update

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

3. Heritage Trail Plan

The subdivision is within the jurisdictional area of the Heritage Trail Plan. However, no specific trails are identified in this area and none are proposed with this subdivision.

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

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

E. Does the subdivision conform to sanitary requirements? (23-408, BMCC)

The 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.

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

The subject property is located within the R-60 zoning district and shall comply with the standards set forth in Section 27-308, BMCC.

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

The City Engineering Division 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 #2 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 provided via North 23rd Street and 10th Avenue North.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Amended Lot 3B, Block 14, Sunnyside Subdivision, 3rd Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 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 25, 2008

Ron Tussing, Mayor

Mayor's Approval Letter

February 25, 2008

Dennis Olson
4227 Pine Cove Road
Billings, MT 59106

Dear Applicant:

On February 25, 2008, the Billings City Council conditionally approved the preliminary plat of Amended Lot 3B, Block 14, Sunnyside Subdivision, 3rd Filing, subject to the following conditions of approval:

1. To minimize impacts to local services, section III.B of the SIA shall be revised to state that "any deficient sidewalks or curb and gutter shall be replaced upon development of the lots. The subdivider shall install an ADA compliant ramp at the intersection of North 23rd Street and 10th Avenue North with the development of Lot 3B-2." (*Recommended by the Engineering Division*)
2. 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*)
3. 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.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

Sincerely,

Ron Tussing, Mayor

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

R

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

TITLE: Final Plat of Trailhead Subdivision
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Trailhead Subdivision is being presented to Council for approval. On July 23, 2007, the City Council conditionally approved the aggregation of Lots 1-9, Block 1, Swartz McGeorge Subdivision and Certificate of Survey 46 in order to develop the property with residential uses as part of a Planned Unit Development. Pursuant to Section 23-1103(C)(2), BMCC, any vacation of a plat that affects six or more lots shall be reviewed as an amended plat (minor subdivision). The subject property is located on the southeast corner of the intersection of Rimrock Road and Avalon Road, and contains the Yellowstone Racquet Club. The owner is Bill Dolan and the representative is Engineering, Inc. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

RECOMMENDATION

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

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

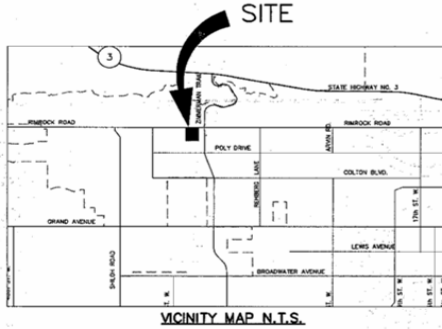
A: Plat

PRELIMINARY PLAT OF TRAILHEAD SUBDIVISION

BEING THE REMAINDER OF C.O.S. 45 &
LOTS 3-8, AND PORTIONS OF LOTS 1, 2 & 9 SWARTZ-MCGEORGE SUB. BLOCK 1
SITUATED IN THE NW 1/4 OF SECTION 34 T. 1 N., R. 25 E., P.M.M.
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: ROGER BEETER REAL ESTATE
PREPARED BY: ENGINEERING, INC.
SCALE: 1" = 40'

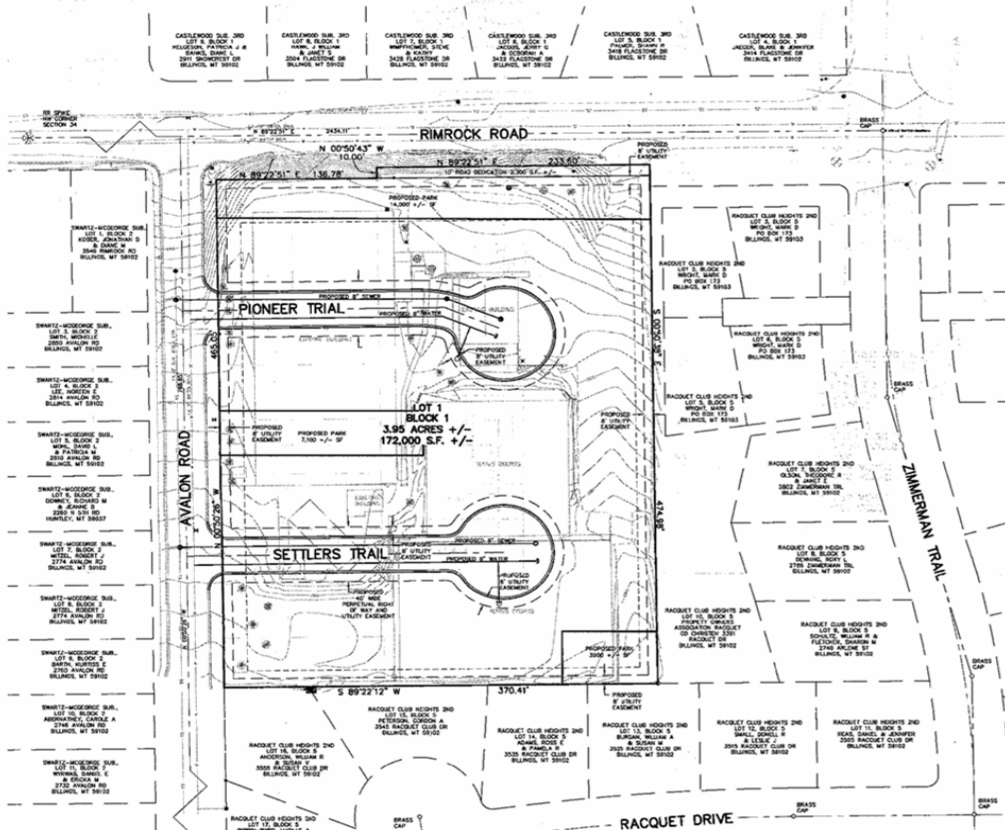
JUNE, 2007
BILLINGS, MONTANA



BASIS OF BEARING: NORTH LINE OF NW 1/4 SECTION 34
TAKEN AS N 89°22'51" E
○ = FOUND SURVEY MONUMENT, AS NOTED

PLAT DATA

| | |
|------------------------|----------------------------|
| GROSS AREA | = 4.01 ACRES |
| NET AREA | = 3.95 ACRES |
| NUMBER OF LOTS | = 1 |
| MINIMUM LOT SIZE | = 3.95 ACRES |
| MAXIMUM LOT SIZE | = 3.95 ACRES |
| LINEAL FEET OF STREETS | = N/A |
| PARKLAND REQUIREMENT | = 0.435 ACRES |
| PARKLAND DEDICATION | = 0.574 ACRES |
| EXISTING ZONING | = R-9600 |
| SURROUNDING ZONING: | |
| NORTH | = R-9600 |
| SOUTH | = PLANNED UNIT DEVELOPMENT |
| EAST | = PLANNED UNIT DEVELOPMENT |
| WEST | = R-9600 |
| EXISTING LAND USE | = RACQUET & TENNIS CLUB |
| PROPOSED LAND USE | = PLANNED UNIT DEVELOPMENT |



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Final Plat of E. D. King Subdivision 2nd Filing
DEPARTMENT: Planning and Community Services
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The final plat of E. D. King Subdivision, 2nd Filing is being presented to the City Council for approval. The subject property is zoned Residential Professional and Community Commercial and is located on the south east corner of Avenue E and Zimmerman Trail. On October 9, 2007, the City Council conditionally approved the 2-lot minor plat on 178,674 square feet (4.1 acres) of land for commercial and professional development. The owner is Latigo Development. The representing agent is Stephen Zabriskie with Engineering Incorporated.

The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of E. D. King Subdivision 2nd Filing.

Approved By: City Administrator ____ City Attorney ____

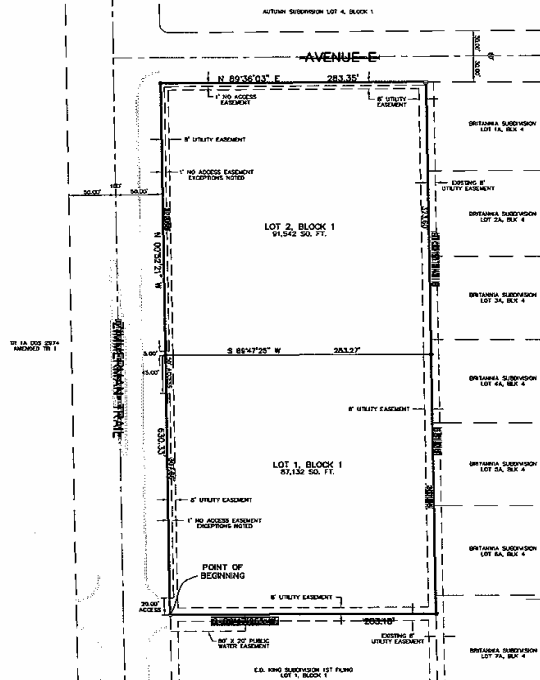
ATTACHMENT

A: Final Plat

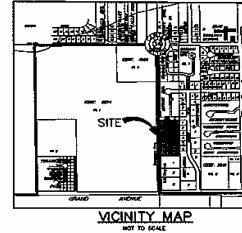
E. D. KING SUBDIVISION, 2ND FILING
 BEING TRACT C-1 OF AMENDED TRACT C OF AMENDED CERTIFICATE OF SURVEY NO. 1011
 SITUATED IN THE SE 1/4 SECTION 34, T. 1 N., R. 25 E., P.M.M.
 BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: LATIGO DEVELOPMENT LLC
 PREPARED BY: ENGINEERING, INC.
 SCALE: 1" = 50'

AUGUST, 2007
 BILLINGS, MONTANA



- BASIS OF BEARING: PLAT OF E.D. KING SUBDIVISION 1ST FILING**
- FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED "ENGINEERING INC." CAPPED REBAR.
 - SET 5/8" X 18" REBAR WITH CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR AND "ENGINEERING INC. BILLINGS MT."



CERTIFICATE OF DEDICATION

STATE OF MONTANA)
 County of Yellowstone)

KNOW ALL MEN BY THESE PRESENTS, that Latigo Development, LLC, the owner of the following described tract of land, does hereby certify that it has caused to be surveyed, subdivided and plotted this lot, block and vicinity as shown on the annexed plat, said tract being situated in the SE 1/4 of Section 34, T. 1 N., R. 25 E., P.M.M., City of Billings, Yellowstone County, Montana, said tract being more particularly described as follows, to-wit:

Beginning at a point which is the Southwest corner of Tract C-1 of Amended Certificate of Survey No. 1011; Thence from said Point of Beginning, N 03°27' W a distance of 830.33 feet; Thence S 85°36'33" E a distance of 293.35 feet; Thence S 05°24' E a distance of 831.28 feet; Thence S 89°17'23" W a distance of 293.18 feet to the Point of Beginning, said Tract containing a gross and net area of 178,674 sq. ft.

There is no park requirement for this minor subdivision pursuant to Section 76-3-621(3)(b), M.C.A. which exempts "subdivisions into parcels that are all nonresidential".

The undersigned hereby grants unto all utility companies, as such are defined and established by Montana law, and utility location companies, easement for the location, maintenance, repair and removal of their lines over, under and across the area designated on the plat as "UTILITY EASEMENT" to have and hold forever. Said tract to be known and designated as E. D. KING SUBDIVISION, 2ND FILING.

LATIGO DEVELOPMENT, LLC

By: _____
 Title: _____

STATE OF MONTANA)
 County of Yellowstone)

On this _____ day of _____, 20____, before me, the undersigned Notary Public for the State of Montana, personally appeared _____ known to me to be the person who signed this foregoing instrument as _____, to me that said company executed the same. Witness my hand and seal the day and year herein above written.

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

NOTICE OF APPROVAL

STATE OF MONTANA)
 County of Yellowstone)

This plat has been approved for filing by the Yellowstone County Board of Planning and conforms to the recommendations of this board.

Date: _____
 President: _____
 Executive Secretary: _____

ERRORS AND OMISSIONS REVIEW

I hereby certify that I have examined the annexed and foregoing plat for errors and omissions in computation 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 existing additions and plats of this City of Billings already plotted or nearly so in accordance with permit.

Examining Land Surveyor: _____
 Date: _____

CERTIFICATE OF CITY ENGINEER'S OFFICE

I hereby certify that I have examined the annexed and foregoing plat conforms with Section 76-3-61(2)(b), M.C.A., for the removal of sanitary restrictions since the plat is made a master planning area and said plat will be provided with sewage facilities for the supply of water and the disposal of sewage and solid waste.

As WITNESS WHEREOF, I have executed this CERTIFICATE OF APPROVAL this _____ day of _____, 20____.

City Engineer's Office

CERTIFICATE OF COUNTY TREASURER

I hereby certify that all real property taxes and special assessments have been paid per 76-3-61(1)(b), M.C.A.

Date: _____
 Yellowstone County Treasurer: _____
 Deputy: _____

CONSENT TO PLATING

The undersigned hereby consents to the plotting of the tract of land herein described. IN WITNESS WHEREOF, the undersigned has caused this consent to be executed and acknowledged. This consent is made pursuant to Section 76-3-61(2)(b), M.C.A.

FIRST INTERSTATE BANK

By: _____
 Title: _____

STATE OF MONTANA)
 County of Yellowstone)

On this _____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____ known to me to be the person who signed this foregoing instrument as _____ of First Interstate Bank, and who 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
 Printed Name: _____
 Residing at: _____
 My commission expires: _____

CERTIFICATE OF SURVEYOR

STATE OF MONTANA)
 County of Yellowstone)

The undersigned, a Montana Registered Land Surveyor being first day sworn, deposes and says that during the month of August, 2007, a survey was performed under his supervision of a tract of land to be known as E.D. KING SUBDIVISION, 2ND FILING in accordance with the request of the owner thereof and in conformity with the Montana Subdivision and Platting Act, and accurate description of boundaries and dimensions being in accordance with the Certificate of Dedication and as shown on the annexed plat; that the measurements found and set are of the character and occupy the positions shown hereon and that the gross and net area is 178,674 square feet.

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

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

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

CERTIFICATE OF CITY COUNCIL APPROVAL

STATE OF MONTANA)
 County of Yellowstone)

We hereby certify that we have examined the annexed and foregoing PLAT OF E.D. KING SUBDIVISION, 2ND FILING, and find that said plat conforms with the requirements of the laws of the State of Montana and the requirements of the Yellowstone County Board of Planning. It is therefore approved and the dedication to public use of any and all lands shown on this plat as being dedicated to such use are accepted.

IN WITNESS WHEREOF, we have set our hands and the seal of the CITY OF BILLINGS, MONTANA, this _____ day of _____, 20____.

By: Mayor _____
 Attest: City Clerk _____

CERTIFICATE OF CITY ATTORNEY

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

Dated: _____
 Reviewed by: _____

RECIPROCAL EASEMENT AGREEMENT

Document No. _____

SUBDIVISION IMPROVEMENT AGREEMENT

Document No. _____

T1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$481,989.14 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 25, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

T2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,281,992.79 have been audited and are presented for your approval for payment. A complete listing of the claims dated February 1, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

SUBJECT: Payment of Claims
DEPARTMENT: Municipal Court
PRESENTED BY: Scott Dobbs, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$178,174.56 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 1, 2007 to September 30, 2007 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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



T4

CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

SUBJECT: Payment of Claims
DEPARTMENT: Municipal Court
PRESENTED BY: Scott Dobbs, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$207,615.93 have been audited and are presented for your approval for payment. A complete listing of the claims dated October 1, 2007 to October 31, 2007 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

SUBJECT: Payment of Claims

DEPARTMENT: Municipal Court

PRESENTED BY: Scott Dobbs, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$196,886.01 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 1, 2007 to November 30, 2007 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

T6



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

SUBJECT: Payment of Claims
DEPARTMENT: Municipal Court
PRESENTED BY: Scott Dobbs, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$121,822.51 have been audited and are presented for your approval for payment. A complete listing of the claims dated December 1, 2007 to December 31, 2007 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Ballpark Management, Operation & Use Agreement with the Billings Mustangs

DEPARTMENT: City Council

PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: A Ballpark Steering Committee Subcommittee and the Billings Mustangs have been negotiating for about a year on the new ballpark's management, operation and use. The subcommittee included Councilmember Dick Clark, PRPL Board member Margy Bonner, City Administrator Tina Volek, City Attorney Brent Brooks and PRPL Director Michael Whitaker. The resulting, 20-year agreement provides for the Mustangs' management of the facility during the playing season of the Mustangs, American Legion and Montana State University-Billings ball clubs. The City will operate the surrounding park and, during the non-baseball season, the facility for other, public activities.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the agreement, which the Mustangs request be done Feb. 25, if possible, so the organization may begin planning the season;
- Postpone action on the agreement; or
- Direct the subcommittee to renegotiate all or part of the contract.

FINANCIAL IMPACT: The Mustangs will pay \$15,000 for the first year of the agreement, which covers approximately six months, and \$30,000 in subsequent years. The amount that can be paid by the Mustangs is limited by other donations to the facility under Federal Internal Revenue Service regulations regarding the tax-exempt status of the public bonds sold to build the facility.

RECOMMENDATION:

The subcommittee recommends approval of the agreement. Several suggestions have been received from the Council and the PRPL Board, so a revised agreement may be distributed before the Council Meeting.

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

ATTACHMENT:

A – Facility Management, Operation and Use Agreement

CITY OF BILLINGS FACILITY MANAGEMENT, OPERATION AND USE AGREEMENT

This Agreement, by and between the City of Billings, a Montana Municipal Corporation, Billings, Montana, hereinafter designated as "City," and the Billings Pioneer Baseball Club, a Montana Corporation, Billings, Montana, d/b/a Billings Mustangs, hereinafter designated as the "Ballclub," hereinafter collectively referred to as "the parties," states:

RECITALS:

The City is in the process of constructing a baseball stadium located at North 27th Street and Ninth Avenue North, in Billings, Montana, more particularly described in Exhibit "A", attached, hereinafter referred to as the "Facility;"

The Ballclub is a professional baseball club and a member of the National Association of Professional Baseball Leagues, Inc. (NAPBL);

The Ballclub owns the exclusive right to arrange, control, promote and profit from playing professional baseball in the Billings area and desires to enter into this Agreement with the City for certain activities to be conducted at the Facility;

City desires to permit the Ballclub to use the Facility to play professional baseball, and Ballclub desires to use the Facility for these purposes;

The Ballclub and the City desire that quality food, beverage and other concession services be available through concession operations located at the Facility;

When constructed the Facility will attract people to the City, provide economic benefit to the City and its residents, improve and promote tourism and enhance the tax base of the City;

The City and the Ballclub desire to permit use of the Facility by the Billings American Legion Baseball (BALB) program, the Montana State University - Billings (MSU-B) baseball program and other youth baseball organizations;

The Ballclub and the City acknowledge that the Facility will be a community asset and desire that the Facility provide a venue for multiple activities and civic events in addition to professional and amateur baseball;

The Facility will provide wholesome recreational and entertainment opportunities for the City residents; and,

The Facility will provide residents and visitors from surrounding areas with an opportunity to attend professional baseball games, without the need to travel extended distances and will thus increase the attractiveness of the City as a place in which to reside and work;

In consideration of the premises, the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each part, the parties mutually agree and covenant as follows:

FACILITY MANAGEMENT, OPERATION AND USE AGREEMENT

Section 1. Facility.

1.1 Name. The name of the Facility shall be _____ for a period of twenty (20) years from the date this Agreement is executed by the City, or from July 1, 2008, whichever occurs first. The Ballclub shall have not have any right or other interest in the name of the Facility.

1.2 Construction. Recognizing that the NAPBL and the Pioneer League require the Ballclub to have a facility in which to play professional baseball, it is understood and agreed that City and Ballclub will cooperate and use their best efforts to assure that construction of the Facility will be sufficiently complete that use can commence not later than July 1, 2008.

1.3 Design. The Facility has been designed and is being constructed to meet or exceed the Standards for Minor League Playing Facilities as set forth in Minor League Baseball Rule 58, a copy of which is attached as Exhibit "B" to this Agreement.

1.4 Administrative Offices. At all times during the term of this Agreement, the Ballclub shall have the right to use designated administrative, Ballclub office and storage space in the Facility as shown on Exhibit A attached herein, subject to the City's right of inspection by authorized City representatives during regular business hours and upon reasonable notice. The Ballclub and the City shall also have the right of shared access to, and inspection of, all common areas of the facility including the stadium, kitchens, conference room, restrooms, mechanical, custodial and ticket areas, at all times.

1.5 Expansion, enhancement and capital improvement. The City and the Ballclub agree to work together throughout the term of this Agreement toward their common goal of enhancing the Facility.

Section 2. Effective Date and Term.

2.1 Effective date. This Agreement is effective upon the date it is executed by the parties, or July 1, 2008, whichever occurs first.

2.2 Initial Period. This Agreement will expire December 31, 2017.

2.3 Options to Extend. At the end of the initial period of this Agreement, Ballclub shall have the option to extend this Agreement, upon terms to be agreed upon by the parties, for additional periods of ten (10) years.

Section 3. Management, Operation, Scheduling and Use of the Facility.

3.1 General. The Parties share the right and responsibility to manage, operate, administer, supervise and schedule the use of the Facility in a manner consistent with this Agreement and the priorities and understandings stated in this Section 3.

3.2 Priorities. Events at the Facility shall be scheduled in accordance with the following priorities: (1) Professional baseball. The Parties shall maintain and use the Facility for professional baseball games, and related functions as a first priority throughout the term of this Agreement; (2) Billings American Legion Baseball. Ballclub agrees to accommodate the game schedule and practice needs of the Billings American Legion Baseball (BALB) program to the fullest possible extent throughout the term of this Agreement, subject to the first priority of professional baseball, and upon reasonable terms and conditions, bearing in mind the long history and tradition of BALB baseball in Billings; (3) Montana State University-Billings. The Ballclub agrees to accommodate the schedule of the MSU-B Baseball program throughout the term of this agreement, subject to the priorities of professional and BALB baseball, and upon reasonable terms and conditions; (4) Youth baseball. The Ballclub understands the value to the community of encouraging the growth, development and popularity of baseball and agrees to accommodate requests by youth baseball programs to use the Facility to the extent possible and upon reasonable terms and conditions; (5) Non-baseball events. The Parties desire that the Facility provide a venue for multiple uses and civic events, subject to the priorities set forth in this Section.

3.3 "Baseball," "Baseball-related" and "Non-baseball" Events, Defined. As used in this Agreement, (1) "Baseball" events include baseball games and all activities, entertainments and promotions planned, scheduled or undertaken incidental to, in conjunction with, or during the course of any baseball game; (2) "Baseball-related" events include any activity, organized or scheduled for the purpose of facilitating, improving, promoting, honoring or financing professional or amateur baseball, its players or affiliated organizations, but not incidental to, in conjunction with or during the course of a baseball game; and (3) "Non-baseball" events include activities, entertainments, gatherings or uses that are neither "baseball" nor "baseball-related" events.

3.4 Scheduling of "Baseball" and "Baseball-related" Events. The Ballclub shall have the exclusive right and responsibility to schedule and manage baseball events at the Facility on available dates and in a manner consistent with, and subject to, the priorities stated in Section 3.2, above. The Ballclub also has the right and responsibility to schedule and manage baseball-related events at the Facility on available dates, provided that no baseball-related event involving the playing surface of the Facility may be scheduled without prior consultation with, and approval of, the City/PRPL.

3.5 Scheduling of Non-baseball Events. The City shall have the right and responsibility to schedule and manage non-baseball events at the Facility on available dates, provided that no event involving the playing surface of the Facility may be scheduled without prior consultation with, and approval of, the Ballclub.

3.6 Reserved dates for City/PRPL. On or before March 1, each year, The Ballclub will reserve and provide to City/PRPL no fewer than fifteen (15) dates and times between March 1 and September 30 on which the City/PRPL may schedule non-

baseball events for all or a specified portion of the Facility. It is understood and agreed, however, that if no event has been scheduled by City/PRPL within ten (10) days of any reserved date, such date shall be deemed jointly available to the Parties for the scheduling of baseball, baseball-related or non-baseball events on a first-come, first-served basis.

3.7 Calendar of Non-baseball Events and Master Calendar. The City shall maintain a Calendar of non-baseball events at the Facility and promptly provide notice to the Ballclub when any non-baseball event is placed on said Calendar. In consultation and cooperation with the City/PRPL, the Ballclub shall maintain a Master Calendar of all events at the Facility.

3.8 Clinics, camps and community outreach. On or before March 1 of each year the Ballclub will provide the City/PRPL Department with specified dates upon which the Ballclub, through selected professional baseball players or coaching staff will organize or make themselves available to participate in and assist with PRPL youth baseball clinics, camps and community outreach activities.

3.9 City Approval of other Use Agreement/Contract Forms. All of the Ballclub's standard forms of sublease, use agreements, contract and subcontract forms and rates applicable to users of the Facility for baseball and baseball-related events shall be subject to prior recommended approval by the City Parks and Recreation Advisory Board and final approval by the Mayor and City Council.

Section 4. Rent and annual financial review.

4.1 Fixed rental payment. For 2008, the Ballclub will pay a fixed annual rent to the City in the amount of Fifteen Thousand and No Hundredths Dollars (\$15,000.00), due on or before December 1, as compensation to City for the use of the Facility. For each year thereafter, Ballclub will pay a fixed annual rent to the City in the amount of Thirty Thousand and No Hundredths Dollars (\$30,000.00), in two equal payments of Fifteen Thousand Dollars (\$15,000.00) due on or before June 1 and December 1.

4.2 Annual review. The Ballclub shall maintain financial records in proper form. Within ninety (90) days of the close of Ballclub's fiscal year, a review of the financial condition of the Ballclub, and of the City of Billings Ballpark Permanent Fund (established in Section 6.9, below), will be conducted by the Facility Review Committee (established in Section 6.10, below). At each such year-end review, the Ballclub will provide the City with financial statements relating to Ballclub operations at the Facility and a projected budget for the coming year and the City will provide the Ballclub with an accounting of the City of Billings Ballpark Permanent Fund. Upon reasonable advance notice to the Ballclub, the City shall have the right to request, at City expense, preparation of reviewed or compiled financial statements relating to Ballclub operations at the Facility for year-end review.

Section 5. Concessions, fundraising, pricing and revenue.

5.1 Authority. The Ballclub has the exclusive right and responsibility to engage in, negotiate for and receive all revenue from ticket and concession sales, advertising, use and fundraising for all baseball and baseball-related events at the Facility, including the exclusive right to rent, lease or sell seating rights, temporary or occasional occupancy of all or a portion of the Facility, skyboxes, rooms and facilities,

advertising, merchandise, novelties, gifts, food, candy products and beverages, including alcoholic beverages, subject to applicable laws and ordinances, any of which may be sold or distributed in Ballclub's discretion from fixed or portable concession stands or vendors at the Facility. Ballclub may, but is not obligated to, contract privately for concession sales and services in connection with non-baseball events at the Facility.

5.2 Naming and advertising rights and baseball promotion. Ballclub has the exclusive right to sell naming and advertising rights, space and opportunities within the Facility and retain all revenue from such sales, including but not limited to signage, banners, scoreboard advertising, displays, announcements, program advertisements and product placements subject to the following exceptions and limitations only: (1) the right to name the Facility exercised in Section 1.1, above, and all revenue from the sale of such right, belongs exclusively to the City; (2) from June 17, 2008 to September 30, 2017, revenue received from Wendy's of Montana and First Interstate Bank for scoreboard advertising sold to defray the cost of construction of the Facility belongs exclusively to the City; (3) rights sold by the Ballclub may not extend beyond the term of this agreement without the express written consent of the City; and (4) without exception, the sale of naming rights in the Facility will be undertaken in a manner consistent with the standards of professional baseball and recognizing the Facility is intended to provide a venue and environment suitable for family entertainment.

5.3 Safe, clean concession operations and food service. The Ballclub will at all times use necessary care to provide safe, clean operations for all events at which it engages in concession sales. Ballclub agrees that all of its storage, preservation, refrigeration, preparation, cooking and delivery of food and beverage will fully comply with all standards of the City Health, Fire and Building Codes for all events at which it engages in concession sales.

5.4 Vendor Selection. The Ballclub has the exclusive right to contract with third parties for concession and vending services and to select and sell partial or exclusive concession rights for events at the Facility and to lease, rent or delegate the right to engage in concession sales for particular events at the Facility upon terms it considers appropriate and consistent with the requirements of Section 5.3, above.

5.5 Pricing. The Ballclub has the exclusive right and authority to determine and set reasonable prices and lease and rental rates for admission, concessions, advertising, sponsorships, naming rights (subject to the provisions of Section 5.2) and use of the Facility.

Section 6. Cleaning, maintenance, repairs, safety, improvements and ownership.

6.1 Duty of Ballclub. The Ballclub has the right and responsibility to regularly clean, maintain, preserve, repair and safely operate the Facility in accordance with this Section and applicable laws and in such a manner as to meet or exceed all applicable standards of professional baseball.

6.2 Duty of City. The City has the right and responsibility to clean, maintain, preserve, repair and safely operate the Facility, except the playing surface, during and immediately following each non-baseball related event it schedules pursuant to Section 3.7, and at all times to maintain, preserve and safely manage the grounds of Athletic

Park Block outside the confines of the Facility walls, including but not limited to sidewalks, landscaping, artwork, Memorials, parking lots, protective netting and related structures.

6.3 Playing surface, grounds and irrigation. The Ballclub has the exclusive right and responsibility to maintain, repair and prepare the baseball playing surface. The City shall be responsible for the reasonable cost of maintenance, repair and preparation of the playing surface, outside the ordinary course of Ballclub operations, necessitated by non-baseball events. The Ballclub shall maintain the grounds within the exterior walls of the Facility in a manner that meets or exceeds all Applicable Standards, including maintenance of the irrigation system within the Facility.

6.4 Cleaning. The Ballclub agrees that all public areas within the Facility, including seating, entrances, restrooms and concession facilities will be cleaned daily with approved cleaning agents and procedures as needed. The entire Facility will be cleaned at least monthly from April to September.

6.5 Maintenance and utilities within the Facility. The Ballclub shall pay all utility charges and regularly perform all routine maintenance within the Facility, including but not limited to: painting, plumbing, mechanical, HVAC, and electrical and other needed repairs in accordance with professional building management standards by knowledgeable service personnel, or as directed by the City. The Ballclub shall use its own equipment for all such maintenance or separately contract for such maintenance and repairs. To insure Ballclub's compliance with cleaning, maintenance, all on-site concession operations and City-authorized improvements, the City's Facilities Manager or any other city representative shall have the right to inspect the Facility common areas at all reasonable times.

6.6 Repairs. Needed repairs within the Facility will be undertaken by the Ballclub as soon thereafter as can reasonably be arranged. The City shall be responsible for the cost of repair of damage occurring at non-baseball events.

6.7 Restrooms. The Ballclub agrees the public restrooms will be stocked, supplied and checked hourly during baseball and baseball-related events and that cleaning will be performed as needed. The City agrees it is responsible for restocking, supplying, checking and cleaning the public restrooms during and following non-baseball events.

6.8 Fire and life safety code compliance. The Ballclub agrees to maintain fire safety and emergency exit systems at all times that the Facility is in use, as required by the Billings Fire Department. In addition, the Ballclub agrees to comply with the Life Safety Code, and in specific, the following items: (1) Emergency lighting shall be provided as required. (2) Fire extinguishers shall be inspected monthly and the date and initials of each inspection noted on an inspection card attached to each extinguisher. The fire extinguishers will be serviced and properly mounted with Type K extinguishers placed in or near each cooking area. (3) Fire hoses shall be inspected monthly during the operating season and all deteriorated hoses and corroded hose connections will be replaced according to the Uniform Fire Codes. Compliance with the above Fire Codes will be done at Ballclub expense. (4) The Facility is smoke free and smoking shall not be permitted anywhere within the ticket booths and entrance fences, locker rooms, spectator seating, and field areas, except in an approved and clearly designated and signed location outside the stadium equipped for tobacco use. (5) The

handicapped accessibility and seating areas shall be appropriately equipped and clearly indicated and supervised by assigned staff during all games.

6.9 Capital repair and improvement fund. The City has created and shall administer a fund known as the "City of Billings Ballpark Permanent Fund," which is a permanent fund of the City available for major repairs and capital improvements to the Facility (work beyond the scope of the Ballclub's routine maintenance and repair duties described in this Agreement). Separate accounts within the permanent fund may be established and earmarked for particular uses, plans and projects within the Facility or Athletic Park Block. Prior approval of the Facility Review Committee created in Section 6.10, below, is required to authorize any expenditure of funds from the Ballpark Permanent Fund. Any single expenditure from the Ballpark Permanent Fund exceeding Ten Thousand dollars (\$10,000) must receive prior approval from the Mayor and City Council. Regardless of the amount of any expenditure, all contracts must comply with City Purchasing manual and City contract rules.

6.10 Facility Review Committee. A Facility Review Committee consisting of one authorized representative of the City's Parks, Recreation and Public Lands, the City's Park Board and the Ballclub shall as necessary periodically review the management, operation, use and maintenance of the Facility. This Committee shall have the authority to approve expenditures in amounts up to Ten Thousand (\$10,000) dollars from the Permanent Fund referenced in Section 6.9.

6.11 Remedies. In the event either Party does not satisfactorily perform its cleaning, upkeep and maintenance obligations under this Agreement, the other Party has the right to hire a third-party to perform such obligations and charge the cost of such cleaning, upkeep or maintenance to the non-performing Party.

6.12 Ownership. All permanent fixtures, repairs and improvements to the Facility are deemed part of the Facility and the property of the City.

Section 7. Fireworks and displays.

Fireworks and similar displays will be permitted in accordance with applicable laws and ordinances and in the discretion of appropriate City authorities.

Section 8. Continuation of professional baseball at the Facility.

8.1 Continuing operations. During the term of this Agreement, the Ballclub agrees to use best efforts to maintain membership in the NAPBL and operate a professional baseball team in Billings, Montana, at the Facility.

8.2 Covenant not to relocate. The Ballclub agrees to schedule and play its home games at the Facility during the entire term of this agreement, and provided that the Facility continues to meet or exceed all applicable standards of professional baseball, covenants not to relocate the playing site of its home games without the prior written consent of the City.

Section 9. Miscellaneous

9.1 Ballclub employees. It is understood and agreed that no agent, servant, employee, contractor or subcontractor of the Ballclub shall under any circumstances be deemed an agent, servant or employee of the City, and that no agent, servant or employee of the City shall be under any circumstances deemed an agent, servant of the Ballclub.

9.2 Announcement. The Ballclub agrees to make the following announcement before each event that takes place at the Stadium:

"Ladies and Gentlemen:

Welcome to _____ owned by the City of Billings, and home of the Billings Mustangs Professional Baseball Club. For your safety, the Mustangs and the City of Billings ask you to take a moment to familiarize yourself with the nearest passageways and exits to be used in case of fire or other emergencies.

These exits are located at (description of exits).

Also, we would like to remind you that _____ is a SMOKE-FREE facility by order of the Billings City Council.

Thank you for your cooperation."

9.3 Assignment. This Agreement is not assignable by the Ballclub in whole or in part without the prior written approval of the City.

9.4 Indemnification. The Ballclub and each other organization using the Facility shall indemnify and have the duty to defend the City and hold it harmless from and against all claims, liabilities, damages, losses and expenses arising out of or resulting from the negligent acts or omissions of anyone they employ directly or indirectly, including sub-contractors, agents and volunteers. All users shall agree to, acknowledge and sign applicable document(s) containing this indemnification.

9.5 Insurance. The Ballclub and each other organization using the Facility shall annually renew and carry liability and property, fire and casualty insurance, including liquor liability insurance (when alcohol will be sold and/or consumed) as approved by the Billings City Attorney covering the Ballclub and all other users. The Ballclub and all other seasonal and single event users shall obtain a Commercial General Liability insurance policy in an amount as set forth below, and under the terms and conditions as approved by the Billings City Administrator or Billings City Attorney. The Ballclub and all other seasonal and single event users shall also obtain a separate liquor liability insurance policy in the amount of One Million and no/100 Dollars (\$1,000,000) per Occurrence when any alcoholic beverages are sold or consumed during any event. The required insurance will be equivalent to the minimum amount of Seven Hundred and Fifty Thousand and no/100 Dollars (\$750,000) per claim, and a minimum of One Million Five Hundred Thousand and no/100 Dollars (\$1,500,000) per occurrence (MCA Section 2-9-108(1)(2007)) and shall be in effect for the entire baseball use season including practice and scheduled games for the term of this agreement. Prior to the start of the use of the Facility each year, the Ballclub and all other permitted users shall provide the City a Certificate of Insurance made out to the City of Billings and naming the City of Billings as a primary, non-contributory insured in all categories

of insurance. The City reserves the right to require reasonable increases in insurance coverage or changes in types of coverage as the circumstances or insurance industry practices may require. The City shall be notified by Ballclub or its insurer in writing thirty (30) days prior to any cancellation or nonrenewal of the policy. The notice of cancellation must be sent to the City.

9.6 Ballclub agrees not to discriminate in any manner on the basis of gender, marital status, race, color, creed, handicap, height, weight, national origin with respect to any applicant or employee, and will use its best efforts to confirm in all respects to the pertinent provisions of federal, state and/or local laws, ordinances, rules and regulations of employment practices. Ballclub agrees that in serving the public, its employees shall not, on the grounds of gender, marital status, race, color, creed, handicap, height, weight, national origin, discriminate or permit discrimination or refuse to serve a person or group of persons in any manner prohibited by federal, state or local laws, rules, ordinances and regulations.

9.7 Stadium Security. The Ballclub shall provide two (2) uniformed Police Officers at each Ballclub Home baseball game.

9.8 Breach. Should any material condition of this Agreement be violated, a notice thereof in writing shall be issued; and if said breach is not corrected within five (5) days of said notice, this Agreement may be terminated at the option of the Party wronged without further notice; provided, however, that this clause shall not necessitate the termination of this Agreement, nor shall it prevent the issuance of any other remedy at law or in equity.

9.9 Attorney fees and costs. In the event it becomes necessary for any Party to this Agreement to retain an attorney to enforce any of the terms or conditions of the Agreement, then the prevailing party shall be entitled to a reasonable attorney's fee and costs, including such fees and costs for in-house counsel.

9.10 Amendment and modification. The Parties hereby agree that any amendments or modifications to this Agreement or any provisions herein may be requested at any time during the term of this Agreement and, if mutually agreed upon, shall be made in writing and executed in the same manner as the original document and shall, after execution, become a part of this Agreement. Negotiations for amendments or modifications of this Agreement shall be conducted in good faith and in a manner consistent with the spirit and purpose of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this _____ day of _____, 20____.

CITY:

CITY OF BILLINGS, a Montana
Municipal Corporation

By: _____
Mayor

2/19/08 Draft

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ATTEST:

Seal

By: _____
City Clerk

APPROVED:

CITY ATTORNEY

BALLCLUB:

THE BILLINGS PIONEER BASEBALL CLUB,
A Montana Corporation

By: _____
Gary Roller, General Manager

By: _____
Elwood "Woody" Hahn, President

ATTEST:

Seal

By: _____
Joe Studiner, Secretary

2/19/08 Draft

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Maintenance and Transfer of Right-of-Way Agreement for the Shiloh Road Corridor Between the Montana Department of Transportation and the City of Billings

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: Montana Department of Transportation (MDT) is developing a highway construction project on Shiloh Road. Shiloh Road is not on the state maintenance system and therefore cannot be maintained by MDT. As such, MDT and the City of Billings desire to resolve the maintenance issue to facilitate development of the project.

ALTERNATIVES ANALYZED:

- Approve this Maintenance and Transfer of Right-of-Way Agreement.
- Do not approve this Maintenance and Transfer of Right-of-Way Agreement.

FINANCIAL IMPACT: There is no cost to the City of Billings for the transfer of right-of-way. There will be an annual cost for maintenance of the Shiloh Road corridor. The estimated annual maintenance costs to the Street/Traffic Division for the Public Works Department and the estimated Street Maintenance Fee revenue are shown on Attachment B. Note that due to FY 2008 budget cuts the Street/Traffic division was required to cut one full time position and reduce seasonal positions from 12 to 5 ½. Currently the properties along Shiloh Road are assessed for street maintenance fees for a total of around \$40,000 per year. These fees are currently being used by Public Works for maintenance today. Once fully developed the properties along Shiloh Road will assessed for street maintenance fees for a total of around \$230,000 per year.

RECOMMENDATION

In order for staff to recommend that Council approve this Maintenance and Transfer of Right-of-Way agreement for the Shiloh Road corridor between the MDT and the City of Billings, the shortfalls in funding for each year would be required to be offset by increases in Street Maintenance Fees.

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

ATTACHMENTS

- A. Maintenance and Transfer of Right-of-Way Agreement
- B. Shiloh Road Maintenance Estimates in Today's Dollars

SHILOH ROAD CORRIDOR-BILLINGS – STPU 1031(2) – CN4666

TRANSFER OF OWNERSHIP AND MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into, by and between the State of Montana, acting by and through its Department of Transportation, hereinafter called MDT, and the City of Billings hereinafter called the City.

WITNESSETH THAT:

WHEREAS, MDT is developing a highway construction project on Shiloh Road in Billings; and,

WHEREAS, Shiloh Road is not currently on the State Maintenance System and therefore cannot be maintained by MDT; and,

WHEREAS, the City has agreed in principle that it will accept full maintenance responsibility for the road after completion of the planned construction project; and,

WHEREAS, MDT and the City wish to fully disclose in advance the terms as to what maintenance activities will be required of the city upon completion of the construction project and facilitate development of the project:

NOW THEREFORE, MDT and the City agree as follows:

1. That MDT will be responsible for all aspects of the design and construction of the project including the preparation of all bid documents, contract specifications and contract administration.

2. That MDT will transfer ownership of all State property within the new right-of-way to the City for those portions, and only those portions, of the corridor that are reconstructed as part of this project after completion of right-of-way acquisition pursuant to 60-4-201 MCA. The City, by accepting the right-of-way transfer, agrees that it will assume full maintenance responsibility including but not limited to winter maintenance, road repair, and traffic control devices; and,

3. That the City will be responsible for controlling access in accordance with the Limited Access Control Resolution passed by the Montana Transportation Commission and recorded in the Office of the Clerk and Recorder of Yellowstone County, Montana as Document No. 3425016.

4. That the City will be afforded the opportunity to concur in the project design and specific design features such as pedestrian underpasses, noise walls, utilities, etc., but that MDT

retains final decision-making authority for the same. It is understood that design features required by the Environmental Assessment (FONSI) completed for this project must be constructed and maintained.

5. That, following completion of construction, the City will accept maintenance responsibility for those portions of the corridor that are reconstructed as part of this project roadway as defined in 60-1-103 MCA. The city will be invited to participate in the final inspection of the project and MDT will provide the City with a copy of the formal "Certificate of Completion". The City will accept responsibility for maintenance of those portions of the corridor that are reconstructed as part of this project as of the date on the Certificate of Completion and the transfer of the right-of-way ownership interests per 60-4-201 MCA.

6. Pursuant to 60-4-201 MCA, the city agrees that upon acceptance of the right-of-way and the completed construction project, that the right-of-way will remain as public right-of-way for transportation purposes and that no portion of the right-of-way may be sold or leased or otherwise used except as public right-of-way.

7. The parties understand and agree that MDT is fully responsible for design and construction of the project and agrees to protect, defend and indemnify the city for any claims, losses or damages that arise from, are allegedly due to the design or construction of the project. The City's acceptance of the right-of-way and maintenance responsibility for those portions of the corridor that are reconstructed as part of this project constitutes an acceptance by the city to assume full responsibility for the maintenance after transfer of the right-of-way and will defend, protect and indemnify the State and Department of Transportation and save it harmless from any claims that may hereafter be brought alleging any claims of loss or damage arising from, or allegedly due to the failure of the City to maintain the project after the right-of-way and ownership is transferred.

8. This agreement does not take the place of or preclude the need for a standard City Agreement for the project.

IN WITNESS WHEREOF, the Director of Transportation or his authorized representative has signed on behalf of the State of Montana, and the Mayor of Billings on behalf of the City, has signed and affixed hereto the seal of the City.

DATED this _____ day of _____, 2008

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

Jim Lynch
Director of Transportation

By _____
Administrator-Engineering Division Approved for Legal Content

CITY OF BILLINGS

ATTEST:

CARI MARTIN, City Clerk By _____
RON TUSSING, Mayor

I, CARI MARTIN, Clerk of the City of Billings hereby certify that the above agreement was regularly adopted by the City Council at a meeting held on the ____ day of _____, 2008; and the Council authorized the Mayor to sign this agreement on behalf of the Council.

(Signature)

APPROVED FOR LEGAL CONTENT

City Attorney

Attachment B

**Shiloh Road Maintenance Estimates in Today's Dollars
Poly Drive to Just South of Zoo Drive**

February 11, 2008

| | |
|--|------------|
| Approximate 2008 Street Maintenance Fees Being Collected | \$ 40,000 |
| Approximate Street Maintenance Fees Collected at Full Development (15 years) | \$ 230,000 |
| Approximate Street Maintenance Fees Increase Per Year due to development | \$ 13,571 |

| Year | Estimated Street/Maint. Fees Collected | O & M Costs Per Year | Save Funding Each Year for Crack Seal | Save Funding Each Year for Overlay | Balance for Each Year | Cumulative Total |
|------|--|-------------------------|---|--|-----------------------------|---------------------|
| 1 | \$ 40,000 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (264,000) | \$ (264,000) |
| 2 | \$ 53,571 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (250,429) | \$ (514,429) |
| 3 | \$ 67,143 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (236,857) | \$ (751,286) |
| 4 | \$ 80,714 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (223,286) | \$ (974,571) |
| 5 | \$ 94,286 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (209,714) | \$ (1,184,286) |
| 6 | \$ 107,857 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (196,143) | \$ (1,380,429) |
| 7 | \$ 121,429 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (182,571) | \$ (1,563,000) |
| 8 | \$ 135,000 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (169,000) | \$ (1,732,000) |
| 9 | \$ 148,571 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (155,429) | \$ (1,887,429) |
| 10 | \$ 162,143 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (141,857) | \$ (2,029,286) |
| 11 | \$ 175,714 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (128,286) | \$ (2,157,571) |
| 12 | \$ 189,286 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (114,714) | \$ (2,272,286) |
| 13 | \$ 202,857 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (101,143) | \$ (2,373,429) |
| 14 | \$ 216,429 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (87,571) | \$ (2,461,000) |
| 15 | \$ 230,000 | \$ (170,000) | \$ (4,000) | \$ (130,000) | \$ (74,000) | \$ (2,535,000) |

Assumptions and Notes:

1. The numbers above are rough estimates.
2. Parcels outside the city limits will be developed with a mixture of commercial and residential zoning.
3. This assumes a 15 year built out for development along this corridor and linear growth
4. All values are in today's dollars
5. Crack sealing will occur every 5 years.
6. Overlay every 15 years.
7. The roundabouts will be concrete and will not require overlays.
8. The street maintenance fees collected from Shiloh must also be used to help maintain all roads in Billings

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Resolution—Use of Council Contingency for Branding Billings

DEPARTMENT: City Council/City Administrator's Office

PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: The Mayor has asked that the City Council consider authorizing an expenditure of up to \$2,000 from Council Contingency for the Branding Billings program. The funds will be used for expenses of developing a “place” brand useful in marketing the city, and for launching the brand to the public in July.

Branding Billings is a cooperative effort to which the Chamber of Commerce and the Economic Development Corporation have each contributed \$1,000. The Yellowstone County Commissioners also are being asked to contribute \$2,000.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the use of up to \$2,000 for the Branding Billings effort;
- Modify the amount; or
- Take no action at this time.

FINANCIAL IMPACT: Council Contingency has a full, unused balance of \$65,000 at this time. A resolution is required to authorize a payment from the Contingency Fund.

RECOMMENDATION

Staff recommends that the Council authorize the expenditure of up to \$2,000 from Council Contingency to the Branding Billings program.

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

ATTACHMENT: Resolution

RESOLUTION NO. 08- ____

**A RESOLUTION BY THE CITY COUNCIL OF BILLINGS, MONTANA,
AUTHORIZING THE EXPENDITURE OF COUNCIL CONTINGENCY FUNDS
FOR BRANDING BILLINGS**

WHEREAS, a community effort called “Branding Billings” is attempting to create a unique identity for Billings that will contribute to economic development and community pride; and

WHEREAS, the City of Billings has been asked to contribute \$2,000 to the effort, to help match other groups’ support; and

WHEREAS, the funding source for the Branding Billings effort is the Council Contingency Fund, the use of which requires a resolution of the governing body.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BILLINGS, MONTANA, that it approves the payment up to \$2,000 from the Council Contingency Fund for its portion of the Branding Billings effort.

ADOPTED this 25th day of February, 2008, by the City Council of Billings, Montana.

APPROVED BY:

Ron Tussing, Mayor

ATTEST:

Cari Martin, City Clerk

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: A Resolution Amending Resolution 07-18636 and Amendment to the Downtown Billings Partnership Development Agreement Dated November 26, 2007

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The Council is being asked to adopt a Resolution and development agreement amendment that allocate the remaining funds in the 1976 downtown Tax Increment District (TID). On November 26, 2007 the Billings City Council approved a resolution that outlined the conditions under which the 1976 downtown TID would sunset and approved a development agreement with the Downtown Billings Partnership that specifies how the final allocation of TID funds are to be expended. Project conditions have changed since November and an internal audit of the TID Fund determined that more money will be available for projects than was previously estimated. The attached Resolution and development agreement are intended to reserve the TID funds for downtown improvements. They must be approved by March 1, 2008, when the TID sunsets, or the funds will revert to the various taxing jurisdictions.

ALTERNATIVES ANALYZED: The Council may:

- Approve the proposed Resolution and development agreement amendment. The changes refine some previously approved projects and add new ones to the list of projects to be accomplished in the TID.
- Amend and approve the proposed Resolution and development agreement amendment to change or re-order the proposed projects. Funds allocated in this way may be preserved for the identified projects and any remaining funds will revert to the other taxing jurisdictions in the city.
- Disapprove the proposed Resolution and development agreement. This action will leave the previously enacted Resolution and development agreement in place and any remaining funds in the TID account will revert to the taxing jurisdictions.

FINANCIAL IMPACT: The Finance Division estimates that up to \$4.9 million will remain in the TID Fund on March 1, after all debt payments have been made. The previously approved development agreement describes four projects that have descending priority; GSA courthouse land assemblage, County parking lot, railroad quiet zone and one-way street conversions to two-way. The first two projects have been refined and the required funding is up to \$800,000 for the two projects. \$446,200 will be paid to the County so that it can temporarily and permanently replace employee parking that it will lose in the land exchange and it has released the DBP and City from any further project assistance obligations. The remainder of the \$800,000 will be used for the courthouse land assemblage. The quiet zone has been allocated \$1 million and the City and Montana Dept. of Transportation have executed an agreement that the City may proceed with the project. Under the present development agreement, any remaining funds are to be spent on one-way street conversions. \$220,000 of the TID account was previously obligated for DBP operations in FY 2009 so that its staff can carry out the identified projects. City staff is reluctant to endorse spending the remaining balance of approximately \$3 million on that loosely described project. If those funds are not committed through a development agreement or contract by March 1, they will revert to the taxing entities. The City's share of the \$3 million balance is approximately \$650,000 and would be distributed proportionally to the General Fund, Public Safety Fund, Library Fund and MET Transit Fund.

RECOMMENDATION

Staff recommends that Council approve the Resolution that amends Resolution No. 07-18636 and that it approve an amendment to the City/DBP development agreement.

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

ATTACHMENTS

A: Development Agreement Amendment

INTRODUCTION

The Council is being asked to approve a Resolution that amends Resolution No. 07-18636 concerning the downtown TID sunset and an amendment to the City – DBP development agreement that was approved in November, 2007. The amendments will allow the City to retain the final TID dollars and to use them for the specified projects.

BACKGROUND

In November, 2007 the City Council adopted Resolution No. 07-18636 and approved a development agreement with the Downtown Billings Partnership. The Resolution established the downtown TID sunset, including specifying the final projects and that the City plans to use the account balance and 2007 tax collections to implement those projects past the official sunset date. This action is allowed by state law, 7-15-4292 MCA. Since November, some of the projects have been solidified and others have changed. An internal audit identified more available funds than were predicted in November, so additional projects may be completed if they are subject to loan commitments, contracts or a development agreement.

The DBP executive committee met on February 11, 2008 to confirm the known projects, to adjust them as needed and to identify additional projects that could be completed due to the extra funding. The DBP recommends that the Council approve a new resolution that describes the TID sunset and an amended development agreement that commits the funds to these projects. The projects and recommended fund allocations are as follows, in descending priority:

- GSA courthouse land assemblage, including
County parking improvements \$800,000
- Railroad quiet zone \$1,000,000
- Downtown light district \$900,000
- ArtSpace Artist Market Study \$35,000
- Large Project Gap Funding \$1,700,000
- Cooperative Security Project \$252,000

The funding allocation also commits \$220,000 for DBP FY 2009 operations.

The first three projects were approved in November but the dollar commitment to the GSA and County parking projects has been reduced. The downtown light district is being planned and should be created no later than March 10th. The district will replace the Northwest Power Lighting District 97 with a City owned district. The \$900,000 contribution will reduce the property owners' assessed costs from \$2.7 million to \$1.8 million. The debt service and power costs will nearly equal the present assessments and after the debt is retired, property owners will pay for power only. The ArtSpace market study is a necessary step in the predevelopment phase of an ArtSpace live/work project. The study's survey will determine the size and the nature of the market for the project. It tells how many live/work units the local arts community can fill and whether there are special considerations, such as the need for specific kinds of studio space that might influence the design and scale of the project.

The large project gap funding program is an existing DBP program. Two projects are under consideration, both having been identified in 2006-2007 as legacy projects that the DBP should pursue to increase the taxable value of the TID. The two potential projects are the redevelopment of the Northern

Hotel or redevelopment of the Moss/Babcock theater property. They require substantial private investment to qualify for the public assistance. DBP is recommending that a time limit of December 31, 2008 be established for the large project. If the project is not finalized by that date, the funds will be released for the cooperative security project and any balance will revert to the light maintenance district project. The cooperative security project is a proposal from the Downtown Alliance to establish a greater police presence in the downtown and thereby to enhance safety and security. The program would pay the salary, benefits, operating costs and equipment for a full time City police officer that would be dedicated to the downtown neighborhood. The money will fund the program for three (3) years, during which time the Downtown Alliance will fund-raise and continue the program after the grant funding expires.

RECOMMENDATION

Staff recommends that Council approve the Resolution that amends Resolution No. 07-18636 and that it approve an amendment to the City/DBP development agreement.

ATTACHMENTS

A: Development Agreement Amendment

AMENDMENT TO
DEVELOPMENT AGREEMENT

This Amendment to Development Agreement (“Amendment”) is entered into this 25th day of February, 2008, by and between the CITY OF BILLINGS, a municipality of the State of Montana (“City”) and DOWNTOWN BILLINGS PARTNERSHIP, INC. an I.R.C. §501(c)(4) Montana non-profit corporation, (“DBP”) and DOWNTOWN DEVELOPMENT CORPORATION, an I.R.C. §501(c)(3) Montana non-profit corporation, (“DDC”). Both DBP and DDC have principal places of business in Billings, Montana and are collectively referred to herein as “Developer”.

WHEREAS, on November 13, 2007, City and Developer entered into that certain Development Agreement (“Development Agreement” or “Agreement”) to establish the terms, conditions and priorities for completion of identified urban renewal projects and for use of tax increments to pay the costs of or incurred in connection with these projects.

WHEREAS, the City by Resolution No. 07-18636 approved and allocated tax increment funds for the urban renewal projects identified therein and in the Development Agreement.

WHEREAS, City and Developer have entered into a development agreement with Yellowstone County, BSEDA and White Family LLC, dated January 29, 2008 for Project 1 as identified in the Development Agreement, and have now funded all obligations related to Project 2 as identified in the Development Agreement, and have received a release from Yellowstone County for all obligations of City and Developer related to Project 2.

WHEREAS, City and the Montana Department of Transportation (MDT) have entered into a binding contract for the completion of Project 3 as identified in the Development Agreement, and City has allocated the sum of \$1,000,000 for Project 3.

WHEREAS, the urban renewal projects have been refined and changed and additional tax increment funds have been identified that should be committed to additional downtown urban renewal projects.

WHEREAS, City and Developer wish to amend the Development Agreement to reflect the status of the urban renewal projects and to include new approved urban renewal projects identified in this Amendment as Projects 4, 5, 6, 7 and 8, and to permit retention and use of funds remaining in the special fund or reserve fund in accordance with the requirement of §7-15-4292(2)(b)(i) MCA.

WHEREAS, the urban renewal projects described in this Amendment will improve the public experience and directly benefit the public and conform to the Downtown Billings Framework Plan.

AGREEMENT

NOW, THEREFORE, City and Developer hereby agree as follows:

1. Amendments to Development Agreement:

(A) Section 2.4 of the Development Agreement shall be deleted in its entirety and replaced with the following:

2.4 Railroad Quiet Zone Project. The second priority Urban Renewal Project shall be to develop and implement the Railroad Quiet Zone within the District ("Project 3"). Since 2005, DBP has worked closely with the City, including the City of Billings Public Works Department, to plan, design and implement a Railroad Quiet Zone under the provisions of federal and state law and to identify the equipment and construction requirements to complete a Railroad Quiet Zone within the District. City has paid to Developer and Developer has allocated the sum of \$1,000,000 of the TIF Funds to implement Project 3. Developer shall allocate these TIF Funds to the City of Billings Public Works Department for this Project and Developer shall work with the Public Works Department to monitor adherence to the Plan. All remaining TIF Funds shall be allocated, paid and used for the approved urban renewal projects as described in Sections 2.5 through 2.9 of this Agreement.

(B) Section 2.5 of the Development Agreement shall be deleted in its entirety and replaced with the following:

2.5 Downtown Street Improvement Light Maintenance District Project. The third priority Urban Renewal Project shall be to allocate up to \$900,000 of remaining TIF Funds to the Street Improvement Light Maintenance District 304 ("SILMD 304") ("Project 4"). SILMD 304 has been the subject of various studies and meetings between City staff and downtown property owners to replace the street lights and traffic signals to provide safer intersection lighting and mid-block pedestrian lighting. City shall allocate \$900,000 of TIF Funds to offset the costs for SILMD 304.

(C) New Sections 2.6, 2.7, 2.8 and 2.9 shall be added to the Development Agreement and shall provide as follows:

2.6 ArtSpace Artist Market Study. The fourth priority Urban Renewal Project shall be to allocate the sum of \$35,000 for the study and predevelopment phase of an ArtSpace live/work project ("Project 5"). The study will determine the size and nature of the market for such a development project and determine the number of live/work units and the types of studio space that might influence the design and scale of such a project. City shall pay to Developer and Developer shall allocate the sum of \$35,000 for Project 5.

2.7 TIF Large Project Grant Program. The fifth priority Urban Renewal Project shall be to allocate any balance of TIF Funds to the TIF Large Project Grant Program ("Project 6")

using the approved application attached herein as “Exhibit A”. Developer shall manage this grant program and award funding to qualified development project(s) pending approval of a project specific development agreement. If Developer is unable to identify and approve a qualified project before December 31, 2008, the TIF Large Project Grant Program shall expire and any and all remaining TIF Funds shall be allocated and managed by Developer for purposes of Sections 2.8 and 2.9 below.

2.8 Downtown Cooperative Security Pilot Program. The sixth priority Urban Renewal Project shall be to implement a Downtown Cooperative Security Pilot Program that shall fund a Downtown Resource Officer assigned by the Billings Police Department (“Project 7”). The allocation to Project 7 shall not exceed \$252,000. Any remaining TIF funds, after fully funding Project 7, shall be then allocated as provided in Section 2.9 below.

2.9 Remaining Funds to Project 4. The seventh priority Urban Renewal Project shall be to allocate any remaining TIF Funds to SILMD 304, identified as Project 4 above (“Project 8”). City shall pay to Developer and Developer shall allocate any and all remaining TIF Funds for the implementation of Projects 4 and 8. Provided, however, that City and Developer reserve the right on City’s approval to allocate and use any remaining TIF Funds for the Urban Renewal Projects identified in the Agreement and this Amendment.

(D) Section 3.3 of the Agreement shall be deleted in its entirety and replaced with the following:

3.3 Release of Funds for Urban Renewal Projects. In addition to the payment for administrative services set forth in Section 3.2 above, City will release the TIF Funds to Developer as follows:

- (a) City shall pay Developer such portion of the TIF Funds as are necessary for land acquisition and/or assemblage for Project 1, in accordance with the development agreement between City, Developer, Yellowstone County, Big Sky EDA and White Family LLC dated January 29, 2008, in the sum of \$353,800. The funds may be paid into escrow for real estate closing purposes. Developer may take title to acquired or assembled land as agent of City and shall hold such land in trust for City. No transfer, use or encumbrance of such land or property by Developer shall be made without City’s prior written consent. City may at any time and in its sole discretion require Developer to transfer title to such property into City’s name.
- (b) At the date of this Amendment, Project 2 has been funded in the sum of \$446,200 and completed.
- (c) At the date of this Amendment, City and Developer have entered into a contract with Montana Department of Transportation and all TIF Funds necessary for completion of Project 3 in the sum of \$1,000,000 have been committed to Project

3. City and Developer shall promptly deliver such funds to the City of Billings Public Works Department to provide goods and services for completion of Project 3.

- (d) City and Developer shall pay the sum of \$900,000 to SILMD 304, for the purpose of funding Project 4. City and Developer shall promptly deliver such funds to the City of Billings Public Works Department to provide goods and services for completion of Project 4.
- (e) City shall pay the sum of \$35,000 to Developer, for the purpose of funding Project 5. Developer shall promptly pay such funds for the goods and services for completion of Project 5.
- (f) City shall pay Developer any remaining TIF Funds after fully funding Projects 1 through 5, for the purpose of funding Project 6. If Developer is unable to identify and approve a qualified project before December 31, 2008, the TIF Large Project Grant Program shall expire and any and all remaining TIF Funds shall be allocated and managed by Developer for purposes of Projects 7 and 8.
- (g) City shall pay Developer any remaining TIF Funds after fully funding Projects 1 through 6, up to the sum of \$252,000, for the purpose of funding Project 7.
- (h) City shall pay any and all remaining TIF Funds after fully funding Projects 1 through 7, if any, to reduce the assessed costs for Projects 4 and 8.

(E) Section 5.1 of the Agreement shall be deleted in its entirety and replaced with the following:

5.1 Schedule of Performance. Developer shall proceed expeditiously to complete the Urban Renewal Projects in accordance with the performance schedule set forth below

Project 1. City and Developer have entered into binding agreement(s) for the land acquisition and/or assemblage for Project 1. Developer anticipates that GSA and the selected developer for the new Federal Courthouse will complete a final construction and development agreement by December 31, 2009 and complete construction of the new Federal Courthouse by December 31, 2012.

Project 2. At the date of this Amendment, Project 2 has been completed.

Project 3. Developer estimates that all construction work for Project 3 shall be completed by December 31, 2009.

Projects 4 and 8. Developer estimates that construction work for Project 4 and 8 will commence no later than December of 2008.

Project 5. Developer estimates that the study to be completed as Project 5 shall be completed no later than December of 2008.

Project 6. Developer estimates that all construction work for Project 6, will commence no later than December 31, 2009 and be completed within a reasonable time frame as identified by the criteria listed set forth in Exhibit A.

Project 7. Developer estimates that to the extent TIF Funds are available for Project 7, the program shall commence no later than December of 2009.

2. Effective Date:

This Amendment shall be effective as of February 25, 2008.

3. Effectiveness of Development Agreement:

Except as expressly provided herein, the Development Agreement remains valid and effective, and nothing in this Amendment shall be deemed to waive or modify any of the provisions of the Development Agreement, or any amendment or addendum thereto. In the event of any conflict between the Development Agreement, this Amendment, or any other amendment or addendum hereto, the document later in time shall prevail.

IN WITNESS WHEREOF, the parties have executed this Amendment to Development Agreement on the day and year first written above.

City of Billings ("City")

By: _____
Its: _____

STATE OF MONTANA)
 :SS
County of Yellowstone)

This instrument was acknowledged before me on _____ by
_____ as _____ of City of Billings.

Printed Name: _____
Notary Public for the State of Montana
Residing at _____,

(SEAL)
Montana

expires:_____

My Commission

“Developer”

Downtown Billings Partnership, Inc.

By:
Its: President

Downtown Development Corporation

By:
Its: President

STATE OF MONTANA)
 :ss
County of Yellowstone)

 This instrument was acknowledged before me on _____ by
_____ as President of Downtown Billings Partnership, Inc..

(SEAL)
Montana

Printed Name:_____
Notary Public for the State of Montana
Residing at _____,

My Commission expires:_____

STATE OF MONTANA)
 :ss

County of Yellowstone)

 This instrument was acknowledged before me on _____ by
_____ as President of Downtown Development Corporation.

(SEAL)

Printed Name: _____
Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires: _____

EXHIBIT A

DBP LARGE PROJECT GAP FINANCING PROGRAM APPLICATION

AVAILABLE IN THE OFFICE OF CITY CLERK OR THE DBP OFFICE, 2815 SECOND
AVENUE NORTH, BILLINGS, MONTANA 59101

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2007

TITLE: Exchange City Golf Corporation 2008 Annual Budget

DEPARTMENT: Parks, Recreation and Public Lands

PRESENTED BY: Mike Whitaker, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: Every year the Exchange City Golf Corporation (ECGC) is required to submit an annual budget to the City Council for approval in December or around the 1st of the year. The proposed budget for the 2008 operating year is being submitted by the ECGC Board of Directors for consideration for approval. The annual distribution of net profit is declared by the ECGC Board of Directors based on: 1st meeting the expenses of the operation; 2nd paying for debt retirement; 3rd providing reserves for the operational expenses; 4th to provide a reserve for the proposed capital expenditures included in the proposed budget; and, 5th providing the net profit distribution to the City and the Downtown Exchange Club on a 2/3-1/3 basis, respectively, as outlined in the operating contract between the City of Billings and the ECGC Corporation. The 2008 proposed budget was reviewed at the November 5th, 2007, City Council Work Session and was reviewed by the Billings Parks, Recreation, and Cemetery Advisory Board on November 14th, 2007. The PRC Board recommends the ECGC budget for 2008 be adopted as presented.

ALTERNATIVES ANALYZED: Staff has analyzed the following alternatives.

1. Approve the ECGC 2008 annual budget. (recommended)
2. Approve the proposed budget with requested changes.

FINANCIAL IMPACT: The 2007 net cash proceeds are projected at \$122,936. The 2008 net cash proceeds are projected to be \$92,148. It is proposed to increase the Daily 18 hole fee by \$2.00 to \$15.00 a round. The 18 hole daily fee has not been changed for 4 years while operation costs, especially for electricity and fuel, have increased dramatically in that time. The increase in revenues from the proposed fee increase is estimated to be \$11,256 for the 2008 operating year. The proposed budget includes capital expenditures of \$24,798 for equipment replacement and course improvements that comes out of the net cash proceeds. The proposed

revenue distribution will be \$30,000 to be split between the City and the Exchange Club as outlined above.

RECOMMENDATION

Staff recommends that Council approve the 2008 Exchange City Golf Course budget as presented.

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

ATTACHMENTS

A: ECGC 2008 Proposed Budget

EXCHANGE CITY GOLF CORPORATION
2008 BUDGET PROPOSAL
OPERATIONS

| | 2007 Projected Annual | 2008 Proposed | Inc/Dec | 2008 CITY APPROVED |
|-------------------------|--------------------------|-----------------|----------|-----------------------|
| Revenue | | | | |
| Green fee revenue | 224,749 | 237,000 | 12,251 | |
| Range revenue | 77,477 | 77,500 | 23 | |
| Golf cart rental | 35,778 | 37,000 | 1,222 | |
| Memberships | 35,150 | 35,150 | - | |
| | 373,154 | 386,650 | 13,496 | - |
| Cost of goods sold | | | | |
| Range expense | 13,000 | 11,000 | (2,000) | |
| Cart expense | - | - | - | |
| | 13,000 | 11,000 | (2,000) | - |
| Ground expenses: | | | | |
| Salary superintendent | 42,500 | 45,500 | 3,000 | |
| Salaries & wages | 50,449 | 70,000 | 19,551 | |
| Payroll taxes | 12,498 | 14,576 | 2,078 | |
| Gas and oil | 9,847 | 10,500 | 653 | |
| Utilities | 9,431 | 9,500 | 69 | |
| Fertilizer and seed | 9,069 | 12,500 | 3,431 | |
| Operating supplies | 5,962 | 6,200 | 238 | |
| Repairs and maintenanc | 5,948 | 5,800 | (148) | |
| Contract labor | 1,130 | 1,600 | 470 | |
| Course security | 264 | * incl in wages | --- | |
| Sand and gravel | 1,917 | 4,000 | 2,083 | |
| Irrigation | 4,816 | 6,300 | 1,484 | |
| Travel | 966 | 1,200 | 234 | |
| Insurance | 3,316 | 3,456 | 140 | |
| | 158,113 | 191,132 | 33,283 | - |
| Club House expenses | | | | |
| Salary Golf pro | 49,450 | 51,000 | 1,550 | |
| Salaries and wages | 26,382 | 37,000 | 10,618 | |
| Payroll taxes | 9,509 | 11,000 | 1,491 | |
| Employee benefits | 1,483 | 1,500 | 17 | |
| Credit card fees | 4,618 | 5,600 | 982 | |
| Office expense | 686 | 1,500 | 814 | |
| Legal and accounting | 10,926 | 10,000 | (926) | |
| Miscellaneous | 530 | 1,200 | 670 | |
| Bad debt expense | 263 | - | (263) | |
| Cash over/short | (51) | - | 51 | |
| Dues and subscriptions | 1,275 | 2,000 | 725 | |
| Utilities | 9,349 | 11,000 | 1,651 | |
| Telephone | 1,568 | 2,000 | 432 | |
| Insurance | 4,807 | 5,500 | 693 | |
| Advertising | 4,129 | 3,000 | (1,129) | |
| Taxes and licenses | 135 | 300 | 165 | |
| Travel | - | 1,000 | 1,000 | |
| Security | - | 400 | 400 | |
| Customer relations | 2,240 | 1,200 | (1,040) | |
| Clubhouse oper/mtno | 461 | 4,200 | 3,739 | |
| | 127,760 | 149,400 | 21,640 | - |
| Other expenses | | | | |
| Interest | 5,435 | - | (5,435) | |
| | 5,435 | - | (5,435) | - |
| Other revenues | | | | |
| Appropriated green fees | 53,940 | 56,880 | 2,940 | - |
| Interest - restricted | 150 | 150 | - | - |
| | 54,090 | 57,030 | 2,940 | - |
| Net cash proceeds | 122,936 | 92,148 | (31,052) | - |

EXCHANGE CITY GOLF COURSE
2008 BUDGET PROPOSAL
REVENUE COS

| | 2007 Actual * | 2008 Proposed | |
|----------------------|-------------------|-------------------|---------------|
| Revenue | | | |
| 9 hole | 128,013.65 | 128,013.65 | EVEN |
| 18 hole | 73,164.50 | 84,420.00 | \$2/RND INCR. |
| Extra 9 hole | 3,033.00 | 3,033.00 | EVEN |
| 9 and 18 hole passes | 20,538.00 | 21,533.35 | EVEN |
| | <u>224,749.15</u> | <u>237,000.00</u> | |
| Range revenue | | | |
| Range revenue | <u>77,477.00</u> | <u>77,500.00</u> | |
| | <u>77,477.00</u> | <u>77,500.00</u> | |
| Golf cart revenue | | | |
| Golf cart revenue | <u>35,778.00</u> | <u>37,000.00</u> | |
| | <u>35,778.00</u> | <u>37,000.00</u> | |
| Memberships | | | |
| Memberships | <u>35,150.00</u> | <u>35,150.00</u> | EVEN |
| | <u>35,150.00</u> | <u>35,150.00</u> | |
| Range expenses | | | |
| Supplies | - | - | @ MARK BUDGET |
| Wages | - | - | ↓ |
| Payroll taxes | - | - | |
| | <u>-</u> | <u>-</u> | |
| Cart expenses | | | |
| Interest | <u>-</u> | <u>-</u> | PER SCH |
| | <u>-</u> | <u>-</u> | |

* Revenue for 2007 estimated using actual revenue for Jan-Sept, 2007
added to actual revenue from Oct-Dec 2006

EXCHANGE CITY GOLF COURSE
2008 BUDGET PROPOSAL

CAPITAL IMPROVEMENTS

| | 2008 Proposed | 2008 Approved |
|--|---------------|---------------|
| Capital Expenditures: | | |
| Course/equipment | | |
| Toro 4800 Sweeper (less trade-in) | 13,698.00 | |
| Sprayer engine | 600.00 | |
| Shop Lean-To | 2,000.00 | |
| <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> ECGC is requesting that the City fund the repair and restoration of this building because it is owned by the City. The above budgeted proposal is to assist the City in the total cost of the repairs, estimated to be \$5,000. </div> | | |
| Course Maintenance | | |
| Trees | 1,500.00 | |
| Temporary water set-up | 7,000.00 | |
| | 24,798.00 | - |

EXCHANGE CITY GOLF CORPORATION
CAPITAL IMPROVEMENT PLAN
YEARS ENDED 2008-2016

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|-------------------------------------|---------|--------|--------|--------|--------|--------|--------|--------|--------|
| EQUIPMENT PURCHASES | | | | | | | | | |
| Toro 3150 Tee/Green Mower | 13,698 | | 32,400 | | | 24,000 | | | 24,000 |
| Grounds Sweeper | | | | | | | | | |
| Toro Flail mower | | | | 14,500 | | | | | |
| Maintenance Cart | 600 | 4,000 | | 4,500 | | | | | |
| Capital repairs | | | | | | | | | |
| Toro 4100D Rough Mower | | 45,000 | | | | | | 45,000 | |
| Fertilizer Spreader | | | 4,000 | | | | | | |
| Cushman Work Cart | | | | 7,500 | | | | | |
| Greens Broom | | | 6,500 | 6,500 | 6,500 | 6,500 | 6,500 | 6,500 | 6,500 |
| Golf Carts (10 in fleet/2 annually) | | | | | | | | | |
| | 14,298 | 55,500 | 42,900 | 35,000 | 6,500 | 30,500 | 6,500 | 51,500 | 30,500 |
| COURSE UPGRADES | | | | | | | | | |
| Seal Coat/Striping Parking Lot | | 12,000 | | | | | | | |
| Shop Upgrades/Repairs | 2,000 | | | | | | | | |
| Trees/Shrubs | 1,500 | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 |
| Water/Irrigation sources | 7,000 | | | | | | | | |
| Tee Box Realignment | | | | | 10,000 | 10,000 | | | |
| Satellite Irrigation Controls | | | 35,000 | 35,000 | | | | | |
| Irrigation Isolation Valves | | | | 4,000 | | | | | |
| Cart Paths Improvement | | | | 7,000 | 7,000 | 7,000 | | | |
| | 10,500 | 14,000 | 37,000 | 48,000 | 19,000 | 19,000 | 2,000 | 2,000 | 2,000 |
| FACILITIES UPGRADES | | | | | | | | | |
| Pro Shop Remodel | | | | 3,000 | | | | | |
| Furniture/Fixtures - Dining area | | | 4,000 | | | | | | |
| Oven/Dishwasher | | 2,500 | | | | | | | |
| Lockers (rental units) | | 5,000 | 2,500 | | | | | | |
| Flooring replacement/upgrade | | | | | | | | | |
| Practice Bunker/Green | | | | 3,000 | | | | | |
| Range Ball Replacement | | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 |
| Range Shelter/Containment | | | | | | | | | |
| | - | 9,500 | 8,500 | 8,000 | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 |
| | 24,798 | 79,000 | 88,400 | 91,000 | 27,500 | 51,500 | 10,500 | 55,500 | 34,500 |
| One-year to Five-year estimate | 310,698 | | | | | | | | |
| Five-year plus estimate | 152,000 | | | | | | | | |
| | 462,698 | | | | | | | | |

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Public Hearing and Resolution Approving the FY 09 – FY 13 Capital Improvement Plan (CIP), Equipment Replacement Plan (ERP), and Technology Replacement Plan (TRP)

DEPARTMENT: City Administration/Aviation and Transit

PRESENTED BY: Tina Volek, City Administrator & Thomas H. Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: The final drafts of the FY 2009-2013 Capital Improvement Plan (CIP), Equipment Replacement Plan (ERP), and Technology Replacement Plan (TRP) were presented to the City Council at the February 4, 2008 Work Session. Based on the outcome of that meeting, the Council is being asked to hold a public hearing and consider final adoption of the CIP, ERP, and TRP on February 25, 2008.

ALTERNATIVES ANALYZED:

- Hold a public hearing and defer action to March 10, 2008.
- Hold a public hearing, amend the Program to include any desired projects, and defer final action to March 10, 2008, so an appropriate adopting resolution can be prepared.
- Hold a public hearing and postpone action indefinitely.
- Hold a public hearing and adopt the CIP, ERP, and TRP as presented.

FINANCIAL IMPACT: The CIP, ERP, and TRP are financial tools that indicate the Council's priorities when budgets are prepared. For the Fiscal 2009 budget, the proposed CIP would result in expenditures totaling \$77,173,543 Million, if fully funded. The ERP would result in expenditures totaling \$3,691,670 Million, and the TRP would result in expenditures totaling \$676,195. Projects are proposed by staff, but Council amendments and the availability of funds in FY 2009 and future years could affect the actual costs. Copies of the CIP, ERP, and TRP are on file in the City Clerk's Office.

RECOMMENDATION

Approved By: City Administrator _____ City Attorney _____
RESOLUTION 08-_____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, FEBRUARY 25, 2008

SUBJECT: Public Hearing and Approval of Resolution Approving and Adopting Budget Amendments for Fiscal Year 2007/2008

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Due to growth on the Airport's west end that exceeded expectations, the Airport needs to amend the FY 2008 Budget to include some capital projects for airfield expansion. These projects include extending sanitary sewer along Overlook Drive, and installing additional fire hydrants, storm drainage infrastructure, and a new taxilane all to accommodate additional hangar sites. Since October 2006, the City has entered into four ground leases in the general aviation area that have consumed the last seven available hangar building sites. Subsequently, the Airport needs to ready the area for additional hangar development. Because spring is typically when the Airport gets the most requests for hangar development, staff believes it would be beneficial and cost effective to begin this work this spring. Therefore, staff is requesting that the following items be amended into the Airport's Capital Budget:

| | |
|---|----------------|
| Extend Sanitary Sewer 1,000 feet along Overlook Drive | \$ 120,000 |
| Additional Water Lines and Five New Hydrants in Hangar Area | 281,000 |
| Additional Storm Water Drains in Hangar Area | 69,000 |
| Hangar Site Work and Paving of New Taxilane | <u>152,000</u> |
| Total Projects | \$ 622,000 |

Additionally, this year's approved capital project, West Frontage Road Repaving, will have substantial savings that can offset approximately \$322,000 of the projects listed above. The West Frontage Road Repaving project was reduced because a significant amount of the road was repaved last year when the Airport paved the overflow lots adjacent to the road. Also, this project originally included the reconstruction of the west end entrance, which has been delayed due to cost and the desire of staff to let the Airport Master Plan process evaluate whether the existing west end access location is appropriate or whether it should be relocated.

It is anticipated that taxiway paving, hangar site preparation, and storm sewer work will eventually be eligible for 95% reimbursement (\$209,950) through the Airport's annual Federal Aviation Administration (FAA) grant program. Currently, staff is negotiating with the FAA to have these projects included in the next grant; however, it is likely that the reimbursement will take place in a future year.

FINANCIAL IMPACT: While the amendment to the Budget will add \$622,000 of capital projects, savings of \$322,000 on the West Road Repaving project reduces the additional budget needed to \$300,000. The future reimbursement of an estimated \$209,950 from the FAA Airport Improvement Program will reduce the total financial impact to \$87,050. The Airport capital account has funds available to cover the additional costs, including the grant eligible amounts until they are reimbursed.

RECOMMENDATION

Staff recommends that Council approve the budget amendment to the Airport's FY 2008 Budget by adding \$622,000 of additional projects for a net budget amendment increase of \$300,000.

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

ATTACHMENTS:

A-Resolution to Make Fiscal Year 2007/2008 Adjustment Appropriations (with Exhibit A)

RESOLUTION 08-

A RESOLUTION TO MAKE FISCAL YEAR 2008 ADJUSTMENTS FOR APPROPRIATIONS PURSUANT TO M.C.A. 7-6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND REVISIONS WITHIN THE GENERAL CLASS OF SALARIES AND WAGES, MAINTENANCE AND SUPPORT, AND CAPITAL OUTLAY.

WHEREAS, M.C.A. 7-6-4006 provides that the City Council, upon proper resolution, adopted by said Council at a regular meeting and entered into its Minutes, may transfer or revise appropriations within the general class of salaries and wages, maintenance and support, and capital outlay, and

WHEREAS, based upon construction needs, it is necessary to alter and change said appropriations for capital outlays.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT A ATTACHED)

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

THE CITY OF BILLINGS:

BY: _____
RON TUSSING, MAYOR

ATTEST:

CARI MARTIN, CITY CLERK

EXHIBIT A

| | | | <u>Revenue</u> | <u>Expenditure</u> | |
|---|------|--|-----------------------|---------------------------|---|
| | | | | | |
| 562 – 7120 – Airport Fund – Capital Replacement | | | | | |
| Budget reduction due to cost savings in existing capital projects to pave frontage roads and to reconstruct the west end access. | | | | | |
| | | | | | |
| 562-7120-711 | 9130 | | | (322,000) | Construction - roads |
| <hr/> | | | | | |
| 563 – 7122 – Airport Fund – Capital | | | | | |
| Using the above budget reduction and cash reserves, Airport is requesting budget authority for capital projects to: extend sanitary sewer 1,000 feet along Overlook Drive, add water lines and five new fire hydrants in the general aviation hangar area, add storm water drains in the general aviation hangar area, and hangar site work and paving of a new taxilane. | | | | | |
| 563-7122-711 | 9310 | | | 120,000 | Construction – sanitary sewer along Overlook Drive |
| 563-7122-711 | 9310 | | | 281,000 | Construction – water lines and five new fire hydrants |
| 563-7122-711 | 9310 | | | 69,000 | Construction – storm water drains |
| 563-7122-711 | 9310 | | | 152,000 | Construction – hangar site work and paving a new taxilane |
| | | | | | |
| <hr/> | | | | | |
| | | | | | |

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CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

MONDAY, FEBRUARY 25, 2008

TITLE: Public Hearing and Resolution to Create SILMD 304 – Downtown Area
(Replaces SILMD 97)

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: On February 11, 2008, the City Council passed Resolution 08-18673, a Resolution of Intent to Create Special Improvement Lighting Maintenance District (SILMD) 304 and established a public hearing for February 25, 2008. Legal notices and a letter explaining the district and the protest procedure were mailed to each property owner within the proposed district on February 14, 2008. Full background information and details were included in the staff memo submitted with the Resolution of Intent approved on February 11, 2008. Information on the number and percentage of property owner protests received will be presented at the public hearing.

ALTERNATIVES ANALYZED:

1. Create the SILMD to provide a source of funding for design, construction, operation, and maintenance of the street lights. Funding will be provided through the creation of a Special Improvement District and bonds will be sold.
2. Do not create the SILMD and do not install street lighting.

FINANCIAL IMPACT: Design and construction costs are estimated to be \$2.4 million and financing costs are estimated to be \$462,000 making total costs \$2,862,000. The property owners in the proposed district have requested the creation of a Special Improvement District to finance the project. Design, construction, energy, and maintenance costs for the proposed light district will be paid for by assessments against properties within the district. City properties within light districts are assessed their proportionate share of the costs for that particular district.

RECOMMENDATION

Staff recommends that the City Council continue the public hearing and delay action on the Resolution Creating SILMD 304 until their March 10, 2008, meeting. This will allow the Downtown Billings Property Owner Committee to pursue and secure up to \$900,000 in additional funding that will reduce the estimated assessments to property owners within the proposed district.

It will also allow City staff time to revise and send new estimates to property owners prior to the public hearing.

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

ATTACHMENTS:

- A. Resolution Creating SILMD 304

INTRODUCTION: On February 11, 2008, the City Council passed Resolution 08-18673, a Resolution of Intent to Create Special Improvement Lighting Maintenance District (SILMD) 304, and established a public hearing for February 25, 2008. Legal notices and a letter explaining the district and the protest procedure were mailed to each property owner within the proposed district on February 14, 2008. Full background information and details were included in the staff memo submitted with the Resolution of Intent approved on February 11, 2008. Information on the number and percentage of property owner protests received will be presented at the public hearing.

BACKGROUND: Property owners within existing SILMD 97 contacted City staff to discuss lighting options within the downtown area. City staff met with property owners several times and subsequently contracted with Marvin & Associates to conduct a New Lighting District Study. Upon receipt of the study, City staff met with downtown property owners and discussed options. Property owners decided to pursue replacement of the existing NorthWestern Energy-owned district with a new City-owned district. They chose a complete change out of all street lights and traffic signals within the current SILMD 97 boundary. This would include replacement of 80 traffic signal poles with new poles that would support the required 250 watt streetlights. Mid-block lighting would be provided with three pedestrian scale lights per block. This option will provide safer intersection lighting and mid-block pedestrian lighting. The City would be responsible for the energy and maintenance of the street lights attached to the traffic signal poles.

The City has traditionally created SILMDs to assess design, construction, energy and maintenance costs for street lighting to abutting property owners. SILMD 304 design and construction costs are estimated to be \$2.4 million and financing costs are estimated to be \$462,000 making total costs \$2,862,000. The property owners in the proposed district have requested the creation of a Special Improvement District to finance the project over 15 years. Design and construction costs for the proposed light district will be paid for by assessments against properties within the district, less any funding the DBPOC is able to secure before the district is created. City properties within light districts are assessed their proportionate share of the costs for that particular district.

Because SILMD 97 is a NorthWestern Energy-owned district, property owners within the district have been paying for the lights well beyond their initial cost. These pass through costs from NorthWestern Energy will only continue to increase. If the proposed City-owned SILMD 304 is created, property owner assessments will drop dramatically after the design and construction costs are paid off in 15 years. From that point forward, property owners will only be assessed energy and maintenance costs.

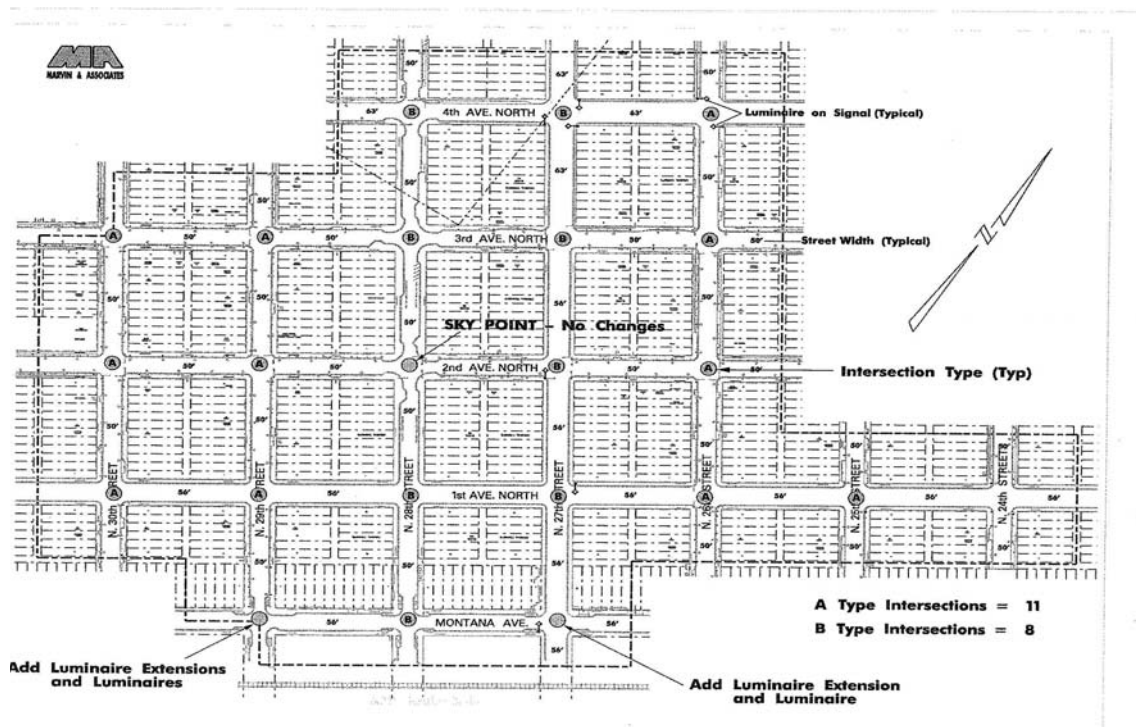
The estimated annual energy and maintenance costs are \$50,600 for the proposed district, including a 10% administrative fee and a 5% delinquency reserve. This entire cost shall be paid by the owners of the property within said District, with each lot, parcel or piece of land within the district to be assessed for that portion of the whole cost which its assessable area bears to the assessable area of the entire district. The estimated cost of energy and maintenance is .028694 per square foot per year.

The Downtown Billing Property Owners Committee (DBPOC) very recently identified a possible funding source of up to \$900,000 that would offset property owners' costs for this SILMD. If they are successful in securing the funding, City staff will revise the estimated property owner assessments and mail them to property owners as soon as possible.

RECOMMENDATION

Staff recommends that the City Council continue the public hearing and delay action on the Resolution Creating SILMD 304 until their March 10, 2008, meeting. This will allow the Downtown Billings Property Owner Committee to pursue and secure up to \$900,000 in additional funding that will reduce the estimated assessments to property owners within the proposed district. It will also allow City staff time to revise and send new estimates to property owners prior to the public hearing.

Proposed SILMD 304 District Boundary Map



RESOLUTION NO. 08-_____

A RESOLUTION CREATING SPECIAL IMPROVEMENT LIGHTING MAINTENANCE DISTRICT NO. 304 OF THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF PROVIDING DESIGN, CONSTRUCTION, ENERGY AND MAINTENANCE FOR STREET LIGHTS, DESIGNATING THE NUMBER OF SAID DISTRICT, DESCRIBING THE BOUNDARIES THEREOF, STATING THE GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE, ESTABLISHING THE ESTIMATE OF THE COST OF DESIGN, CONSTRUCTION, ADMINISTRATION, ENERGY AND MAINTENANCE OF SUCH LIGHTS AND SUPPLYING ELECTRICAL CURRENT THEREFOR FOR THE FIRST YEAR, THE PROPORTION OF THE COST TO BE ASSESSED AGAINST THE ABUTTING PROPERTY, AND THE METHOD OF ASSESSMENT OF SAID COST.

WHEREAS, the City Council of the City of Billings, Montana, on the 11th day of February 2008, passed Resolution 08-18673, a Resolution of Intention to Create a Special Improvement Lighting Maintenance District designated as No. 304, setting the hearing on the creation of said District and hearing of protests against the extent and creation of said District, or any matter pertaining thereto, and thereafter gave notice by publication and mailing, all as required by law, and at said hearing which was held at the time and place specified in said Notice, all protests were heard and considered; and;

WHEREAS, the City Council finds that the protests are insufficient to stop the creation of said district, and the protests are overruled and denied.

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

SECTION 1:

That the City Council of the City of Billings, Montana does hereby create a District, to be known and designated as Special Improvement Lighting Maintenance

District No. 304, hereinafter called the District, for the purpose of providing design, construction, energy and maintenance for new street lights for lighting said District.

SECTION 2:

That the boundaries of the District are as set forth in Resolution of Intention No. 08-18673, hereinafter called the Resolution, on file in the office of the City Clerk of Billings, Montana, and by this reference is incorporated herein and made a part hereof.

SECTION 3:

That the City of Billings, Montana, hereby finds, determines and declares that each of the lots, blocks, pieces and parcels of land situated along and within the boundaries of the District, will be especially benefited and affected by said improvements, and that each and all of the lots, blocks, pieces and parcels, more particularly described in the Resolution are hereby declared to be the property to be assessed for the costs and expense of designing and constructing the street lights and obtaining the streets lights, electrical energy, and maintenance of said street lights.

SECTION 4:

That the general character of the improvements to be made in the District is hereby declared to be as described in the Resolution and is by this reference incorporated herein and made a part hereof.

SECTION 5:

That the City of Billings intends to construct the new lighting facilities and sell bonds in the amount of Two Million Four Hundred Fifty Thousand (\$2,450,000) to pay for the design, construction and administration costs of the District. The bonds will be

issued in accordance with 7-12-4342 MCA and will be paid off over a period of fifteen (15) years through annual assessments to property owners within the district. Each lot, parcel, or piece of land within the district shall be assessed for that portion of the bond retirement costs which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places. The assessment rate, exclusive of interest charges, is estimated at \$1.39 per square foot of assessable area.

SECTION 6:

That the entire cost of maintenance and electrical energy for the District shall be paid by an annual assessment against the property in the District; that annually, pursuant to MCA 7-12-4332, the City Council shall adopt a resolution estimating the cost of maintaining said lights including a reserve, and furnishing electrical current and assessing all of said property within said District for the annual costs; that all monies derived from the collection of such assessments shall be paid into a fund to be known as "Special Lighting Maintenance District No. 304 Maintenance Fund," and warrants shall be drawn on said fund for the payment of such costs of maintaining such lights and supplying electrical current therefore.

SECTION 7:

That the City of Billings intends to establish the approximate contract rate for supplying electrical energy and maintenance as follows: \$230 per luminaries unit per year.

The estimate of the cost of energy and maintenance for the District per year, including a 10% administrative fee and a 5% delinquency reserve, is the sum of

\$50,600 that the entire cost shall be paid by the owners of the property within said District, with each lot, parcel or piece of land within the District to be assessed for that portion of the whole cost which its assessable area bears to the assessable area of the entire District, exclusive of streets, avenues, alleys, and public places. Due to the difference in the time the lighting service starts and the time assessments can be levied, the first assessment may cover a period of operation of the District shorter or greater than one year.

SECTION 8:

That reference is hereby made to the Resolution, the maps, specifications, boundaries, perimeter and data pertaining to the District, on file in the offices of the City Clerk and City Engineer, for further particulars, all of which are made a part hereof.

Passed by the CITY Council and APPROVED this 25th day of February, 2008.

CITY OF BILLINGS

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 25, 2008

TITLE: SID 1383 Cherry Hills 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 16 of the 28 lots proposed in the SID district boundary, has the desire to construct public improvements on Cherry Hills Road between Annandale Road and just east of Clubhouse Way. These improvements generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements to Cherry Hills Road. The storm drain improvements include construction of a pond and channel on Lake Hills Golf Course per the Lake Hills Storm Drain Feasibility Study. This portion of the storm drain will be paid out of storm funds. The protest period for SID 1383 will end on February 22nd. The protest count will be announced at the Council Meeting.

ALTERNATIVES ANALYZED:

1. After holding a public hearing, approve Resolution Creating SID 1383; or
2. After holding a public hearing do not approve the Resolution Creating SID 1383.

FINANCIAL IMPACT: The total estimated costs of the Improvements are \$884,893.10. The costs of the Improvements are to be paid from the following sources: (1) \$333,000.00 of Special Improvement District bonds hereinafter described; (2) \$180,000.00 cash contribution from the City of Billings utilizing storm funds; and (3) \$371,893.10 of cash contribution by Ron Hill, owner of 16 of the 28 lots in the District.

RECOMMENDATION

Staff recommends that Council approve the Resolution Creating SID 1383.

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

ATTACHMENTS

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1383 Cherry Hills Road Resolution Creating District

INTRODUCTION

Ron Hill, owner of 16 of the 28 lots within the proposed boundary of the SID, has a desire to develop lots on Cherry Hills Road. In order to develop these lots, all the necessary street improvements need to be constructed on Cherry Hills Road. These improvements generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements. To complete the project, it is necessary to create a Special Improvement District.

PROCEDURAL HISTORY

- January 28, 2008 – Resolution of Intent to Create SID 1383.
- February 25, 2008 – Public Hearing and Resolution Creating SID 1383 and Professional Services Contract Award.
- Spring 2008 – 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, storm drain, curb and gutter, street improvements to Cherry Hills Road. Also, included is the construction of another storm drain pond and channel within Lake Hills Golf Course utilizing city storm funds (\$180,000.00). Ron Hill, owner of 16 of the 28 lots in the District will pay a cash contribution to the project. The total cash contribution is equal to \$551,893.10 and represents 62 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 1383 will begin in the spring of 2008 and be completed by the summer of 2008.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1383 and set a public hearing date for February 25, 2008.

ATTACHMENTS

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1383 Cherry Hills 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. 08-_____, entitled: "RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. **1383**; 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 25, 2008**, 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 _____.

Cari Martin

CITY CLERK

RESOLUTION NO. 08-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1383; 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 28, 2008**, adopted Resolution No. **08-18520** (the "Resolution of Intention"), pursuant to which this Council declared its intention to create a special improvement district, designated as Special Improvement District No. **1383** 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 25, 2008**, 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, _____ protests were filed with the City Clerk and not withdrawn by the owners of property in the District subject to assessment for _____% of the total costs of the Improvements or representing _____% 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 **25th** Day of February, 2008.

THE CITY OF BILLINGS:

BY _____
Ron Tussing MAYOR

ATTEST:

BY _____
Cari Martin CITY CLERK

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Professional Services Contract for SID 1383

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: SID 1383 was created at the January 28, 2008, City Council Meeting. The improvements to be constructed with SID 1383 generally consist of Cherry Hills Road between Annandale Road and just east of Clubhouse Way. These improvements generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements to Cherry Hills Road. The storm drain improvements include construction of a pond and channel on Lake Hills Golf Course per the Lake Hills Storm Drain Feasibility Study. The City Engineer's Office sent out a Request for Proposals (RFP) for engineering services for the design and contract administration for SID 1383. Engineering, Inc. was selected by a committee of four city staff members for the project. The engineering contract is for \$119,562.41, which is reasonable for a project of this size and is on file at the City Clerk's Office.

ALTERNATIVES ANALYZED:

11. Approve the professional services contract for SID 1383 with Engineering, Inc. in the amount of \$119,562.41.
12. Do not approve the professional services contract for SID 1383 with Engineering, Inc.

FINANCIAL IMPACT: The total estimated costs of the Improvements are \$884,893.10. The costs of the Improvements are to be paid from the following sources: (1) \$333,000.00 of Special Improvement District bonds hereinafter described; (2) \$180,000.00 cash contribution from the City of Billings utilizing storm funds; and (3) \$371,893.10 of cash contribution by Ron Hill, owner of 16 of the 28 lots in the District.

RECOMMENDATION

Staff recommends that Council approve the professional services contract for SID 1383 with Engineering, Inc. in the amount of \$119,562.41.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Public Hearing to Vacate Portions of S. 24th Street, 4th Ave. S., 5th Ave. S., 6th Ave. S., alleys within Blocks 173 and 179 of Billings Old Town

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: ConocoPhillips has petitioned to vacate S. 24th Street south of 5th Ave. S., 5th Ave. S. east of S. 24th Street, a portion of 6th Ave. S. east of S. 25th Street, a small portion of 4th Ave. S. at ConocoPhillips' front entrance, and the alleys within blocks 173 and 179 of Billings Old Town totaling 51,542 square feet. ConocoPhillips owns all of the property abutting the proposed right-of-way and is proposing to develop the property in the future. Currently, there is a water and sanitary sewer line running through the proposed vacated area. ConocoPhillips will enter into an easement agreement that will allow full access to these lines and will require ConocoPhillips to relocate the water and sanitary sewer lines if they ever propose to construct a structure over the lines.

ALTERNATIVES ANALYZED:

- 13. After the public hearing, approve the vacation of the above-mentioned right-of-way.
- 14. Do not approve the vacation of the above-mentioned right-of-way.

FINANCIAL IMPACT: A comparison land sales report was done by Charles H. Hamwey, which valued the right-of-way at \$2.25 to \$2.50 per square foot. ConocoPhillips is offering the city \$2.35 per square foot. In the past, the city has accepted \$2.00 per square foot from ConocoPhillips for right-of-way. The total amount offered from ConocoPhillips is \$121,123.70.

RECOMMENDATION

After the public hearing, staff recommends that Council approve the vacation of portions of S. 24th Street, 4th Ave. S., 5th Ave. S., 6th Ave. S., alleys within Blocks 173 and 179 of Billings Old Town and accept an easement for the public utilities running through the vacated streets.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Map Depicting Area to be Vacated
- B. Letter from Charles H. Hamwey establishing value of land
- C. Resolution to Vacate
- D. Easement



September 27, 2007

J.D. Adkins
ConocoPhillips Co.
338 Hwy 87 East
Billings MT 59101

RE: Vacating streets and alleys in
Section 3, T1S, R26 East

Dear J.D.,

Upon your request I have reviewed the above subject property on September 26, 2007 to determine the Estimated Fair Market Value as of this date.

This property is West of the ConocoPhillips refinery. In reviewing comparable sales in the area and taking in consideration of the location of the proposed, range in value is between \$2.25 per sq. ft. to \$2.50 per sq. ft.

It is apparent that the total taking consists of 51,542 Sq. Ft. and based on the range in values in this area, it is my opinion that the Estimated Fair Market Value for the taking is:

\$121,123.70

If you have any further questions, please feel free to contact me.

Sincerely,


Charles H. Hamwey



RESOLUTION NO. 08-_____

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, DISCONTINUING AND VACATING portions of S. 24th Street, 4th Ave. S., 5th Ave. S., 6th Ave. S., alleys within Blocks 173 and 179 of Billings Old Town.

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of portions of S. 24th Street, 4th Ave. S., 5th Ave. S., 6th Ave. S., alleys within Blocks 173 and 179 of Billings Old Town as described hereinafter; and

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

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

1. DISCONTINUANCE AND VACATION. Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., portions of S. 24th Street, 4th Ave. S., 5th Ave. S., 6th Ave. S., alleys within Blocks 173 and 179 of Billings Old Town more particularly described as follows:

PORTION OF SOUTH 24th STREET RIGHT-OF-WAY

A tract of land located in the NE 1/4 of Section 3, T. 1 S., R. 26 E., P.M.M., Yellowstone County, Montana, being a portion of the right-of-way of South 24th Street more particularly described as follows, to-wit:

Beginning at a point which is the northeasterly corner of Lot 12, Block 186 of the Original Town (now City) of Billings, Montana; thence, from said point of

beginning, crossing the right-of-way of S. 24th Street, N 55°23'30" E a distance of 80.00 feet; thence along the easterly right-of-way line of S. 24th Street, S 34°36'30" E a distance of 168.99 feet; thence, along the east line of Section 3, T. 1 S., R. 26 E., P.M.M., S 00°18'30" E a distance of 141.96 feet; thence, along the westerly right-of-way line of S. 24th Street, N 34°36'30" W a distance of 286.27 feet to the point of beginning; said described tract having an area of 18,210 square feet.

PORITION OF 6th AVENUE SOUTH RIGHT-OF-WAY

A tract of land located in the NE 1/4 of Section 3, T. 1 S., R. 26 E., P.M.M., Yellowstone County, Montana, being a portion of the right-of-way of 5th Avenue South more particularly described as follows, to-wit:

Beginning at a point which is the southwesterly corner of Lot 5A, Block 186 of the Original Town (now City) of Billings, Montana; thence, from said point of beginning, along the northerly right-of-way line of 6th Avenue South, N 55°23'30" E a distance of 130.59 feet; thence, along the east line of Section 3, T. 1 S., R. 26 E., P.M.M., S 00°18'30" E a distance of 96.84 feet; thence, along the southerly right-of-way line of 6th Avenue South, S 55°23'30" W a distance of 76.02 feet; thence, crossing the right-of-way of 6th Avenue South, N 34°36'30" W a distance of 80.00 feet to the point of beginning; said described tract having an area of 8,264 square feet.

ALLEY IN BLOCK 173

A tract of land located in the NE 1/4 of Section 3, T. 1 S., R. 26 E., P.M.M., Yellowstone County, Montana, being the Alley in Block 173 of the Original Town (now City) of Billings, Montana, more particularly described as follows, to-wit:

Beginning at a point which is the northeasterly corner of Lot 13, Block 173 of the Original Town (now City) of Billings, Montana; thence, from said point of beginning, along the southerly right-of-way line of 3rd Avenue South, N 55°23'30" E a distance of 20.0 feet; thence, along the southwesterly line of Lots 1 through 12 in said Block 173, S 34°36'30" E a distance of 300.0 feet; thence, along the northerly right-of-way line of 4th Avenue South, S 55°23'30" W a distance of 20.0 feet; thence, along the northeasterly line of Lots 13 through 24 in said Block 173, N 34°36'30" W a distance of 300.0 feet to the point of beginning; said described tract having an area of 6,000 square feet.

PORITION OF 4th AVENUE SOUTH RIGHT-OF-WAY

A tract of land located in the NE 1/4 of Section 3, T. 1 S., R. 26 E., P.M.M., Yellowstone County, Montana, being a portion of the right-of-way of 4th Avenue South more particularly described as follows, to-wit:

Beginning at a point which is the southwesterly corner of Lot 24, Block 174 of the Original Town (now City) of Billings, Montana; thence, from said point of beginning, along the northerly right-of-way line of 4th Avenue South, N

55°23'30" E a distance of 50.04 feet; thence, along the east line of Section 3, T. 1 S., R. 26 E., P.M.M., S 00°03'00" E a distance of 88.22 feet; thence, leaving said section line, N 34°36'30" W a distance of 72.65 feet to the point of beginning; said described tract having an area of 1,818 square feet.

ALLEY IN BLOCK 179

A tract of land located in the NE 1/4 of Section 3, T. 1 S., R. 26 E., P.M.M., Yellowstone County, Montana, being the Alley in Block 179 of the Original Town (now City) of Billings, Montana, more particularly described as follows, to-wit:

Beginning at a point which is the northeasterly corner of Lot 13, Block 179 of the Original Town (now City) of Billings, Montana; thence, from said point of beginning, along the southerly right-of-way line of 4th Avenue South, N 55°23'30" E a distance of 20.0 feet; thence, along the southwesterly line of Lots 1 through 12A in said Block 179, S 34°36'30" E a distance of 300.0 feet; thence, along the northerly right-of-way line of 5th Avenue South, S 55°23'30" W a distance of 20.0 feet; thence, along the northeasterly line of Lots 13 through 24 in said Block 179, N 34°36'30" W a distance of 300.0 feet to the point of beginning; said described tract having an area of 6,000 square feet.

PORTION OF 5th AVENUE SOUTH RIGHT-OF-WAY

A tract of land located in the NE 1/4 of Section 3, T. 1 S., R. 26 E., P.M.M., Yellowstone County, Montana, being a portion of the right-of-way of 5th Avenue South more particularly described as follows, to-wit:

Beginning at a point which is the southwesterly corner of Lot 24, Block 179 of the Original Town (now City) of Billings, Montana; thence, from said point of beginning, along the northerly right-of-way line of 5th Avenue South, N 55°23'30" E a distance of 168.31 feet; thence, along the east line of Section 3, T. 1 S., R. 26 E., P.M.M., S 00°03'00" E a distance of 97.14 feet; thence, along the southerly right-of-way line of 5th Avenue South, S 55°23'30" W a distance of 113.20 feet; thence N 34°36'30" W a distance of 80.0 feet to the point of beginning; said described tract having an area of 11,260 square feet.

Is hereby discontinued, abandoned and vacated.

2. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described **portions of S. 24th Street, 4th Ave. S., 5th Ave. S., 6th Ave. S., alleys within Blocks 173 and 179 of Billings Old Town** is in the best interest of the public and can be done without any public detriment.

PASSED by the City Council and APPROVED this 25th day of February 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Cari Martin CITY CLERK

PERPETUAL RIGHT-OF-WAY EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this _____ day of _____, _____, the undersigned, ConocoPhillips Company with an address of _____, hereinafter called "Grantor", hereby grants and conveys unto THE CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, City Hall, 210 North 27th Street, Billings, Montana, 59101, hereinafter called "Grantee", a non-exclusive perpetual easement and right-of-way over, thirty feet in width, across, under and through the following described tracts of real property in Yellowstone County Montana:

A tract of land located in the NE 1/4 of Section 3, T. 1 S., R. 26 E., P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit:

Beginning at a point which is the northeasterly corner of Lot 12, Block 145 of the Original Town (now City) of Billings, Montana;
thence, from said point of beginning, N 55°23'30" E a distance of 59.34 feet;
thence S 34°36'30" E a distance of 347.00 feet;
thence S 55°23'30" W a distance of 8.53 feet;
thence S 34°36'30" E a distance of 276.32 feet;
thence S 00°03'00" E a distance of 140.46 feet;
thence S 55°23'30" W a distance of 271.14 feet;
thence N 34°36'30" W a distance of 38.0 feet;
thence N 55°23'30" E a distance of 76.97 feet;
thence S 34°36'30" E a distance of 8.0 feet;
thence N 55°23'30" E a distance of 191.76 feet;
thence N 00°03'00" W a distance of 35.21 feet;
thence N 55°23'30" E a distance of 11.29 feet;
thence N 34°36'30" W a distance of 16.39 feet;
thence N 00°03'00" W a distance of 36.70 feet;
thence N 34°36'30" W a distance of 286.38 feet;
thence S 55°23'30" W a distance of 222.44 feet;
thence S 34°36'30" E a distance of 25.55 feet;
thence S 55°23'30" W a distance of 30.0 feet;

thence N 34°36'30" W a distance of 25.55 feet;
thence S 55°23'30" W a distance of 68.38 feet;
thence N 34°36'30" W a distance of 30.0 feet;
thence N 55°23'30" E a distance of 300.0 feet;
thence N 34°36'30" W a distance of 29.15 feet;
thence N 55°23'30" E a distance of 20.82 feet;
thence N 34°36'30" W a distance of 272.85 feet;
thence S 55°23'30" W a distance of 20.82 feet;
thence N 34°36'30" W a distance of 15.0 feet to the point of beginning;
said described tract having an area of 43,947 square feet.

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

This grant is subject to all grants, easements, leases, mineral leases or rights, reservations, rights and rights-of-way heretofore reserved or granted and/or now existing on the above described property and is further made without warranty of title, express or implied.

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

a) Grantor agrees not to plant, nor cause to be planted within the easement right-of-way any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except with permission from the City of Billings Public Works Department, which permission shall not be unreasonably withheld, delayed or conditioned.

b) Grantor agrees that authorized representatives of the City of Billings can travel within the easement right-of-way with their equipment in the performance of their duties at all reasonable times, regardless of outside weather conditions; provided, however, Grantee shall be liable for any damage caused to Grantor's property and roads as a result of such travel.

c) Grantor agrees to obtain permission of the City of Billings which permission shall not be unreasonably withheld, delayed or conditioned, prior to placing or removing any fill dirt within the easement right-of-way. In the event such permission is granted and as a result of such placement or removal it is necessary to modify the existing public utilities, then Grantor agrees to perform any work necessary to modify the existing public utilities, which work may be required prior to placing or removing any fill dirt within the easement right-of-way. All such work shall be done at Grantor's expense and without expense to the City of Billings.

d) Grantor agrees to obtain permission of the City of Billings, which permission shall not be unreasonably withheld, delayed or conditioned, prior to constructing, or causing to be constructed, within the easement right-of-way, any type of building or structure, such as, but not limited to, houses, garages, shacks, kennels, fences, and other fixed objects of any kind, shape or form. In the event such permission is granted and as a result of such building or structure it is necessary to modify the existing public utilities, then Grantor agrees to perform any work necessary to relocate the existing public utilities out of the easement right-of-way as approved by the City of Billings Public Works Department. All such work shall be done at Grantor's expense and without expense to the City of Billings. Before relocation of public utilities, if it is determined that the existing public utilities need to be upsized due to reasons other than to serve Grantor's property, the cost to upsize the utility will be borne by the City of Billings.

Grantee agrees that any time Grantee and its representatives are on Grantor's property, including the easement right-of-way, Grantee and its representatives shall comply with all of Grantor's safety rules and regulations, and that Grantee shall be liable for any damages to Grantor's property caused by the exercise of Grantee's rights under this Easement. After completion of any construction, replacement, repair or service work to the public utilities by the City of Billings, Grantee shall be responsible for restoring the surface as near as practicable to the condition that existed prior to such activity.

Each party hereto shall reimburse the other party for any and all damage claims paid by the other party for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by such party's failure to comply with any portion of the rights, restrictions, obligations or responsibilities contained in this Easement.

The Grantor and Grantee agree to mutually indemnify, defend and hold each other and their respective officers, employees, agents and contractors, harmless from and against all liabilities, claims, demands, losses, actions, judgments, costs, expenses, attorneys fees or damages of whatever kind or nature, arising out of, resulting from or related to the negligent, intentional or reckless acts or omissions of the Grantor's or Grantee's performance of their respective duties and obligations under this easement agreement.

No waiver of the provisions hereof shall be effective unless in writing and signed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver or waiver in respect of any subsequent breach or default, either of a similar or dissimilar nature, unless expressly so stated in writing.

Any notice, request, instruction or other document to be given hereunder by either party to the other shall be in writing, and delivered personally, by telecopy, by messenger or by certified mail, postage prepaid, return receipt requested as follows:

If to Grantor, addressed to: [EXACT NAME OF ENTITY]
[INSERT TITLE]
[INSERT ADDRESS]

If to Grantee, addressed to: City Of Billings
City Hall
210 North 27th Street
Billings, MT 59101

Either party may change its representative or the address to which notice shall be directed by appropriate written notice to the other party in the manner described above.

The covenants, agreements and all statements in this Easement apply to and shall be binding on the heirs, personal representatives, successors and assigns of the respective parties and shall run with the land. This Easement contains all of the agreements and stipulations between Grantor and Grantee with respect to the granting of the easement right-of-way, and is intended solely for the benefit of the parties hereto and shall not create any rights, including without limitation any third party beneficiary rights, in any third party.

STATE OF _____)
: ss
County of _____)

On this ____ day of _____, 200__, before me, a Notary Public for the State of Montana, personally appeared _____, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.

Notary Public for the State of _____
Residing at _____
My commission expires _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM **CITY OF BILLINGS, MONTANA** **Monday, February 25, 2008**

TITLE: Public Hearing and First Reading of an Ordinance Expanding Ward II:
Annexation #08-05

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: On February 11, 2008, the City Council approved the annexation of a 0.89-acre parcel legally described as Lot 1, Sylvia Subdivision. The request for annexation was submitted by First Citizens Bank of Billings, the owners of the property. Upon 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 II will be conducted at this meeting. The second reading of the ordinance will be conducted on March 10, 2008.

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

RECOMMENDATION

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

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

B. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 08-_____

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

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

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

A tract of land situated in the NE1/4 of Section 27, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:
Lot 1, Sylvia Subdivision, Recorded January 5, 1960, under Document No. 634167, Records of Yellowstone County.
Including all adjacent right-of-way of Lincoln Lane.
Containing 1.047 gross acres, and 0.891 net acres.
(# 08-05) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 25th day of February, 2008.

PASSED by the City Council on the second reading this 10th day of March, 2008.

THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY:_____
Cari Martin, CITY CLERK

(AN 08-05)

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

SUBJECT: Zone Change #831, Expansion of Central Business District Zoning First Reading of the Ordinance.

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: On July 23, 2007, the City Council approved an initiative directing staff to extend the Central Business District Zoning (CBD). This would change the zoning from Controlled Industrial to CBD in an area with general boundaries from the east side of North 25th Street to North 20th Street, on the south side of 6th Avenue North, generally south to the Railroad right-of-way (**See Attachment B**). The Zoning Commission conducted a public hearing on January 2, 2008, and forwarded a recommendation for denial with a vote of 5-0.

A public hearing was conducted by the City Council on January 28, 2008 for the proposed zone change. During the public hearing many people spoke in favor of the zone change and opposed to the zone change. When the public hearing was closed, the City Council discussed what had been presented and asked staff numerous questions. Numerous council members stated that the zone change would favor one property owner over many. Several of the Council members expressed their desire to have the Salvation Army build the youth center however they felt the site restrictions could be better dealt with by the variance process. A motion was made by Councilmember Jani McCall to delay action on the zone change for 30 days allowing the Salvation Army the chance to submit a parking variance through engineering for City Council consideration. The motion was passed with a unanimous vote by the City Council.

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

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: If the zone change is approved, future redevelopment of the property should increase the City's tax base.

RECOMMENDATION

Staff acknowledges that the recommendation of the City Zoning Commission is to deny the application request. However, because the City Council is the applicant, staff recommends that the Council withdraw this application and allow the Salvation Army to pursue the variance requests.

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

ATTACHMENTS

- A: Surrounding zoning map
- B: Proposed CBD Expansion
- C: Site Photographs
- D: Ordinance

INTRODUCTION

On July 23, 2007, the City Council approved an initiative to extend the CBD. The initiative stated that “the Salvation Army would like to build a youth center, and being part of the Central Business District would help resolve most of the problems they have with parking and building placement” (From City Council meeting minutes of July 23, 2007).

The properties currently in the proposed expansion of the CBD are zoned CI. With CI zoning there are requirements for building setbacks from property lines and a maximum lot coverage of 75% of the lot. There are minimum parking requirements based on the proposed use of the building, and minimum landscaping which is 10% of the land not covered by the structure, unless the lot is over 130,000 square feet and then the requirements consider surrounding bufferyards. Parking lot landscaping is required in all circumstances.

Many of the properties in this area are older buildings and uses that were built before zoning was established here in Billings. Many of the existing properties have structures on them that do not meet several of the current CI zoning requirements. This causes them to be classified as legal non-conforming. They are not able to expand or do major modifications without bringing the entire site into compliance. In some cases it is not possible because the existing structure does not meet required setbacks or they are currently over maximum lot coverage. With this zone change staff determined that these properties would become legal conforming properties. CBD zoning allows buildings to be built right on the property lines, the entire lot can be covered with the structure, and there is no required parking or landscaping.

The Planning Division did a visual survey of the area proposed for the expansion and has determined that all current uses in the area will conform to CBD zoning, or will become conforming, with CBD zoning with the exception of one lot. The one lot that will not be in conformance with the CBD zoning currently has open, outdoor storage which is not allowed in CBD zoning.

The Planning Division held a public meeting on November 15, 2007, inviting members of the neighborhood and surrounding neighborhood to discuss their concerns and the possible effect of extending the CBD. Two members of the community attended the meeting on November 15th.

Staff has notified the property owners within 300 feet of the proposed CBD expansion of the public hearing with the Zoning Commission and of the City Council meeting.

PROCEDURAL HISTORY

- A council initiative for a zone change was made on July 23, 2007, for the subject properties.
- The Planning Division held a public meeting on November 15, 2007.
- The Zoning Commission conducted a public hearing on January 2, 2008, and recommended denial to the City Council by a 5-0 vote.

- The City Council conducted a public hearing and first reading on January 28, 2008, and delayed action on this zone change until February 25, 2008.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on March 10, 2008.
- If the Zone Change Ordinance is delayed, City Council will take action on the first reading on March 24, and second reading on April 14, 2008.

BACKGROUND

On July 23, 2007 the City Council approved an initiative to extend the CBD. The Planning Division did a visual survey of the area proposed for the expansion and has determined that all current uses in the area will conform to CBD zoning, or will become conforming, with CBD zoning with the exception of one lot. The one lot that will not be in conformance with the CBD zoning currently has open outdoor storage which is not allowed in CBD zoning.

The Planning Division held a public meeting on November 15, 2007, inviting members of the neighborhood and surrounding neighborhood to discuss their concerns and the possible effect of extending the CBD. Two members of the community attended the meeting on November 15th.

The Zoning Commission conducted a public hearing on January 2, 2008, and forwarded a recommendation for denial with a vote of 5-0. City Council held a public hearing for the first reading of the zone change ordinance on January 28, 2007. At that hearing, several people spoke in favor of the zone change, including the Executive Director of the Salvation Army, Major Keith Bottjen and Yellowstone County Commissioner Bill Kennedy. Gordon Tryan, member of the Billings Industrial Revitalization District, spoke in opposition to the zone change based on the lack of a master plan to guide zoning decisions. Because of the limitations on parking spaces and building setbacks, the option for variances from site development and zoning code instead of a zone change, was discussed by Council. City Council voted to delay action on the zone change application and directed staff to assist the Salvation Army apply for variances from the city codes. The City Board of Adjustment will act on the zoning variance on March 5. The variance from the site development code will be acted on by Council on March 10. Due to this schedule, the Council may prefer to withdraw the application and allow the variances to be processed.

ALTERNATIVES ANALYSIS

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

Prior to any recommendation to the City Council, the Zoning Commission shall consider the following:

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

The 2003 City/County Growth Policy establishes policies to guide development. It is not a land use plan and does not recommend the location or extent of preferred land uses or zoning districts. It does, however, recommend that Neighborhood Plans or Urban Renewal Plan be developed to specifically address land use issues. An Urban Renewal Plan for this area was developed in 2006, but a land use master plan, was deferred until funding could be obtained. Funding for the master plan has been obtained from the U.S. Economic Development Agency as long as the required match can be met. The \$150,000 match requirement has been met and the master planning process can begin this year.

State law requires that zoning regulations be made in accordance with the Growth Policy (76-2-304, MCA), or in this case, the Urban Renewal Plan as an extension of the Growth Policy. Until a land use master plan is adopted for this area, it would be premature and inconsistent with state law to approve zone changes.

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

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

The properties in the proposed expansion of the CBD are in an area of Billings that has experienced decline over the past years. The proposed zone change will remove some restrictions to help encourage redevelopment that should promote more growth in the area to revitalize the neighborhood.

- *Coordinated economic development efforts that target business recruitment, retention, and expansion. (Economic Development Goal, page 6)*

With the proposed zone change it will encourage more business recruitment in the area and encourage expansion of existing businesses within the existing neighborhood.

- *An economically and culturally vibrant Downtown Billings. (Economic Development Goal, page 7)*

The proposed zoning accommodates more flexible development and will promote economic development of this portion of Downtown Billings.

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

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

The proposed zoning will focus development in and around existing population centers but CBD zoning does not require landscaping or building setbacks from property lines so it does not encourage open space.

- *Attractive and accessible communities. (Economic Development Goal, page 7)*

While the proposed zoning does “Encourage new businesses to locate in Billings” and “Convey a business-friendly attitude”, there are no requirements for building setbacks or landscaping which may not increase the visual appeal of the neighborhood.

- *Visually appealing communities (Aesthetics Goal, page 7)*

The proposed zoning may limit the visual appeal of the neighborhood because there are no requirements for building setbacks from property lines or landscaping to soften the edges of the lot or the hard surfaces of a building façade. On a principle arterial street with a speed limit of 35 it may be less appealing to walk on a sidewalk between a building front and higher speed traffic. With no landscape to soften building lots or street frontage it is not visually appealing or inviting.

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

The new zoning will have no effect on the current traffic on the streets. With future changes and development in the proposed CBD zoning, parking may become an issue.

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

Because the area is already developed, the safety issues of the existing neighborhood will not change with the proposed zone change. Future redevelopment of the area will address these issues with applicable zoning codes.

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

Because the area is already developed, the health and general welfare of the area will not change with this zone change. Future redevelopment of the area will address these issues.

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

Because the area is already developed, adequate light and air in the area will not change with this zone change. Future redevelopment of the area with CBD zoning may reduce the light and open space areas. CBD zoning allows buildings to cover the entire lot and there are no requirements for landscaping. With CBD zoning allowances, development may reduce light and open space in this area.

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

CBD zoning allows for the entire lot to be covered by a structure, and there are no height restrictions. This zoning is intended for very high density. With the right developments the area can be developed to not cause overcrowding of land.

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

The proposed zoning is generally for commercial uses. It does allow for residential uses but these are generally over the commercial uses in multi-story buildings. Existing single family residential uses in the proposed CBD zoning are there because they were built before current zoning.

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

Transportation: Traffic patterns are already established in this neighborhood. Any future large development would be expected to submit a TAS.

Water and Sewer: All water and sewer services are currently in place in this neighborhood and in some areas most likely need to be updated.

Schools and Parks: The proposed CBD zoning is not required to contribute park land and will have minimum to no effect on the school system.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments.

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

The proposed zoning will be alike in character with the current adjacent zoning as it is used now. With time and redevelopment the character could change with more dense development of the neighborhood within the area of this zone change.

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

It is unknown whether the subject property is suitable for the Central Business zoning district until a more detailed land use plan for the area is prepared. The area of the proposed zone change is an area where redevelopment is expected to occur along a principle arterial street. Whether the area is more aptly suited for commercial or residential development will depend on how the surrounding properties develop. Changing the zoning prior to developing a more

detailed land use or master plan of the area may create an unsuitable land use as the surrounding properties redevelop.

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

A building located within the Central Business District could lose its value or cause surrounding building to lose value if future redevelopment of the area were inconsistent with an adopted master plan. Values could be maintained if the existing buildings conformed with the master plan. Redevelopment in accordance with a master plan could increase the value of existing buildings.

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

The proposed zoning will permit redevelopment of the area with a minimal amount of restrictions to the developments compared to other commercial and industrial zoning districts. It will also provide tax revenue to the City of Billings and add to the overall economic vitality of the neighborhood.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

Gordon Tryan, representing the Billings Industrial Revitalization District (BIRD), spoke in opposition to the zone change. The BIRD organization is currently getting funding together to be able to get matching grant funds to have the entire East End Tax Increment Finance District (TIFD) master planned. He stated that he felt the master plan should be done first before any zone changes. Doing zone changes without a master plan or a plan would be a “hodge podge” approach to development and could end up with the same mixed results in the area that currently exists. Also, if this zone change were granted Mr. Tryan asked what precedent could it set and what company would be the next one to ask for a re-zoning to CBD and where would it stop? Mr. Tryan stated that he felt this was a zone change for the advantage of one organization, The Salvation Army. Mr. Tryan stated that although the proposed youth center to be built by the Salvation Army is commendable, this zone change takes in quite a few properties and there is no way to know what the others will do with the CBD zoning.

After the public hearing was closed, Commission Members discussed what had been presented and what Mr. Tryan had said. Commission Member Ed Workman stated that he had attended some meetings with the BIRD organization and that they are trying very hard to get the entire East End TIFD master planned to have direction with this area. The master plan will give them direction with the redevelopment of this area and provide guidance for doing it in the best way possible. Mr. Workman said he felt that granting this zone change would work to undermine what they are trying to do. Commission Member Michael Larson also stated that he felt it was in

the cities best interest to have the master plan done first before re-zoning areas in the East End TIFD. He also re-iterated what Commission Member Ed Workman had stated.

RECOMMENDATION

Staff acknowledges that the recommendation of the City Zoning Commission is to deny the application request. However, because the City Council is the applicant, staff recommends that the Council withdraw this application and allow the Salvation Army to pursue the variance requests.

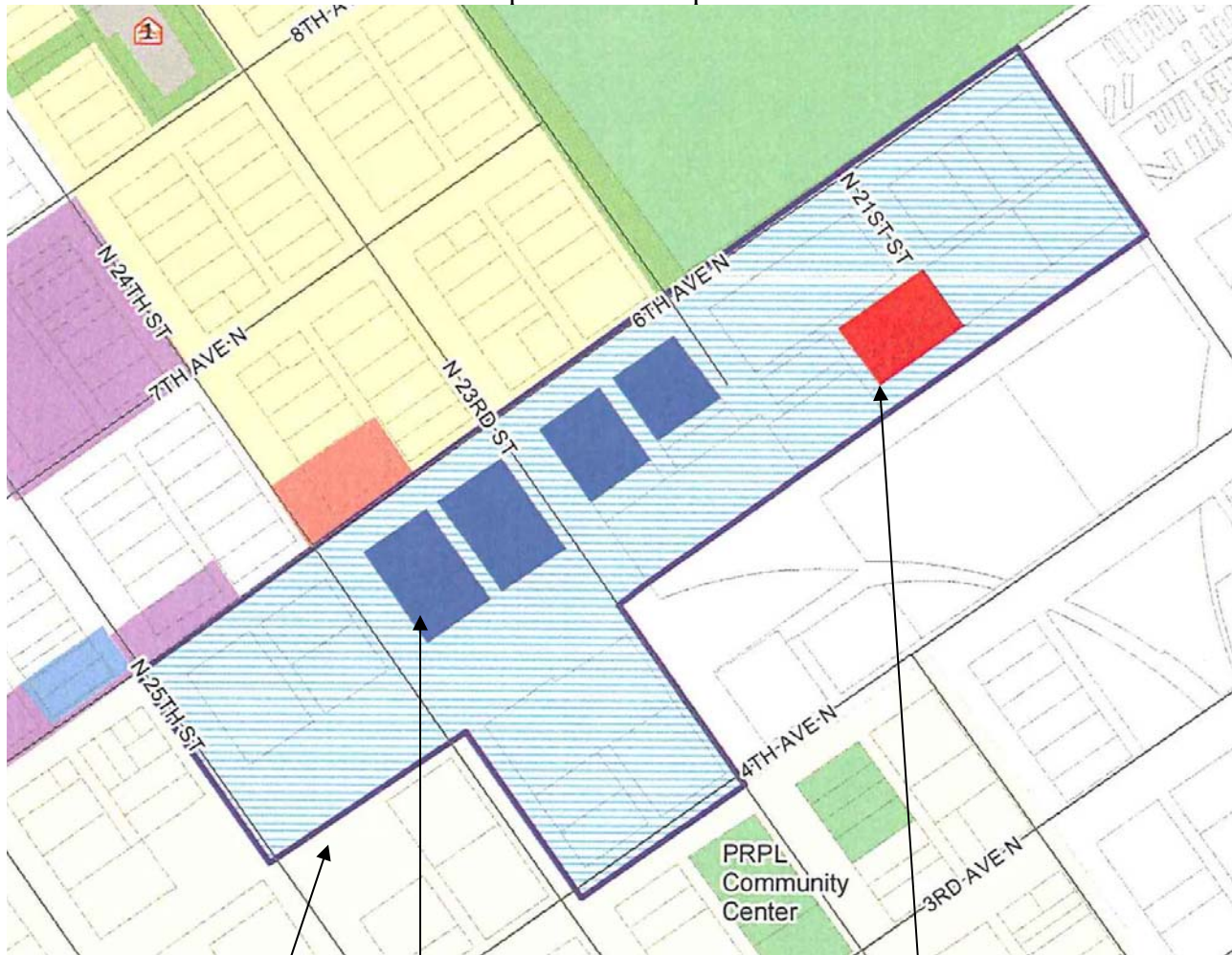
ATTACHMENTS:

- A: Surrounding zoning map
- B: Proposed CBD Expansion
- C: Site Photographs
- D: Ordinance

ATTACHMENT A
Surrounding Zoning Map



ATTACHMENT B
Proposed CBD Expansion



Proposed boundary
expansion of the Central
Business District Zoning

Properties that are currently
non-conforming that will
become conforming with
CBD zoning.

Property that will become
non-conforming with CBD
zoning.

ATTACHMENT C
Site Photographs



Looking south from Salvation Army parking lot on 6th Avenue North.



Looking south from 22nd Street and 6th Avenue North.



Looking west on 21st Street at residential property along 6th Avenue North.



Looking west along 6th Avenue North towards 25th Street from apartment building.



Looking south from 22nd Street at existing structure.

ATTACHMENT D

Ordinance

ORDINANCE NO. 08-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Lots 5 - 20, Block 266, Lots 5 – 20, Block 265, Lots 5 & 6; 19 & 20, W45' of Lots 13-18; W50' of E95' of Lots 13-18; E45' of Lots 3-18; Lot 1A of Amended Lots 1-4, 21-24 + ADJ VAC STS + Alley; W40' Lot 8 to 12 + W40' of N5' of Lot 7; Center 50' of Lot 7 to 12 + N5' of Center 50' of Lot 7; E50' of Lot 8 + 12 E50' of N5' of Lot 7; S20' of Lot 7 (Alley); Lot 22A of Amended Lots 22-24 + ADJ VAC STS, Block 264; Lots 7-18; 19 + 20; Lots 5 + 6 + VAC ADJ 21st Street; Lot 3 + VAC ADJ 21st Street, Block 263; Lots 2-18; Lots 19-23 + VAC ADJ 21st Street, Block 262; Lots 1-6, 13-21; Lots 22A-24A, Block 12, Billings Original Townsite Subdivision, Section 13, T.1N, R.26E, containing Approximately 17.3 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 Lots 5 - 20, Block 266, Lots 5 – 20, Block 265, Lots 5 & 6; 19 & 20, W45' of Lots 13-18; W50' of E95' of Lots 13-18; E45' of Lots 3-18; Lot 1A of Amended Lots 1-4, 21-24 + ADJ VAC STS + Alley; W40' Lot 8 to 12 + W40' of N5' of Lot 7; Center 50' of Lot 7 to 12 + N5' of Center 50' of Lot 7; E50' of Lot 8 + 12 E50' of N5' of Lot 7; S20' of Lot 7 (Alley); Lot 22A of Amended Lots 22-24 + ADJ VAC STS, Block 264; Lots 7-18; 19 + 20; Lots 5 + 6 + VAC ADJ 21st Street; Lot 3 + VAC ADJ 21st Street, Block 263; Lots 2-18; Lots 19-23 + VAC ADJ 21st Street, Block 262; Lots 1-6, 13-21; Lots 22A-24A, Block 12, Billings Original Townsite Subdivision, Section 13, T.1N, R.26E, containing approximately 17.3 acres and is presently zoned Controlled Industrial 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 **Controlled Industrial to Central Business District** and from the effective date of this ordinance,

shall be subject to all the rules and regulations pertaining to **Central Business District** 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 February 25, 2008.

PASSED, ADOPTED AND APPROVED on second reading March 10, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: Cari Martin, City Clerk

ZC #831

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Zone Change #832 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Residential 9,600 (R-96) to Residential 7,000 (R-70) on a 14,000 square foot parcel of land containing an existing duplex. The subject property is legally described as Lot 15, Block 3, Hilltop Subdivision, 1st Filing and is located on the southeast corner of the intersection of Hilltop Road and Agate Avenue in the Heights. The applicant is proposing the zone change in order to bring the previously constructed duplex into compliance with zoning. The owner and applicant is Steve Zimmerer. The Zoning Commission conducted a public hearing on February 5, 2008, and forwarded a recommendation of approval on 5-0 vote.

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: Upon development, the proposed zone change should increase the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #832 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Site Plan of Existing Duplex
- D: Ordinance

INTRODUCTION

The applicant is requesting a zone change from Residential 9,600 (R-96) to Residential 7,000 (R-70) on a 14,000 square foot parcel of land containing an existing duplex. The subject property is legally described as Lot 15, Block 3, Hilltop Subdivision, 1st Filing and is located on the southeast corner of the intersection of Hilltop Road and Agate Avenue in the Heights. The applicant is proposing the zone change in order to bring the previously constructed duplex into compliance with zoning.

PROCEDURAL HISTORY

- On December 20, 2007, the neighborhood meeting for the proposed zoning application was conducted at 928 Broadwater Avenue.
- On January 7, 2008, the rezone application was submitted to the Planning Division.
- On February 5, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and forwarded a recommendation of approval to the City Council on a 5-0 vote.
- On February 18, 2008, an additional neighborhood meeting was conducted at 875 Main Street in the Heights.
- On February 25, 2008, the City Council will conduct the public hearing for the the zone change.
- On March 10, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

BACKGROUND

The applicant is requesting to rezone a 14,000 square foot property from R-96 to R-70. The subject property is located on the southeast corner of the intersection of Hilltop Road and Agate Avenue in the Heights. The intent of the zone change is to bring the existing duplex, which was constructed in the late 1970's into compliance with zoning. The existing duplex on this property is in compliance with the preferred single-family residential and duplex uses identified in the Heights Neighborhood Plan.

A neighborhood meeting was conducted for the proposed zone change on December 20, 2007, at 5:30 pm at 928 Broadwater Avenue, Suite 231. There have been concerns by the City Council regarding past locations for neighborhood meetings for proposed zone changes and it has been encouraged that they be conducted within the vicinity of the property. Since this meeting was conducted on Broadwater Avenue, the applicant was encouraged to reschedule a meeting within the Heights area. A neighborhood meeting was rescheduled and conducted on February 18, 2008, at 7:00 p.m. at 875 Main Street (Fuddrucker's Restaurant) in the Heights. Additional information regarding this meeting will be available at the City Council meeting.

Planning staff is forwarding a recommendation of approval for this application. Staff has based this recommendation on the 12 criteria for zone changes discussed below.

ALTERNATIVES ANALYSIS

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

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

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

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

The existing duplex on this property is consistent with the duplexes located to the northeast and west of the subject property. The proposed use will also be in conformance with the Heights Neighborhood Plan.

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

The proposed zoning will be compatible with the surrounding single-family residential uses and duplexes.

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

The proposed zoning is not expected to generate additional traffic in this area, as the duplex has been in existence since the 1970's.

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

The lot has public street frontage and is served by the City Fire Department. The duplex has been in existence since the 1970's and the proposed zoning will not affect the emergency services to this property.

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

The proposed zoning would allow for the existing duplex to remain on the lot and should not have an effect on the general health and welfare of surrounding properties.

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

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

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

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land.

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

The proposed uses should not cause an undue concentration of population, as there is surrounding residentially developed properties.

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

Transportation: The proposed zoning will not increase traffic.

Water and Sewer: The City has adequate facilities to serve this property.

Schools and Parks: This proposed re-zone should have no substantial effect on schools or parks.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments.

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

The proposed zoning will be similar in character with the adjacent residential uses.

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

The subject property is suitable for the requested zoning district.

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

The new zoning should not have significant effect on the value of residential buildings in the area.

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

The proposed zoning will permit single-family residences and duplexes as an outright use. The Heights Neighborhood plan also identifies this area for development as single-family and duplexes.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

A neighborhood meeting was conducted for the proposed zone change on December 20, 2007, at 5:30 pm at 928 Broadwater Avenue, Suite 231. There have been concerns by the City Council regarding past locations for neighborhood meetings for proposed zone changes and it has been encouraged that they be conducted within the vicinity of the property. Since this meeting was conducted on Broadwater Avenue, the applicant is encouraged to reschedule a meeting within the Heights area. At the time the City Council memo was written, staff did not have information regarding the location or time of this meeting.

The Zoning Commission conducted a public hearing on February 5, 2008, and forwarded a recommendation of approval to the City Council on a 5-0. The applicant was present at the Zoning Commission meeting. There was no public comment at the meeting and no discussion by the Zoning Commission.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #832 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Site Plan of Existing Duplex
- D: Ordinance

Attachment A
Site Photographs



Figure 1: View looking north of the intersection of Hilltop Road and Agate Avenue.

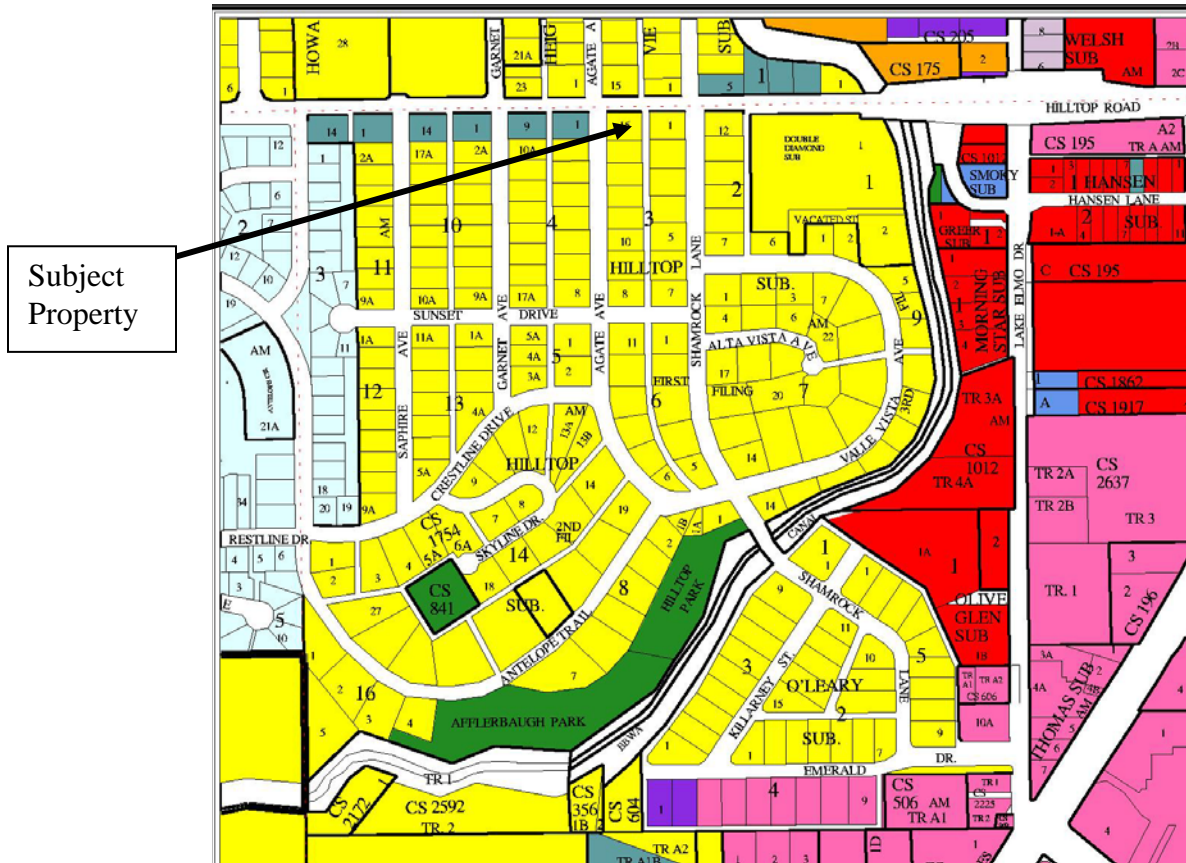


Figure 2: View from the northwest corner of the property toward the existing duplex on the property.



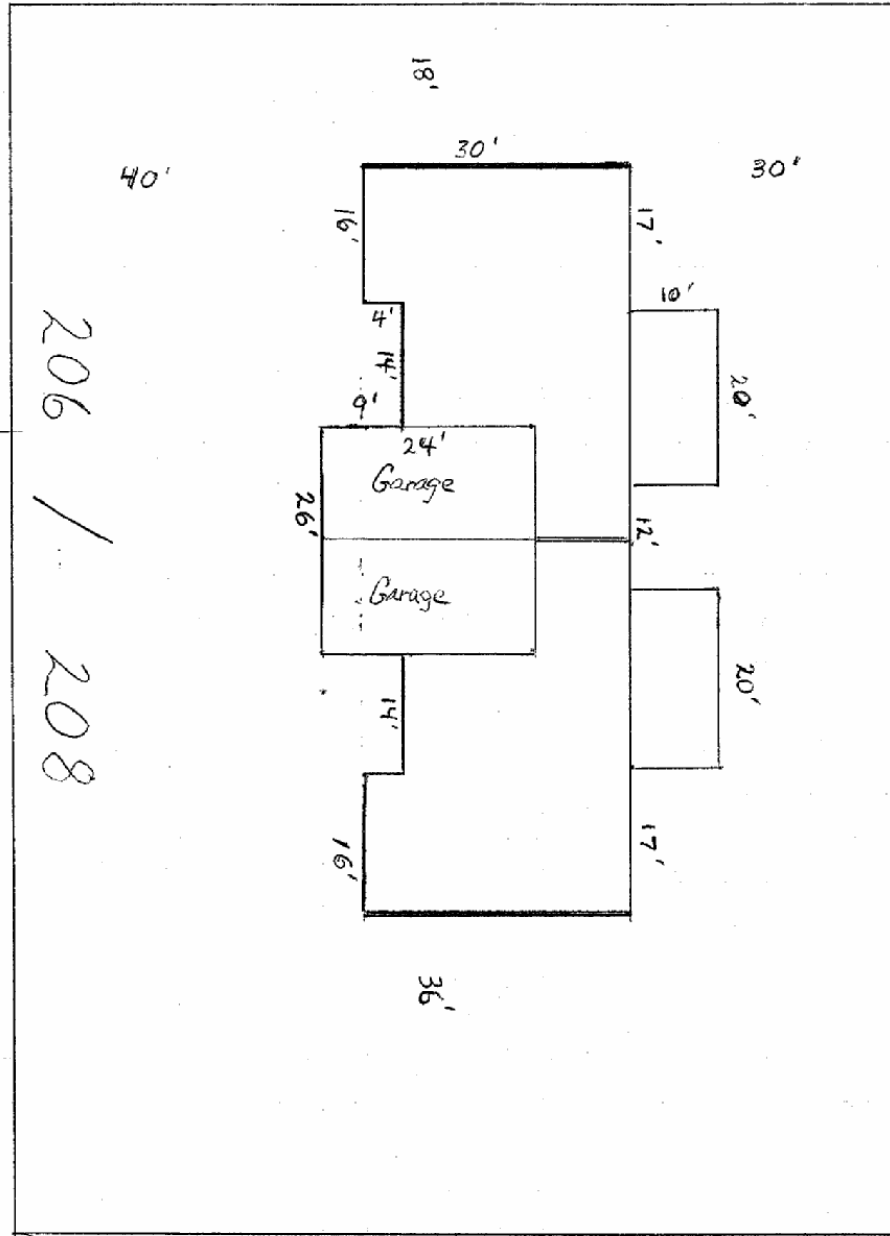
Figure 3: View east along Hilltop Road toward adjacent residential uses.

Attachment B
Surrounding Zoning



HILLTOP

206 / 208



AGATE AVE

ORDINANCE NO. 08-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Lot 15, Block 3, Hilltop Subdivision, 1st Filing, 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 Lot 15, Block 3, Hilltop Subdivision, 1st Filing, containing approximately 14,000 square feet and is presently zoned Residential 9600 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9600** to **Residential 7000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 7000** 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 February 25, 2008.

PASSED, ADOPTED AND APPROVED on second reading March 10, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

City Clerk
ZC #832

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

TITLE: Zone Change #833 Public Hearing and 1st 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 (R-70) to Residential 6,000 (R-60) on the southern half of Tract 2, Certificate of Survey 3303 located at 927 Bench Boulevard. The property is owned by Gene and Joy Culver and the agent for the property is Engineering, Inc. The applicant is proposing to construct 10 four-plex multifamily dwellings on the subject property. A concurrent Special Review (SR #855) has been submitted and will be considered by the Council if this re-zoning request is granted. A pre-application neighborhood meeting was held at the offices of Engineering, Inc. on December 4, 2007. The Zoning Commission conducted a public hearing on February 5, 2008, and voted 5-0 to recommend approval to the City Council.

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

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

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

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #833 and adopt the determinations of the 12 criteria, as discussed within this report.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance

INTRODUCTION

The applicant is requesting to rezone the southern half of Tract 2 of C/S 3303 located north of the intersection of Bench Blvd and Hilltop Road and just south of the South Heights Planned Development Subdivision on the east side of Bench Boulevard. The applicants, Gene & Joy Culver, are proposing to construct 10 four-plex multifamily dwellings on the property. Most of the surrounding property is zoned for single family or two family dwelling units, but the neighborhood has a greater variety of uses.

PROCEDURAL HISTORY

- A pre-application Neighborhood Meeting was conducted on December 4, 2007, by the applicant at the offices of Engineering, Inc.
- An application was received by the Planning Division on January 7, 2008.
- The Zoning Commission conducted a public hearing on February 5, 2008, and the Zoning Commission voted 5-0 to recommend approval of the zone change.
- The City Council will conduct a public hearing and first reading on February 25, 2008, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on March 10, 2008.

BACKGROUND

The applicant is requesting a zone change as well as a special review to develop the property for 10 four-plex multifamily dwellings. Most of the surrounding property is zoned for single family or two family dwelling units. Property at the intersection of Bench Boulevard and Yellowstone River Road was re-zoned recently to accommodate Neighborhood Commercial uses and multifamily dwelling units. A similar re-zoning at the intersection of Wicks Lane and Bench Boulevard was approved by the City Council in 2005. This property is not near the intersection of arterial streets but has frontage on Bench Boulevard, that will be reconstructed in the near future to arterial street standards.

The lots to the north are zoned Planned Development with an underlying zoning of Residential Manufactured Home (RMH) and two lots zoned R-60. The two lots with underlying zoning of R-60 were developed with two duplex dwellings each. The property east and south of the site is R-70 and is developed for single family dwellings. This area is a mixture of site built homes, modular homes and manufactured homes. West of the site the zoning is RMH, and is developed for single family homes. Billings Heights Park with two playing fields is just south and west of the subject property. There are few multifamily dwellings within the immediate area. Bench Boulevard is a principal arterial street and currently handles about 3,900 vehicle trips per day. When Bench Boulevard is re-constructed, this traffic is expected to increase.

The Billings Heights Neighborhood Plan indicates this area should develop at a medium residential density with mixed uses or higher density multifamily along the arterial. The proposed R-60 zoning district could allow a higher density residential development on this 3.978 acre property. Multifamily dwellings could be developed that would allow up to 20 dwellings

units per acre. The concurrent special review is proposing 10 four-plex structures for an overall density of approximately 10 dwelling units per acre. If the lot is developed as single family detached dwellings this would allow up to 7 dwelling units per acre. Duplex structures could allow a density of 12 dwelling units per acre. Any development of the property for multifamily structures would require the provision of adequate off-street parking and landscaping to commercial development standards.

The Planning Division reviewed the application and recommended denial based on the attached twelve (12) criteria for zone changes. The subject property is surrounded by R-70, R-60 and RMH and staff did consider this proposal to be compatible with the surrounding zoning or neighborhood character. The Zoning Commission conducted a public hearing on February 5, 2008, and recommended approval of the zone change on a 5-0 vote.

ALTERNATIVES ANALYSIS

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

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

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

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

The proposed zoning could permit up to 22 multi-family units per acre, but the applicant is proposing through a concurrent special review application to limit the density to 10 units per acre. This density and housing type is consistent with the mixture of surrounding land uses and densities.

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

The proposed zoning is consistent with the surrounding character of the neighborhood.

- *Billings Heights Neighborhood Plan – Encourage high density multi-family development along arterials and maintain similar housing in established neighborhoods. (Land Use Element Goal, page 19)*

The proposed zoning would allow only a slight increase in density from the current zoning and is consistent with the established neighborhood.

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

The additional traffic that could be produced by the proposed increase in density is approximately 400 additional vehicle trips per day on Bench Boulevard. This estimate is based on the proposed ten 4-plex structures. Bench Boulevard will be re-constructed to arterial standards in the near future and this volume of traffic can be accommodated by the existing street.

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

The subject property is currently serviced by City Fire and Police. Staff is unable to determine the impacts of the proposed density on those services. Any development will require a minimum width for access roads and provision of water for fire protection.

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

The proposed zoning would permit a slight density increase from the current allowed maximum of 9 units per acre in the R-70 zoning district. This would not cause traffic conflicts within the area. However, the Unified Zoning Regulations do specify minimum setbacks and lot coverage requirements for the proposed zoning district in order to promote health and safety.

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

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

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

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-70 zone allows 30% lot coverage and the R-60 zone allows 40% lot coverage. The proposed density of 10 units an acre for the 10 four-plex structures does allow for adequate open area and should not overcrowd the property.

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

The proposed zoning will allow the introduction of multifamily residential uses in an area that has a mixture of housing densities. Many properties along Bench Boulevard have older homes with acreage that can be used for in-fill projects. This would not unduly concentrate population on a small area.

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

| | |
|--------------------|---|
| Transportation: | The proposed zoning may impact the surrounding streets, as the only way in and out of the development is Bench Boulevard. Traffic access and construction will be addressed through a future development agreement. |
| Water and Sewer: | The City will provide water and sewer to the property through existing lines on Bench Boulevard. |
| Schools and Parks: | Skyview High School, Castle Rock Middle School, and Bitterroot Elementary School will provide education to students within the development. |
| Fire and Police: | The subject property is currently served by the City of Billings fire and police departments. |

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

The proposed zoning will permit multifamily uses through special review. The concurrent special review limits the density to 10 dwellings per acre which is similar to the surrounding neighborhood.

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

The subject property is suitable for the requested zoning district. A portion of the property that has frontage on Bench Boulevard will provide the access to the acreage to the east.

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

Staff cannot determine whether the proposed zoning would appreciably alter the value of structures within the area. The road access from Bench Boulevard may have some affect on the adjacent homes. The existing single family home at 927 Bench Boulevard will be removed to provide road access to the east.

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

The proposed zoning will permit a greater variety of housing choices in this neighborhood. The property has direct access to Bench Boulevard, a principle arterial street. The Heights Neighborhood Plan depicts this area of the city as mixed uses and medium density residential (R-70 & R-60, Neighborhood Services).

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

The Zoning Commission conducted a public hearing on February 5, 2008. The applicant and agent attended the public hearing and provided testimony to the Zoning Commission. Rick Leuthold of Engineering, Inc. explained the proposed development to the Commission. He stated he disagreed with the Staff recommendation of denial. Mr. Leuthold provided photographs of the surrounding neighborhood that showed a variety of uses in the area including a ball field, dense manufactured home parks, multi-family dwellings and a vehicle wrecking yard. He stated other areas of the city have blended housing types successfully such as the area near Boulder Elementary School. The specifics of the development plan make this proposal compatible with the area. Mr. Leuthold stated the area was a mishmash of uses and housing density. He stated this would be a great in-fill project. Mr. Leuthold pointed out the planned re-construction of Bench Boulevard and how this project would take advantage of the planned improvements. Mr. Leuthold stated a neighborhood meeting was held and two property owners attended. Both attendees had no major concerns with the proposal. He asked the Commission to forward a recommendation of approval.

Commissioner Hawkins asked Mr. Leuthold if the applicant would be interested in approval of the zone change only and not the special review. Mr. Leuthold stated the applicant is only

interested in the development plan if the special review were also approved. The applicant does not believe there is a sufficient market at this location to sustain a one or two-family development style. Commissioner Larson asked Mr. Leuthold to explain the development plan and its potential to effect surrounding property. Mr. Leuthold stated the plan should not appreciably affect surrounding owners. The development will have screening and setbacks to diminish any visual impact. The manufactured home park to the east is screened by the existing 6-foot berm on the ditch bank. Commissioner Hawkins asked Mr. Leuthold how many adjacent properties have manufactured homes. Mr. Leuthold stated only one adjacent property has manufactured homes. Mr. Leuthold stated that any development of the property would require road access from Bench Boulevard, even if it were a single family development.

Steve Long, an adjacent property owner, testified in favor of the zone change and special review. He stated Bench Boulevard will continue to carry larger amounts of traffic and this is an ideal location for this type of development. Commissioner Dailey asked Mr. Long if the widening of Bench Boulevard will affect existing homes with frontage. Mr. Long stated that his property and many others have 50 or 60 foot setbacks to the pavement already. He stated a few may have to be removed.

Mr. McCrae testified against the proposed zone change on behalf of his sister, Nancy McCrae of Chicago, IL, who owns a house at 923 Bench Boulevard. Her home will now be right next to a road. His sister is concerned about the affect on the re-sale value of her home.

In rebuttal, Mr. Leuthold stated that even a single family home development of the parcel would require a road to access the property. The screening for the property should protect any adjacent owners. In-fill projects do sometimes involve the removal of older structures to access all the developable area.

The Zoning Commission considered the staff recommendation, the testimony, and the applicant's explanation of the proposed project. The Zoning Commission voted 5-0 to approve the zone change application.

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #833 and adopt the determinations of the 12 criteria, as discussed within this report.

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance

ATTACHMENT A

Site Photographs, Zone Change #833 – 927 Bench Boulevard



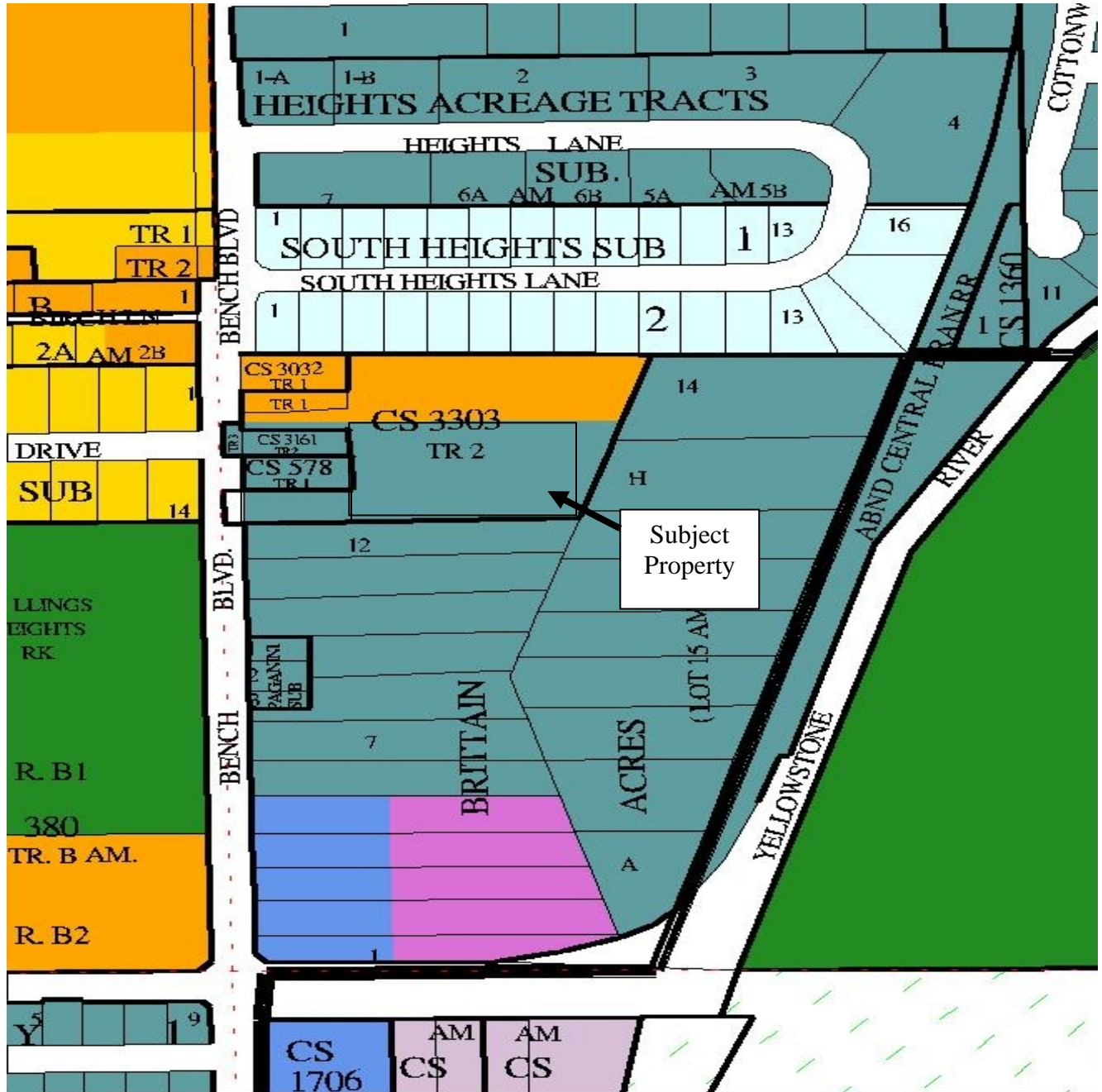
Subject Property with existing single family home – acreage in background



View at single family residence directly north of subject property

ATTACHMENT B

Surrounding Zoning – Zone Change #833



ATTACHMENT C

Zone Change #833

ORDINANCE NO. 08-_____

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR THE SOUTH HALF OF TRACT 2 OF CERTIFICATE OF
SURVEY 3303

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 south one-half of Tract 2 of Certificate of Survey 3303 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 on the **south half of Tract 2 of Certificate of Survey 3303** is hereby changed from **Residential 7,000** to **Residential 6,000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 6,000** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading February 25, 2008.

PASSED, ADOPTED AND APPROVED on second reading March 10, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

ZC#833 – 927 Bench Boulevard

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

TITLE: Public Hearing for Special Review #855
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole M. Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a special review request to allow 10 four-plex multifamily dwellings on a 3.978 acre parcel in a proposed Residential 6,000 (R-60) zone and an existing R-60 zone, on Tract 2 of Certificate of Survey 3303. Gene & Joy Culver are the owners and Engineering, Inc. is the agent. The property is addressed as 927 Bench Boulevard. The Zoning Commission held a public hearing on this request on February 5, 2008, and voted to forward a recommendation of conditional approval to the City Council on a 5-0 vote.

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

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

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

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #855 on a 5-0 vote.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A. Zoning Map

- B. Site Photographs
- C. Site Plan

INTRODUCTION

This is a request for a special review to allow the construction of 10 four-plex multifamily dwellings on Tract 2 of C/S 3303. The applicant has submitted a concurrent zone change request (ZC #833) to change the underlying zoning from R-70 to R-60 on the southern half of the parcel to allow for this special review request. The Zoning Commission has recommended approval of the zone change request based on the 12 review criteria for zone changes. If the City Council concurs with the zone change recommendation, this special review request will be considered. If the City Council does not concur with the recommendation to approve the zone change then it cannot consider this special review request.

PROCEDURAL HISTORY

- A special review application to construct 10 four-plex multifamily dwellings was received concurrently with the zone change application on January 7, 2008.
- The City Zoning Commission held a public hearing on February 5, 2008, and voted to forward a recommendation of approval on a 5-0 vote.
- The City Council will conduct a public hearing and consider this application on February 25, 2008.

BACKGROUND

The applicants, Gene & Joy Culver, are proposing to demolish the existing single family home and construct 10 four-plex multifamily dwellings on the property. Single structures with more than two units are not allowed under the current R-70 zoning for the southern half of the parcel. Most of the surrounding property is zoned for single family or two family dwelling units but the neighborhood has developed with a variety of uses and housing types. Property to the south and east is zoned R-70 and some are developed as single family homes and manufactured homes. There are no multifamily dwellings developed in this area with exception of two four-plex multifamily dwellings at the eastern end of the South Heights Lane Planned Development Subdivision. The Billings Heights Neighborhood Plan encourages high density multi-family development along arterials but prefers to maintain similar housing in established neighborhoods. The established neighborhood on the east side of Bench Boulevard is a mixture of single family, modular and manufactured homes, and some higher density neighborhoods. There are several duplexes and 2 four-plex dwellings to the north of the subject property. The property has zoning that will accommodate single family and two family dwelling units without special review approval.

The Planning Division reviewed this application with other city departments and recommended denial to the Zoning Commission. The City Zoning Commission held a public hearing and based on testimony from the applicant, agent and surrounding property owners made a recommendation to conditionally approve the special review. Before a recommendation of approval or conditional approval can be made, each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. The Zoning Commission determined the application conforms to the first criteria in so far that it might be within one of the zoning districts (the proposed R-60 zone) where multifamily dwellings are allowed by special review approval. The form of the application is correct and the submitted site plan appears to be in conformance with site development and zoning regulations for multifamily dwellings.

The Zoning Commission determined that the application does conform to the second or third criteria. During the staff review of this project, the Planning staff expressed concern with the proposed access and the lack of similar housing in the neighborhood. The Zoning Commission determined the application meets the second criteria that requires consistency with the objectives and purposes of the Unified Zoning Regulations. The proposal is not significantly denser than surrounding neighborhoods, an access road would be required for any type of development and there were similar housing types in the area, specifically the South Heights Lane Planned Development. The proposal protects the health, safety and the general welfare of the area. The Zoning Commission determined the proposal was consistent with the Billings Heights Neighborhood Plan by placing higher density housing near access to arterial streets and is compatible with surrounding density. The Zoning Commission considered and is recommending conditions of approval to otherwise screen the project from adjacent land uses and to minimize any potential adverse impacts.

The Zoning Commission has recommended approval of the proposed zone change from R-70 to R-60 and is forwarding a recommendation of conditional approval for the special review based on the three review criteria for special reviews.

ALTERNATIVES ANALYSIS

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

1. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is consistent with the purposes of Chapter 27 and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location. The access road will conform to city development standards. The application does encourage predictable land use decisions that are

consistent with the neighborhood character and land use patterns. Adjacent parcels are developed for a variety of uses and densities including single family, two family and multifamily dwellings. Four-plex multifamily dwellings will not be out of character for this neighborhood. The application encourages new developments that are sensitive to and compatible with the character of the adjacent neighborhood.

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

The proposed multifamily dwellings are appropriate at this location and conditions of approval are recommended that will minimize any potential adverse effects of the proposal.

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

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

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #855 on a 5-0 vote.

CONDITIONS

1. The developer will submit a Certificate of Survey to reflect a provision of public right-of-way on Bench Boulevard to the City of Billings.
2. This special review approval is for the construction of 10 four-plex multifamily dwellings and no other use or expansion of this use is approved or implied with this conditional approval.
3. Development of the site shall be in substantial conformance with the site plan dated December 18, 2007, unless specifically modified by these conditions. Deviations from the approved site plan that change the location of buildings or increase the number of dwelling units will require additional special review approval
4. This approval shall be limited to 40 dwelling units in 10 structures as shown on the site plan dated December 18, 2007.
5. Any expansion of the gross floor area of the building(s) or number of parking stalls greater than 10 percent will require an additional special review approval as required by Section 27-613(c) of the Unified Zoning Regulations.
6. Access roads, including construction widths, that enter off of Bench Blvd will be approved by City Engineering and the City Fire Department.
7. Landscaping shall be provided as shown on the site plan dated December 18, 2007, and as required by Section 27-1100, of the Unified Zoning Regulations.

8. A 6' high site obscuring fence shall be constructed, where one does not already exist, along all property lines with the exception of the east property line and excluding clear vision zones. The fence shall be constructed of standard fencing materials. No chain link or wire fencing will be used for a sight-obscuring fence.
9. These conditions of special review approval shall run with the land described in this special review approval and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
10. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City regulations that apply

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

STAKEHOLDERS

The Zoning Commission conducted a public hearing on February 5, 2008, and received testimony from the applicant and agent. The applicant and agent explained the proposed development to the Zoning Commission.

The Zoning Commission considered the staff recommendation, the public testimony and voted 5-0 to recommend conditional approval of Special Review #855.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

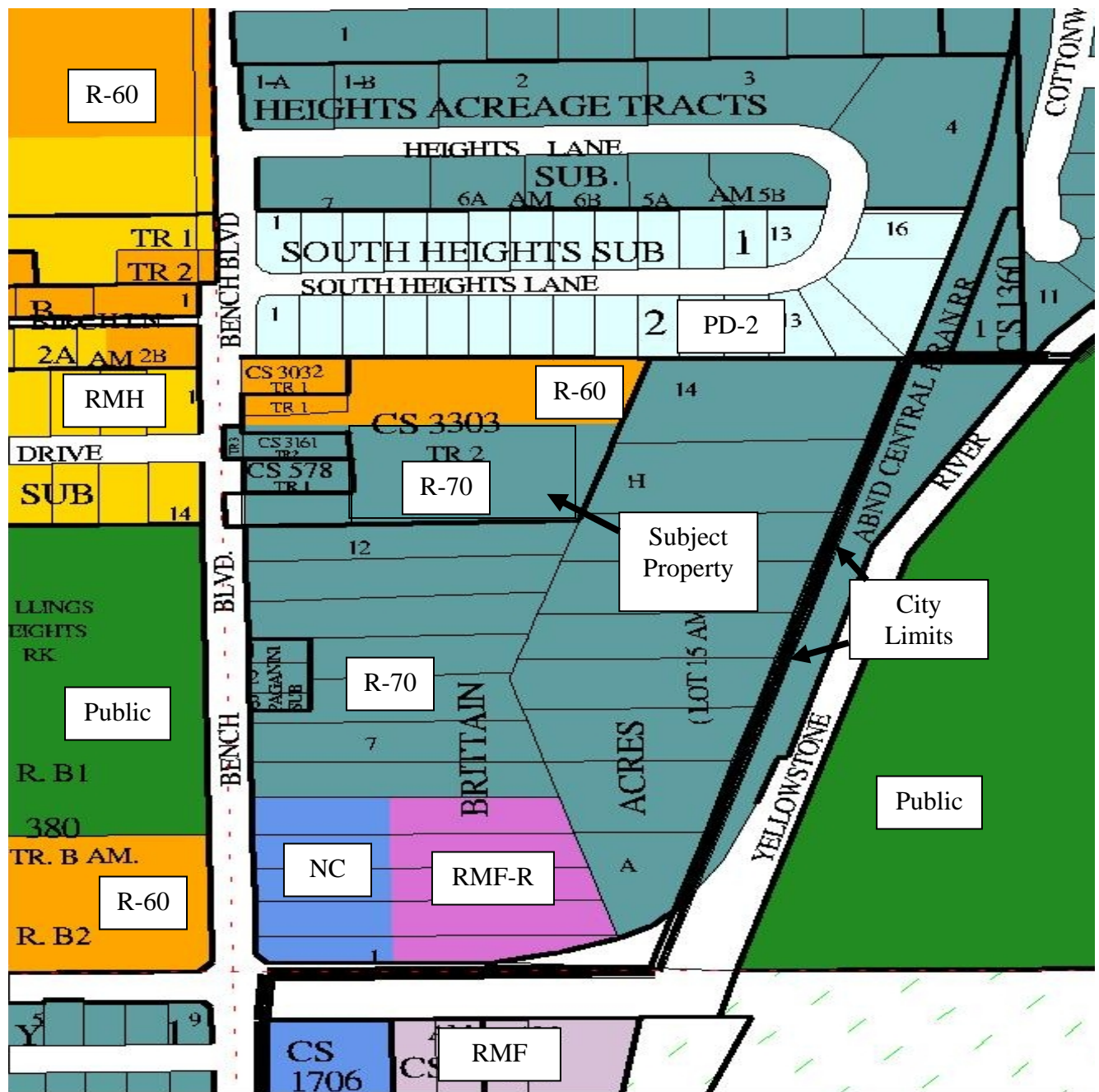
Consistency with adopted plans and policies is discussed in the Alternatives Analysis section above.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #855 on a 5-0 vote.

ATTACHMENTS

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

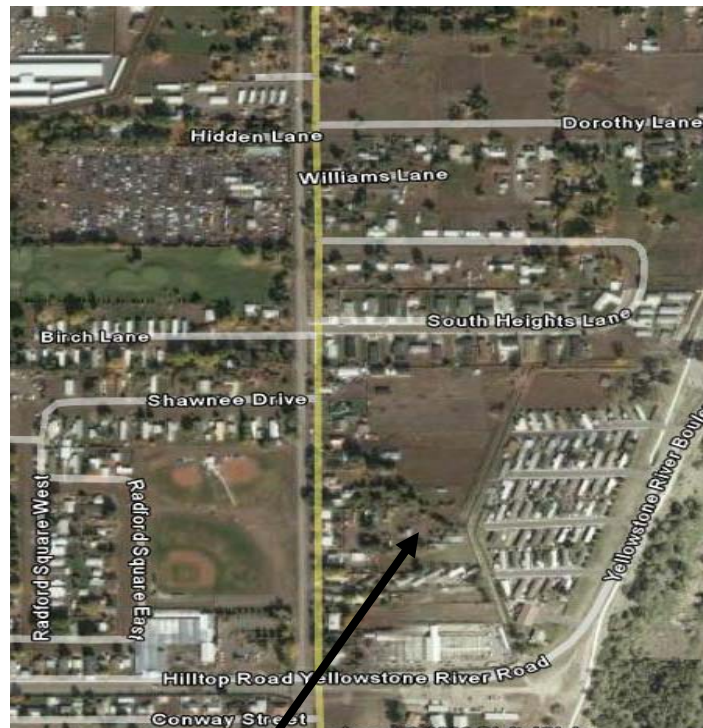


ATTACHMENT B

Site photos –Special Review #855

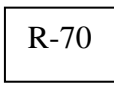


Subject Property 927 Bench Boulevard and adjacent property north



Aerial view of 927 Bench Boulevard and surrounding neighborhood

Site Plan – Special Review #855



289

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

TITLE: Zone Change #834 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change request from Residential 7,000 (R-70) to Residential 6,000 (R-60) on Tract 1, Certificate of Survey 1531 located at 1442 Bench Boulevard, a 2.11 acre parcel of land. The parcel is located on the west side of Bench Boulevard just south of the intersection with Wicks Lane. The applicant is proposing to construct 7 four-plex multifamily dwellings on the subject property. A concurrent Special Review (SR #856) has been submitted and will be considered by the Council if this rezoning request is granted. The applicants are Gene and Joy Culver and the agent is Engineering, Inc. A pre-application neighborhood meeting was held at the offices of Engineering, Inc. on December 4, 2007. The Zoning Commission conducted a public hearing on February 5, 2008, and forwarded a recommendation of approval on 5-0 vote.

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: Upon development, the proposed zone change should increase the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #834 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance

INTRODUCTION

The applicant is requesting to rezone Tract 1 of C/S 1531 located just south of the intersection of Wicks Lane and Bench Boulevard and adjacent to the Popelka Heights commercial development on the west side of Bench Boulevard. The applicants, Gene & Joy Culver, are proposing to construct multi-family housing on the property. Most of the surrounding property is zoned for single family, multifamily or commercial uses. The property is near the intersection of arterial streets and just east of the new elderly housing complex at 1439 Main Street. The applicant is proposing to construct 7 four-plex multifamily dwellings.

PROCEDURAL HISTORY

- On December 4, 2007, the pre-application neighborhood meeting for the proposed zoning application was conducted at the offices of Engineering, Inc.
- On January 7, 2008, a zone change application was submitted to the Planning Department.
- On February 5, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and forwarded a recommendation of approval to the City Council on a 5-0 vote.
- On February 25, 2008, the City Council will conduct the public hearing for the the zone change.
- On March 10, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

BACKGROUND

The applicant is requesting to rezone a 2.11 acre property from R-70 to R-60. The subject property is located just south of the Popelka Heights development that includes a U.S. Post Office and a veterinary clinic. It is the property owner's intent to construct up to 7 four-plex multifamily dwellings on the property through a special review approval (SR #856). The construction of mixed uses and higher density residential uses is supported by the 2003 Growth Policy and the Billings Heights Neighborhood Plan.

The lots to the north are zoned Community Commercial and have been fully developed for commercial uses. The property east of the site is R-70 and is developed for single family and two-family dwellings. This area near the intersection of Wicks Lane and Bench Boulevard has been developing for commercial and higher density housing since the Heights Wal-Mart was approved in 2000. Bench Boulevard is a principal arterial street and currently handles about 3,900 vehicle trips per day. When Bench Boulevard is re-constructed, this traffic is expected to increase. The Billings Heights Neighborhood Plan indicates this area should develop at a medium residential density with mixed uses or higher density multifamily along the arterial. The Billings Heights Neighborhood Plan supports higher density multifamily development that has arterial frontage. The proposed R-60 zoning district could allow a higher density residential development on this 2.11 acre property. The applicant is proposing to combine this property with Tract 2 of C/S 193 to the south to create a 3.055 acre parcel for multifamily development. Multifamily dwellings could be developed that would allow up to 20 dwellings units per acre. The concurrent special review is proposing 7 four-plex structures for an overall density of

approximately 9 dwelling units per acre. Any development of the property for multifamily structures would require the provision of adequate off-street parking and landscaping to commercial development standards.

Planning staff forwarded a recommendation of approval to the Zoning Commission for this application. The Zoning Commission concurred with this recommendation. Staff based this recommendation on the 12 criteria for zone changes discussed below.

ALTERNATIVES ANALYSIS

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

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

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

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

The proposed zoning would permit up to 22 multi-family units per acre, which is consistent with the surrounding multifamily and commercial uses.

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

The proposed zoning is consistent with the surrounding character of the neighborhood, which is multifamily and commercial uses.

- *Billings Heights Neighborhood Plan – Encourage high density multi-family development along arterials and maintain similar housing in established neighborhoods. (Land Use Element Goal, page 19)*

The proposed zoning would allow similar density multifamily development within an established neighborhood. All of the property is along the arterial street and would be similar to the existing multifamily elderly housing to the west.

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

The additional traffic that could be produced by the proposed increase in density is approximately 280 additional vehicle trips per day on Bench Boulevard. This estimate is based on the proposed 7 four-plex structures. The existing traffic on Bench Boulevard is approximately 3,900 vehicle trips per day.

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

The subject property is currently serviced by City Fire and Police. Staff is unable to determine the impacts of the proposed density on those services. Any development will require a minimum width for access roads, turn around areas, and provision of water for fire protection.

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

The proposed zoning would permit a density increase from the current allowed maximum of 9 units per acre in the R-70 zoning district. This should not cause traffic conflicts within the area. This section of Bench Boulevard has been improved in recent years for the surrounding commercial and multifamily developments. The Unified Zoning Regulations do specify minimum setbacks and lot coverage requirements for the proposed zoning district in order to promote health and safety.

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

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

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

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-70 zone allows 30% lot coverage and the R-60 zone allows 40% lot coverage. The proposed density of 9 units an acre for the 7 four-plex structures does allow for adequate open area and should not overcrowd the property.

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

The proposed zoning will allow the introduction of multifamily residential uses in an area surrounded by commercial and multifamily uses. This would not unduly concentrate population on a small area.

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

| | |
|--------------------|---|
| Transportation: | The proposed zoning may have a minor impact on the surrounding streets, as the only way in and out of the development is Bench Boulevard. |
| Water and Sewer: | The City will provide water and sewer to the property through existing lines on Bench Boulevard. |
| Schools and Parks: | Skyview High School, Castle Rock Middle School, and Bitterroot Elementary School will provide education to students within the development. |
| Fire and Police: | The subject property is currently served by the City of Billings fire and police departments. |

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

The proposed zoning will permit multifamily uses, which are alike in character to the surrounding commercial and multifamily uses.

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

The subject property is suitable for the requested zoning district. Many properties on the west side of Bench Boulevard have been zoned for multifamily uses and this area is suitable for higher density development.

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

Staff cannot determine whether the proposed zoning would appreciably alter the value of structures within the area. Higher density multifamily dwellings may negatively affect single-family market prices.

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

The proposed zoning will permit more dense development that is alike in character to the surrounding multifamily uses. The Heights Neighborhood Plan depicts this area of the city as mixed uses and higher density residential (RMF-R or R-60).

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

A neighborhood meeting was conducted on December 4, 2007, at the offices of Engineering, Inc. by the applicant and agent. Four surrounding property owners attended the meeting in addition to the applicant and agent. Staff has not received any phone calls or letters regarding concerns over the proposed zone change or the special review application for multifamily dwellings.

The Zoning Commission conducted a public hearing on February 5, 2008, and forwarded a recommendation of approval to the City Council on a 5-0 vote. The applicant and agent were present at the Zoning Commission meeting and explained the application and proposed development. There was no other public comment at the meeting and no discussion by the Zoning Commission.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #834 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance

Attachment A

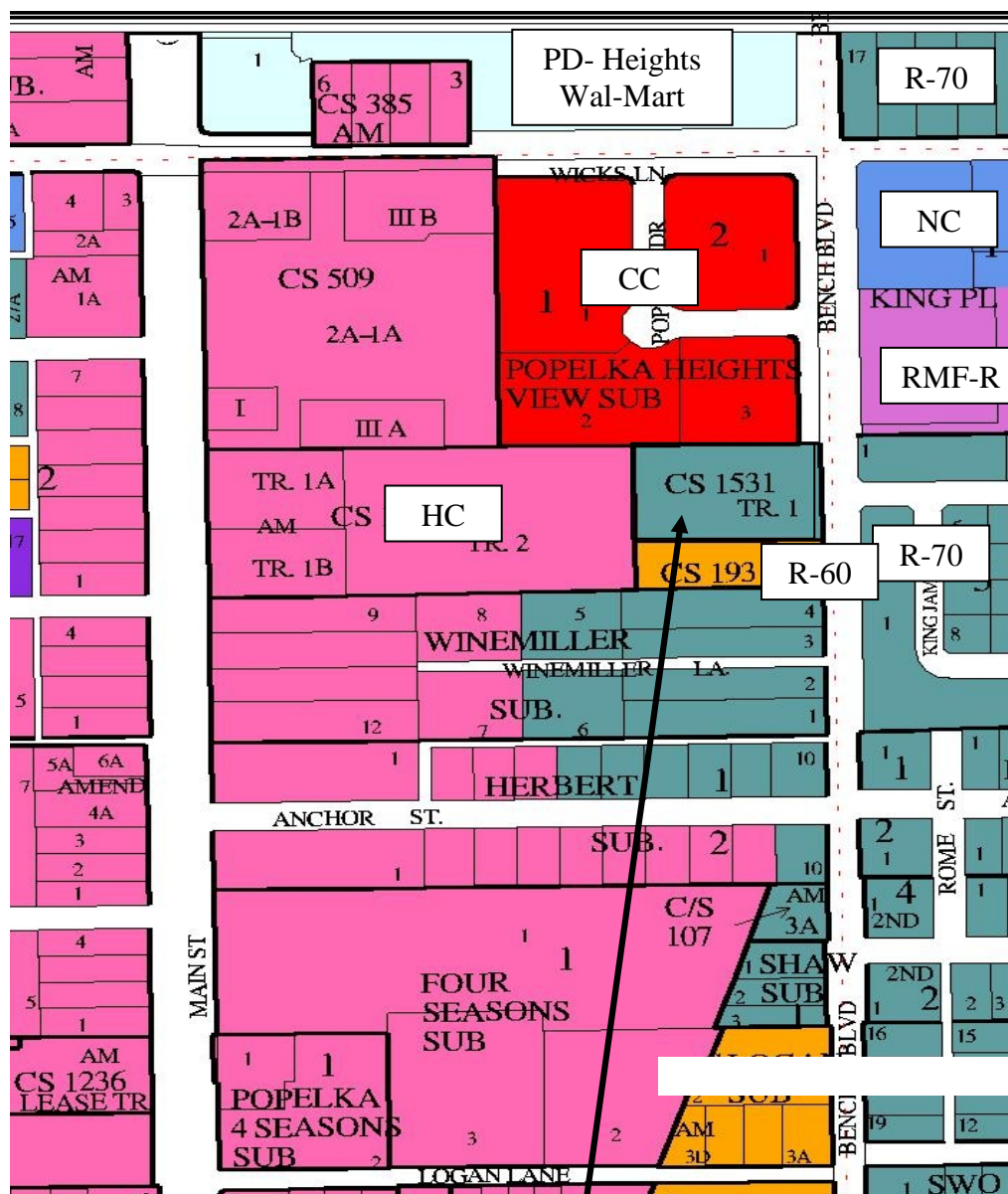
Site Photographs, Zone Change #834 – 1442 Bench Boulevard



Subject Property with existing single family home



View north along Bench Boulevard



ORDINANCE NO. 08-_____

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR
Tract 1 of Certificate of Survey 1531, containing approximately 2.11 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 Tract1 of Certificate of Survey 1531, containing approximately 2.11 acres and is presently zoned Residential 7000 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 7000** to **Residential 6000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 6000** 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 February 25, 2008.

PASSED, ADOPTED AND APPROVED on second reading March 10, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

City Clerk
ZC #834- 1442 Bench Boulevard

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

TITLE: Public Hearing for Special Review #856
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole M. Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a special review request to allow 7 four-plex multifamily dwellings on a 3.055 acre parcel in a proposed Residential 6,000 (R-60) zone and an existing R-60 zone, on Tract 2 of Certificate of Survey 193 (existing R-60) and Tract 1 of Certificate of Survey 1531 (proposed R-60). Gene & Joy Culver are the owners and Engineering, Inc. is the agent. The property is addressed as 1432 and 1442 Bench Boulevard. The applicants have submitted a concurrent zone change (ZC #834) for Tract 1 of Certificate of Survey 1531. The Zoning Commission held a public hearing on this request on February 5, 2008, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

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

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

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

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #856 on a 5-0 vote.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

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

INTRODUCTION

This is a request for a special review to allow the construction of 7 four-plex multifamily dwellings on Tract 2 of C/S 193 and Tract 1 of C/S 1531. Tract 2 of C/S 193, is currently zoned R-60 and has been approved by special review to construct two 10-plex multifamily structures. The applicant has submitted a concurrent zone change request to change the underlying zoning from R-70 to R-60 on Tract 1 of C/S 1531 an adjacent parcel to the north. The Planning Division recommended approval of the zone change request based on the 12 review criteria for zone changes and the Zoning Commission has concurred with the zone change recommendation. If the Council also approves the zone change (ZC #834) this special review request should be considered. If the Council does not concur with the recommendation to approve the zone change then it should not consider this special review request.

PROCEDURAL HISTORY

- A special review application to construct 7 four-plex multifamily dwellings was received on January 7, 2008.
- The City Zoning Commission held a public hearing on February 5, 2008, and is forwarding a recommendation of conditional approval on a 5-0 vote.
- The City Council will conduct a public hearing and consider this application on February 25, 2008.

BACKGROUND

The applicants, Gene & Joy Culver, are proposing to construct 7 four-plex multifamily dwellings on the property behind three existing single family homes. Most of the surrounding property is zoned for multifamily dwellings or commercial uses. The property east of the site is R-70 and is developed for single family and two-family dwellings. This area near the intersection of Wicks Lane and Bench Boulevard has been developing for commercial and higher density housing since the Heights Wal-Mart was approved in 2000. The Billings Heights Neighborhood Plan indicates this area should develop at a medium residential density with mixed uses or higher density multifamily along the arterial. The Billings Heights Neighborhood Plan supports higher density multifamily development that has arterial frontage.

The Planning Division reviewed this application with other city departments and recommended conditional approval. Before a recommendation of approval or conditional approval can be made each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it might be within one of the zoning districts (the proposed R-60 zone) where multifamily dwellings are allowed by special review approval. The form of the application is correct and the submitted site plan appears to be in conformance with site development and zoning regulations for multifamily dwellings.

The application also conforms to the second and third criteria. The zoning regulations adopted by

the City Council have the purpose of promoting health, safety and general welfare. The proposed site plan will meet these objectives. In addition, the Zoning Commission is recommending conditions of approval to minimize and otherwise mitigate any adverse impact the development may pose to the surrounding property.

ALTERNATIVES ANALYSIS

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

4. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
5. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is consistent with the purposes of Chapter 2, the 2003 Growth Policy and the Billings Heights Neighborhood Plan. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood. The proposed development has arterial street frontage and the Billings Heights Neighborhood Plan recommends higher density residential uses along arterial streets.
6. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.
The proposed location of the multifamily dwellings is appropriate and conditions of approval are recommended.

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

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

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #856 on a 5-0 vote.

CONDITIONS OF APPROVAL

11. The special review approval shall be limited to Tract 2, C/S 193 and Tract 1, C/S 1531 as shown on the site plan dated December 18, 2007.

12. This special review approval is for the construction of 7 four-plex multifamily dwellings and no other use or expansion of this use is approved or implied with this conditional approval.
13. Development of the site shall be in substantial conformance with the site plan dated December 18, 2007, unless specifically modified by these conditions. Deviations from the approved site plan that change the location of buildings or increase the number of dwelling units will require additional special review approval.
14. This approval shall be limited to 28 dwelling units in 7 structures as shown on the site plan dated December 18, 2007.
15. Any expansion of the gross floor area of the building(s) or number of parking stalls greater than 10 percent will require an additional special review approval as required by Section 27-613(c) of the Unified Zoning Regulations.
16. The north access road shall be re-aligned to coincide with Kingston Avenue that enters Bench Boulevard opposite the subject property. Any new alignment will be approved by the City Engineer.
17. The proposed 28-foot wide access road will be widened to 34 feet and be designed and constructed in accordance to city standards for a new residential street. The street design will be approved by the City Engineer and the City Fire Department.
18. Landscaping shall be provided as shown on the site plan dated December 18, 2007, and as required by Section 27-1100, of the Unified Zoning Regulations.
19. A 6-foot high sight-obscuring fence shall be constructed along the entire length of the north and south property lines excluding any required clear vision area. The fence shall be constructed of standard fencing materials. No chain link or wire fencing will be used for a sight-obscuring fence. The fence will shield the development from the commercial development to the north and the single family developments to the south.
20. These conditions of special review approval shall run with the land described in this special review approval and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
21. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City regulations that apply

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

STAKEHOLDERS

A public hearing before the City Zoning Commission was held on February 5, 2008. Staff forwarded a recommendation of conditional approval. Rick Leuthold of Engineering, Inc., agent for Gene Culver, appeared before the Zoning Commission and explained the proposed multifamily development. No other persons testified in favor or in opposition to the application.

The Zoning Commission considered the testimony and the staff recommendation of conditional approval. The Zoning Commission moved to recommend conditional approval of the special review request and voted 5-0 to forward this recommendation to the City Council.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

Consistency with plans and policies is discussed in the Alternatives Analysis section above.

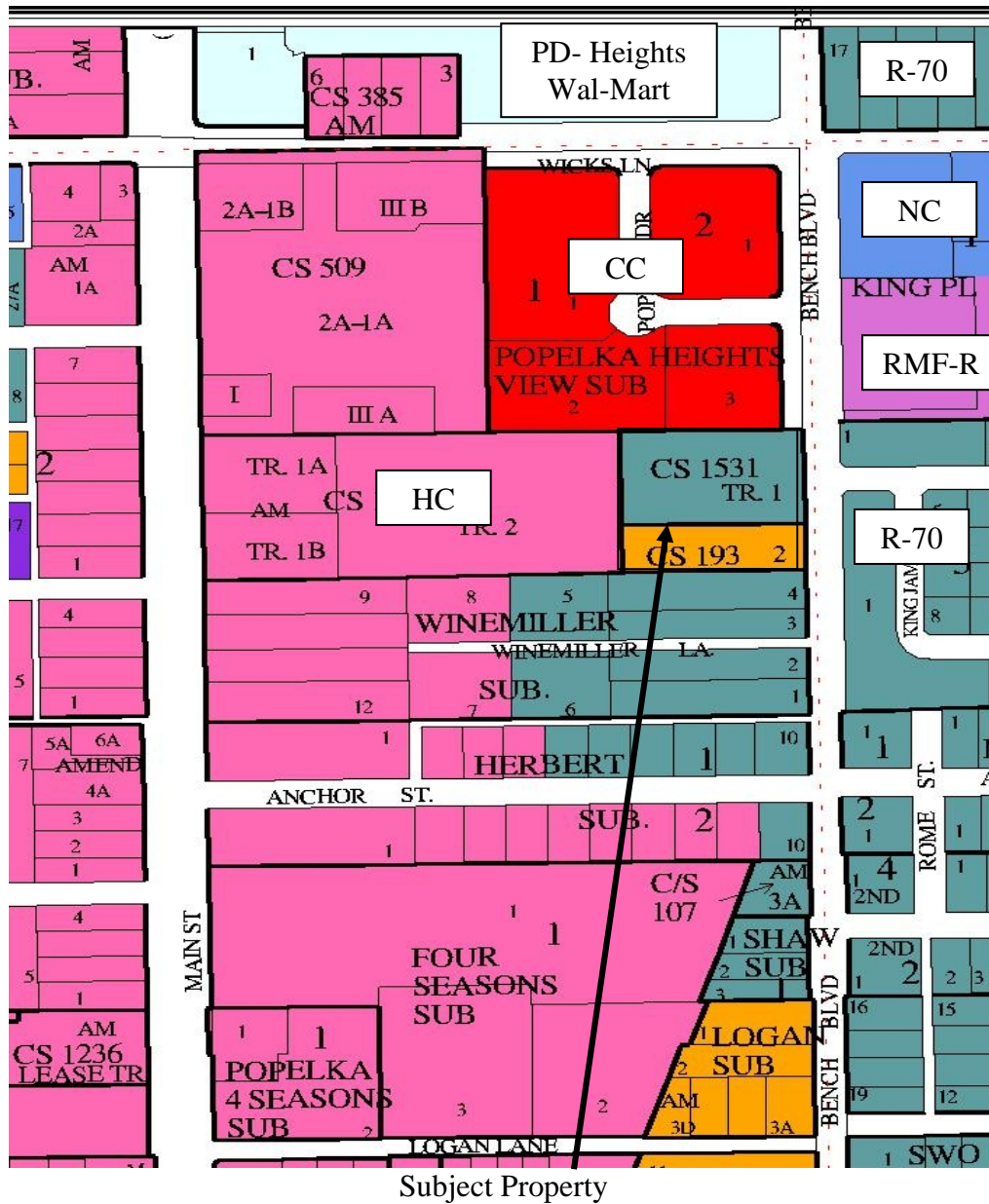
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #856 on a 5-0 vote.

ATTACHMENTS

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

ATTACHMENT A
Zoning Map – Special Review #856



Subject Property

ATTACHMENT B

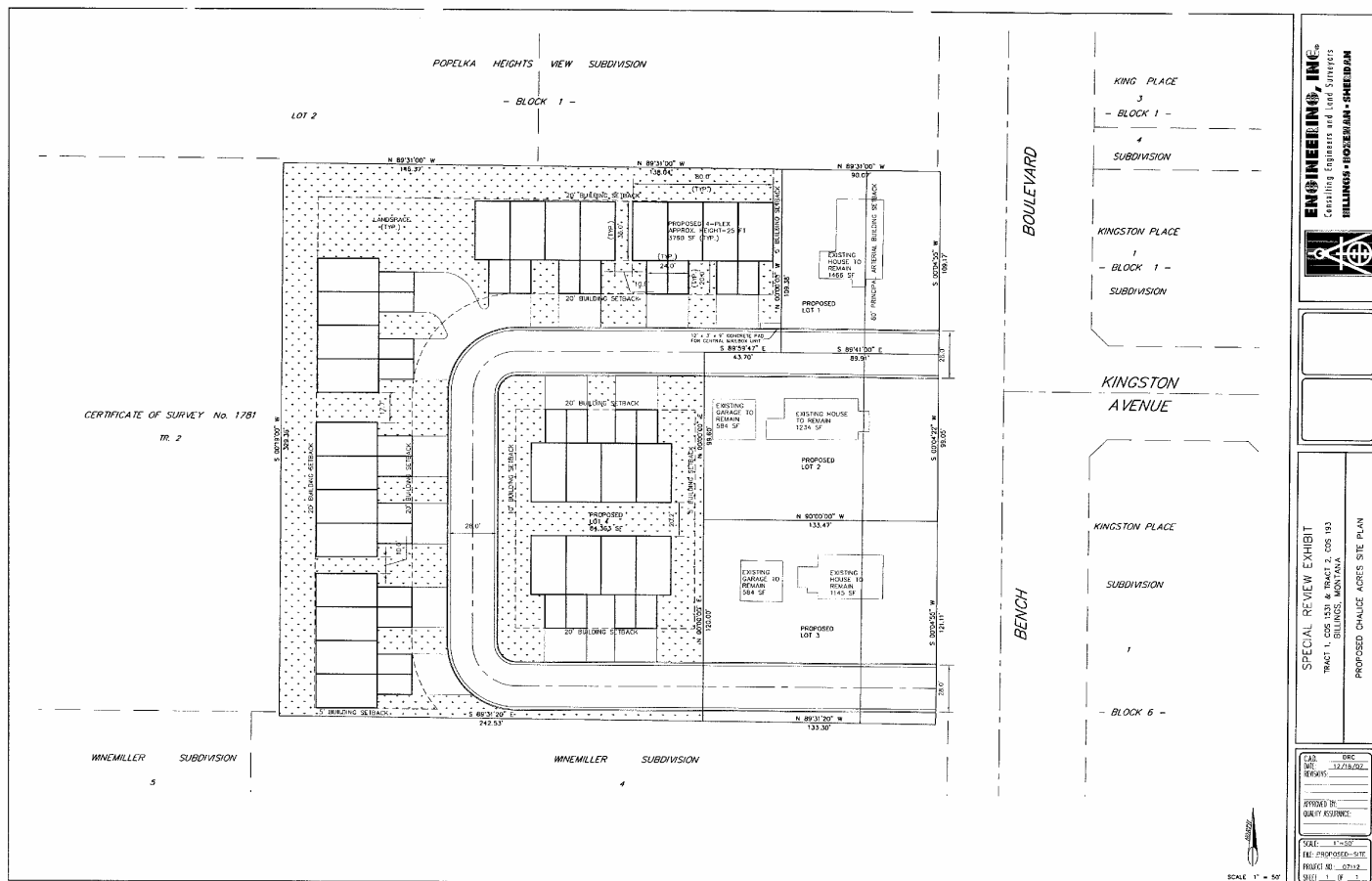
Site photos –Special Review #856



View south east across Bench Boulevard



View north and west across Subject Property



ENGINEERING, INC.
 Consulting Engineers and Land Surveyors
 HILLIUS • HODGEMAN • SKEEDMAN



SPECIAL REVIEW EXHIBIT
 TRACT 1, COS 1533 & TRACT 2, COS 183
 BILLINGS, MONTANA
 PROPOSED CHALICE ACRES SITE PLAN

CAD FILE: 12/7/18/202
 DATE: 12/7/18/202
 BY: [Signature]
 CHECKED BY: [Signature]
 SCALE: 1" = 50'
 NO. PROPOSED: 5/17
 PROJECT NO.: 07112
 SHEET: 1 OF 1

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 25, 2008

SUBJECT: Zone Change #835, Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The applicant is requesting to rezone Tract 1, Certificate of Survey (COS) 2560, from Entryway Light Industrial (ELI) to Controlled Industrial (CI). The subject property is generally located on the southeast corner of King Avenue West and Shiloh Road and is currently being developed as a commercial development called Shiloh Crossing. The owner and applicant is Shiloh Crossing, LLC, Collaborative Design is the agent.

The Zoning Commission conducted a public hearing on February 5, 2008, and is forwarding a recommendation of approval on a 5-0 vote.

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

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

FINANCIAL IMPACT: If the zone change is approved, future development of the property should increase the City's tax base.

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #835 and adopt the determinations of the 12 criteria, as discussed within this report.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS

- A: Site Map
- B: Surrounding zoning
- C: Site Photographs
- D: Opposition Letter
- E: Ordinance

INTRODUCTION

The applicant is requesting to rezone Tract 1, COS 2560, from ELI to CI. The proposed zoning will remove some of the restrictions with the current zoning that will not allow buildings to have a common wall across property lines. It is the developers stated intent to build a regional retail shopping center.

The Zoning Commission conducted a public hearing on February 5, 2008, and is forwarding a recommendation of approval on a 5-0 vote.

PROCEDURAL HISTORY

- A zone change request was received on January 7, 2008, for the subject property.
- The Zoning Commission conducted a public hearing on February 5, 2008, and recommended approval to the City Council by a 5-0 vote.
- The City Council will conduct a public hearing and first reading on February 25, 2008, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on March 10, 2008.

BACKGROUND

The applicant is requesting to rezone Tract 1, COS 2560, from ELI to CI. The proposed zoning will remove some of the restrictions with the current zoning that will not allow buildings to have a common wall across property lines. It is the developers stated intent to build a regional retail shopping center. ELI zoning requires side yard setbacks between buildings that are on separate lots. With ELI zoning, business owners would not be able to own a separate lot and at the same time have a common building wall with the business next door. With CI zoning, the developer and business owners are able to construct buildings with common side walls because CI zoning allows construction of buildings right to the side lot line, there is no required side yard setback.

The applicant feels that the CI zoning will be more conducive to a development that will have a more “neighborhood” feel. By constructing clusters of buildings that are easily within walking distance of each other.

This parcel of land is in the Shiloh Corridor Overlay District (SCOD). The developer has indicated in his letter to the surrounding property owners that; “The design and development of Shiloh Crossing will be subject to the South Shiloh Corridor Overlay Zoning Requirements, as well as additional restrictive covenants which will further limit and restrict the types of businesses and activities that can be conducted in the shopping center”.

The developers’ agent conducted a neighborhood meeting on December 22, 2007, at Faith Evangelical Church, 3145 Sweetwater Drive. The 61 surrounding property owners were notified about the meeting and 12 people attended. At this meeting, the developers presented what they are planning to build on the site. With this zone change it would allow them to build large buildings that are connected but on separate lots.

ALTERNATIVES ANALYSIS

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

Prior to any recommendation to the City Council, the Zoning Commission shall consider the following:

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

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

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

This property is in an area of Billings that is seeing a lot of proposed growth. With the proposed reconstruction of Shiloh Road and the proposed surrounding new subdivisions, this shopping center will provide some new jobs and more shopping choices to Billings. This parcel is identified in the West Billings Plan as a Regional Center.

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

The proposed zoning will permit the development of the proposed commercial center providing more business choices in this area of Billings.

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

The new zoning will increase the traffic on Shiloh Road and King Avenue West. The developer and the city are currently rebuilding King Avenue West from 31st Street West to Shiloh Road. Shiloh Road is slated to be rebuilt in the near future. The reconstruction of the two streets will be much better suited to handle increased traffic created by this proposed commercial development.

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

With the proposed zoning, there are requirements that help to insure safety from fire, panic and other dangers. Also when the developer submits a proposed site plan, the Engineering

Division, Planning Division and the Fire Department review what the developer is proposing to build and have input to insure that it is designed to meet safety requirements.

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

The proposed zoning will permit Commercial uses. The Unified Zoning Regulations specify minimum setbacks, lot coverage requirements and height restrictions. This site is also in the Shiloh Corridor Overlay District that has landscape requirements to enhance the look of the site and make it a positive addition.

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

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

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

The proposed zoning, as well as all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land.

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

The proposed zoning is for Controlled Industrial use which will not cause a concentration of population.

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

| | |
|------------------------|--|
| <i>Transportation:</i> | The city and developer are currently working together to make street improvements on King Avenue West. Shiloh Road will be upgraded in the near future. All accesses into the proposed development have been approved by MDT and the City of Billings. |
|------------------------|--|

| | |
|-------------------------|--|
| <i>Water and Sewer:</i> | The City will provide water and sewer to the entire property through existing lines from King Avenue West and Shiloh Road. |
|-------------------------|--|

| | |
|---------------------------|---|
| <i>Schools and Parks:</i> | The proposed zoning will have no effect on the school system. |
|---------------------------|---|

| | |
|-------------------------|---|
| <i>Fire and Police:</i> | The subject property is currently served by the City of Billings fire and police departments. |
|-------------------------|---|

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

The proposed zoning will allow buildings to be clustered together providing shorter walking distances within each cluster of buildings. The neighborhood to the north has trails for walking and biking, this proposed commercial development is proposed to be more pedestrian friendly.

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

The subject property is suitable for the requested zoning. The proposed commercial development will provide the surrounding citizens with a shopping area within their neighborhood.

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

There currently are no buildings on this site. There are a few businesses to the west and residential to the north.

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

The proposed zoning will permit this land to be developed as recommended by the West Billings Plan.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

The developers' agent conducted a neighborhood meeting on December 22, 2007, at Faith Evangelical Church, 3145 Sweetwater Drive. The 61 surrounding property owners were notified about the meeting and 12 people attended. At this meeting the developers presented what they are planning to build on the site. With this zone change it would allow them to build large buildings that are connected but on separate lots.

The Zoning Commission conducted a public hearing on February 5, 2008, and forwarded a recommendation of approval to the City Council on a 5-0. The applicant was present at the Zoning Commission meeting. There was no public comment at the meeting and no discussion by the Zoning Commission.

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #835 and adopt the determinations of the 12 criteria, as discussed within this report.

ATTACHMENTS:

- A: Site Map
- B: Surrounding zoning
- C: Site Photographs
- D: Ordinance

CERTIFICATE OF SURVEY No. 2560

SITUATED IN THE N.W. 1/4 OF SECTION 14, T.1 S., R.25 E., P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : UNITED INDUSTRY, INC.

PREPARED BY : ENGINEERING, INC.

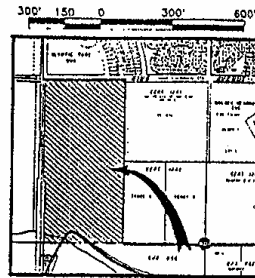
SCALE : 1" = 300'

JANUARY, 1990
BILLINGS, MONTANA



BASIS OF BEARING = PLAT OF
OLYMPIC PARK SUBDIVISION

○ = SET CAPPED REBAR



VICINITY MAP

CERTIFICATE OF SURVEY

STATE OF MONTANA)
County of Yellowstone) ss.

Peter B. Knapp, R.L.S., Montana Registered Land Surveyor Number 8377-S, being first duly sworn, deposes and says that during the month of January, 1990, a survey was performed under his supervision of a tract of land situated in the NW of Section 14, T.1S., R.25E., P.M.M., Yellowstone County, Montana, said tract being more particularly described as follows, to wit:

Beginning at a point on the easterly right-of-way line of Shiloh Road which is situated N89°47'40"E a distance of 52.87 feet from the NW corner of Section 14, T.1S., R.25E.; thence, from said point of beginning, along said east right-of-way line, N00°09'37"W, a distance of 507.54 feet, N89°50'23"E a distance of 10.00 feet, N00°09'37"W a distance of 500.12 feet, S89°50'23"W a distance of 30.00 feet and N00°09'37"W a distance of 1,574.84 feet to a point on the southerly right-of-way line of King Avenue; thence, along said southerly right-of-way line, N89°47'32"E a distance of 1,290.00 feet to the NW corner of Tract 5-D of Certificate of Survey No. 1349 Amended; thence, along the westerly line of said Tract 5-D and the westerly line of Tract 1 of Certificate of Survey No. 1349, S00°05'37"E a distance of 2,582.52 feet to the center West 1/16 corner of Section 14; thence, along the east-west midsection line of said Section 14, S89°47'48"W a distance of 1,266.89 feet to the point of beginning, containing 75.8144 acres.

That iron monuments of suitable size were set at all intersection points as indicated on the plat by a mark "O". That said survey and the plat hereof show true and correct dimensions, and that the plat conforms with the work on the ground.

Dated this 19th day of February, 1990.

Peter B. Knapp, R.L.S., Montana Registration Number 8377-S

Subscribed and sworn to before me, a Notary Public in and for the State of Montana, this 19th day of February, 1990.

Notary Public in and for the State of Montana
Residing at Billings, MT
My commission expires July 9, 1992

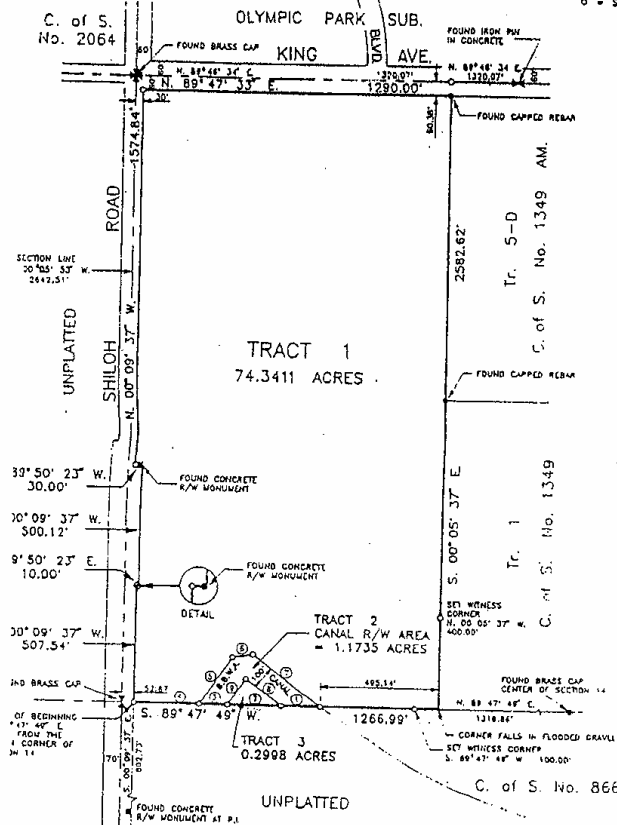
LANDOWNERS STATEMENT - REASON FOR SURVEY

I hereby certify that the purpose of this survey is to retrace the exterior boundaries of the WMMW of Section 14 and identify the area remaining after the removal of right-of-way 1 Shiloh Road, King Avenue, and the Billings Bench Water Association Canal and no new division of land is hereby created. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-2-206 M.C.A.

I further certify that Tract 2 as shown on this survey has been created to identify the canal right-of-way and is exempt from review by the Department of Health and Environmental Sciences pursuant to ARM 16.16.605(2)(e).

I further certify that Tract 3 as shown on this survey will be used exclusively for agricultural purposes and no building requiring water or sewage disposal will be erected on this tract. Tract 3 is therefore exempt from review by the Department of Health and Environmental Sciences pursuant to ARM 16.16.605(1)(h).

Notary Public
Residing at Billings, MT
My commission expires July 9, 1992



1. S. 89°47'48" W. 140.18'
2. S. 89°47'48" W. 223.03'
3. S. 89°47'48" W. 118.46'
4. S. 89°47'48" W. 268.16'
5. S. 32°57'48" W. 248.48'
6. S. 80°41'44" W. 88.49'
7. N. 51°34'18" W. 356.83'
8. N. 51°34'18" W. 187.58'
9. S. 32°57'48" W. 138.89'

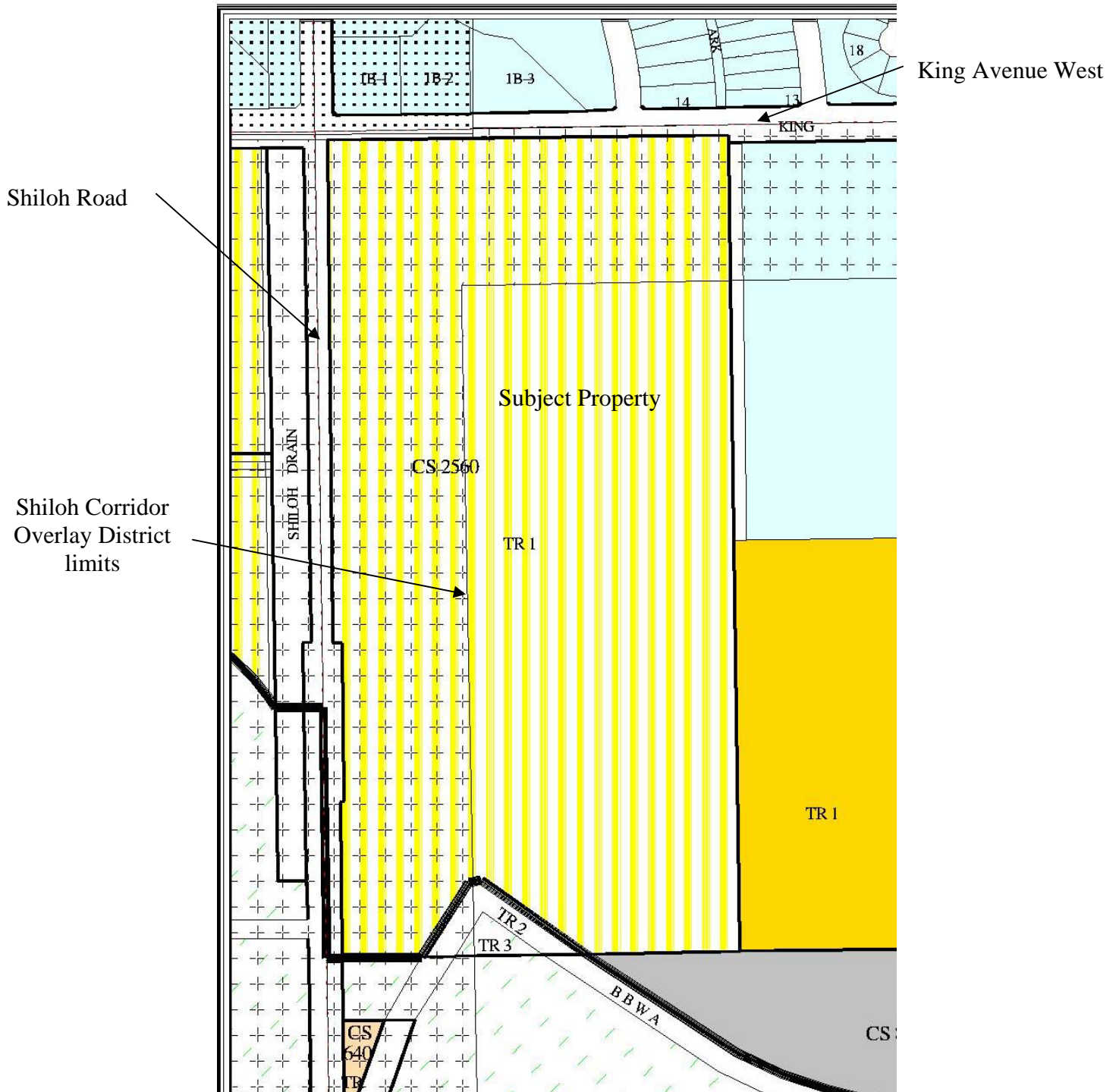
CHECKED IN COUNTY SURVEYOR'S OFFICE
3/2/90 BY Donna R. Hume

STATE OF MONTANA)
County of Yellowstone) 1552090

I hereby certify that this Certificate of Survey Number 2560 was filed for record in my office on the 19th day of February, 1990 at 10 o'clock P.M.

I HEREBY CERTIFY THAT THE
SAID SURVEY WAS
FILED FOR RECORD IN MY
OFFICE ON THE 19th DAY OF
FEBRUARY, 1990.

ATTACHMENT B
Surrounding Zoning Map



ATTACHMENT C
Site Photographs



Looking south from King Avenue West across subject property



Looking north from subject property across King Avenue



Looking east along King Avenue West with the subject property to the south

ORDINANCE NO. 08-
AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR TRACT 1, CERTIFICATE OF SURVEY 2560, Section
14, T.1S, R.25E, containing approximately 74.341 acres

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

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

2. DESCRIPTION. A tract of land known as Tract 1, Certificate of Survey 2560, Section 14, T.1S, R.25E, containing approximately 74.341 acres and is presently zoned Entryway Light Industrial 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 **Entryway Light Industrial to Controlled Industrial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Controlled Industrial** 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 February 25, 2008.

PASSED, ADOPTED AND APPROVED on second reading March 10, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: Cari Martin, City Clerk

ZC #835

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Public Hearing for Special Review #854 - 3178 Gabel Road

DEPARTMENT: Planning and Community Services

PRESENTED BY: Dave Green, Planner I

PROBLEM/ISSUE STATEMENT: This is a special review request for an all beverage license for the sale of alcoholic beverages with gaming and a restaurant on a 1.92 acre parcel of land in a Controlled Industrial (CI) zone on a property legally described as Lot 1, Block 1A, Tierra Yellowstone Industrial Subdivision and is addressed as 3178 Gabel Road. The owner and applicant is Copper King Resources, Inc. The lot is on the south east corner at the intersection of Gabel Road and 32nd Street West. The Zoning Commission held a public hearing on this request on February 5, 2008, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

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

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

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

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #854 on a 5-0 vote.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- G. Zoning Map
- H. Site Photographs
- I. Site Plan
- J. Overflow Parking Agreement

INTRODUCTION

This is a special review request for an all beverage license for the sale of alcoholic beverages with gaming and a restaurant. The subject property is located at 3178 Gabel Road and is legally described as Lot 1, Block 1A, Tierra Yellowstone Industrial Subdivision. The property is zoned CI. The site is currently a vacant parcel of land and the surrounding properties are vacant.

PROCEDURAL HISTORY

- A special review application for an all beverage license for the sale of alcoholic beverages with gaming and a restaurant was submitted on January 7, 2008.
- The City Zoning Commission held a public hearing on February 5, 2008, and is forwarding a recommendation of conditional approval.
- The City Council will conduct a public hearing and consider this application on February 25, 2008.

BACKGROUND

This is a special review request for an all beverage license for the sale of alcoholic beverages with gaming and a restaurant. The subject property is located at 3178 Gabel Road and is legally described as Lot 1, Block 1A, Tierra Yellowstone Industrial Subdivision. The property is zoned CI. The site is currently a vacant parcel of land and the surrounding properties are vacant. There is development in the area that is made up of commercial and industrial uses. The owners intend to construct a new facility on the property at some point in the future. In the application submitted by the applicant, it states that the new facility “will be of the highest quality and design, harmonizing with the existing buildings in the Trans Tech Center”.

There are no other all beverage licenses within the immediate area. There are no schools, churches, or playgrounds with equipment within 600 feet of the proposed location.

ALTERNATIVES ANALYSIS

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

7. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
8. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is consistent with the purposes of Chapter 27 and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood.
9. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The zoning regulations adopted by the City Council have designated several zoning districts where on premise consumption of alcoholic beverages may be allowed. There are no existing residential developments immediately adjacent to this property.

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

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

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #854 on a 5-0 vote.

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lot 1, Block 1A, Tierra Yellowstone Industrial Subdivision located at 3178 Gabel Road.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that change the location of buildings, addition of outdoor patio areas, parking lot access or parking areas will require additional special review approval.
3. There shall be no background music or amplified announcement system outside the building.
4. The solid waste storage area shall be enclosed on three (3) sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side. This enclosure shall be constructed of normal fencing materials. Chain link or wire fencing cannot be used for sight-obscuring enclosure.
5. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
6. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations.
7. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
8. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

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

STAKEHOLDERS

The Zoning Commission conducted a public hearing on February 5, 2008, and forwarded a recommendation of approval to the City Council on a 5-0 vote. The applicant was present at the Zoning Commission meeting. There was no public comment at the meeting and no discussion by the Zoning Commission.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

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

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- The project does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns.

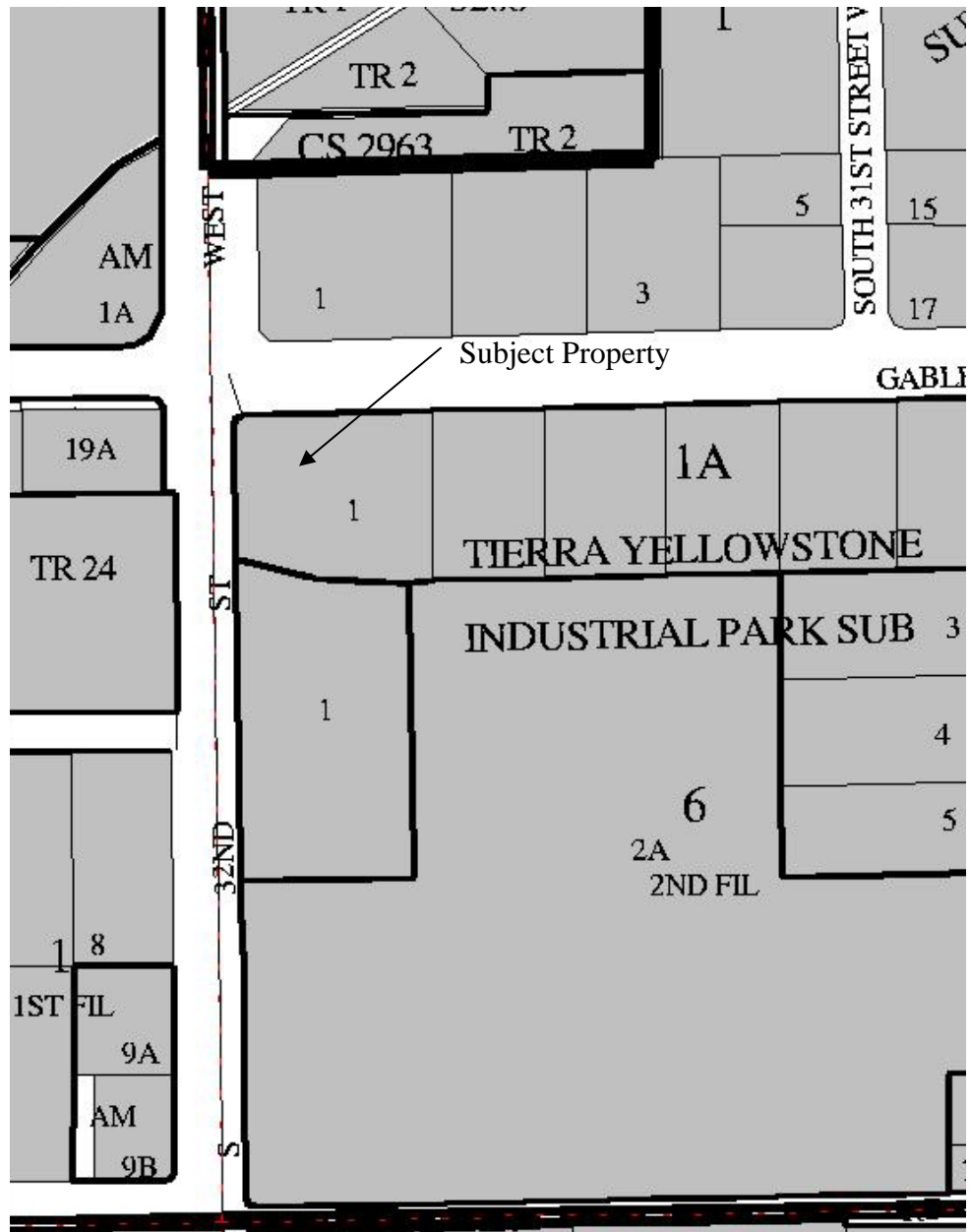
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #854 on a 5-0 vote.

ATTACHMENTS

- G. Zoning Map
- H. Site Photographs
- I. Site Plan
- J. Overflow Parking Agreement

Zoning Map – Special Review #854



ATTACHMENT B

Site photos –Special Review #854



Looking across subject property at 3178 Gabel Road



Looking west from subject property at the intersection of Gabel Road and 32nd Street West

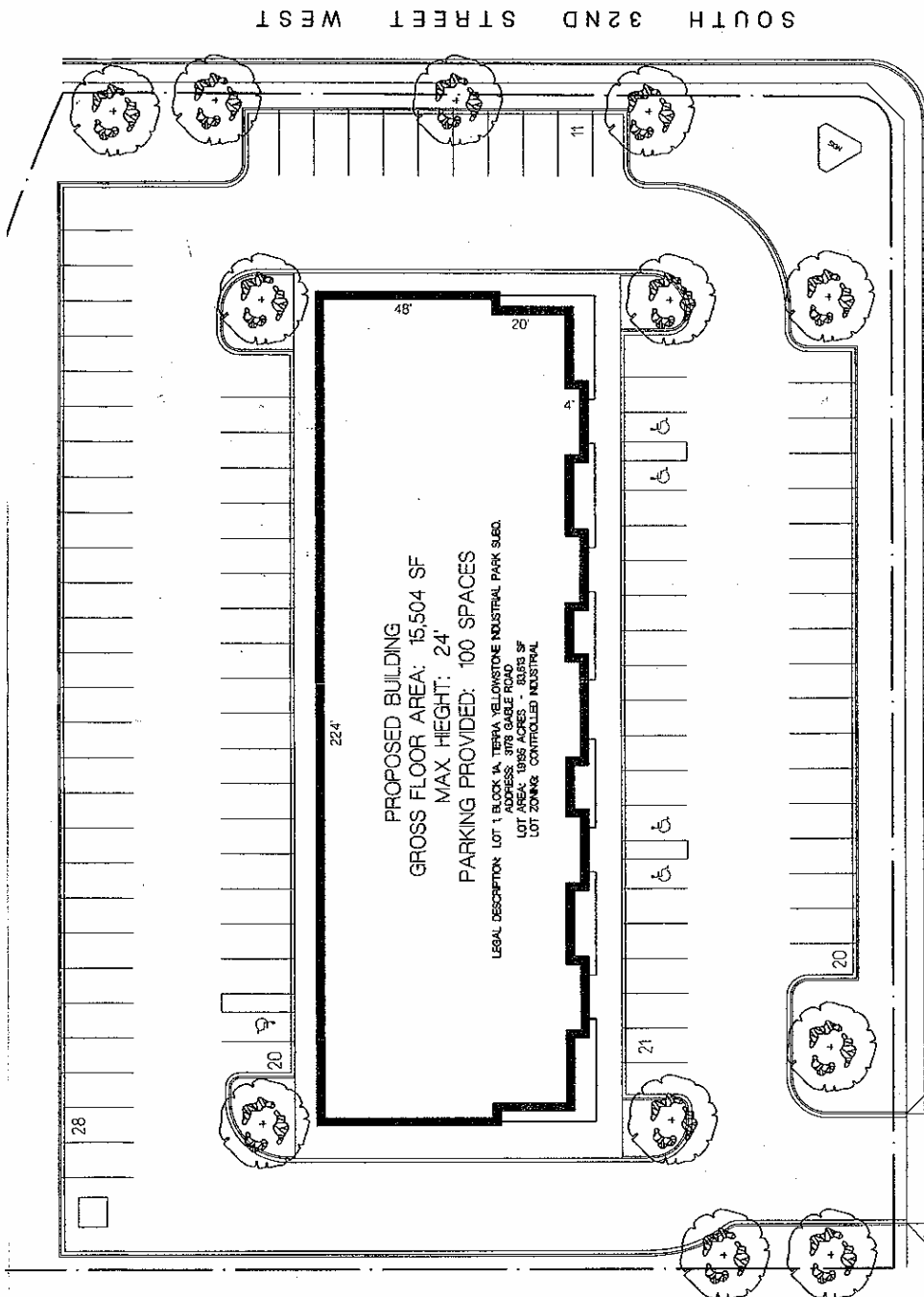


Looking north from subject property across Gabel Road



Looking east along Gabel Road from subject property

ATTACHMENT C
Site Plan Special Review #854



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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Public Hearing and Resolution for Lenhardt Square Property Urban Planning Study – Urban Planning Boundary

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Lenhardt Property, LP; Lenhardt Farm, LLC; and Lenhardt Enterprises, LLC, property owners, have submitted this Urban Planning Study (UPS) to support maintaining the entire subject property within the Urban Planning Area (UPA) boundary, and to support a request to include this property within the Red Area (annexation expected 2007-2012) of the Limits of Annexation Map to enable the property to be annexed into the City. The 114-acre property is described as Tracts 1-5, Certificate of Survey 2063. The property owners have simultaneously submitted a request to have the entire property included within the Limits of Annexation Map for immediate annexation potential, a petition for annexation, and an application for a Planned Development zone change for the property. (See Applications Schedule included in the Background section of this report). The Yellowstone County Board of Planning reviewed the UPS at its January 22, 2008, meeting and is recommending the City Council accept the Urban Planning Study and maintain the Urban Planning Area (UPA) to include the subject property. The Planning Board also is recommending that the City Council include the subject property within the red area of the Limits of Annexation Map to allow for the potential for immediate annexation into the City Limits.

ALTERNATIVES ANALYZED: The City Council may approve or disapprove the UPS and maintenance of the UPA boundary to include this property. If the study is approved, the UPA will continue to include the property and the Council may consider including the property within the red Limits of Annexation Map area, annexing the land, and providing municipal services. The property may not be annexed if the UPS is denied.

FINANCIAL IMPACT: There are no direct financial impacts from approving the study and maintaining the property within the UPA. Financial issues are discussed in the Alternatives

Analysis section of this report as they pertain to servicing the property if it were annexed into the City.

RECOMMENDATION

The Yellowstone County Board of Planning on a 7-0 vote recommends that the City Council accept the UPS and approve that the UPA boundary to continue to include the Lenhardt Square property described as Tracts 1-5, Certificate of Survey 2063. The Planning Board also recommends on a 7-0 vote that the City Council include this property within the red Limits of Annexation Map area to enable immediate consideration of this property for annexation into the City.

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

ATTACHMENT

- A: Letters of Support for Lenhardt Square
- B: Resolution
- C: Urban Planning Study

INTRODUCTION

Urban Planning Studies are prepared so that the City can determine the impacts of annexing and serving the property. City departments review UPS documents for conformance with operating policies, capital improvement plans, the Growth Policy, and other plans. The Yellowstone County Board of Planning reviewed the Lenhardt Square UPS at its January 22, 2008, meeting and is recommending the City Council accept the UPS and maintain the UPA to include the subject property. The Planning Board also is recommending that the City Council include the subject property within the red area of the Limits of Annexation Map to allow for the potential for immediate annexation.

The property is proposed to develop as a high-density, mixed-use, urban-style development located west and north of the intersection of Shiloh Road and King Avenue West. The property abuts the undeveloped St. Vincent's "Village" property at the northwest corner of Shiloh Road and King Avenue West. The property requested inclusion in the red area of the City's Limits of Annexation Map in February 2007 when annual amendments to the City's Annexation Policy and Limits of Annexation Map were reviewed and approved by the City Council. At the time, City Council did not approve of including the property in the Limits of Annexation area for immediate annexation due to lack of water and sewer infrastructure in the area and no specific plan or timeline for development of the property. The property owner in November 2007 resubmitted the request to be included in the red Limits of Annexation Map area for immediate annexation potential. This request is also before the City Council at this meeting.

BACKGROUND

The UPA is a mechanism that the City of Billings uses to plan for future growth of the City. Urban Planning Studies are prepared so that the City can determine the impacts of annexing and serving the property. City departments review the UPS documents for conformance with City operating policies, capital improvement plans, the Growth Policy and other plans. The Planning Board is responsible for making a recommendation to the City Council whether to, in this case, accept the UPA and maintain the subject property within the UPA.

The UPA, annexation and water/wastewater service are intertwined in the City Code. BMCC 20-301 requires that land must be in the UPA before it can be annexed. BMCC 26-200 requires that property being considered for water and wastewater services must be in the utility service area. In order to be included in the utility service area, the subject land must be annexed or attempt annexation. The typical process is for a UPS to be completed and approved, the UPA expanded, annexation to occur, and finally utility extensions made and City services provided at time of development.

This property is currently included within the UPA boundary for the City of Billings. It was included in a larger general UPS completed in 2002 of a 4,832-acre area of land along the western part of Billings. The 2002 UPS stated that it "shall be reviewed regularly and may need to be updated as time passes." It also stated that "as portions of the area are considered for annexation, specific impacts should be considered and reviewed as it is impossible to consider all

potential impacts of annexation for an area of this magnitude prior to submittal of an annexation petition with specific development consideration.”

The Lenhardt Square UPS addresses the detailed information needed for the City to assess maintaining this property within the UPA. The Yellowstone County Board of Planning reviewed both the staff proposal to bring the UPA boundary into alignment with the Limits of Annexation Map and the specific Lenhardt Square UPS to maintain the property within the UPA boundary at its January 22, 2008. The Planning Board took testimony from the public and the Lenhardt Square property owners at its meeting. The comments identified that property owners already within the UPA boundary have placed significant value in being within it and do not want to be removed. The Planning Board also expressed concern about retracting the UPA boundary at this time. The Planning Board is recommending the City Council accept the Urban Planning Study and approve of maintaining the UPA to include the Lenhardt Square property. At the request of the Lenhardt Square property owners, the Planning Board also is recommending that the City Council include the subject property within the red area of the Limits of Annexation Map to allow for the potential for immediate annexation into the City Limits.

Lenhardt Applications Schedule

November 2007: The property owner submitted an Urban Planning Study to support a request to maintain the property within the Urban Planning Area boundary, requested to amend the Limits of Annexation Map to include the entire subject property in the red (2007-2013) immediate annexation area, submitted a petition to annex the subject property, and submitted an application to change the zoning from Agricultural Open Space to Planned Development (PD) zoning.

December 5, 2007: City Annexation Committee held first meeting for 2008 review. Committee reviewed the Lenhardt request to amend the Limits of Annexation Map for 2008.

December 20, 2007: The Design Review Committee Meeting was held to review PD Zoning Application. Concerns about the development density were expressed by staff.

January 2, 2008: City Zoning Commission reviewed the PD application and approved a 30-day delay for the application. The Zoning Commission is expected to make recommendation to City Council at its meeting on February 5.

January 3, 2008: City Annexation Committee reviewed Lenhardt request and agreed to delay a final recommendation until its meeting on January 31st at the applicant’s request.

January 22: Planning Board Meeting was held to review the proposed amendment to the Urban Planning Area Boundary to maintain the Lenhardt Square property in the boundary and made its recommendation to the City Council.

January 31: City Annexation Committee made recommendation to City Council for amendment to the Limits of Annexation Map for the Lenhardt Property.

February 5: The City Zoning Commission held a second hearing to review the PD application for this property and made its recommendation to the City Council.

February 11: City Council acknowledged the petition to annex Lenhardt Square property and set a public hearing date for its February 25 meeting.

February 25: In the following order: City Council to conduct a public hearing and act on the Urban Planning Study and UPA boundary; conduct a public hearing and take action on an

amendment to the Limits of Annexation Map; conduct a public hearing and act on annexation; conduct a public hearing and takes action on the PD zoning application.

March 10: City Council to act on Second Reading of PD zoning application and act on First Reading of Ward Ordinance boundary change for Annexation.

ALTERNATIVES ANALYSIS

The UPS discusses existing conditions and the predicted impact on services and facilities if the property is annexed. The following descriptions summarize the UPS findings and supplement them with staff information. Staff found this UPS report to be well documented and informative and has used this analysis to evaluate inclusion of the subject property within the UPA and the Limits of Annexation Map area for potential immediate annexation.

1. **Topography and soils:** The property is generally flat. Soils are deep loams and silty clays. The soil has characteristics of poor to moderate stability with low to medium bearing capacity and a high shrink swell potential. A geotechnical analysis will be required prior to construction on the site.
2. **Effects on agriculture:** There will be a negative effect on agriculture because this property is irrigated land and has been in agricultural crop production for beets, spring wheat and hay for many years. The UPS states that parcels of land in close proximity to the City that are less than 400 to 500 acres have been found to be of a higher value for development than for ongoing agricultural operations. While it is stated that larger agricultural tracts are needed for cost-effective agricultural operations, it is the gradual reduction in the acreage of farm land in West Billings like this that contributes to this situation.
3. **Historic sites:** The property contains no known historical or cultural sites, according to an analysis conducted by Ethnoscience, Inc. for this UPS.
4. **Wildlife:** There are no known threatened or endangered wildlife species on the property and there is no critical habitat. Montana Fish, Wildlife and Parks did indicate that the property and the area contains habitat for rabbits, deer and smaller animals.
5. **Public services:**
 - a. **Water:** The developer's Urban Planning Study (UPS) document estimates that at build-out of the property water consumption will average about 570,000 gallons per day and reach maximums of 1.26 million gallons per day. The City Water Plant is designed to produce 60 million gallons per day. Current maximum water demands on the City Water Plant are about 45 million gallons per day. The maximum water demands of this developed property would equate to about 7.5% of the remaining water plant capacity, according to the UPS.

The UPS also identifies a shortfall in storage capacity in Zone 3 prior to the development of this property. This is the City water service zone that would serve

this property. While pumping water from Zone 2 to serve Zone 3 accommodates the shortfall today, there is no on-site backup power for these pumps. In addition, the excess storage in Zone 2 must also assist the storage shortfall in Zone 1.

The Public Works Department supports maintaining the entire property within the UPA and including the property within the red area of the Limits of Annexation Map provided that the build out of the property is limited to a maximum day demand of 600,000 gallons per day of water until such time as two water storage projects in Zone 3 are completed for the City of Billings. This is estimated to serve approximately 1,100 residential units based on 219 gallons per person per day and approximately 2.34 persons per unit. The commercial water consumption needs of the development are not known since commercial uses can vary widely in their water consumption. The city's water and sanitary sewer master plan recommends adding some storage in Zone 3 in fiscal year (FY) 2009 and more storage in FY 2013. These projects are identified as PWU-W022, Zone 3 Storage Expansion and PWU-W030, Zone 3 West End Storage. The remaining build out of the property, estimated at a total of 1.26 million gallons per day maximum demand, may be allowed by the Public Works Department after completion of the two capital improvement projects. Both projects are dependant on funding and City Council approval. If one of these projects is completed, the water usage may be increased as determined by the Public Works Department. Like any other new development, the developer will pay the cost of extending infrastructure to serve the property.

- b. Sewer:** Sanitary sewer extension in this area is now in construction between 32nd Street West and Shiloh Road which would allow the continued extension west beyond Shiloh Road to serve this property. A 27-inch sanitary sewer main in King Avenue West will need to be extended to serve this property. This sewer main is expected to be extended to 44th Street (near the western edge of the subject property) if the King Meadows Subdivision begins improvements in 2008. The UPS estimates that the wastewater flow from the subject property at build-out could be as much as 25% of the capacity of the 27-inch main in King Avenue West. The developer will pay for any extension of existing mains and internal infrastructure to serve the property.
- c. Stormwater:** There are no storm drains available to serve the subject property at this time. A 72-inch trunk storm drain is expected to be constructed with development of the property east and south along King Avenue West and Shiloh Road. A City-wide Stormwater Master Plan Update is in the process of being drafted that will address existing stormwater issues in this area of the City. Storm water will be addressed during development most likely using on-site storage facilities. Public Works is concerned over the number of on-site storage facilities that are being constructed and have been constructed in recent years. It is nearly 2,000 feet from the southeastern edge of this property to the Shiloh Drain. The Shiloh Drain is at capacity under the BBWA canal east of Shiloh Road and downstream of the culvert under the BBWA. It is nearly 2,500 feet from the southern boundary of this property to Hogan's slough

which should be investigated for drainage opportunities during development of this property.

- d. Street/traffic:** The Street/Traffic division for public works is concerned about serving this area if it is annexed to the city due to FY 2008 budget limitations within this division and the potential for budgetary changes in the future.
- e. Solid waste:** The City is expected to provide solid waste collection and disposal at the City's landfill. The landfill has used 4 million tons of its current estimated 20 million tons of solid waste capacity. This development is expected to generate about 0.2% of the remaining landfill capacity.
- f. Parks and Recreation:** There are no existing City parks developed in the area. There is a large County Park parcel about one ¼ of a mile south of the subject property adjacent to the Knife River (formerly JTL) gravel mining operation. This park has not been developed and its future use is not known. Several smaller parks are planned for the King Meadows Subdivision across King Avenue West to the south of this property.

The Parks Department expressed concern that additional development without large park areas to provide “programmable” space for soccer and ball fields, playground areas and other uses continues to place stress on the existing community parks in the City. The Department specifically responded to the Lenhardt Square Planned Development Agreement specifications that include a large central park area in the middle of the development, several additional smaller park spaces throughout the property, and a network of pedestrian trails connecting the parks. The Parks Department found that the larger park areas were more acceptable to provide space for large outdoor recreation activities but is interested in having the maintenance of all of the park spaces in the proposed development privately maintained. The Parks Department did not want to take on maintenance responsibilities of the number of small park spaces and corridors proposed in the development.

- g. Schools:** Elementary school age children will attend Central Heights Elementary School, Riverside Middle School and West High School, according to the UPS and School District 2 staff. This development is estimated to generate about 1,000 students at full build out.

District 2 staff expressed serious concern that without a new elementary school built west of Shiloh Road and either an additional high school or addition to West High, ongoing over capacity problems will continue. District 2 staff indicated that there are already 580 elementary students west of Shiloh Road. A new elementary school would be expected to serve about 450 students, so just the addition of one new elementary school will likely only address current student demand in this area of Billings. While the District is moving forward to purchase property at Cottonwood

Park for an elementary school, there is no immediate plan to fund and build a school at that location.

- h. Public safety:** The Police Department and Fire Department support maintaining this property within the UPA. However, both Departments expressed concerns regarding the cumulative impacts providing services.

Police: The Police Department already serves the properties within the City Limits in close proximity to this property. The Police Station is located in City Hall about 7 miles from the subject property. While the new Fire Station at 54th Street West and Grand Avenue does have a satellite facility for the Police Department, the Police Department staff indicated there is no immediate plan to staff the facility as a 24-hour substation operation. The Police Department also indicated that while two additional officers will be added in 2008, the additional staff will bring the Department up to current authorized strength and will not address the significant City growth that is occurring.

Fire: The area already is in the BUFSA and is served by the Billings Fire Department. The nearest fire station for this property is located about 3 miles away at 54th Street West and Grand Avenue. This station just started operations in December 2007. The next nearest station is at 24th Street West and King Avenue West about 5.3 miles from the property.

The Fire Department is supportive of maintaining the property within the UPA as long as the water supply limitations specified by the Public Works Department are followed. The Fire Department also noted that the limited service provided by the Department's ladder truck out of Station #1, about 7 miles from the subject property, may create some service challenges in this area of the City in the future.

Emergency Medical Services: American Medical Response provides emergency medical services to the City. AMR must comply with the City's mandate that 90% of calls be answered within 8 minutes. AMR's facility is located about 8 miles from the property and response time may depend on the location of mobile rescue units in the City. It is not known how this added development will affect AMR's service abilities. The nearest medical treatment facility for emergencies is located at either Billings Clinic or St. Vincent's in downtown Billings about 7 miles from the property.

- i. Transportation:**

MET Transit: MET have no plans to expand the current bus services to this property. MET staff explained that the Department has no plans in expand service in any area of the City at this time due to funding limitations.

Road Capacities and Connections: King Avenue West is classified as a Principal Arterial and runs along the south edge of the property. King Avenue West is under the jurisdiction of the Montana Department of Transportation (MDT) and any accesses to the road will require MDT approval.

Monad Road is classified as a Minor Arterial and is proposed to run through the northern portion of the property from east to west. It is not clear how Monad Road will pass through this property and the service needs for alignment and service capabilities of Monad Road will need to be carefully considered. King Avenue and Monad are likely to provide the only external traffic access to this property. It is expected that a Traffic Accessibility Study to match the PD plans for the property will be required prior to development of the property. The owner or developers will waive the right to protest creating Special Improvement Districts through a development agreement or subdivision improvement agreement if they are necessary to make area-wide transportation infrastructure improvements.

- j. **Financial Analysis:** Information provided in the UPS and submitted by the property owner to City staff for review roughly estimated that the raw land taxes on the subject property after annexation would be about \$71,800 and the taxes on the property at full build out based on current values and taxes would be between \$1.2-\$1.5 million.

Assistant City Administrator Bruce McCandless attended the Annexation Committee meetings on behalf of City Administration and Finance. He commented that in Fiscal Year 2008, every property tax-supported City department is spending reserves in order to balance their operating budgets and a reappraisal of property value by the Department of Revenue in conjunction with the 2009 Legislature is expected to further reduce property tax revenue to the City.

McCandless also indicated that tax revenue from new development that comes on line now is distributed to the City in increments over a six year time period, so that there is no immediate realization of the new development tax benefit while the City services must be provided as soon as the new development is occupied. He explained that in many instances the City can generate capital funding, but funding of operating costs is a major issue. Even fee and assessment supported services, such as street maintenance and water/wastewater, are beginning to feel a budget pinch and are reducing services or spreading them thinner. While the City has historically been willing to annex property annually, he expressed concern that any additions to the City at this time may diminish services to existing City residents.

CONFORMANCE WITH ADOPTED POLICIES OR PLANS

Continued inclusion of the entire Lenhardt Square Property in the UPA is inconsistent with some goals and consistent with other goals of the Yellowstone County and City of Billings 2003 Growth Policy and generally consistent with the West Billings Plan.

Yellowstone County – City of Billings 2003 Growth Policy

Inclusion of the subject property is consistent with the following goals and policies of the Growth Policy:

- Goal: More housing and business choices within each neighborhood (Land Use Element, Page 6). *The proposed mixed-use design of this property could provide a variety of housing and business choices for a future urban neighborhood in this area of Billings.*
- Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness (Open Space and Recreation, Page 9). *The proposed design of this property could provide a series of trails that would provide internal connections to the development on the property and external connections to the planned trail corridor along Shiloh Road.*

Inclusion of the subject property is not consistent with the following goals of the Growth Policy:

- Goal: Protection of groundwater, surface water, riparian areas, air quality and productive agricultural land (Natural Resources Goal, Page 8). *Development of the property will take 114 acres of irrigated agricultural land out of production. While it is stated that larger agricultural tracts are needed for cost-effective agricultural operations, it is gradual reduction in the acreage of farm land in West Billings like this that contributes to this situation.*
- Goal: Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, Page 6). *This property is on the western fringe of the City Limits. While it is contiguous to the City Limits on the east side, it is in an area that has limited City services at this time and is about 8 miles from the City core.*
- Goal: Protect public lives and property (Public Services Goal, Page 11). *The location of this property in relation to overall delivery of City services challenges the City's ability to ensure adequate and acceptable levels of service to existing City neighborhoods when new service expansion for property like this is considered. The proposal to require phasing of development on the property based on infrastructure and service limitations is one option for mitigating this concern.*

2001 West Billings Plan

Inclusion of this property in the red Limits of Annexation Map area for immediate annexation is somewhat consistent with the West Billings Plan. The plan to develop the property at urban densities is in line with the managed growth theme of the West Billings Plan. However, the Plan also encourages compact and infill development to conserve land and natural resources (Theme 1, Planned Growth, Page 15). The development proposed for this property is compact but property is on the fringe of the urban area and is not infill.

The subject property is located in an area that the West Billings Plan identifies as a place for residential development, with a commercial center identified to the east at the intersection of Shiloh Road and King Avenue West. The proposal for development of the property would include both residential and commercial uses in a mixed use environment (Theme 3, Achieving a Distinctive Community Character, Page 38).

STAKEHOLDERS

The Lenhardt Square UPS and request to maintain the entire property within the UPA was distributed to City staff for review and comment. There was ongoing discussion between City staff and the property owner throughout the review process.

A public hearing was conducted at the Yellowstone County Planning Board meeting on January 22 to review maintaining of this property within the Urban Planning Area boundary. Comments from the Lenhardt Square property owner and the public stressed that the UPA boundary should not be reduced and that changes that might reduce the UPA in West Billings could impact the future urban development of the area and cause more large-lot County development.

Several members of the Planning Board expressed concern that the City staff's report that there are significant challenges to serving the Lenhardt Square property indicated a potential restriction on growth by the City instead of a partnership with new development. Planning Board Vice President Bill Iverson stated that City Departments must support growth and not limit it. He characterized the challenges to serving the property outlined by staff to be "troubling." The Planning Board also discussed the idea that the UPA should go beyond the City's Limits of Annexation Map 5-year annexation horizon. The Board agreed that the UPA should not be retracted and that additional analysis should be completed to determine how the UPA may or may not fit into the community's other growth management tools. The Planning Board went on to recommend to the City Council that no changes that would retract the UPA boundary be considered and that the Lenhardt Square UPS be approved.

Four letters of support for either inclusion of the Lenhardt Square property within the UPA, red Limits of Annexation Map area or annexation of the property into the City were received by the Planning Board and City staff and have been attached to this report.

A public hearing at the City Council meeting on February 25 to review the UPS and ongoing inclusion of the Lenhardt Square property within the UPA will provide an additional opportunity for public comment. Two additional public hearings to consider inclusion of the entire property within the red Limits of Annexation Map area and to consider a petition from the property owner to annex the entire property into the City Limits also will occur at the February 25 Council Meeting.

RECOMMENDATION

The Yellowstone County Board of Planning recommends that the City Council accept the Urban Planning Study and approve that the UPA boundary to continue to include the Lenhardt Square property described as Tracts 1-5, Certificate of Survey 2063. The Planning Board also

recommends that the City Council include this property within the red Limits of Annexation Map area to enable immediate consideration of this property for annexation into the City.

ATTACHMENT

- A: Letters of Support for Lenhardt Square
- B: Resolution
- C: Urban Planning Study

ATTACHMENT A

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

BERNARD E. LONGO
OF COUNSEL

Law Offices

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MICHAEL E. BEGLEY
WILLIAM O. RYAN, JR.
JEFF G. SORENSON
MATTHEW D. BRAUKMANN
KATHRYN J. BELL

FREDRIC D. MOULTON
[1912-1989]

W. S. MATHER
[1922-1998]

WM. H. BELLINGHAM
[1920-2002]

January 29, 2008

Annexation Committee
City of Billings
Attn: Wyeth Friday
510 North Broadway, 4th Floor
Billings, MT 59101

Re: Lenhardt Square

Dear Wyeth:



We represent St. Vincent Healthcare Foundation, Inc., the owner and developer of the future Medical Campus that will be located at the corner of Shiloh and King Avenue. I am writing to you on behalf of the Foundation to express its support for the annexation of Lenhardt Square. The Lenhardt Square Subdivision will be directly west of the Medical Campus. This development has the potential to provide housing for many of the people who will work in the Medical Campus and other near by developments such as Shiloh Crossing. Accordingly, on behalf of the Foundation, we urge the annexation committee to recommend annexation of Lenhardt Square into the City of Billings.

Sincerely,

DOUG JAMES
JAMES@moultonlawfirm.com

DJ:ssm

1-22-08

City Planning Dept.-Billings,MT
Billings City Library Building
Lenhardt Subdivision City /County Planning Meeting

Dear Planning Dept.,

In researching availability of Lots for multi-family development in the Billings ,MT area I searched the entire multi-list system today and found only the attached 8 lots available for purchase at this time.

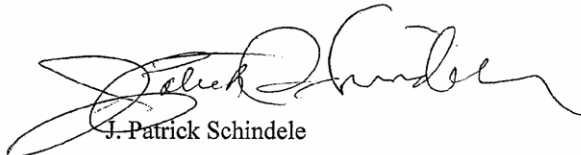
This is a typical scenario of recent years as I have had developers/investors looking for some time and can never find much offered. All are in tight hands or just not there. You will notice that of the eight lots marked "multi-family" only 3 are 4 -7 unit build lots and the rest are duplex lots. There are no parcels available with proper zoning for multiplex subdivision.

This is a major need in Billings.

There are many 1031 buyers calling looking for investments and they would buy multi – plexes if they were available and they are not or they are old buildings in disrepair or high maintenance. If the housing market were to slow in Billings which it hasn't much, we would see an even greater demand for rental units. I own apartment buildings personally and have for 25 years and my rents have gone up 25% this year on average. The Lenhardt Subdivision is a much needed development in the right part of town.

I had an interested developer/buyer wanting to purchase infill farm land off of Grand Ave. in 2007. It became very clear when talking to other developers and builders that the surrounding home owners were well organized and had threatened a charge against multiplex density by Junkert Const. when he tried to purchase there before.

Sincerely,



J. Patrick Schindele



Your Community... Your Bank

Candi Beaudry, Director
Planning and Community Services Department, City of Billings
PO Box 1178
Billings, MT 59103

To All Concerned City Offices and Citizens,

In April 2006 Beartooth Bank became a lone wolf by opening a bank at 4130 King Avenue West (King and Shiloh). In hindsight we were not the initial catalyst but, were in the early wave of growth led by the Trans Tech area, the Zoo drive interchange, and the expansions along King and Shiloh. With recent announcements and commitments of GECC, Kohl's, Sportsmen's Warehouse and the ongoing commitment to the community by St. Vincent's Healthcare, First Interstate Bank and others by building on the west end, to limit housing development in (specifically the Lenhardt Square development) seems contradictory to the community's best interests.

I can share in your concerns about costs, planning and perhaps even the timing of the development but, to remove Lenhardt Square from the annexation process and "urban planning area" would certainly only create further expenses to all parties down the road and inconveniences for people who will ultimately be best served; people who will seek housing to work for the companies coming to and expanding in Billings.

Billings' has "bucked" the recent national trend and is now being viewed as a place to bring business to. For the long range benefit of Billings and Montana as a whole, I urge you to keep areas that make demographic sense for the support of this trend in the "urban planning area" and within the scope of annexation.

Sincerely,

Vernon L. Mohlis,
President & CEO

January 21, 2008

Candi Beaudry, Director
Planning and Community Services Department
City of Billings
P. O. Box 1178
Billings, MT 59103

Dear Candi,

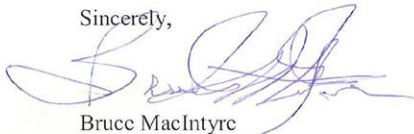
For the past 2 years, the development of Shiloh Road has been a priority issue for the Billings Chamber of Commerce/CVB, and will continue to be an important issue for us. Development of Shiloh isn't just about getting a road built, or the added commercial development that comes with the improvements in the infrastructure. Just as important, we believe, is an orderly plan to develop housing for the workforce that inevitably will come along with the growth that we expect to see in the next few years as Shiloh is developed.

We feel that Lenhardt Square offers a viable option to live and work in the same area, with a possibility of walking to work if employment is close by. Since this parcel of land is close to existing City services, infrastructure requirements should be minimal.

We often hear that once a community reaches a threshold of 100,000 population, growth increases rapidly as that community hits the radar of many companies looking for expansion of their markets. Since we have now exceeded that 100,000, Billings needs to be ready to meet all aspects of growth. While the concept of infill development is worthwhile, concept and reality often differ. Our community will need to react to the demands of potential area homeowners, and we anticipate that many will be looking for housing in the vicinity of their employment.

We ask that your Department maintain the existing Urban Planning Area and recommend inclusion of Lenhardt Square in the limits of annexation.

Sincerely,



Bruce MacIntyre
Director, Government Affairs



815 South 27th Street / P.O. Box 31177 / Billings, MT 59107-1177
ph 406-245-4111 / f 406-245-7333 / www.billingschamber.com

it's
BiLLiNGS
Billings Chamber of Commerce
Convention and Visitors Bureau

ATTACHMENT B

RESOLUTION NO. 08-_____

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, ACCEPTING THE
LENHARDT SQUARE URBAN PLANNING STUDY AND MAINTAINING THE
BOUNDARIES OF THE BILLINGS URBAN PLANNING AREA TO INCLUDE TRACTS 1-
5, CERTIFICATE OF SURVEY 2063; S1/2, SECTION 10, T1S, R25E

WHEREAS, an Urban Planning Study was conducted on properties described as Tracts 1-5, Certificate of Survey 2063 and was submitted to the City for review and approval, and

WHEREAS, the Billings Urban Planning Area is the area established by the City for the purpose of planning for growth of the City within the next 10 years, and

WHEREAS, the purpose of the study is to determine impacts on city services, the natural environment, and the feasibility of extending City services within the proposed area, and

WHEREAS, the Yellowstone County Board of Planning reviewed the Urban Planning Study at its regular meeting on January 22, 2008, and

WHEREAS, the Yellowstone County Board of Planning has recommended acceptance of the Urban Planning Study and approval of maintaining the subject area in the Billings Urban Planning Area, finding that municipal services can safely and efficiently be extended to this area and its existing and planned growth and development are consistent with existing and proposed land use and transportation plans, and

WHEREAS, a public hearing was properly noticed and held by the Billings City Council as required by law.

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

1. URBAN PLANNING STUDY. The Urban Planning Study for Tracts 1-5, Certificate of Survey 2063; S1/2, Section 10, T1S, R25E is hereby approved by the Billings City Council.
2. URBAN PLANNING AREA. The boundaries of the Billings Urban Planning Area are hereby maintained to include Tracts 1-5, Certificate of Survey 2063; S1/2, Section 10, T1S, R25E.

PASSED AND APPROVED by the City Council this 25th day of February, 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing Mayor

ATTEST:

BY: _____
Cari Martin City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, February 25, 2008**

TITLE: Public Hearing and Resolution to Revise the 2007 Limits of Annexation Map to Include Lenhardt Square Property

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The City Council adopted the current Annexation Policy and Limits of Annexation Map on February 26, 2007. The Annexation Policy requires the City to update the associated map whenever the Capital Improvements Plan is revised. Council is scheduled to approve revisions to the 2009-2014 Capital Improvements Plan at the February 25, 2008, Council meeting, and consider this one revision to the Limits of Annexation Map at the same meeting. The Annexation Committee will be forwarding several other updates to the Limits of Annexation Map to the Council for its meeting on March 10. This recommendation is coming forward at this time since it is the only property owner initiated amendment and is on a specific schedule with its other concurrent applications. To provide guidance on this map amendment, an Annexation Committee, consisting of representatives from the Parks, Recreation and Public Lands, Police, Fire, Public Works, Transit, Administration and Planning Departments, and Billings School District 2, was convened. The Committee met three times, from December 2007 through January 2008, to provide input on the proposed map revision based on the ability to serve the area located within the Limits of Annexation area. To evaluate the proposed map revision, the committee took into account the 2006 Water and Wastewater Facilities Master Plan, the Draft 2009-2014 Capital Improvements Plan, the individual Lenhardt Square Property request, and the effects of additional growth on the health and quality of life of City residents. The Committee is presenting the Council with its recommendation in the form of a resolution to revise the Limits of Annexation Map to include the Lenhardt Square Property.

ALTERNATIVES ANALYZED: Staff considered the ability to serve areas outside the existing City limits based on existing resources, effects on City residents, and programmed improvements. The proposed revision to the Limits of Annexation Map reflect these considerations and attempt not to favor one department's ability to provide service over another department's limitations.

FINANCIAL IMPACT: Annexation of property to the City of Billings will increase the City's tax base. At the same time, the City will bear the cost of additional service requirements. The Annexation Policy and the Limits of Annexation Map are management tools to help balance this cost-benefit ratio.

RECOMMENDATION

Based on a recommendation from the Annexation Committee, staff recommends that Council adopt the resolution to revise the Limits of Annexation Map to include the entire Lenhardt Square Property.

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

ATTACHMENTS

A. Resolution and Limits of Annexation Map

INTRODUCTION

The Annexation Policy adopted in April 2006, requires the City to update the Limits of Annexation map whenever the Capital Improvements Plan (CIP) is revised. The City Council is approving an administrative revision to the 2009-2014 CIP on February 25, 2008, at the same meeting that this amendment to the Limits of Annexation Map is being considered. An Annexation Committee, consisting of representatives from City Departments and Billings School District 2, reviewed the current Limits of Annexation Map and is forwarding this recommended change. During its analysis, the City Annexation Committee considered the proposed revisions to the Capital Improvements Plan, the 2006 Water and Wastewater Facilities Master Plan, the 2007 Limits of Annexation Map, reviewed the Lenhardt Square Property landowner request, and considered the effects on the quality of life and health of the Billings Community in making its recommendation to the City Council. The guiding principal for the recommendation was to not increase costs to the City that were not already programmed.

PROCEDURAL HISTORY 2008 LIMITS OF ANNEXATION MAP AMENDMENTS

- February 26, 2007, Amendments to the Annexation Policy and Limits of Annexation Map adopted by City Council
- November 2007, Formal property owner requests were accepted to amend the Limits of Annexation Map for 2008. One request was received.
- December 2007 and January 2008, City Departments reviewed proposed changes to the CIP and updated the CIP to reflect the current status of all CIP projects
- December 2007 through January 2008, The City Annexation Committee met three times to review this request and other map amendments and formulate recommendations for amendments the Limits of Annexation Map
- February 25, 2008, Proposed FY 2009 amendments to the CIP presented to the City Council
- February 25, 2008, Public Hearing and Resolution revising the Limits of Annexation Map to include the Lenhardt Square Property presented to City Council
- March 10, 2008, Public Hearing to review proposed amendments to the Urban Planning Area boundary and additional amendments to the Limits of Annexation Map.

BACKGROUND

The City of Billings has annexed more than eight square miles since 1999 (32.8 to 41.3 sq. mi.). Many of those annexations required a considerable outlay of City funds to ensure acceptable levels of service to the annexed properties and to maintain the levels of service within the existing City limits. As these properties developed, the cost of providing certain services exceeded the revenue generated by the development. For this reason, the City Council requested staff to draft an Annexation Policy that would recommend limiting annexations to areas that could be served without incurring additional costs. The adopted policy, last amended in February 2007, established a map showing three limits of annexation. The red area (2007-2012) coincides with the immediate five years covered by the CIP and defines an area where annexation petitions may be supported in the short term. The second time period, designated in orange (2013-2023), covers the next 10 years for areas where City services may be extended but

would require additional funding to support those services. The third area, shown in yellow, is defined as “Unknown” due to lack of information regarding the feasibility and costs of extending services.

ALTERNATIVES ANALYSIS

The City Annexation Committee considered the proposed revisions to the Capital Improvements Plan, the 2006 Water and Wastewater Facilities Master Plan, the 2007 Limits of Annexation Map, reviewed the Lenhardt Square Property landowner request, and considered the effects on the quality of life and health of the Billings community in making this recommendation to the City Council.

The Committee received one request from Lenhardt Square Property owners to include the property in the 2008-2013 Limits of Annexation red area to enable immediate annexation of the property. The Committee is recommending this property for inclusion in the 2008-2013 Limits of Annexation red area with some qualifications. The basis for the Annexation Committee recommendation and qualifications is detailed below:

Lenhardt Home Place Property: This 114-acre property is located north of King Avenue West between 48th Street West and Shiloh Road. Currently, about 84 acres of this property is classified in the orange area (2013-2023) and 30 acres is classified in the red (2007-2012). The property owners requested total inclusion in the red area of the Limits of Annexation Map in 2006, and the Annexation Committee did not recommend inclusion of the property at that time because the property owner did not specify any imminent plans for the property to be annexed and developed, and sanitary sewer was more than 10 block from the property at King Avenue West and 32nd Street West. The City Council concurred in February 2007 and did not expand the red area.

The Lenhardt Square property owners in November 2007 simultaneously submitted a request to amend the Limits of Annexation Map, an Urban Planning Study to support maintaining the entire property within the Urban Planning Area Boundary, a petition for annexation, and an application for a Planned Development zone change for the property. The Council is reviewing all of these items at its meeting on February 25, 2008.

The Public Works Department supports inclusion of the entire property within the red area of the Limits of Annexation Map provided that the development of the property is restricted using a maximum daily demand of 600,000 gallons per day of water until such time as two water storage projects in Zone 3 are completed for the City of Billings. These projects are identified as PWU-W022, Zone 3 Storage Expansion and PWU-W030, Zone 3 West End Storage. The remaining build out of the property, estimated at a total of 1.26 million gallons per day maximum demand, may be allowed by the Public Works Department after completion of the two capital improvement projects. Both projects are dependant on funding and City Council approval. If one of these projects is completed, the water usage may be increased as determined by the Public

Works Department. Like any other new development, the developer will pay the cost of extending infrastructure to serve the property. Sanitary sewer extension in this area is now in construction between 32nd Street West and Shiloh Road which would allow the continued extension west beyond Shiloh Road to serve this property.

The Police Department and Fire Department support inclusion of this property. The Police Department supports inclusion of the property but identified concerns regarding staffing and services. The Department indicated that while two additional officers will be added in 2008, the additional staff will bring the Department up to current authorized strength and will not address the significant City growth that is occurring. The Fire Department is supportive of including the property within the red area of the Limits of Annexation Map as long as the water supply limitations specified by the Public Works Department are followed. The Fire Department also noted that the limited service provided by the Department's ladder truck out of Station #1 may create some service challenges in this area of the City in the future.

The Parks Department expressed concern that additional development without large park areas to provide "programmable" space for soccer and ball fields, playground areas and other uses continues to place stress on the existing community parks in the City. The Lenhardt Square Planned Development Agreement specifies a large central park area in the middle of the development, several additional smaller park spaces throughout the property, and a network of pedestrian trails connecting the parks. The Parks Department found that the larger park areas were more acceptable to provide space for large outdoor recreation activities but is interested in having the maintenance of all of the park spaces in the proposed development privately maintained. The Parks Department did not want to take on maintenance responsibilities of the number of small park spaces and corridors proposed in the development.

MET Transit has no plans to expand the current bus services to this property. MET staff explained that the Department has no plans in expand service in any area of the City at this time due to funding limitations.

Billings School District 2 staff expressed serious concern that without a new elementary school built west of Shiloh Road and either an additional high school or addition to West High, ongoing over capacity problems will continue. District 2 staff indicated that there are already 580 elementary students west of Shiloh Road. A new elementary school would be expected to serve about 450 students, so just the addition of one new elementary school will likely only address current student demand in this area of Billings. While the District is moving forward to purchase property at Cottonwood Park for an elementary school, there is no immediate plan to fund and build a school at that location.

Assistant City Administrator Bruce McCandless attended the Annexation Committee meetings on behalf of City Administration and Finance. He commented that in Fiscal Year 2008, every property tax-supported City department is spending reserves in order balance their operating budgets and a reappraisal of property value by the Department of Revenue in conjunction with the 2009 Legislature is expected to further reduce property tax revenue to the City. McCandless

indicated that tax revenue from new development that comes on line now is distributed to the City in increments over a six year time period, so that there is no immediate realization of the new development tax benefit while the City services must be provided as soon as the new development is occupied. He explained that in many instances the City can generate capital funding, but funding of operating costs is a major issue. Even fee and assessment supported services, such as street maintenance and water/wastewater, are beginning to feel a budget pinch and are reducing services or spreading them thinner. While the City has historically been willing to annex property annually, he expressed concern that any additions to the City at this time may diminish services to existing City residents.

Planning staff reiterated that the Growth Policy, West Billings Plan and Annexation Policy all point toward orderly and managed growth for the community. It is also the City's responsibility to ensure that service levels for all City residents are maintained at adequate levels and public safety is ensured. This property is zoned Agricultural-Open Space. The development proposal would rezone the property to allow high-density residential and mixed-use development. This zoning is different from most of the surrounding properties in regard to its high-density and mixed use nature but not in terms of the overall residential and neighborhood commercial-type development proposed. Property to the east is developing with residential and commercial uses along the Shiloh Road corridor. Property south across King Avenue West is developing for residential and commercial uses. This property is still on the fringe of the City and property to the west and north is still in agricultural production with pockets developed for low-density residential uses. While this area is expected to develop to urban densities in the future, the ability to serve the property with all City services at adequate levels at this time has some challenges. The phasing of this development proposed by the Annexation Committee based on limited provision of infrastructure and some services makes it possible to support annexation of the Lenhardt Square property at this time.

CONFORMANCE WITH ADOPTED POLICIES OR PLANS

The Annexation Policy requires that when recommendations are made to the City Council to amend the Limits of Annexation Map, the Committee must consider the conformance of the proposed amendment with other City plans and policies.

Inclusion of the entire Lenhardt Square Property in the red Limits of Annexation Map area is inconsistent with some goals and consistent with other goals of the Yellowstone County and City of Billings 2003 Growth Policy, generally consistent with the West Billings Plan, and may be consistent with the Annexation Policy if development of the property is done with the infrastructure limitations outlined in this report.

Yellowstone County – City of Billings 2003 Growth Policy

Inclusion of the subject property is consistent with the following goals and policies of the Growth Policy:

- Goal: More housing and business choices within each neighborhood (Land Use Element, Page 6). *The proposed mixed-use design of this property could provide a*

variety of housing and business choices for a future urban neighborhood in this area of Billings.

- Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness (Open Space and Recreation, Page 9). *The proposed design of this property could provide a series of trails that would provide internal connections to the development on the property and external connections to the planned trail corridor along Shiloh Road.*

Inclusion of the subject property is not consistent with the following goals of the Growth Policy:

- Goal: Protection of groundwater, surface water, riparian areas, air quality and productive agricultural land (Natural Resources Goal, Page 8). *Development of the property will take 114 acres of irrigated agricultural land out of production. While it is stated that larger agricultural tracts are needed for cost-effective agricultural operations, it is gradual reduction in the acreage of farm land in West Billings like this that contributes to this situation.*
- Goal: Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, Page 6). *This property is on the western fringe of the City Limits. While it is contiguous to the City Limits on the east side, it is in an area that has limited City services at this time and is about 8 miles from the City core.*
- Goal: Protect public lives and property (Public Services Goal, Page 11). *The location of this property in relation to overall delivery of City services challenges the City's ability to ensure adequate and acceptable levels of service to existing City neighborhoods when new service expansion for property like this is considered. The proposal to require phasing of development on the property based on infrastructure and service limitations is one option for mitigating this concern.*

2001 West Billings Plan

Inclusion of this property in the red Limits of Annexation Map area for immediate annexation is somewhat consistent with the West Billings Plan. The plan to develop the property at urban densities is consistent with the managed growth theme of the West Billings Plan. However, the Plan also encourages compact and infill development to conserve land and natural resources (Theme 1, Planned Growth, Page 15). The development proposed for this property is compact but property is on the fringe of the urban area and is not infill.

The subject property is located in an area that the West Billings Plan identifies as a place for residential development, with a commercial center identified to the east at the intersection of Shiloh Road and King Avenue West. The proposal for development of the property would include both residential and commercial uses in a mixed use environment (Theme 3, Achieving a Distinctive Community Character, Page 38).

Annexation Policy

The Annexation Policy provides the rationale for amending the Limits of Annexation Map to include new properties. There are several criteria in the rationale section of the Policy that have raised concerns for the City in terms of inclusion of the subject property. The proposal to allow phased development based on infrastructure limitations is one approach to trying to address some of these criteria.

- **Distance from existing city services and response times:** As has been outlined in this report, the property is on the western fringe of the City and recent changes in Fire Department staffing and equipment configurations, and limits on the number of patrol officers could all contribute to future service challenges.
- **Capacity and location of existing facilities and future upgrades or construction of new facilities:** Service to this property for water and sewer can be provided at this time at certain levels. The Public Works Department and Fire Department specifically support a phased development of the property based on the ability to provide adequate water to the property.
- **Cost of City Services and the Effect on existing residents:** The City is striving to limit the costs of new development on the existing residents of Billings. However, limited resources and rising costs of growth are making this more challenging for the City. Existing residents question why services and maintenance may be limited at the same time that the City is reviewing expansions on the edges of the City. Requiring phasing of development of this property based on infrastructure and service limitations may help to address the impacts to existing residence if this property is included in the City Limits.
- **Conformance with all adopted plans:** Depending on the development of this property, it is expected to both conform and conflict with various aspects of the plans already in place across the community as has been discussed in this report.

STAKEHOLDERS

Written requests for including property within the 2008 – 2013 Limits of Annexation red area were received from one property owner, the Lenhardt Square Property. This request was distributed to the City Annexation Committee for review and comment. There was ongoing discussion between City staff and the property owner throughout the review process. During a public hearing at the Yellowstone County Planning Board meeting on January 22 to review maintaining of this property within the Urban Planning Area boundary, public testimony was given to include this property within the Limits of Annexation Area. The Planning Board made a recommendation at the January 22 meeting to the City Council to include the Lenhardt Square Property within the Limits of Annexation Area for immediate annexation. Public comment on the Annexation Policy and Limits of Annexation Map will be heard at the City Council meeting on February 25. The comments from the Lenhardt Square property owner and the public at the Planning Board meeting were considered as the Annexation Committee discussed amendments

to the map. The Committee recommendation is summarized in the **Alternatives Analysis** section of this report.

RECOMMENDATION

Staff recommends that Council adopt the resolution to revise the Limits of Annexation Map to include the entire Lenhardt Square Property as recommended by the Annexation Committee.

ATTACHMENTS

- A. Resolution and Limits of Annexation Map

ATTACHMENT A

RESOLUTION NO. 08 - _____

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA
PURSUANT TO ARTICLE II. CITY BOUNDARIES, MCA 7-1-
114(1)(a); ANNEXATION PROCEDURES, MCA 7-2-4201 ET
SEQ. AND SETTING FORTH AN ANNEXATION POLICY;

WHEREAS, the City Council adopted the City of Billings Annexation Policy and
Limits of Annexation Map by Resolution on April 10, 2006; and

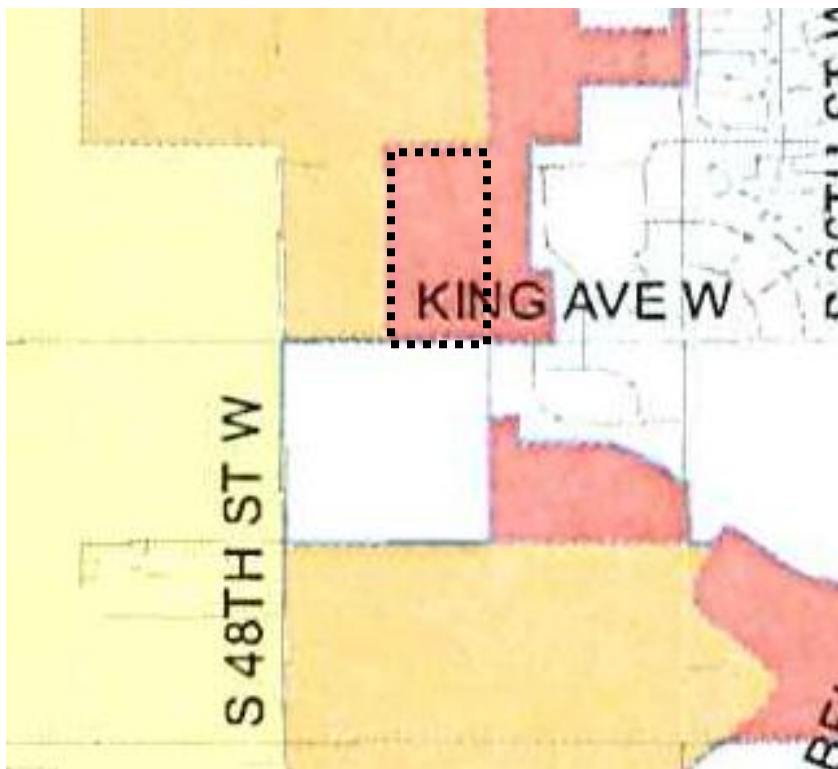
WHEREAS, the Policy states that the Map shall be revised whenever the Capital
Improvements Plan is revised; and

WHEREAS, the City Council approved the FY 2009 Modifications to the Capital
Improvements Plan on February 25, 2008.

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

That the City Council now makes and adopts the following change to the Limits of
Annexation Map:

LIMITS OF ANNEXATION MAP Revised, February 25, 2008



APPROVED AND PASSED by the City Council of the City of Billings, this 25th day of February, 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Cari Martin, City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Public Hearing and Resolution for Annexation #08-01 – Lenhardt Square

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Lenhardt Property, LP; Lenhardt Farm, LLC; and Lenhardt Enterprises, LLC, property owners, have submitted a petition for annexation of property to the City of Billings under 7-2-4600 MCA. The 114-acre property is described as Tracts 1-5, Certificate of Survey 2063 and is located north of King Avenue West between 48th Street West and Shiloh Road. The property owner is requesting annexation in order to obtain city services and move forward with development of the property at urban densities. The property owner also has submitted an Urban Planning Study to support the property's inclusion in the Urban Planning Area boundary, a request to include the entire property within the Limits of Annexation Map area for immediate annexation, and a zone change application, all for Council consideration at this same meeting.

The City Council's policy is to consider annexations at two separate meetings. At the first meeting, the Council acknowledges receipt of a petition and sets a public hearing date. At the second meeting the Council conducts the hearing and decides if it will annex the property. This public service report describes the City's capacity to serve the property.

ALTERNATIVES ANALYZED: The City Council may approve or disapprove a petition submitted by owners of 50% of the real property in the area to be annexed (7-2-4601 (3)(b), MCA).

FINANCIAL IMPACT: Financial issues are discussed in the Alternatives Analysis section of this report as they pertain to servicing the property if it were annexed into the City.

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation contingent upon the following conditions:

1. The maximum quantity of City water supplied to this property will be 600,000 gallons per day until such time as water storage facilities for Zone 3 are completed. Provision of water supply above 600,000 gallons per day is subject to the approval of the City Public Works Department and the City Fire Department.
2. Prior to site development, a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; and/or
3. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. If required, the subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

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

ATTACHMENTS

- A.** Resolution
- B.** Petition for Annexation
- C.** Exhibit A Map
- D.** Applicant Tax Analysis Document

INTRODUCTION

The property owner on August 14, 2007, submitted a petition for annexation of a 114-acre property located north of King Avenue West between 48th Street West and Shiloh Road. The property is currently zoned Agricultural Open Space (A-1). The property will automatically be zoned Residential-9600 if it is annexed into the City. In November 2007, the property owner submitted an Urban Planning Study to support a request to maintain the property within the Urban Planning Area boundary, requested to amend the Limits of Annexation Map to include the entire subject property in the red (2007-2013) immediate annexation area, submitted a petition to annex the subject property, and submitted an application to change the zoning from A-1 to Planned Development (PD) with multiple residential and mixed use zoning. The Council is acting on all of these recommendations at this meeting.

PROCEDURAL HISTORY

Winter 2006: The property owner requested inclusion in the immediate area for annexation when the Limits of Annexation Map was reviewed for amendments in winter 2006-07. The City denied the request at that time and a portion of the property remained in the red area expected to annex between 2007-2012 and a portion remained in the orange area expected to be annexed between 2012-2023 on the Limits of Annexation Map.

November 2007: The property owner submitted an Urban Planning Study to support a request to maintain the property within the Urban Planning Area boundary, requested to amend the Limits of Annexation Map to include the entire subject property in the red (2007-2013) immediate annexation area, submitted a petition to annex the subject property, and submitted an application to change the zoning from A-1 to PD zoning.

December 5, 2007: City Annexation Committee held first meeting for 2008 review. Committee reviewed the Lenhardt request to amend the Limits of Annexation Map for 2008.

December 20, 2007: Design Review Committee Meeting was held to review PD Zoning Application. Concerns about the development density were expressed by staff.

January 2, 2008: City Zoning Commission reviewed the PD application and approved a 30-day delay for the application. The Zoning Commission made its recommendation to City Council at its meeting on February 5.

January 3, 2008: City Annexation Committee reviewed Lenhardt request and agreed to delay a final recommendation until its meeting on January 31st at the applicant's request.

January 22: Planning Board Meeting was held to review the proposed amendment to the Urban Planning Area Boundary to maintain the Lenhardt Square property in the boundary and made its recommendation to the City Council.

January 31: City Annexation Committee made recommendation to City Council for amendment to the Limits of Annexation Map for the Lenhardt Property.

February 5: The City Zoning Commission held a second hearing to review the PD application for this property and made its recommendation to the City Council.

February 11: City Council acknowledged the petition to annex Lenhardt Square property and set a public hearing date for its February 25 meeting.

February 25: In the following order: City Council to conduct a public hearing and act on the Urban Planning Study and expansion of Urban Planning Boundary; conduct a public hearing and

take action on an amendment to the Limits of Annexation Map; conduct a public hearing and act on annexation; conduct a public hearing and takes action on the PD zoning application.

March 10: City Council to act on Second Reading of PD zoning application and act on First Reading of Ward Ordinance boundary change for Annexation.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns about how annexations may affect the City's ability to provide services to annexed property without diminishing the services provided to existing City residents. To address these concerns, Council adopted an annexation policy that lists criteria for suitable annexations. With phasing of the development on the subject property, the proposed annexation *complies* with the recently adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area (pending approval of the City Council at its February 25th Meeting).
2. The City is able to provide adequate services if the development of the property is phased based on future public infrastructure improvements.
3. Any proposed improvements would meet City standards.
4. The property owners will have to sign a Development Agreement and/or SIA and a Waiver of Right to Protest the Creation of SIDs prior to development of the property.
5. Given the size of the property and the proposed PD zoning, residential densities will be approximately 12 dwelling units per acre.
6. The proposed annexation meets several goals of the City-County Growth Policy as outlined in this report.

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan including a 5-year (minimum) plan that outlines how and when services and infrastructure will be extended to the annexed area and how they will be financed. This report follows that general format.

Departmental Response: City departments, the Yellowstone County Public Works Department and the Board of County Commissioners were given the opportunity to comment on this annexation. School District #2 also was notified of this annexation. City department comments are provided later in this report. No comments were received from Yellowstone County. School District 2 has a representative on the City's Annexation Committee and provided comments provided later in this report.

City Facilities: The following improvements and facilities are necessary to provide adequate services to the subject property.

Water: The Public Works Department supports annexation of the property provided that the development of the property is restricted using a maximum daily demand of 600,000 gallons per day of water until such time as two water storage projects in Zone 3 are completed for the City of Billings. These projects are identified as PWU-W022, Zone 3 Storage Expansion and PWU-W030, Zone 3 West End Storage. The remaining build out

of the property, estimated at a total of 1.26 million gallons per day maximum demand, may be allowed by the Public Works Department after completion of the two capital improvement projects. Both projects are dependant on funding and City Council approval. If one of these projects is completed, the water usage may be increased as determined by the Public Works Department. Like any other new development, the developer will pay the cost of extending infrastructure to serve the property. Sanitary sewer extension in this area is now in construction between 32nd Street West and Shiloh Road which would allow the continued extension west beyond Shiloh Road to serve this property.

Sewer: Sanitary sewer extension in this area is now under construction between 32nd Street West and Shiloh Road which would allow the continued extension west beyond Shiloh Road to serve this property. A 27-inch sanitary sewer main in King Avenue West will need to be extended to serve this property. This sewer main is expected to be extended to 44th Street (near the western edge of the subject property) if the King Meadows Subdivision begins improvements in 2008. The developer will pay for any extension of existing mains and internal infrastructure to serve the property.

Stormwater: There are no storm drains available to serve the subject property at this time. A 72-inch trunk storm drain is expected to be constructed with development of the property east and south along King Avenue West and Shiloh Road. A City-wide Stormwater Master Plan Update is in the process of being drafted that will address existing stormwater issues in this area of the City. Storm water will be addressed during development most likely using on-site storage facilities. Public Works is concerned over the number of on-site storage facilities that are being constructed and have been constructed in recent years. It is nearly 2,000 feet from the southeastern edge of this property to the Shiloh Drain. The Shiloh Drain is at capacity under the BBWA canal east of Shiloh Road and downstream of the culvert under the BBWA. It is nearly 2,500 feet from the southern boundary of this property to Hogan's slough which should be investigated for drainage opportunities during development of this property.

Road Capacities and Connections: King Avenue West is classified as a Principal Arterial and runs along the south edge of the property. King Avenue West is under the jurisdiction of the Montana Department of Transportation (MDT) and any accesses to the road will require MDT approval.

Monad Road is classified as a Minor Arterial and is proposed to run through the northern portion of the property from east to west. It is not clear how Monad Road will pass through this property and the service needs for alignment and service capabilities of Monad Road will need to be carefully considered. King Avenue and Monad are likely to provide the only external traffic access to this property. It is expected that a Traffic Accessibility Study to match the PD plans for the property will be required prior to development of the property. The owner or developers will waive the right to protest creating Special Improvement Districts through a development agreement or subdivision

improvement agreement if they are necessary to make area-wide transportation infrastructure improvements.

General City Services: These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal.

Street/traffic: The Street/Traffic division for public works has area for concern to serve this area if it is annexed to the city due to FY 2008 budget limitations within this division and the potential for additional budgetary changes in the future.

Solid waste: The City is expected to provide solid waste collection and disposal at the City's landfill. The landfill has used 4 million tons of its current estimated 20 million tons of solid waste capacity. This development is expected to generate about 0.2% of the remaining landfill capacity.

MET Transit: MET has no plans to expand the current bus services to this property. MET staff explained that the Department has no plans in expand service in any area of the City at this time due to funding limitations.

Police: The Police Department already serves the properties within the City Limits in close proximity to this property. The Police Station is located in City Hall about 7 miles from the subject property. While the new Fire Station at 54th Street West and Grand Avenue has a satellite facility for the Police Department, the Police Department staff indicated there is no immediate plan to staff the facility as a 24-hour substation operation. The Police Department also indicated that while two additional officers will be added in 2008, the additional staff will bring the Department up to current authorized strength and will not address the significant City growth that is occurring.

Fire: The area is in the BUFGA and is served by the Billings Fire Department. The nearest fire station for this property is located about 3 miles away at 54th Street West and Grand Avenue. This station just started operations in December. The next nearest station is at 24th Street West and King Avenue West about 5.3 miles from the property.

The Fire Department is supportive of annexing the property as long as the water supply limitations specified by the Public Works Department are followed. The Fire Department also noted that the limited service provided by the Department's ladder truck out of Station #1, about 7 miles from the subject property, may create some service challenges in this area of the City in the future.

Emergency Medical Services: American Medical Response provides emergency medical services to the City. AMR must comply with the City's mandate that 90% of

calls be answered within 8 minutes. AMR's facility is located about 8 miles from the property and response time may depend on the location of mobile rescue units in the City. It is not known how this added development will affect AMR's service abilities. The nearest medical treatment facility for emergencies is located at either Billings Clinic or St. Vincent's in downtown Billings about 7 miles from the property.

Parks and Recreation: There are no existing City parks developed in the area. There is a large County Park parcel about one ¼ of a mile south of the subject property adjacent to the Knife River (formerly JTL) gravel mining operation. This park has not been developed and its future use is not known. Several smaller parks are planned for the King Meadows Subdivision across King Avenue West to the south of this property.

The Parks Department expressed concern that additional development in the City without large park areas to provide "programmable" space for soccer and ball fields, playground areas and other uses continues to place stress on the existing community parks already in the City. The Department specifically responded to the Lenhardt Square Planned Development Agreement specifications that include a large central park area in the middle of the development, several additional smaller park spaces throughout the property, and a network of pedestrian trails connecting the parks. The Parks Department found that the larger park areas were more acceptable to provide space for large outdoor recreation activities but is interested in having the maintenance of all of the park spaces in the proposed development privately maintained. The Parks Department does not want to take on maintenance responsibilities of the number of small park spaces and corridors proposed in the development.

Schools: Elementary school age children will attend Central Heights Elementary School, Riverside Middle School and West High School, according to the UPS and School District 2 staff. This development is estimated to generate about 1,000 students at full build out.

District 2 staff expressed serious concern that without a new elementary school built west of Shiloh Road and either an additional high school or addition to West High, ongoing over capacity problems will continue. District 2 staff indicated that there are already 580 elementary students west of Shiloh Road. A new elementary school would be expected to serve about 450 students, so just the addition of one new elementary school will likely only address current student demand in this area of Billings. While the District is moving forward to purchase property at Cottonwood Park for an elementary school, there is no immediate plan to fund and build a school at that location.

Finance Department Comments: Information provided in the UPS and submitted to City staff for review by the applicant roughly estimated that the raw land taxes on the subject property after annexation would be about \$71,800.00 and the taxes on the property at full build out based on current values and taxes would be between \$1.3-\$1.5 million (**See Attachment D**).

Assistant City Administrator Bruce McCandless attended the Annexation Committee meetings on behalf of City Administration and Finance, and reviewed the Lenhardt Square UPS. He commented that in Fiscal Year 2008, every property tax supported department in the City is spending reserves in order balance their operating budgets and a reappraisal of property value by the DOR and the 2009 Legislature is expected to further reduce property tax revenue to the City.

McCandless also indicated that tax revenue from new development that comes on line in a current year is distributed to the City in increments over a six year time period. The means that there is no immediate realization of the total new development tax benefit while the City services must be provided as soon as the new development is occupied. He explained that in many instances the City can generate capital funding, but funding operating costs is a major issue. Even fee and assessment supported services, such as street maintenance and water/wastewater, are beginning to feel a budget pinch and are reducing services or spreading them thinner. While the City has historically been willing to maintain property within the UPA, include property within the red Limits of Annexation Map area, and annex property annually, he expressed concern that any additions to the City at this time will diminish services to existing City residents.

Other Departments: City/County services such as Library, Planning, and Environmental Health are only slightly affected by the annexation since they will serve new development if it is in the City or if it remains in the County.

STAKEHOLDERS

The annexation by petition method does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was posted on the property and published in the Billings Times more than 15 days prior to the Council hearing as required. The Planning Division had not received comments on this proposed annexation at the time this staff report was submitted to the Council.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Annexation of the entire Lenhardt Square Property is inconsistent with some goals and consistent with other goals of the Yellowstone County and City of Billings 2003 Growth Policy, and is generally consistent with the West Billings Plan.

Yellowstone County – City of Billings 2003 Growth Policy

Inclusion of the subject property is consistent with the following goals and policies of the Growth Policy:

- Goal: More housing and business choices within each neighborhood (Land Use Element, Page 6). *The proposed mixed-use design of this property could provide a variety of housing and business choices for a future urban neighborhood in this area of Billings.*

- Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness (Open Space and Recreation, Page 9). *The proposed design of this property could provide a series of trails that would provide internal connections to the development on the property and external connections to the planned trail corridor along Shiloh Road.*

Inclusion of the subject property is not consistent with the following goals of the Growth Policy:

- Goal: Protection of groundwater, surface water, riparian areas, air quality and productive agricultural land (Natural Resources Goal, Page 8). *Development of the property will take 114 acres of irrigated agricultural land out of production. While it is stated that larger agricultural tracts are needed for cost-effective agricultural operations, it is gradual reduction in the acreage of farm land in West Billings like this that contributes to this situation.*
- Goal: Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, Page 6). *This property is on the western fringe of the City Limits. While it is contiguous to the City Limits on the east side, it is in an area that has limited City services at this time and is about 8 miles from the City core.*
- Goal: Protect public lives and property (Public Services Goal, Page 11). *The location of this property in relation to overall delivery of City services challenges the City's ability to ensure adequate and acceptable levels of service to existing City neighborhoods when new service expansion for property like this is considered. The proposal to require phasing of development on the property based on infrastructure and service limitations is one option for mitigating this concern.*

2001 West Billings Plan

Annexation of the property is somewhat consistent with the West Billings Plan. The plan to develop the property at urban densities is in line with the managed growth theme of the West Billings Plan. However, the Plan also encourages compact and infill development to conserve land and natural resources (Theme 1, Planned Growth, Page 15). The development proposed for this property is compact but property is on the fringe of the urban area and is not infill.

The subject property is located in an area that the West Billings Plan identifies as a place for residential development, with a commercial center identified to the east at the intersection of Shiloh Road and King Avenue West. The proposal for development of the property would include both residential and commercial uses in a mixed use environment (Theme 3, Achieving a Distinctive Community Character, Page 38).

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation contingent upon the following conditions:

1. The maximum quantity of City water supplied to this property will be 600,000 gallons per day until such time as water storage facilities for Zone 3 are completed. Provision of water supply above 600,000 gallons per day is subject to the approval of the City Public Works Department and the City Fire Department.
2. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
3. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

ATTACHMENTS

- A.** Resolution
- B.** Exhibit A Map
- C.** Annexation Petition
- D.** Applicant Tax Analysis Document

ATTACHMENT A

RESOLUTION NO. 08-

A RESOLUTION OF THE CITY OF BILLINGS APPROVING PETITIONS FOR ANNEXATION AND ANNEXING TERRITORY TO THE CITY.

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law, and

WHEREAS, annexation of said territory would be in the best interest of the City.

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

1. **TERRITORY ANNEXED.** Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

Tracts of land situated in the S1/2 of Section 10, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:
Tracts 1,2,3,4, & 5, Certificate of Survey 2063, Recorded March 20, 1981, under Document No. 1192727, Records of Yellowstone County.
Including all adjacent right-of-way of King Avenue West.
Containing 114.669 gross acres, and 114.298 net acres.
(# 08-01) See Exhibit "A" Attached

2. **CONDITIONS.** The annexation is approved contingent upon the following conditions:
 1. The maximum quantity of City water supplied to this property will be 600,000 gallons per day until such time as water storage facilities for Zone 3 are completed. Provision of water supply above 600,000 gallons per day is subject to the approval of the City Public Works Department and the City Fire Department.
 2. Prior to site development, a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; and/or

3. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. If required, the subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.
3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 25th day of February, 2008.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

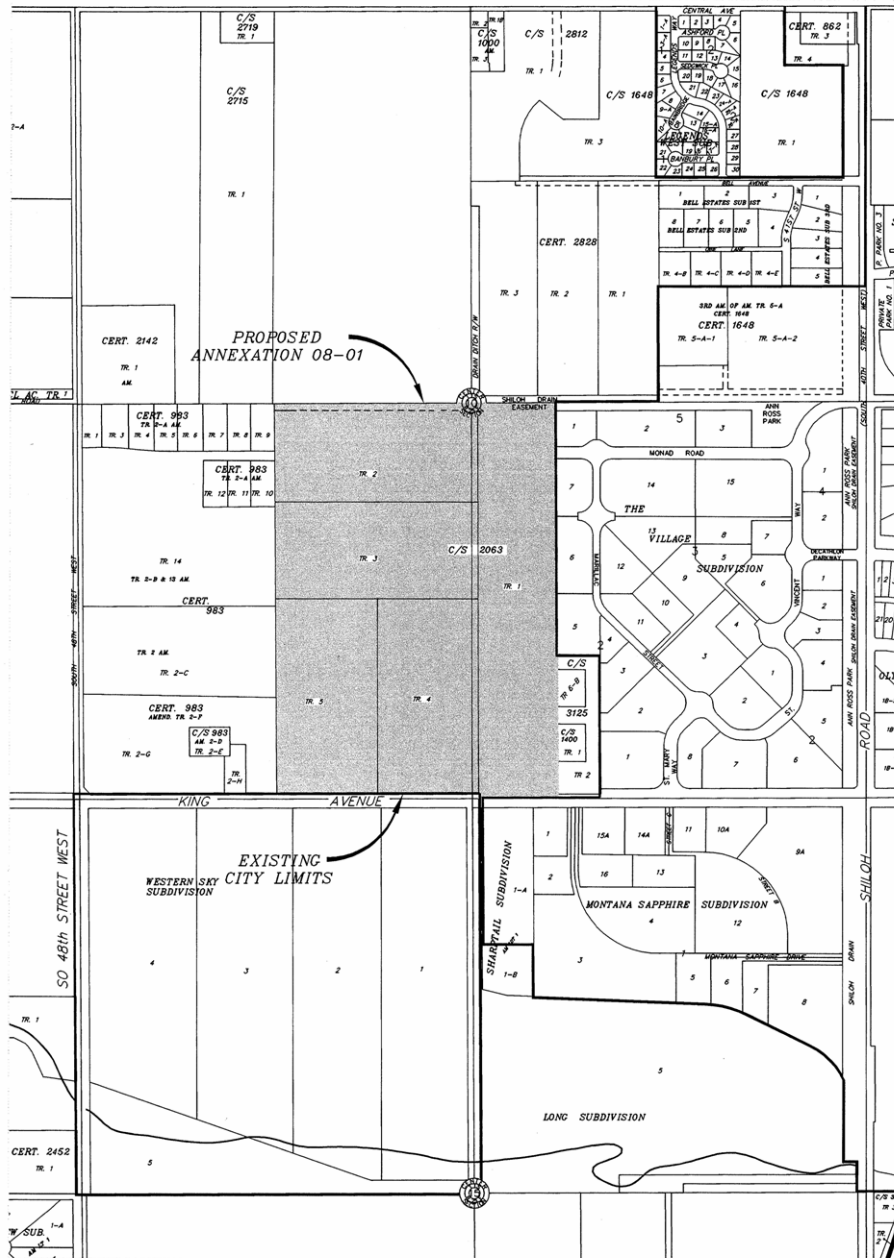
BY: _____

CITY CLERK

(AN #08-01)

ATTACHMENT B

EXHIBIT A



ATTACHMENT C

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 Parmly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, and Finance Department. If no problems with the Petition have been noted by the departments, the City Clerk will schedule the Petition for City Council action.
 4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
 5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

RESIDENT FREEHOLDER ELECTORS

| Date | Print Name | Name Signature | Address |
|--------|-------------------------|--|-----------------------|
| 8/2/07 | Lenhardt Property LP | | 4035 Cedarbrook Court |
| | Lorraine Newman, member |  | Bellingham, WA 98229 |
| | Allan Lenhardt, member | | |
| | Jan Rehberg, member |  | |
| | | | |

(continued on separate page)

07-747

DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS

[illegible]

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted:

11/6/07

Fee Paid: 7800.00

Received By: Tony Davis / Wed 4 Friday

#08-01

Petition Number:

Estimated Property Tax Revenues:
 Lenhardt Square
 Reduced Residential Sq. Ft. MU @ Residential Rate

| RESIDENTIAL | | | | | | | | | | |
|-----------------|-------------------------------------|-----------------------|---------------------|----------------------|-----------------------|-------------------|-----------------------|-------------------------------------|---------------------------------------|--|
| Zoning | Total Developable Area ¹ | Average Density Limit | Total Allowed Units | Est. FMV Per Sq. Ft. | Est. Sq. Ft. Per Unit | Est. FMV Per Unit | Est. Taxable MV (66%) | Est. Taxable Value Per Unit (3.07%) | Est. Tax Revenue Per Unit (618 mills) | Est. Tax Rev. To City Unit (157 mills) |
| Tract 2A MF-4 | 15.49 | 10 | 155 | \$175 | 1400 | \$245,000 | \$161,700 | \$4,964 | \$3,068 | \$779 |
| Tract 3A MF-R | 15.27 | 15 | 229 | \$165 | 1400 | \$231,000 | \$152,460 | \$4,681 | \$2,893 | \$735 |
| Tract 4A MU** | 13.94 | 20 | 279 | \$135 | 1000 | \$135,000 | \$89,100 | \$2,735 | \$1,690 | \$429 |
| Tract 5A.1 MF-4 | 10.72 | 10 | 107 | \$175 | 1400 | \$245,000 | \$161,700 | \$4,964 | \$3,068 | \$779 |
| Tract 5A.2 MU** | 3.76 | 20 | 76 | \$135 | 1000 | \$135,000 | \$89,100 | \$2,735 | \$1,690 | \$429 |
| Totals | 59.18 | | 845 | | | | | | \$2,064,601 | \$524,502 |

¹ Gross acreage less public roads and open space (parks and trails) shown on master plan.

| NON-RESIDENTIAL (COMMERCIAL, OFFICE, MULTI-FAMILY APT., PARKING) | | | | | | | | | | |
|--|------------------------|-----------|-----------------------|-------------------------|----------------------|--------------------|----------------------------------|--------------------------------------|---|---|
| Zoning | Total Developable Area | USE | Est. Sq. Ft. Per Acre | Total Sq. Ft. Per Tract | Est. FMV Per Sq. Ft. | Est. FMV Per Tract | Est. Tax (66% MF & Parking @85%) | Est. Taxable Value Per Tract (3.07%) | Est. Total Tax Rev. Per Tract (618 Mills) | Est. Tax Rev. To City Per Tract (157 Mills) |
| Tract 1A MF-R | 28.34 | MF | 23,000 | 651,820 | \$150 | \$97,773,000 | \$63,107,050 | \$2,551,388 | \$1,576,757 | \$400,368 |
| Tract 4A MU | 13.94 | Comm/Prof | 30,000 | 418,200 | \$200 | \$83,640,000 | \$55,202,400 | \$1,894,714 | \$1,047,333 | \$266,070 |
| Tract 5A.2 MU | 3.76 | Comm/Prof | 30,000 | 112,800 | \$200 | \$22,560,000 | \$14,889,600 | \$457,111 | \$282,494 | \$71,766 |
| Tr. 4A & 5A.2 MU | 17.70 | Parking | 30,000 | 531,000 | \$20 | \$10,620,000 | \$9,027,000 | \$277,129 | \$171,266 | \$43,509 |
| Totals | | | | | | | \$162,226,050 | \$4,960,340 | \$3,077,950 | \$781,913 |

¹ Assumes two floors of non-residential retail, commercial, office, parking, etc. per structure in MU zone with 50% of non-residential space utilized for parking.

Estimated total tax revenue from residential development at full build out
 Estimated total tax revenue from non-residential development at full build out
 Estimated total tax revenue from Lenhardt Square at full build out

\$2,064,601
 \$3,077,850
 \$5,142,451

\$524,502
 \$781,913
 \$1,306,416

1/31/2008 1:14 PM

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 25, 2008

TITLE: Zone Change #829 Public Hearing and 1st 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 Agriculture-Open Space (A-1), a county zoning district, to Planned Development with several underlying zoning districts including mixed uses (commercial & residential), multi-family apartments, single-family & patio homes as well as parks for open space. The property is located at 4345 King Avenue West and is a 113.29 acre parcel of land described as Tracts 1 through 5 of Certificate of Survey 2063. The property is owned by the Lenhardt Property, LP, Lenhardt Farm, LLC and Lenhardt Enterprises, LLC. Engineering, Inc. and Bill Cole of the Cole Law Firm are the agents. The Zoning Commission conducted a hearing on January 2, 2008, and allowed a 30-day delay for the applicant to address Planning Division and other City staff concerns with the Planned Development. The Zoning Commission conducted a second public hearing on February 5, 2008, and voted 5-0 to recommend approval to the City Council.

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

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

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

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #829 and adopt the determinations of the 12 criteria, as discussed within this report.

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

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance and Planned Development Agreement

INTRODUCTION

This is a zone change request from A-1, a County zoning district, to Planned Development with three underlying zoning districts: Mixed Use (MU), Multi-family Residential (MF-R) and Single Family, Residential Multi-Family (Four-Plex) (MF-4). The property is five tracts in a certificate of survey totaling about 113 acres of land. The owners have also petitioned to be annexed in to the city and have city services provided for the proposed development. The current limit of annexation includes Tract 1, the 32.4 acre tract in the survey that adjoins the Village Subdivision to the east. The City Council will need to accept an Urban Planning Study, maintain the property within the Urban Planning Area, amend the limits of annexation map and annex all five tracts for this zone change to be considered. The Urban Planning Study, the request to amend the limits of Annexation map, and Petition for Annexation have been submitted and are under consideration.

PROCEDURAL HISTORY

- A pre-application Neighborhood Meeting was conducted by the applicant and agent at the offices of Engineering, Inc. on October 29, 2007.
- The Planning Division received a Planned Development zone change application on November 5, 2007.
- A Preliminary Review meeting was held with the applicant, agent, city staff and the surrounding property owners on December 20, 2007.
- The City Zoning Commission held a public hearing on January 2, 2008, and granted a 30-day delay so the applicant could address city staff concerns with the draft Planned Development Agreement.
- The City Zoning Commission held a second public hearing on February 5, 2008, and voted 5-0 to forward a recommendation of approval.
- The City Council will hold a public hearing and 1st reading of the ordinance on February 25, 2008.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on March 10, 2008.

BACKGROUND

This is a Planned Development zone change for the proposed Lenhardt Square neighborhood. The underlying zoning districts are similar to existing zoning districts but have different building height, setbacks, lot coverage and proposed uses that will be particular to this 113 acre property. The purpose of a Planned Development (PD) zone is to “*encourage unique development or re-development through a flexible, timely and efficient process. Developments which utilize innovative, progressive planning and site design techniques and methods to allow a mixture of land uses, densities, setbacks and building heights will be encouraged. In addition, this zone is intended to encourage the preservation and enhancement of the physical characteristics of the site.*” (BMCC 27- 1301) The Planned Development regulation also requires the City to consider each request to vary from a standard zoning district to be weighed against the additional benefits the development would provide. As an example, a PD zone that allows 12.5 dwelling units per acre should be weighed against some additional amenity not otherwise required in a high density residential subdivision. The regulations specifically state this guideline: “*For example,*

permitting greater density in a PD could be approved, in exchange for a greater amount of open space than a similar project, not located in a planned development zone, would be required to provide.” (BMCC 27-1303) The proposal for Lenhardt Square offers more open space than would otherwise be required. In a residential multi-family subdivision 11% of the net land area is required for parkland dedication. Lenhardt Square is proposed to have 14% of the net land area dedicated as common open space. In addition, the Open Space will be developed for bikeways, trails, and central squares or palazzos. This is an unusual amenity in so far that most residential developments that dedicate parkland are not required to construct the park improvements. The development guidelines and architectural control proposed will assure the Common Open Space areas will be an integral part of the development.

The proposed zoning district within the PD for Mixed Use (MU) allows a wide range of commercial & retail uses as well as residential uses. The recommended PD agreement limits the density in the MU zone to 20 dwelling units per acre. In addition, the zoning Master Plan (Exhibit A of the PD agreement) shows the location of the 3 proposed zoning districts, MU, MF-R and MF-4 and has assigned maximum density limits as follows: 10 dwelling units per acre in the MF-4 zone (Tracts 2A & 5A.1), 20 dwelling units per acre for 32.69 acres of the MF-R zone (Tract 1A), 15 dwelling units per acre for 19.31 acres of the MF-R zone (Tract 3A) and 20 dwelling units per acre in the MU zone (Tracts 4A & 5A.2) The overall development density of the Lenhardt Planned Development is proposed at 12.5 dwelling units per acre. This density is compatible with existing and proposed city neighborhoods to the east, north and southwest of the subject property.

The PD zoning Master Plan indicates the following areas for each zone:

January 24, 2008

19.97 acres as MU (Tract 4A & 5A.2)

50.92 acres as MF-R (Tract 1A & 3A)

28.08 acres as MF-4 (Tract 2A & 5A.1)

14.27 acres as Open Space (throughout)

113.24 Total acres (includes area that may be right-of-ways)

The remaining area is intended for dedication of an easement for the Shiloh Drain that runs along the north property line.

The recommended PD agreement also proposes maximum heights for structures in the MU zone of 80 feet, in the MF-R zone of 40 feet, and in the MF-4 zone of 34 feet. This will allow 7-story structures in the MU zone but the maximum dwelling unit density will limit the total population. This may result in additional commercial, retail, office or entertainment space available for a 7-story structure. For example, there may be 4 stories of commercial, office or retail uses with 2 or 3 stories of residential units above. The maximum building height in the MU zone will allow the Fire Department to bring the 75-foot bucket truck from the Terry Fire Station if necessary. The Terry station is 5.5 miles from the subject property. Two other stations would be first responders to a fire – 24th Street West Station 2.6 miles away and the new Station at 54th Street West and Grand Avenue 3.2 miles away.

The Fire Department had expressed concern that sprinkler systems and fire apparatus may not be able to provide adequate water pressure above the fifth story of structures in the MU zone. The location is at the lowest elevation of the Water Supply Zone #3 and water pressure should be adequate based on information from the Public Works Department. Water quantity issues will likely be alleviated by water storage improvements planned for 2009 and 2013 as shown in the Capital Improvement Plan (CIP). The Public Works Department has indicated it is able to enter an agreement to provide the Lenhardt Planned Development with up to a maximum of 600,000 gallons of water per day until the water storage improvements are completed. This amount will not accommodate the full-build out population. In addition, commercial, retail, office or entertainment uses will also take up some of this proposed maximum water supply. The maximum population is estimated at 3,302 (2.34 persons per household in the Billings census area). Average daily residential water demand is estimated 219 gallons per person for an average daily demand of 723,138 gallons. Peak demand is usually 2.2 times the average daily demand so a peak demand daily average would be 1,590,903 gallons per day. These estimates do not include water usage for commercial, retail or office uses.

PLANNED DEVELOPMENT AGREEMENT CHANGES

The Planning Division recommended and the Zoning Commission concurred with several changes to be made to the PD agreement. These changes will not materially change the proposed density, setbacks, or uses of the subject property but will bring the agreement in to alignment with standard practices for Planned Developments. The Zoning Commission recommended changes are shown in the PD Agreement (Attachment C) and are detailed below. Where language is recommended for deletion it is shown with a line strikethrough (~~example~~) and where language is recommended for addition it is shown underlined (example).

1. The Planning Staff recommended, and the Zoning Commission did not concur, to eliminate Footnotes #1 and #2 as shown on Exhibit B of the PD Agreement (page 61 of 62). Footnotes #1 and #2 will allow the “Reviewer”, the person or group appointed by the owners to review developments prior to submission to the City, to grant reductions in setbacks of up to 10% and grant a zero front setback. This is less than what is specified in Exhibit B – General Requirements. This is in opposition to what the City can grant as an administrative change to the PD. The Planned Development regulations (BMCC 27-1310) specify the amount and type of changes the Zoning Coordinator is allowed to grant as a ministerial action. Granting a reduction in setbacks is not an allowed ministerial act. Reductions in setbacks need to go through a variance application, even for property within a Planned Development. The Zoning Commission heard testimony from Bill Cole, the applicant’s agent, on this matter. Mr. Cole stated that even though the Zoning Coordinator may be limited by the regulations in BMCC 27-1310, this limitation does not apply to other parties. The Zoning Commission therefore recommended to leave footnotes #1 and #2 in Exhibit B in place and recommended the related legal issues be resolved through discussion with the City Attorney, the City Council and the applicant’s agents.

2. The Planning Staff recommended and the Zoning Commission concurred that Footnote #7 in Exhibit B of the PD Agreement (page 62 of 62) be deleted. The current language states the Zoning Coordinator could allow a density increase of 10%. The Planned Development regulations (BMCC 27-1310) only allow the Zoning Coordinator to increase the number of residential units by 2%. The applicant's agent, Bill Cole, also concurred with this recommended change.
3. In Article IX.A.2., Amendments or Changes (page 52 of 62), the percentage should be changed from 5% to 2% for the reasons stated above concerning Footnote #7 in Exhibit B. The Zoning Commission and the applicant's agent concurred with this proposed change.
4. In Article VI.C. Roof-Top Amenity Areas (page 51 of 62), the City of Billings Building Division will need to review most of the types of amenities listed in this section, particularly if it involves the installation of any structure. The language can still provide an exemption for the "Reviewer". The Zoning Commission and the applicant's agent concurred with this proposed change.
5. In Article V.B.14 –Design Standards (page 50 of 62), the Fire Department requested that language be inserted to reference the International Fire Code, the code now adopted for the City of Billings. The Zoning Commission and applicant's agent concurred with this change.
6. In Article IV.J.8 – Home Occupations (pages 44 & 43 of 62), the Building Official requested that language be inserted to notify owners of the building codes that may apply when Home Occupations have non-resident employees. The Zoning Commission and the applicant's agent concurred.
7. In regards to Exhibit A of the PD Agreement – Conceptual Master Plan (page 60 of 62), the Zoning Commission received testimony from surrounding property owners, the Dyk family and Leo Barsanti, that concerned the proposed street layout, in particular the alignment of Monad Road. The surrounding owners were concerned that Monad Road be continued on its current east to west alignment and not deviate to the north or south as shown on the Conceptual Master Plan. Planning Staff stated the Conceptual Master Plan in the PD Agreement only shows a proposed layout of streets and action on the PD Agreement would not approve or deny the proposed streets including any locations for access to King Avenue West or the alignment of Monad Road. The Urban Transportation Plan (UTP) currently shows Monad Road continuing west of Shiloh Road as a Collector street. East of Shiloh Road, Monad Road is a Minor Arterial street. The primary difference between a Minor Arterial and a Collector is the volume of traffic the street is expected to carry. A two-lane Minor Arterial has an average daily capacity of 20,400 vehicle trips per day and a two-lane Collector has an average daily capacity of 15,800 vehicle trips per day. The Functional Classification Map in the UTP shows Monad Road west of Shiloh along the same alignment and then deviating to the north above the Lenhardt property to intersect with 44th Street West – a proposed north-south Collector street. The alignment, design and construction of Monad Road west of Shiloh Road will be reviewed and approved by the City through a subdivision or development agreement that will be necessary for any development to begin on the

Lenhardt Square property. The Zoning Commission recommended and the applicant's agent concurred to amend the Conceptual Master Plan to eliminate the area shown as right-of-ways and add the area to the adjacent underlying zoning districts as developable area.

The West Billings Neighborhood Plan did envision allowing mixed uses and higher density residential uses along arterial streets between major intersections. The proposed Lenhardt Square neighborhood does achieve some of these goals listed in the West Billings Neighborhood Plan. The PD is sensitive to the adjacent land uses and zoning. The maximum building heights and available residential density is compatible with the adopted or proposed land uses in the area. The developer has balanced this request to vary from standard zoning district requirements with an amenity not otherwise required for other developments.

The Planning Division reviewed the proposed zone change and recommended approval to the Zoning Commission based on the attached twelve (12) criteria for zone changes and Section 27-1303 Planned Development Guidelines. The applicant has prepared a zoning plan that does provide compatibility with surrounding properties and does not unduly concentrate population in a small area. Reductions in maximum building height and allowable residential densities make the development compatible with surrounding land uses. City services capacity is constrained at this time to serve this proposed development. City departments will endeavor to create additional capacity to accommodate the entire build out of the development in the future.

The Zoning Commission conducted a public hearing on February 5, 2008, and recommended approval of the zone change on a 5-0 vote.

ALTERNATIVES ANALYSIS

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

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

The Growth Policy and the West Billings Neighborhood Plan support higher density residential and mixed uses along arterial streets between intersections. The proposed density could be supported at this location. Standard density for Residential Multi-family (RMF) zoning districts is a maximum of 76 dwelling units per acre. This zone does not limit height, however 1.5 parking spaces must be provided for each unit and the maximum lot coverage is 55%. The proposed Mixed Use (MU) zone has a maximum density of up to 20 dwelling units per acre, or 26% of the maximum residential density in an RMF zone. The Growth Policy encourages new development that is compatible and complementary of the surrounding land uses or planned land uses. All of the surrounding zoning districts have maximum building heights of 45 feet and maximum lot coverage ranging from 30% to 50%. The proposed zoning allows maximum building height in the MU zone of 80 feet and lot coverage of 100%. This is compatible and complementary to the surrounding existing and proposed land uses.

2. *Is the new zoning designed to lessen congestion in the streets?*
The new zoning is not designed to lessen congestion in the streets but does locate zoning districts that generate the highest number of vehicle trips on arterial streets that are designed to handle the increase in traffic. Traffic impacts have not been identified but may be identified in a future Traffic Accessibility Study when a subdivision of one of the tracts is submitted or site development occurs. If developed to a maximum residential density of 1,411 dwelling units, up to 14,110 new vehicle trips could be generated from residential uses. Commercial, retail and office uses will add to the trip generation. The Montana Department of Transportation will control access to King Avenue West as well as determine what mitigation will be required such as traffic lights, turning lanes or other mitigation measures.
3. *Will the new zoning secure safety from fire, panic and other dangers?*
The property has public street frontage on King Avenue West and is proposing to extend Monad Road from the adjacent property to the east. The zoning master plan shows a proposed road layout that jogs the right-of-way for Monad Road to the south after it enters Lenhardt Square. There is concern about street continuity for Monad Road, a designated collector street west of Shiloh Road. The zoning Master Plan is not the final layout of streets and access points for any future development. Those details will be finalized in a future subdivision or development agreement. There is some concern about providing water for the full build out of the development. Planned water storage improvements should mitigate this concern, but may limit the timing of build out of the property.
4. *Will the new zoning promote health and general welfare?*
The new zoning contains restrictions on uses allowed. In general, this list of allowed uses restricts the development of any type of manufacturing. The zoning does allow zero lot line setbacks in the Mixed Use zone and higher density. This should not affect the health and general welfare.
5. *Will the new zoning provide adequate light and air?*
The new zoning provides for sufficient setbacks in the Residential Single Family and Multi-Family zoning districts. The Mixed Use zone has a central Common Open Space area that will allow for adequate light and air even with zero setbacks for structures and 100% lot coverage.
6. *Will the new zoning prevent overcrowding of land?*
The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. In the Residential zoning districts this is proposed at 50% of the lot area. The Mixed Use zone allows 100% lot coverage but the central Open Space area will mitigate this allowance. In addition, maximum residential densities are proposed that will prevent the overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*

The Residential zones allow single family and multi-family dwellings. The average density of the entire parcel will result in approximately 12.5 dwelling units per acre (maximum) or a population of 1,411 families. This is a similar density to other existing or proposed neighborhoods in the area. The average household in Billings is 2.34 persons resulting in a population increase of approximately 3,302 over an estimated 10-year build out period. The existing population of this area of Billings is about 9,450.

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

Transportation: The new zoning will have an effect on the adjacent streets and traffic patterns. A traffic study has not been completed but additional traffic analysis to determine how traffic will be accommodated must be completed.

Water and Sewerage: The City will provide water and sewer service to the property and does not have adequate capacity to serve this property at full build out at this time. The Urban Planning Study indicates the total build out may use more than the remaining capacity for this water service zone. The Public Works Department is proposing an interim maximum of 600,000 gallons per day until the storage improvements are completed.

Schools and Parks: There will be an effect on parks and schools from this rezoning. The proposed parks will be developed at the time of the subdivision and will need to be maintained through the private owners association. The school district will be impacted by this development. The potential increase in school age population will require additional classroom space and staff. This will not be off set by an overall increase in mill levy to the School District.

Fire and Police: The property is within the Billings Urban Fire Service area. It is currently active agriculture land with one existing dwelling. At the proposed maximum building height of 80 feet in the MU zone, service calls for new buildings in the MU zone may require the bucket truck from Fire Station #4 at Terry Park to respond. Response time will be greater than otherwise anticipated for these structures. Other structures can be protected by apparatus at Fire Station #5 on 24th Street West or new Fire Station #7 at 54th Street West and Grand Avenue.

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

The primary zoning in this area is Planned Development to the east with mixed uses of commercial, medical and residential dwellings, Entryway Light Industrial to the south with primarily commercial development, and Agriculture Open-Space zoning to the north and west with very low density residential uses and active irrigated crop land. The proposed density and mixed uses are compatible with the existing and planned land uses to the east and south. The King Meadows Subdivision south and west of Lenhardt Square

does provide for a mix of residential densities including Residential Multi-family-Restricted (RMF-R) and Community Commercial zoning at the intersection of King Avenue West and 48th Street West.

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

The subject property is suitable for the requested zoning district.

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

The new zoning may alter the value of buildings in the area. There are three parcels of land directly east at 4245, 4249 and 4253 King Avenue West that have single family homes and the marketability of these properties may be significantly reduced if sold as single family homes. These parcels are also bordered by the Village Planned Development further east on King Avenue West.

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

The new zoning will encourage the most appropriate use of this land in the area for urban development.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

The Zoning Commission conducted a public hearing on February 5, 2008, and forwarded a positive recommendation to the City Council by a 5-0 vote. The applicants and agents attended the hearing and explained the proposal to the Zoning Commission. Rick Leuthold of Engineering, Inc. testified that previous staff concerns with the PD Agreement have been addressed and staff forwarded a recommendation of approval. The applicant and the city are working on a phased development agreement to address water supply concerns. He asked the Zoning Commission to forward a favorable recommendation to the City Council based on the amended PD Agreement.

Dan McElmurray of VBM Design Studios, Las Vegas, Nevada, and agent for the applicants, explained the design criteria, building setbacks and mixture of uses that will apply throughout the Lenhardt Square neighborhood. Defining features will include emphasis on the interaction with the outdoors through parks, bikeways and linear parkways, vertical mixed uses in the MU zone and the provision for central squares as places for residents to gather and have social events. The streetscape design standards will be an important feature of the overall development. These provisions will be adopted through covenants and enforced through the owners association.

Allan Lenhardt, an owner, introduced the other property owners, Jan Rehberg and Lorraine Newman, to the Zoning Commission. He asked the Commission to forward a favorable recommendation to the City Council.

Bill Cole of the Cole Law Firm, and agent for the applicants, presented his written testimony to the Zoning Commission for consideration. He asked the Commission to allow Footnotes #1 & #2 in Exhibit B of the PD Agreement to remain in place and allow the City Attorney, the City Council and himself to discuss the legal issues surrounding variations from the PD Agreement. Mr. Cole explained this zoning proposal will be setting the best example of implementation of the West Billings Neighborhood Plan since the plan was adopted in 2001. The proposal allows higher density housing near the intersection of arterial streets, successfully mixes uses to allow a neighborhood where residents can live, work, play and shop. The key elements of the West Billings Neighborhood Plan, especially for areas west of Shiloh Road, were to not allow strip development or low-density residential subdivisions. This proposal meets those goals of the plan. Mr. Cole asked the Commission for a favorable recommendation.

Bruce McIntyre, Billings Chamber of Commerce, testified in favor of the proposed zone change. He stated that the improvements to Shiloh Road will begin in about 18 months and this and similar developments should be allowed to go forward to take advantage of those improvements. Mr. McIntyre asked the Commission to recommend approval.

Mr. Leo Barsanti, Vice-Chair of the West End Task Force, testified against the proposed alignment of Monad Road as shown on the Conceptual Master Plan. He was concerned that West Billings keep as many arterial streets as possible and not dead-end these streets unnecessarily. He stated there were examples of this throughout the city including the dead-end of Poly Drive at 38th Street West, and the dead-end 24th Street West at Colton. He asked the Commission to resolve the issue of street alignments and not forward the Conceptual Master Plan as shown in the PD Agreement.

Rick Leuthold provided rebuttal to Mr. Barsanti's testimony regarding the proposed streets. He stated the Conceptual Master Plan is not a plat, so the road details must be worked out through a subdivision or development agreement. He stated the city has adopted a Transportation Plan that does not continue every half-section minor arterial street. Monad Road west of Shiloh is designated a Collector and could vary from its alignment. He stated he would not want Monad Road to continue all the way through to 48th Street West and dead-end near where the School District owns property for a new high school. This would make Monad Road a potential drag strip in the future.

Commission Member Ed Workman asked why the concept drawings shown to the Commission did not show buildings 80-feet tall if that was the proposed maximum building height in the MU zone. Mr. Leuthold responded that most buildings in the MU zone will be less than 80-feet but the concept is to mix the uses within a single structure. The owners do not have a proposal yet to build any development in the MU zone.

There was no further testimony and Zoning Commission closed the public hearing.

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #829 and adopt the determinations of the 12 criteria, as discussed within this report.

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning and Proposed Zoning
- C: Ordinance and Planned Development Agreement

ATTACHMENT A

Site photographs – Zone Change #829

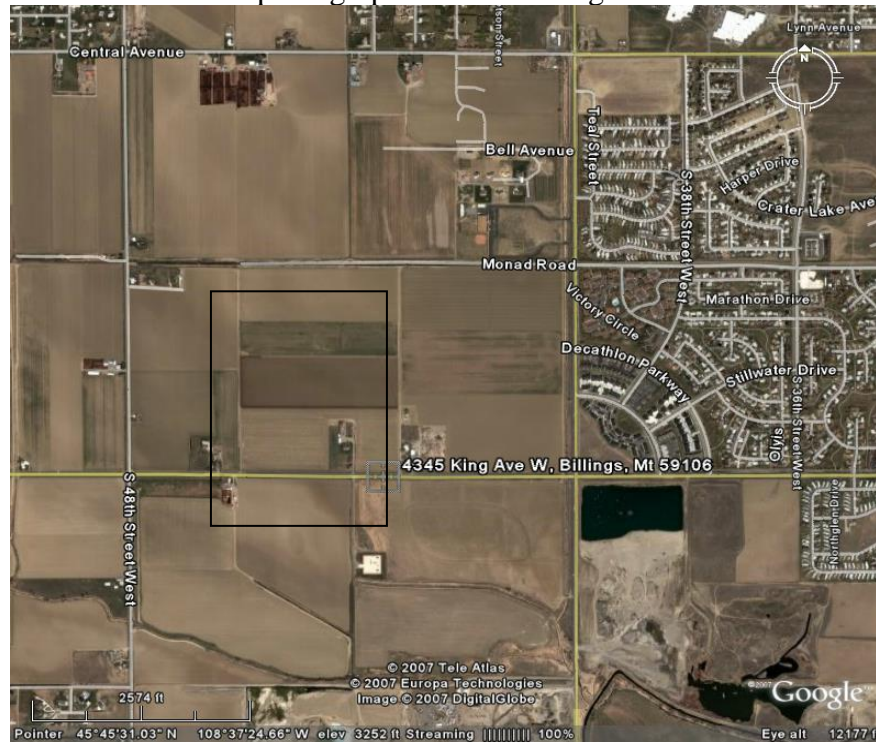


Subject Property view west along King Avenue West



View north across subject property

ATTACHMENT A, continued
Site photographs – Zone Change #829



Aerial view of Lenhardt Square

[illegible]

Proposed Planned Development Zoning – Zone Change #829



ATTACHMENT C

Zone Change #829

ORDINANCE NO. 08-_____

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR TRACTS 1 THROUGH 5 OF CERTIFICATE OF
SURVEY 2063, A 113.29 ACRE PARCEL OF LAND.

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 through 5 of Certificate of Survey 2063 a 113.2 9 acre parcel of land is presently zoned Agriculture Open-Space (A-1) and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning on **Tracts 1 through 5 of Certificate of Survey 2063** is hereby changed from **Agriculture Open-Space** to **Planned Development** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Planned Development** as set out in the Billings, Montana City Code and by the Lenhardt Square Planned Development Agreement attached as **Exhibit A** to this ordinance.

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 February 25, 2008.

PASSED, ADOPTED AND APPROVED on second reading March 10, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

ZC#829 – Lenhardt Square Planned Development

Exhibit A

**PLANNED DEVELOPMENT AGREEMENT FOR
LENHARDT SQUARE**

By and between:

**LENHARDT PROPERTY, LP, LENHARDT FARM, LLC, LENHARDT
ENTERPRISES, LLC**

and

THE CITY OF BILLINGS, MONTANA

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PLANNED DEVELOPMENT AGREEMENT FOR **LENHARDT SQUARE**

This PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE (“Agreement” or “PDA”) is made and entered into this ____ day of _____, 2008, by and between tenants in common LENHARDT PROPERTY, LP, a Montana limited partnership, of 4035 Cedarbrook Court, Bellingham, Washington 98229-5007, LENHARDT FARM LLC, of 240 East Drive, Baton Rouge, Louisiana 70806, and LENHARDT ENTERPRISES, LLC, of 4401 Highway 3, Billings, Montana 59106 (collectively “Founders”), and the CITY OF BILLINGS, a Montana municipality (“the City”), of 210 North 27th Street, Billings, Montana 59101.

RECITALS

NOW WHEREAS:

1. Founders own as tenants in common approximately 114 acres of real property in Billings, Montana, more particularly described as:

Tracts 1A, 2A, 3A, 4A, 5A of Certificate of Survey _____ according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana as Document Number _____.

The foregoing property, which has been owned and farmed by the Lenhardt family for many decades, shall hereafter be known collectively as “LENHARDT SQUARE.” The five individual parcels that make up the Lenhardt farm shall hereafter be known as the “Tracts” or, if referred to individually, as a “Tract.”

2. In furtherance of their plan to liquidate the property and terminate their co-tenancy relationship, the Founders desire to place certain building and use restrictions on the property within LENHARDT SQUARE, specify certain land use and design regulations for LENHARDT SQUARE, and establish a pattern of development that is consistent with Lenhardt family values and that protects the value of the investment property being liquidated.

3. In 2001 the City of Billings and Yellowstone County adopted a neighborhood plan titled the “West Billings Plan.” The purpose of the plan was to establish development guidelines in West Billings “to meet the community’s shared vision for the future of West Billings, enabling it to thrive on growth and change through innovative, aesthetic land use and responsible development” (page 1). The West Billings Plan established these policy goals, among others, for future development in the West Billings area:

- Recognition that it is not desirable for West Billings to develop with a low-density, rural character (p. 14);
- More compact development patterns are desirable because they make full use of urban services, offer cost-effective infrastructure, and hold down costs to the taxpayer (p. 15);
- Concentrate multi-family, office, and non-retail uses between commercial nodes along arterial streets (p. 17);
- Provide opportunities for a mix of housing types and mixed-use development by encouraging planned unit developments (pp. 22, 24);
- Increase residential densities and promote medium and high-density residential development within walking distance to commercial centers, medical facilities, and recreational amenities (pp. 21, 23);
- Link pedestrian-friendly residential, commercial, mixed-use, and park areas through a linear open space network, subdivision entryways, and special arterial treatments (p. 38);
- Create commercial developments with unique, identifiable focal points such as parks and linear open space (p. 38).

4. The City of Billings is growing to the west, adding more commercial and professional businesses. By providing convenient, nearby living opportunities for employees, our community can reduce the cost of constructing roads, sewers, and other infrastructure and consume fewer scarce natural resources.

5. The Shiloh Interchange and Shiloh Road have created a major new entryway into Billings that provides convenient access for commuters and visitors coming from Montana communities to the west and Wyoming communities to the south, leading to increased commercial growth along the King Avenue and Shiloh Road corridors.

6. LENHARDT SQUARE is located near what will likely become the most important new commercial area in Billings. In 2001 the City approved Montana Sapphire Subdivision, a 65-acre commercial development located on the southwest corner of the King Avenue/Shiloh Road intersection and southeast of LENHARDT SQUARE. In 2004 the City approved the Planned Development Agreement for The Village, a planned unit development managed by St. Vincent Healthcare Foundation, Inc. located on the northwest corner of the King Avenue/Shiloh Road intersection and directly to the east and adjacent to LENHARDT SQUARE. The Village will be a quality, mixed-use development with commercial, clinical,

medical, and residential uses. In July 2007 the City approved a petition to annex the 164 acre Western Sky Subdivision located on the south side of King Avenue immediately south of LENHARDT SQUARE. This subdivision is being re-platted as King Meadows Subdivision and will consist of small single family lots and also provide for multi-family development. Lastly, the City is currently in the process of reviewing an application for approval of Shiloh Crossing Subdivision, which, if approved, will be a 74-acre commercial development on the southeast corner of the King Avenue and Shiloh Road intersection that is intended to house a large retail mall.

7. The increasing cost of residential lot development and single family housing construction makes quality single family housing cost-prohibitive for many young professionals, working families and retired seniors, many of whom will be working in the emerging commercial districts along King Avenue and Shiloh Road and/or seeking convenient access to medical services provided in The Village.

8. Founders desire to provide an opportunity for future development consistent with the West Billings Plan that will accommodate a variety of residential living opportunities and necessary services to support the increased commercial development occurring on the west end of Billings; encourage pedestrian and non-motorized interconnectivity; promote densities that economically support the extension of city services; and utilize economies of scale to increase the affordability of residential housing in West Billings.

9. Founders enter into this Agreement with the City to ensure that LENHARDT SQUARE will be developed and maintained in a manner that is complementary to the neighborhood and other planned developments in the area, including The Village, and that will protect the value of any property of Founders that remains undeveloped.

10. Founders seek the City's approval of the LENHARDT SQUARE planned development zoning district described in this Agreement in accordance with Unified Zoning Regulations Sec. 27-1301 through 27-1310.

NOW THEREFORE, the undersigned hereby establish and declare the following plan for LENHARDT SQUARE, including such restrictions and protective covenants as set forth herein that shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners of such real estate, and shall run with the land.

AGREEMENT

ARTICLE I – PURPOSES

A. Neighborhood Compatibility and Complementary Features. The planned development zoning district described in this Agreement is intended to provide an opportunity for future development that will create an attractive and functional neighborhood with a variety

of living opportunities in close proximity to the growing commercial development on the west end of Billings. It will include planned circulation patterns to encourage pedestrian access and reduce vehicular congestion and pedestrian/vehicular conflicts. LENHARDT SQUARE will create livable residential areas with necessary services and businesses within walking distance of each other and adjacent residential and commercial areas. It will provide connectivity to other adjacent neighborhoods of West Billings as they develop, and complement the existing planned developments in the area.

B. Flexibility for Future Development. This Agreement and the development it describes shall permit flexibility to meet the demands of the residential, commercial, and health care markets as they change over time. In accordance with that goal, this Agreement is designed and intended to afford the future Developer of each Tract within LENHARDT SQUARE latitude to design and construct future development in a way that meets the needs and desires of the time while still ensuring sound development for the benefit of the Founders' remaining Tracts and the neighborhood generally.

C. Specific Goals for Tract Development. The parties enter into this Agreement to accomplish the purposes set forth herein and further the following additional objectives of LENHARDT SQUARE:

1. To provide for an appealing architectural arrangement of buildings and spaces through the use of a wide variety of living opportunities, architectural sizing, and residential services;
2. To provide for ample but not excessive off-street parking that is well screened and landscaped and that incorporates multilevel parking where feasible;
3. To provide for well-configured squares, plazas, walkways, bikeways, greens/commons, landscaped streets and parks that are woven into the pattern of the entire development and dedicated to collective social activity, recreation, and visual enjoyment;
4. To require attractive landscaping beneficial to residents and the community;
5. To provide for a pedestrian-friendly and bicycle-friendly environment;
6. To facilitate and foster complementary uses serving the needs of the residential, commercial, professional and medical community in the area;
7. To promote a unique, attractive, and distinctive mixed-use development;
8. To promote and assist in the orderly development of LENHARDT SQUARE and the west end of Billings;

9. To encourage creativity in design, quality, and character of new development; and

10. To minimize adverse aesthetic impacts associated with excessive lighting, signage, parking and other design features.

D. Consistency with Overall Community Goals. The parties understand, acknowledge and agree that this plan for LENHARDT SQUARE includes and promotes consideration of the following:

1. Creating a planned development zone that permits single family, small and large scale multi-family, and residential-commercial mixed-use development uses in proximity to one another, while protecting and respecting the character and quality of adjacent uses;

2. Increasing urban densities to utilize land use efficiencies and economies to slow suburban sprawl;

3. Encouraging flexibility in design and use of mixed-use and residential zones to allow for economy, convenience, variety, and amenity;

4. Enhancing the aesthetics of the increasingly commercialized King Avenue and Shiloh Road corridors;

5. Ensuring adequate provision of public services such as water, sewer, public safety, public parks, open space, storm water control, and vehicular and pedestrian-bicycle circulation; and

6. Reducing traffic congestion and degradation of the existing air quality.

ARTICLE II – DEFINITIONS

All terms used herein shall have the same definition and meaning as specified in the Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein either expressly or by implication. The following definitions shall apply to this PDA:

A. Annexation Agreement. “Annexation Agreement” refers to the Annexation Agreement for Lenhardt Square executed by Founders and the City in conjunction with this Agreement.

B. Common Areas. “Common Areas” means any property or facility that the

Master Association or an Owners Association owns or in which it otherwise holds possessory or use rights or owes maintenance obligations for the common use or benefit of more than one Unit in LENHARDT SQUARE. Common Areas may include but are not limited to open spaces, green roofs, park areas, Linear Parkways and pocket parks, gardens, athletic fields, open space corridors, bike trails, sidewalks, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, indoor or outdoor gathering places and community centers. Common Areas may include both public or private parks, sidewalks, and other facilities. Common Areas do not include prohibited competitive sporting facilities described in Article IV.J.9.

1. **“Master Common Areas”** means those Common Areas established in the Master Plan for LENHARDT SQUARE that are owed by, or the possessory or use rights are held or maintenance obligation are owed by, the Master Association. Master Common Areas have been defined by approximate size, general location, and intended purpose. Actual size, location, size, improvements and purpose shall be established by Developers during the platting process for each Tract, subject to the approval and consent of the Reviewer.

2. **“Developer Common Areas”** means those Common Areas that are owned by, or the possessory or use rights are held or maintenance obligations are owed by, an Owners Association.

C. **Conditions, Covenants, and Restrictions.** The “Conditions, Covenants, and Restrictions” (also referred to as the “CCRs”) means those conditions, covenants, and restrictions recorded against all or any part of the real property in LENHARDT SQUARE by Founders as the Declarant.

D. **Developer.** “Developer” means any person or entity who purchases a Tract or any portion of a Tract within LENHARDT SQUARE from Founders or their successors in interest for further subdivision, development, or resale in the ordinary course of business or for investment purposes.

E. **Dwelling Unit.** “Dwelling Unit” means one (1) or more rooms designed for or occupied by one (1) family for living or sleeping purposes and may contain kitchen and/or bathroom facilities for use solely by one (1) family. All rooms comprising a Dwelling Unit shall have access through an interior door to other parts of the Dwelling Unit. A studio/efficiency apartment constitutes a Dwelling Unit.

F. **Founders.** “Founders” means Lenhardt Property, L.P., Lenhardt Farm, L.L.C., and Lenhardt Enterprises, L.L.C., co-tenants and co-owners of LENHARDT SQUARE. Any rights inuring to Founders under this Agreement shall be exercised by Founders jointly, and if any action is permitted or required by Founders hereunder said action shall only be effective if all Founders join in and none dissent from the subject action.

G. **Green Roof.** “Green Roof” means an engineered roofing system that allows for

the propagation of rooftop vegetation and the retention or detention of storm water while maintaining the integrity of the roof structure and membrane. A Green Roof may be intended for exclusively decorative and environmental purposes with a shallow planting medium and a substrate depth ranging between approximately two inches and six inches and weighing between approximately 165 pounds and 375 pounds per square yard, designed to accommodate hardy, low height, drought resistant plant species. Alternatively, a Green Roof may be designed to accommodate deeper planting media, irrigation systems, complex landscaping features, and a broad range of plant species, and may be designed to support human occupant loads.

H. Home Occupation. “Home Occupation” shall have the same meaning as that phrase has in the Unified Zoning Regulations (Sec. 27-606) and shall be subject to the same restrictions described therein except as provided in Article IV.J.8.

I. Linear Parkways. “Linear Parkways” means those Master Common Areas depicted on Exhibit A that are linear open spaces containing developed bikeways, pathways, or pedestrian trails that are intended to provide alternative means of non-motorized transportation within LENHARDT SQUARE and connections to adjacent properties.

J. Lot. “Lot” means a portion of LENHARDT SQUARE depicted as a separately identified parcel of land on a recorded subdivision plat or survey other than a Tract owned by Founders that may be independently owned and conveyed. The term refers to the land, as opposed to any structures or other improvements on the Lot. Multiple Dwelling Units may be located on one Lot. The term does not include Common Areas, as defined above, or property dedicated to the public.

K. Master Association. “Master Association” means the association established by Founders to own, operate and/or maintain the various Master Common Areas and improvements and to administer and enforce the CCRs and other governing documents pertaining to LENHARDT SQUARE.

L. Master Design Guidelines. “Master Design Guidelines “ means the design standards and architectural and aesthetic guidelines adopted pursuant to the CCRs, as they may be amended, which govern construction, modification, and maintenance of Common Areas and Units, including structures, landscaping, and other improvements.

M. Master Plan. “Master Plan” means a concept plan and drawing showing existing Tracts and zoning as well as proposed streets, access points, Common Areas and other site improvements intended for LENHARDT SQUARE. The details depicted in the Master Plan are conceptual in nature and may be further refined by subsequent platting or amendment of this Agreement. The current Master Plan of LENHARDT SQUARE is attached to this Agreement and marked “Exhibit A.”

N. Mixed-Use. “Mixed-use” refers to the mixing of different land uses – residential, retail, employment, entertainment, lodging, civic, cultural, etc. – in one relatively discrete area

featuring stacked uses in low to mid-rise buildings, arranged along streets and around public squares or other open spaces. Mixed-used developments have these additional characteristics:

1. The development promotes synergy of uses and a sense of place featuring an integrated, interactive community with its own recognizable identity, focused on one or more central community features or land uses and dedicated to collective social activity and common, but diverse, business interests;

2. The development includes within the mixed-use area three or more different, significant uses such as retail, entertainment, office, medical, residential, hotel, civic, cultural, and/or recreational that are complementary and together promote a sense of community, but at least one of which is residential; and

3. The development includes uninterrupted pedestrian connections and other physical and functional components that promote integration of community businesses, residential and civic elements to create a mutually supportive community and efficient and intensive use of land.

O. Owners Association. “Owners Association” means an association of owners of property within a portion of LENHARDT SQUARE, other than the Master Association, established by a Developer to administer additional covenants applicable to that particular area, and/or to own, operate and/or maintain any Developer Common Areas with the area, including but not limited to associations of owners of Units, business properties, condominiums, townhomes, or single family homes.

P. Pocket Park. “Pocket Park” means a small park that is approximately one-half (1/2) of an acre or smaller.

Q. The Reviewer. “The Reviewer” means that person, entity, or committee appointed by Founders that shall have all of the rights, duties and responsibilities assigned to the Reviewer in this Agreement and the CCRs, including but not limited to the review and approval or denial of the design and planning elements of all subsequent development of Tracts and subdivision plats filed for property within LENHARDT SQUARE.

R. Shiloh Drain. “Shiloh Drain” means the lateral drainage ditch that lies within the boundaries of the Shiloh Drain Easement Area shown on Exhibit A.

S. Shiloh Drain Easement Area. The “Shiloh Drain Easement Area” means the easement within which the Shiloh Drain is located on the north property line of LENHARDT SQUARE as depicted on Exhibit A hereto.

T. Small In Scale. “Small in scale” means a retail, professional or other commercial space not exceeding 8,000 square feet in total floor space on all levels.

U. **Special Review Approval.** “Special Review Approval” means approval by the City of Billings pursuant to the Special Review Approval process established in Sections 27-613 and 27-1503 of the Unified Zoning Regulations and as modified by this Agreement, including approval by the Reviewer in its discretion.

V. **Tract.** “Tract(s)” means one or more of Tracts 1A through 5A of C.O.S. _____. Parcels in Tract 5A designated on the Master Plan by a number (e.g., Tracts 5A, Parcel 1 and Parcel 2, hereafter “Tract 5A.1” and “Tract 5A.2”) are conceptual only and are depicted on the Master Plan for zoning and planning purposes only. Parcels designated by a number are not legally distinct parcels and may not be separately conveyed or transferred.

W. **Unified Zoning Regulations.** “Unified Zoning Regulations” means the Unified Zoning Regulations of the City of Billings, Yellowstone County Jurisdictional Area.

X. **Unit.** “Unit” means a portion of LENHARDT SQUARE depicted as a separately identified Lot, parcel or condominium on a recorded subdivision plat or survey that may be independently owned and conveyed. The term “Unit” refers to the land, if any, that is part of the Unit, as well as to any structures or other improvements on the Unit. In the case of a structure containing multiple dwellings that may be independently owned and conveyed, each such dwelling shall be deemed to be a separate Unit. A parcel of land is considered a single Unit until a subdivision plat or survey is recorded subdividing it into more than one Unit. The term does not include Common Areas, as defined above, or property dedicated to the public.

Y. **Unit Owner.** “Unit Owner” means the owner of a Unit within one of the Tracts in LENHARDT SQUARE.

ARTICLE III – BINDING EFFECT

A. **Persons Bound by this Agreement.** The City of Billings and all individuals, corporations, or other entities who presently have or shall hereafter acquire any interest in and to any of the real property within LENHARDT SQUARE shall be held to agree to all of the terms of this Agreement, and all such individuals, corporations, and other entities, as well as their heirs, devisees, successors, assigns, tenants, trustees, mortgagees and other persons claiming under them shall be bound by this Agreement.

B. **Founders.** Any obligations of Founders arising under this Agreement shall be binding upon all of the Founders jointly, and all rights inuring to Founders under this Agreement shall be exercised by Founders jointly. If any action is permitted or required by Founders hereunder said action shall only be effective if all Founders join in and none dissent from the subject action.

ARTICLE IV – USE RESTRICTIONS

A. Land Use Restrictions Generally. Tracts in LENHARDT SQUARE shall be located and classified by zone as follows:

1. Tracts 1A and 3A – Residential Multi-Family-Restricted (MF-R).

Tracts 1A and 3A are located, respectively, along the east border and in the center of LENHARDT SQUARE as shown on Exhibit “A” hereto. The use of the Lots in Tracts 1A and 3A is contemplated to be multi-family residential in scale and character. These tracts are intended primarily to accommodate apartments, townhomes, condominiums, and other multi-family and attached single-family complexes and uses permitted in the Residential Multi-Family-Restricted Zoning District as defined in the Unified Zoning Regulations; however, single family residences are permitted. Additional requirements for multi-family Units in Tracts 1A and 3A are set forth in Exhibit “B.”

2. Tract 4A and Tract 5A.2 – Mixed-Use (MU).

Tracts 4A and 5A.2 are located, respectively, on the southern and western borders of LENHARDT SQUARE near King Avenue West as shown on Exhibit “A.” Tracts 4A and 5A.2 are designed for residential and complementary commercial uses as further described in the definition of “mixed-use” found in Article II, including, but not limited to, in-home and small-scale professional and retail space. These tracts may be developed as a combination residential-commercial-cultural center with retail activities conducted in a unified development designed to serve the residential Dwelling Units in the Tract and surrounding neighborhood with shopping facilities consisting of convenience, retail and personal service establishments that secure their principal trade by supplying the daily needs of the neighboring population. Multi-family residential uses are also permitted.

3. Tract 5A.1 and Tract 2A – Residential Single Family and Residential Multi-Family (Four-Plex) (MF-4). Tract 5A.1 is located along the northwest border and Tract 2A is located along the northern border of LENHARDT SQUARE as shown on Exhibit “A.” Use of the Lots in Tracts 5A.1 and 5 is contemplated to be residential in nature, including single family dwellings and multi-family structures containing up to four Dwelling Units.

B. Procedure for Obtaining Reviewer Approval; Mixed-Use Requirements.

Any Developer of property in LENHARDT SQUARE shall obtain the written approval of the Reviewer prior to submitting any application for subdivision, zone change, building permit, or design approval of any kind to the City or any other government authority. The City shall not accept any such application unless the Developer first presents written evidence of the Reviewer’s approval. Neither the Reviewer nor the City shall approve the Developer’s application unless the proposed development complies with the requirements of this Agreement. Any development proposed for Tract 4A or Tract 5A.2 shall be mixed-use in character as described in this Agreement. In making this determination the Reviewer and the City shall examine the plan for development of all property proposed for development by the Developer in the two tracts. An individual

structure or Lot may be devoted to a single use that is not mixed-use as long as the Reviewer determines in its discretion that the Developer's project as a whole satisfies the mixed-use requirements of this Agreement and:

1. There is or will be sufficient residential, commercial, professional, or other non-residential uses included in the subject structure or on other nearby Lots that are part of the Developer's project to preserve and promote the mixed-use character of the project and Tracts 4A and 5A.2 intended by this Agreement; and

2. The Developer's project will otherwise comply with all other requirements of this Agreement.

C. Permitted and Prohibited Uses – Generally. Lots in each of the Tracts identified below may be used for any of the uses specifically permitted below. Lots in each of the Tracts identified below may not be used for any of the uses specifically prohibited. If a use is neither specifically permitted, specifically prohibited, or specifically subject to special review, the zoning coordinator shall determine whether the use is permitted or prohibited or subject to special review by determining whether it is most closely analogous to a use that is specifically permitted, prohibited, or subject to special review. The decision of the zoning coordinator shall not become effective until it has been reviewed and approved by the Reviewer.

D. Permitted Uses – Tracts 1A and 3A (MF-R). Units in Tracts 1A and 3A, unless otherwise prohibited herein, may be used for any of the following uses:

1. Accessory uses and detached structures (other than garages) less than 300 square feet in size that are associated with a permitted principal structure, subject to the additional allowances and requirements of Article V.B.9 of this Agreement.
2. Assisted living facilities serving up to eight (8) persons;
3. Bus stops;
4. Common Areas;
5. Community center;
6. Community residential facility as defined by Unified Zoning Regulations;
7. Garages, subject to size limitations described in Article V.B.4.(d);
8. Health clubs, spas, gymnasiums, and other recreational facilities if part of a residential building or multi-family residential complex;
9. Home occupations;

10. Family day care home serving up to 6 children or adults;
11. Multi-family or attached dwellings including apartments, residential suites, condominiums, townhomes and other multiplex housing units;
12. Single family residential uses;
13. Any use that is permitted in a residential zoning district pursuant to the Unified Zoning Regulations, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

E. Permitted Uses – Tract 4A and Tract 5A.2 (Mixed-Use). Units in Tract 4A and Tract 5A.2, unless otherwise prohibited herein, may be used for any of the following uses, provided that nonresidential permitted uses shall be restricted to spaces not exceeding 8,000 square feet of gross floor area except upon special review:

1. Animal grooming facilities;
2. Art galleries;
3. Assisted living facilities serving any number of persons;
4. Bakeries;
5. Banks, credit unions, and savings and loan offices;
6. Barber and beauty shops;
7. Bicycle sales, rental, and repair shops;
8. Boarding, lodging, and bed and breakfast houses;
9. Bookstores;
10. Building supply stores and hardware stores (but not lumber yards);
11. Bus stops;
12. Camera, hobby, toy, and gift stores;
13. Ceramics and pottery shops;
14. Charitable, religious, educational or nonprofit institutions;

15. Clothing and apparel stores;
16. Common Areas;
17. Community centers;
18. Community residential facility as defined by Unified Zoning Regulations serving up to 8 persons on a 24-hour-a-day basis;
19. Convalescent, nursing, and retirement homes;
20. Convenience and specialty food stores (but no gasoline sales);
21. Cultural, educational, and instructional facilities;
22. Day care center (as defined in Unified Zoning Regulations Sec. 27-201);
23. Denturists;
24. Department stores;
25. Drug stores - prescription and pharmacy;
26. Dry cleaning or laundry drop-off and pick-up store;
27. Eating and drinking establishments that do not sell alcohol for on-site consumption;
28. Education facilities, including elementary and secondary schools, colleges, universities, professional schools, and junior colleges;
29. Family day care home (as defined in Unified Zoning Regulations Sec. 27-201) serving up to six children or adults;
30. Finance and loan companies;
31. Florists;
32. Food and grocery stores;
33. Furniture - retail only;
34. Flower shops and nurseries (provided that there is no outside storage);

35. Garages, subject to size limitations described in Article V.B.4.(d);
36. Group day care home services (as defined in Unified Zoning Regulations Sec. 27-201) for 7 to 12 children or adults;
37. Hardware and appliance – retail only;
38. Health clubs, spas, and gymnasiums;
39. Health and fitness related businesses;
40. Home occupations (mixed-use area)
41. Hotels and motels;
42. Jewelry stores;
43. Libraries, museums, and art galleries;
44. Liquor stores
45. Medical and dental offices;
46. Membership organization offices;
47. Multifamily residential uses consistent with a mixed-use development, including apartments, residential suites, condominiums and townhomes;
48. Offices, including real estate, financial, counseling, professional, medical, and dental;
49. Office supply and equipment, copying and mail services stores – retail only;
50. Open spaces, park areas, gardens, squares, athletic fields, bike trails, playgrounds, and walking paths, and other Common Areas;
51. Parking facilities, including above or below ground parking garages;
52. Parks, playgrounds, pools, sport courts;
53. Pet stores;

- 54. Photo studios, shops, and processing - retail only;
- 55. Physical therapy facilities;
- 56. Postal service facilities;
- 57. Public administration facilities, including government facilities, except correctional institutions;
- 58. Publicly-owned or government operated buildings and uses;
- 59. Retail stores;
- 60. Satellite dishes up to 2 feet in diameter if not otherwise restricted by applicable design criteria or other restrictions;
- 61. Senior and assisted living residential facility;
- 62. Sports medicine and rehabilitation facilities;
- 63. Theaters;
- 64. Veterinary clinic, outpatient only;
- 65. Wine store;
- 66. Any use permitted in a residential multi-family, residential multi-family restricted, residential professional, neighborhood commercial or community commercial zoning district pursuant to the Unified Zoning, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

F. Permitted Uses – Tracts 5A.1 and 2A. Lots in Tracts 5A.1 and 2A, unless otherwise prohibited herein, may be used for any of the following uses:

- 1. Accessory uses and structures (other than garages) not larger than 300 square feet associated with a permitted principal structure, subject to the additional allowances and requirements of Article V.B.9 of this Agreement;
- 2. Assisted living facilities serving up to eight (8) persons;
- 3. Bus stops;
- 4. Common Areas;

5. Community centers;
6. Community residential facilities as defined by Unified Zoning Regulations serving up to eight (8) persons on a 24-hour-a-day basis;
7. Family day care facilities serving up to six (6) children or adults;
8. Garages, subject to size limitations described in Article V.B.4(d);
9. Health clubs, spas, gymnasiums, and other recreational facilities if part of a residential building or multi-family residential complex;
10. Home occupations;
11. Multi-family residential structures containing up to four (4) Dwelling Units;
12. Single family residential units;
13. Any use permitted in a single family residential zoning district pursuant to the Unified Zoning Regulations, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

G. Permitted Uses Subject to Special Review – All Tracts. Uses identified below and designated with an asterisk (*) are permitted in Tracts 4A and 5A.2 without special review under Article IV.E. above. The following uses are permissible in other Tracts only upon consent of the Reviewer and the approval of the City of Billings through the special review process and may be subject to appropriate conditions. For purposes of this provision, the special review procedures contained in the Unified Zoning Regulations shall apply subject to any additional requirements contained in this Agreement, including the requirement of Reviewer consent. The following special review uses may be permitted in Tracts 1A, 2A, 3A, 4A, and 5A unless specifically restricted to particular Tracts:

1. Accessory structures in Tract 4A and Tract 5A.2 (other than garages) associated with a permitted principal structure and subject to the additional allowances and requirements of Article V.B.9 of this Agreement;
2. Animal boarding facilities (allowed in Tract 4A and Tract 5A.2 only);
3. Assisted living facilities serving more than 8 persons;*
4. Bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption (allowed on Tract 4A and Tract 5A.2 only). However, bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-

site consumption are exempt from Sec. 27-612(a)(1).

5. Cell, communication and satellite towers and satellite dishes greater than 2 feet in diameter provided such towers are incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A and Tract 5A.2 only);

6. Convalescent, nursing and retirement homes;*

7. Day care centers serving more than 12 children or adults;*

8. Churches, synagogues, and places of worship;

9. Emergency services, including fire stations and ambulance services;

10. Funeral homes and mortuaries;

11. Group day care home serving 7 to 12 children or adults;*

12. Health and fitness related businesses not associated with a residential facility;*

13. Hospitals and hospital related services (allowed in Tract 4A and Tract 5A.2 only);

14. Medical, dental and health-related clinics (allowed in Tract 4A and Tract 5A.2 only);

15. Medical, dental, and other professional offices;*

16. Medical laboratories (allowed in Tract 4A and Tract 5A.2 only);

17. Modular homes;

18. Offices and small-scale retail;*

19. Pharmacies (allowed in Tract 4A and Tract 5A.2 only);

20. Physical therapy facilities;*

21. Research and testing facilities (allowed in Tract 4A and Tract 5A.2 only);

22. Residential multi-family housing consisting of more than four (4) Dwelling Units (special review required only in Tracts Tract 5A.1 and 2A);

23. Non-residential permitted uses requiring more than 8,000 square feet of floor space (allowed in Tract 4A and Tract 5A.2 only);
24. Retirement facilities larger than eight (8) persons per Unit;
25. Sports and rehabilitative commercial facilities;*
26. Veterinary clinic with boarding facilities (allowed in Tract 4A and Tract 5A.2 only).

H. Permitted Uses Subject to Special Review – Factors to be Considered. The City of Billings may authorize the preceding special review uses through the Special Review Approval process if the proposed use conforms to the following standards and criteria. To make this determination the City shall conduct a public hearing and make findings of fact to determine whether:

1. The proposed use is consistent with the terms, intent and objectives of this Agreement;
2. The proposed use is compatible with surrounding uses;
3. The proposed use is not detrimental to other property in LENHARDT SQUARE;
4. The proposed use complies with other provisions of law and ordinances of the City of Billings;
5. Reviewer has given its written consent to the special use (Reviewer may, in its discretion, withhold its consent, and no special review shall be granted for any use in LENHARDT SQUARE without the express written consent of Reviewer);
6. The proposed use will not attract large volumes of vehicular traffic or create traffic congestion that cannot be properly managed and regulated with traffic control equipment;
7. The proposed use is of a similar architectural scale to existing development in the neighborhood, or will use an existing building for its purposes;
8. Minimum visual and functional conflict will be created between the proposed use and nearby uses;
9. Anticipated noise and congestion created by the proposed use will be

comparable to the levels created by other uses permitted on that Unit.

I. Prohibited Uses. The following operations and uses shall not be permitted on any property in LENHARDT SQUARE, regardless of where the property is located:

1. Amusement park services or facilities;
2. Animal shelters, public or private;
3. Apparel fabrication;
4. Arcades, including but not limited to video arcades;
5. Auction houses or auction yards;
6. Auto body and collision repair;
7. Automobile repair shops;
8. Automotive Sales and Service. Any establishment engaged in automotive sales, leasing, repair, service, salvage, rental, or storage;
9. Auto parts supply;
10. Competitive sporting facilities as described in Article IV.J.9.
11. Beverage bottling plant or wholesaling operations;
12. Billboard signs;
13. Body Alteration Salons. Any establishment engaged in body painting, body piercing, or tattooing;
14. Brewery (except as incidental to a restaurant, such as a brew pub);
15. Broadcasting (radio and television) stations, studios and antenna support structures;
16. Building fabrication, except construction of buildings for use on-site;
17. Building construction operations other than for temporary, on-site construction by general contractors or subcontractors unless office-only without outside equipment or materials storage;

18. Bus terminal and maintenance facilities, except for shuttle bus storage facilities intended to service shuttle buses that operate solely within LENHARDT SQUARE or the immediately surrounding neighborhood;

19. Campground;

20. Car wash;

21. Casinos and gambling or gambling activity, as defined in M.C.A. 23-5-112, unless permitted with legally enforceable restrictions described in the CCRs;

22. Chain link fencing;

23. Crematoriums;

24. Dumping concrete, cement residue, refuse, dirt, garbage, or fill materials without authorization of property owner;

25. Drugs or drug paraphernalia. Using, promoting, or facilitating the use of illegal drugs or any business engaged in selling so-called drug paraphernalia;

26. Dry cleaning, laundry plant or public laundromat, but this prohibition shall not be applicable to facilities for pickup and delivery by the ultimate consumer;

27. Electronic component manufacturing;

28. Equipment rental shop;

29. Excavation. Businesses engaged in commercial excavation, providing that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction;

30. Exotic dancing. Any establishment permitting exotic dancing, including semi-nude and nude clubs;

31. Extractive industries. Any establishment engaged in the sale, extraction, or storage of sand, gravel, or minerals unless such sale or storage is an ancillary part of a hardware, home-improvement, or similar retail store;

32. Fire sale or bankruptcy sale;

33. Fireworks. Fireworks manufacture and/or sales;

34. Flea markets;

35. Food processing or wholesaling, except ancillary services associated with retail, restaurant, and grocery operations;

36. Foundries and factory operations;

37. Furniture fabrication;

38. Garbage handling.. Any dumping, disposing, incineration or reduction of garbage, but this prohibition shall not prohibit garbage compactors located near the rear of any building or small-scale recycling containers intended to collect recyclable materials as a convenience for neighborhood residents;

39. Gas or diesel stations;

40. Go-cart tracks;

41. Greenhouses for commercial or retail purposes;

42. Gun or archery range unless located within a structure and not visible or audible from outside the structure;

43. Guns and Ammunition. The sale of firearms and ammunition, unless incidental to a general retail store or sporting goods store;

44. Heavy equipment sales and service;

45. Ice manufacturing for resale of ice not intended for use on-site ;

46. Illegal Drugs. The sale, manufacture, or possession of illegal drugs;

47. Industrial production or manufacturing facilities;

48. Jails. Jails, prisons, half-way houses for pre-release inmates, and/or detention facilities, except public facilities if permitted by Section 76-2-411, Montana Code Annotated;

49. Junk shops, second-hand stores, and antique stores;

50. Livestock and Wild Animals. No swine, poultry, goats, horses, cows, or other livestock or domestic or wild animals shall be kept on the property within LENHARDT SQUARE except for domestic pets and other animals specifically permitted under this Agreement and, which shall be subject to any applicable restrictions contained herein, and no agricultural grazing is allowed unless specifically permitted by Founders

in accordance with this Agreement;

51. Livestock Production. Any establishment engaged in livestock production or slaughter, except for agricultural grazing permitted by Founders on undeveloped tracts within LENHARDT SQUARE;

52. Livestock and Farm Equipment. Any establishment engaged in the sale of livestock, ranch, or farm equipment;

53. Machine and welding shops;

54. Manufactured Homes and Manufactured Home Parks. The sale, use, maintenance, rental, repair or storage of manufactured housing or mobile homes;

55. Manufacturing businesses;

56. Metal fabrication and manufacturing;

57. Mill work and cabinet shops;

58. Motorized sports vehicle repair, storage, and/or sales (including parts sales);

59. Mining and Related Activities. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;

60. Motocross tracks;

61. Motorcycle racing;

62. Nuisances. Any use that constitutes a nuisance under Article IV.J.3 of this Agreement.

63. Paper warehouses;

64. Pawn shops;

65. Power Poles and Overhead Power Lines. Installing new power poles and overhead power and utility lines; provided, however, this shall not prohibit existing power poles and lines and shall not prohibit adding new lines to the existing poles;

66. Product manufacturing unless the product is intended primarily for local consumption or use;

- 67. Propane sales;
- 68. Race tracks;
- 69. Recreational vehicles. The commercial sale, maintenance, rental, repair or storage of boats, trailers, motorcycles, ATVs, or other recreational vehicles. The private repair or storage of such vehicles must comply with other provisions of this Agreement.
- 70. Recycling centers;
- 71. Rental car dealerships;
- 72. Vehicular, small engine and appliance repair shops;
- 73. Roller skating rinks;
- 74. Roping and rodeo arenas;
- 75. Sanitary dumps;
- 76. Scrap or waste material processing;
- 77. Septic systems;
- 78. Sexually Oriented Businesses. Sexually oriented businesses as defined by Section 27-611 of the Unified Zoning Regulations;
- 79. Repair shops. Shop facilities containing open or visible storage;
- 80. Stables;
- 81. Storage facilities other than garages associated with residential structures;
- 82. Super Stores. Retail sales uses (for goods and/or merchandise) by any person, firm, or entity that utilizes more than 40,000 square feet of any structure (nothing in this prohibition shall be interpreted to permit retail sales uses smaller than 40,000 square feet if otherwise prohibited in this Agreement);
- 83. Surplus store;
- 84. Taxidermists;
- 85. Tire sales, except as incidental to the operation of a general retail store;

86. Towers and Dishes. Freestanding communication and satellite towers and dishes greater than two (2) feet in diameter unless incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A and Tract 5A.2 only);

87. Trailer Parks and Campgrounds. Mobile home parks, trailer parks, recreational vehicle campgrounds, or any commercial establishment that permits overnight parking of recreational vehicles;

88. Truck Stop. Truck stop, as defined by Section 27-201 of the Unified Zoning Regulations;

89. Truck Terminals. Truck terminals, cartage operations, and similar uses;

90. Truck Wash. Truck wash as defined by Section 27-201 of the Unified Zoning Regulations;

91. Trucks. Sale, leasing, manufacture, rental or repair of trucks;

92. Trucking operation offices and warehouses;

93. Utility sub-stations and other utility installations other than utility lines, utility boxes, and other utility facilities used to service an individual Lot;

94. Warehouses;

95. Wholesale lumber and wholesale building materials;

96. Wild Animals and Livestock. Any establishment, structure, or enterprise housing any wild animals, poultry, or domestic livestock unless sold as domestic pets in a retail pet store;

97. Wholesale distribution and sales.

J. Other Use Regulations

1. **Continued Farming Operations.** Founders may, in their sole and unreviewable discretion permit farming operations (including livestock grazing) on undeveloped parcels within LENHARDT SQUARE on a case-by-case basis. No Unit may be farmed or flood-irrigated without the prior express written consent of Founders. Written consent to farm and to irrigate must be obtained on an annual basis. Livestock grazing, if permitted, will be limited to a reasonable carrying capacity that prevents overgrazing. Founders may prohibit farming and/or flood irrigation in LENHARDT SQUARE in the sole, exclusive and unreviewable discretion of Founders.

2. **Irrigation.** Founders, in their sole and unreviewable discretion, may elect to retain any shares in the irrigation district serving LENHARDT SQUARE, transfer such shares to the Master Association, or transfer such shares back to the irrigation district. Founders specifically reserve, and do not waive or abandon, irrigation and drainage easements for the conveyance of water and collection of waste water wherever irrigation or drainage ditches are currently located in LENHARDT SQUARE. Without limiting the foregoing, Founders currently believe that such ditches are currently located generally along the north and south boundaries of the property. All such easements shall continue as long as flood irrigation is conducted on any Tract of LENHARDT SQUARE or as long as any such easement is necessary to convey or drain water for the benefit of an adjacent property owner. In addition, Founders reserve a fifteen (15) foot easement along the east boundary of Tract 1A for purposes of installing and maintaining a new irrigation drainage ditch for so long as flood irrigation is conducted on any Tract within LENHARDT SQUARE.

3. **Nuisance.** No nuisance shall be permitted to exist or operate on any property in LENHARDT SQUARE so as to be offensive or detrimental to other property or occupants in LENHARDT SQUARE. A nuisance includes, but is not limited to, any operations or uses that create vibration, electro-magnetic disturbances, radiation, air or water pollution, dust, emissions of odorous, toxic or nontoxic matter (including steam), and excessive noise; provided, however, that agricultural activities authorized by Founders shall not be considered a nuisance. No noxious, offensive, or hazardous activities shall be permitted upon any Unit in LENHARDT SQUARE, nor shall anything be done or placed upon any Unit that is or may become a nuisance to others. No light shall trespass onto another Unit unless approved by adjacent Unit owners or in conjunction with shared parking facilities, nor shall any light be produced from any Unit that is unreasonably bright or causes unreasonable glare. No sound shall be produced upon any Unit that is unreasonably loud or annoying, including but not limited to speakers, horns, whistles, bells, excessive barking, or other animal noises.

4. **The Shiloh Drain.** Any Unit Owner or Developer in LENHARDT SQUARE shall at all times conduct its use and activities in a manner that will preserve the integrity of the Shiloh Drain and the Shiloh Drain Easement Area, including preventing any degradation of water quality, any reduction in the flow of water, and any damage to the bed or banks of the Shiloh Drain. Certain portions of the Shiloh Drain Easement Area may require modifications during the course of development of LENHARDT SQUARE to accommodate storm drainage from within the property. No such modifications shall be made without first obtaining written permission from the City of Billings. The cost of these modifications shall be the responsibility of Developer or Unit Owner(s) requiring access for drainage to the Shiloh Drain. In addition to the foregoing, the owner of any Unit or Tract in LENHARDT SQUARE shall not conduct or permit the conduct of the following activities:

(a) The discharge of any liquid (except storm water runoff as directed by an approved, engineered storm drainage management plan), solid, or gas into the Shiloh Drain;

(b) Planting or dropping any non-native fish, animal, reptile, or plant into the Shiloh Drain area;

(c) The dumping of grass clippings or landscaping material or debris into the Shiloh Drain;

(d) Any activities that permit or encourage refuse dumping in the vicinity of the Shiloh Drain;

(e) Polluting water in the Shiloh Drain;

(f) The discharge of any Hazardous Materials. The term "Hazardous Materials" shall mean: petroleum products, asbestos, poly-chlorinated biphenyls, radioactive materials, and all other dangerous, toxic, or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. The term "Environmental Law" shall mean all federal, state, county, city, local, and other statutes, laws, ordinances, and regulations that relate or deal with human health or the environment, all as may be amended from time to time.

5. Domestic Pets Limitation. Unit Owners must comply with all ordinances or laws applicable to pet ownership. In addition, any establishment, commercial building, or single family residence may not house more than two (2) dogs and no more than a total of four (4) domestic pets other than fish (for example two (2) dogs and two (2) cats). Any Dwelling Unit in a multi-family residence facility may not house more than two (2) domestic pets (excluding fish). Any pet or animal shall be leashed at any time it is outdoors unless it is being kept in a fenced yard area. No pets shall be raised or cared for on a commercial basis except in a retail pet store or as otherwise allowed in this Agreement. Pet owners shall retrieve excrement deposited by household pets on public or private property and dispose of such excrement in a manner so as not to create a nuisance.

6. Inoperable and Junk Vehicles. No inoperable or junk vehicle shall be permitted to park on any street within LENHARDT SQUARE for a period of more than two (2) days and shall not be stored for more than seven (7) days on any Lot unless enclosed within a structure.

7. Recreational Vehicles. Recreational vehicles, including but not limited to snowmobiles, all-terrain vehicles, or motorcycles not licensed to operate on city streets shall not be permitted to operate within the confines of LENHARDT SQUARE.

Recreational vehicles may not be stored for more than seven (7) cumulative days in any thirty (30) day period on any Lot unless enclosed within a structure or completely screened from view by a solid privacy fence.

8. Home Occupations. Unless otherwise specified in this Agreement or unless more restrictive limitations are adopted by Developers or an Owners Association, every Home Occupation shall be subject to the same restrictions described in the Unified Zoning Regulations (Sec. 27-606). Vehicle trips to a dwelling not located in Tract 4A or Tract 5A.2 where the occupant carries on a Home Occupation shall not exceed, on average, more than two (2) vehicle trips during any hour. A Home Occupation in Tract 4A or Tract 5A.2 is subject to the same restrictions described in the Unified Zoning Regulations except as follows:

(a) Hours of operation may extend from 7:30 A.M. to 9:00 P.M.;

(b) The activity must constitute a permitted use in the mixed-use zone established in this Agreement;

(c) The business may employ up to three persons, including the residents of the dwelling, who are present on the property at any given time or who visit the property at least once a day. The unit must meet any applicable building and fire codes; and

(d) The business may employ sign advertising, but such advertising must be located on the Lot where the Home Occupation is located and shall comply with all applicable government regulations and private covenants or restrictions. In addition, any signage advertising a Home Occupation shall be displayed in a lobby or other place inside the structure where the business is located or, if located on or outside of the structure, the sign shall not exceed two (2) square feet in size. Only one sign may be displayed for each Home Occupation. Section 27-606(f) and (g) of the Unified Zoning Regulations shall not apply to such a business to the extent those provisions are inconsistent with this subparagraph.

(e) Residents and Unit Owners are advised that carrying on certain Home Occupations, including those that include employees, may require compliance with special code requirements applicable to commercial establishment. All residents and Unit Owners are advised to consult with local building officials before establishing a Home Occupation. Residents and Unit Owners shall comply with all applicable codes and other government regulations in accordance with this Agreement.

9. Scheduled Sporting Events and Related Facilities. Parks and other Common Areas located in LENHARDT SQUARE are intended primarily for the benefit

of residents of LENHARDT SQUARE and only secondarily for the benefit of other persons. Common Areas should be constructed to include attractive landscaping, benches, picnic and game tables, walkways, children's play facilities, and other amenities that serve the immediate neighborhood and appeal to a diversity of users. Amenities that promote traffic and parking congestion should be avoided as much as possible. To that end no Common Area shall be used for, and no Common Area shall be constructed to include infrastructure that is specifically intended to be used for the organized play of football, baseball, soccer, track, or other similar sports by competing teams on a scheduled or regular basis. No permanent goal posts, field-striping, baseball diamonds, baseball pitching mounds, dugouts, or score boards shall be constructed in any Common Area. Nothing in this Agreement shall prohibit the construction of baseball backstops and outdoor basketball or tennis courts in the Common Areas

ARTICLE V – INFRASTRUCTURE AND TRACT DEVELOPMENT STANDARDS

A. Infrastructure Development Standards. The parties agree that promptly after or in conjunction with the execution of this Agreement they shall negotiate and execute the Annexation Agreement that will prescribe additional standards for the dedication, construction and maintenance of public rights-of-way, streets, sidewalks, utilities, and other infrastructure in LENHARDT SQUARE. The standards described in the Annexation Agreement shall apply to all Tracts within LENHARDT SQUARE unless Developer applies for and obtains a variance from the City of Billings. All applications for variance must be approved in writing by Reviewer prior to submittal to the City. Reviewer may approve or disapprove the variance in its sole discretion.

B. Tract Development Standards. Tract development standards are provided to establish minimum guidelines for the development of facilities within LENHARDT SQUARE, including site work, buildings, accessory structures, parking, signage, lighting, fencing and landscaping. These standards establish the minimum construction requirements to be adopted by Developers within LENHARDT SQUARE. More detailed architectural and landscape design guidelines (Master Design Guidelines) will be adopted by the Founders pursuant to the CCRs to govern the aesthetic and functional standards for public areas, streetscape, pedestrian areas, buildings and signage. Developers may, subject to approval by the Reviewer, adopt more (but not less) detailed and/or stringent site, building and landscape design criteria to govern construction within their respective Tracts. All construction within LENHARDT SQUARE shall comply with the Unified Zoning Regulations, International Building Code, or any other building codes or building regulations applicable under local, state, or federal law.

1. Lot Size. Developers shall be responsible for submitting plats for further subdivision of each Tract to the City of Billings for subdivision approval. Within these plats, Lots designated for single family construction shall comply with the minimum size requirements described in Exhibit B. In accordance with Exhibit B, Lot size for multi-family, commercial, and mixed-use structures may vary in size depending upon the

number of dwelling units contained in the structure. There are no maximum Lot size requirements. All Lots must comply with the lot coverage and setback standards set forth in this Agreement.

2. **Lot Coverage.** Lot coverage requirements are set forth in the General Requirements in Exhibit B and are based upon a percentage of total square footage of the Lot. The total combined lot coverage for all structures on any Lot shall not exceed the maximum requirements established in Exhibit B.

3. **Setbacks.** Minimum setback requirements are set forth in the General Requirements in Exhibit B.

4. **Parking.**

(a) **Required Parking.** Adequate parking shall be provided by each Unit Owner for residents, visitors, customers, renters, and employees. Parking requirements may be satisfied by on-site parking, approved street parking, off-site parking facilities, or any combination thereof. The following requirements shall apply in each zone:

(i) **MF-4.** At least two enclosed parking spaces must be provided for each Dwelling Unit in the MF-4 zone.

(ii) **MF-R.** Minimum parking requirements for multi-family residential uses shall be 1.5 parking spaces times the number of Dwelling Units (rounded to the next highest number of spaces). Except as provided hereafter, the maximum number of parking spaces shall not exceed 1.75 times the number of Dwelling Units (rounded to the next highest number of spaces). Developer may construct more than 1.75 parking spaces per Dwelling Unit, but all spaces in excess of that number must be incorporated as part of a structure that includes multi-family Dwelling Units or in a separate underground or multi-level parking facility. At least one parking stall for each Dwelling Unit shall be provided in covered or enclosed parking facilities. In order to insure adequate parking, parking spaces, including enclosed spaces, must be maintained in a manner that accommodates vehicle parking and may not be used primarily for non-vehicular storage.

(iii) **MU.** The minimum parking requirements for residential dwelling units within the MU district shall be determined as set forth in the attached Exhibit C. No more than ten percent (10%) of the area of any lot within Tract 4A or 5A.2 may be utilized for surface parking.

(b) **Joint Parking.** Joint parking agreements are encouraged. Unit

Owners may enter into agreements with other Unit Owners located within a 600-foot radius to share parking spaces provided the agreement complies with the requirements set forth in Exhibit C. For uses not referenced in the joint use matrix found in Exhibit C, allowable joint use parking reductions requested by the Developer shall be determined by the City zoning coordinator with the consent of Reviewer up to, and not exceeding, a total reduction factor of 1.5.

(c) **Off-Site Parking.** Each off-site parking area shall be accessible by a public right-of-way. If space is leased in an off-site parking area to meet minimum parking requirements, the term of any lease while minimum parking requirements are in effect shall be for the duration of the time that the building, use, or activity served by such parking area is in existence at such location. Each such lease shall be subject to prior review by the City of Billings and shall provide that if the right to use the designated off-site parking is for any reason terminated or forfeited the City shall be immediately advised. In case of such termination or forfeiture, all uses and activities so served shall cease until adequate off-street parking meeting the requirements of this Agreement is again provided. All requirements for setbacks, landscaping, signage, and lighting established in this Agreement, the CCRs, and/or the Master Design Guidelines or other applicable standards shall apply to off-site parking facilities. All off-site and on-site parking facilities shall satisfy any applicable handicapped accessibility requirements. Off-site parking shall be located within six hundred (600) feet of the building or use for which it is required, which distance shall be measured along a straight line between the two (2) nearest points of the Lots containing the main use and the accessory parking use.

(d) **Garages.** The incorporation of multi-level parking garages into principal building structures in the Mixed-Use and Multi-Family-Restricted zones is encouraged. Ground level parking garages shall be limited to 2,500 square feet and may accommodate no more than ten (10) vehicles unless approved by the Reviewer. Freestanding multi-level parking garages shall be considered a principal structure. A minimum of ten (10) feet, or the applicable IBC minimum standard, whichever is greater, shall be maintained between garages and other structures. Parking garages must conform to CCRs and Master Design Guidelines.

(e) **Landscaping.** Parking lots shall be landscaped in accordance with the CCRs and the Master Design Guidelines.

5. Right-of-Way and Landscaped Green Belt Improvements Generally.
A minimum 10-foot landscaped green belt, which may be incorporated into any required building setback, shall be landscaped and maintained along any property line that abuts the Shiloh Drain or a public or private right-of-way or street unless the same is bordered by a developed Pathway or Linear Parkway maintained by the Master Association, an

Owners Association, or the City. Founders shall establish design standards for such landscaped green belt areas. Developers shall be responsible for installation of the landscaped green belts in accordance with the CCRs and Master Design Guidelines. Unless maintenance responsibilities are specifically accepted by the Master Association and/or City, Unit Owners shall maintain their yards as well as the space in the landscaped green belt area and any easement or right-of-way up to the back of the curb, the edge of paving of the street, or the midline of any easement not bordering a street, in conformance with the CCRs and Master Design Guidelines. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt area or the setback.

6. **Average Density Limits.** The number of residential Dwelling Units shall not exceed the maximum density-per-acre limits set forth in Exhibit B. For purposes of determining compliance with this requirement, an “acre” shall be the gross acreage of the development less the area actually devoted to the open space and public roads conceptually depicted on the Master Plan. Average density limits shall be measured by evaluating the average, overall per-acre density for each part of a Developer’s project that is subject to a different density limitation. Density limits shall not be measured by evaluating the actual density for each individual acre. Actual per-acre densities in a particular part of a Developer’s project area may be higher than the allowed limits if the average density for the Developer’s property in each zone as a whole complies with the density limitations set out in Exhibit B.

7. **Landscaped Green Belts Along King Avenue, C/S 2064, C/S 3125 and C/S 1400.** A minimum twenty (20) foot wide landscaped green belt shall be maintained inside the south property line of all Units in Tracts 1A and 5A adjoining King Avenue. A minimum twenty (20) foot wide landscaped green belt shall be maintained inside the south property line of Tract 4A adjoining King Avenue. A minimum fifteen (15) foot wide landscaped green belt shall be maintained inside the property line of the portion of Tract 1A adjoining C/S 2064 (Tracts 6B), C/S 3125 (Tract 4A), and C/S 1400 (Tract 1A). The Developers of Tracts 1A, 4A, and 5A shall be responsible for installation of the landscaped green belts in accordance with the CCRs and Master Design Guidelines. The landscaped green belts described in this paragraph shall be maintained in accordance with Article V.B.5. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt area or the setback.

8. **Loading, Storage and Service Areas.** Loading and service areas shall not be permitted in the front of any Lot or in any side yard adjacent to and visible from a street within LENHARDT SQUARE and shall be subject to design standards adopted by the Founders.

9. **Fence, Wall, Berms and Hedge Improvements.** Fences, walls, berms and hedges within LENHARDT SQUARE shall be constructed according to the following minimum standards:

(a) All improvements shall comply with the City of Billings, Montana clear vision standards and the maximum height restrictions set forth in Exhibit B;

(b) All improvements shall comply with the CCRs and Master Design Guidelines;

(c) A permit shall be obtained from the City prior to constructing any fence over six (6) feet in height or any wall over four (4) feet in height.

10. Accessory Structures. Detached accessory structures other than garages shall be no larger than 300 square feet. A minimum of 5 feet, or the applicable Unified Zoning Regulations minimum standard, whichever is greater, shall be maintained between detached accessory structures other than garages and any other structure. All detached accessory structures must conform to the CCRs and Master Design Guidelines. Accessory structures in Tract 4A and Tract 5A.2 are subject to special review in accordance with Article V.G.1. above.

11. Projections. In Tracts other than Tract 4A and Tract 5A.2, awnings, stoops, open porches, balconies, bay windows, cantilevered decks, permitted signage, and similar projections may extend into fifty percent (50%) of the width of any required building setback provided the projection does not cause a hazard or interfere with any improved Linear Parkway located within the setback. In Tract 4A and Tract 5A.2 such projections may extend to, but not over, the boundary of the public right-of-way. The lowest point of any projection must be at least eight (8') feet beyond the surface of any sidewalk, pathway, driveway or other travel surface located below the projection.

12. Signage. The signage requirements included in Article 27-700 of the Unified Zoning Regulations ("Sign Code") and any subsequent amendments thereto shall govern the regulation of signage in LENHARDT SQUARE so far as they are not inconsistent with this Agreement. To the extent that different Sign Code regulations apply depending upon the zoning category where the signage is located, for this purpose only Tracts 1A and 3A shall be deemed to be a residential professional zone; Tracts 4A and 5A.2 shall be deemed to be a commercial zone; and Tracts 5A.1 and 2A shall be deemed to be a residential zone. For purposes of regulating signage the mixed-used areas (Tract 4A and Tract 5A.2) shall be subject to the same regulations that govern the Central Business District, including Ordinance No. 07-5437 approved October 22, 2007 amending Section 27-705(c) of the Unified Zoning Regulations. In addition all signs shall comply with CCRs and Master Design Guidelines.

13. Lighting.

(a) All outdoor pole lighting shall be fully shielded (no light emitted by the fixture is projected above the horizontal plane of the fixture) and mounted

at heights no greater than twenty (20) feet above grade;

(b) All outdoor lighting, except street lights, shall be located and aimed or shielded so as to minimize stray light trespassing across property boundaries.

(c) Canopy, marquee and “wall pack” lighting shall be fully shielded. No internally illuminated fascia shall be allowed.

(d) All lighting shall comply with CCRs and Master Design Guidelines.

14. Design Standards. Additional Design Standards may be included within the CCRs and/or Founders may adopt Master Design Guidelines for use in LENHARDT SQUARE. Such standards and guidelines shall govern building, landscape and Common Area construction. Developers may adopt more stringent standards or guidelines and/or additional compatible standards or guidelines for areas located within the Tract being developed, provided such standards or guidelines are compatible with the Master Design Guidelines and approved by the Reviewer. All construction within LENHARDT SQUARE shall comply with the International Building Code, the International Fire Code, and any other building codes or building regulations applicable under local, state, or federal law.

ARTICLE VI – OPEN SPACE

A. Master Plan Common Areas Generally. Founders hereby agree that certain portions of LENHARDT SQUARE will be permanently set aside for park and recreational uses sufficient to meet the needs of the residents of LENHARDT SQUARE. Founders further agree that they will cause an easement for pedestrian and bike travel by the general public to be dedicated in or near the Shiloh Drain Easement Area for inclusion in the Heritage Trail System. The lands set aside in accordance with this Article VI.A. will include the Master Common Areas shown on the Master Plan (Exhibit A) and may include, but are not limited to, open spaces, Green Roofs and other roof-top amenities, park areas, Linear Parkways and pocket parks, gardens, athletic fields, open space corridors, bike trails, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, indoor or outdoor gathering places and community centers. The total acreage set aside for park and recreational use as depicted on Exhibit A is approximately 15.35 acres. The general size, location, and design of Master Common Areas described in this Agreement and designated in the Master Plan are conceptual in nature and are subject to modification by Founders and future Developers through the platting process. Any such modifications must, however, be approved by the Reviewer, and the City of Billings must receive the consent of the Reviewer prior to approving any plat that modifies the size, location, or design of the Master Common Areas described herein. The City of Billings shall be entitled to review and approve any material

reduction in the size of the Master Common Areas or material change of the function of those areas if such reduction or change would entitle the City to withdraw its waiver of statutory and local park dedication requirements mandated under M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009.A. Nothing in this Agreement shall prohibit a Developer from establishing Developer Common Areas within its Tract, provided maintenance of such additional common areas shall be the responsibility of the Developer and/or any Owners Association created by the Developer, unless the Master Association agrees in writing to undertake such maintenance responsibilities. Developers may agree to assume maintenance responsibilities for Master Common Areas by entering into a written agreement with the Master Association.

B. Annexation Agreement to Prescribe Standards for Common Areas. The parties agree that promptly after or in conjunction with the execution of this Agreement they shall negotiate and execute an annexation agreement that will prescribe standards for the designation, development, and maintenance of parks and other Common Areas in LENHARDT SQUARE. Although the particular terms of the annexation agreement will be determined later, it is currently anticipated that the agreement will address these and other issues: (1) waiver by the City of statutory and local regulatory park dedication requirements in accordance with M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009.A.; (2) maintenance obligations of the Master Association, Developers and the City; (3) construction standards for linear parkways; and (4) mutual easements for the construction and maintenance of Common Areas on private and public property.

C. Roof-Top Amenity Areas. The roof area of each building over forty feet (40') in height (measured to the top of the enclosed structure and not including non-enclosed structures, towers, antennae, etc.) in a mixed-use zone (Tract 4A and Tract 5A.2) shall include roof-top amenities that comply with this Agreement. Such roof-top amenities may include, but are not limited to, one or more of the following: Green Roofs, gardens, pools, terraces, decks, balconies, porches, atriums, greenhouses, picnic areas, recreational facilities, or similar amenities. For purposes of this Article VI.C. "roof area" shall include both the roof structure immediately above the uppermost floor of the building and also any horizontal setback areas created when a floor of the building is recessed from the line of the façade of the floor below. One hundred percent of each roof area not necessary for the use, storage, or operation of mechanical equipment related to the function of the building shall be devoted to such roof-top amenities unless the Reviewer grants a partial exemption from this requirement after receiving a written request from the Developer. The Reviewer may exempt part of the roof area from this requirement if the Reviewer determines in its discretion that the portion proposed for exemption is too small, inaccessible, or otherwise unavailable for reasonable construction or maintenance as a roof-top amenity. All roof-top amenities shall be professionally designed and constructed and shall comply with all applicable building codes, ordinances, and laws. ~~Neither Reviewer nor the City~~ shall not be required to review any building design, specifications or drawings for compliance with such codes, ordinances, laws or other building standards and therefore shall not be responsible for any violation of the same or any negligence in the design or construction of any roof-top amenity or other element of any structure. All roof-top amenities shall be well

constructed, according to any applicable building and safety codes, repaired, and maintained so that they provide a useful and attractive area for the private or semi-private use of tenants or owners in the subject building or adjacent mixed-use neighborhood in the Tract.

ARTICLE VII - CROSS EASEMENTS FOR PEDESTRIANS AND VEHICLES

At the time each Tract is developed, or at such earlier time as may be determined by Founders or the Developer of the Tract, Founders or the Developer shall grant a non-exclusive easement for pedestrian and bicycle ingress and egress for the benefit of all Developers and Unit Owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the Common Areas of LENHARDT SQUARE (or the Tract) devoted to pedestrian walkways, bike paths, and private roadways intended for common use.. At the time each Tract is developed, or at such earlier time as may be determined by Founders or the Developer of the Tract, Founders or the Developer shall also grant a non-exclusive easement for vehicular ingress and egress for the benefit of all Developers and Unit Owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the private roadways of LENHARDT SQUARE (or the Tract).

ARTICLE VIII - ENFORCEMENT

A. Statement of Purpose. The parties acknowledge that from time to time disputes may arise involving the City, Founders, Unit Owners, the Master Association, Owners Associations, or other persons bound by this Agreement. In order to minimize the financial and emotional costs that such disputes may exact from the participants, the parties to this Agreement, on behalf of themselves and their successors and assigns hereby commit themselves to work together in a spirit of cooperation to facilitate the prompt resolution of such disputes in a manner that respects and promotes relationships between the parties and without resort to litigation as much as possible.

B. Right to Enforce by City. The terms of this Agreement may be enforced by the City as provided for in Article 27-1600 of the City Code of Billings, Montana.

C. Right to Enforce by Unit Owners and Master Association. The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and the owners of property within LENHARDT SQUARE and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto as well as the Unit Owners within LENHARDT SQUARE. The parties further agree that the Master Association shall have standing to enforce the terms of this Agreement relative to the City or any Unit Owner or Owners Association regardless of whether the Master Association owns property in LENHARDT SQUARE. In addition to all rights inuring to them under this Agreement, the

parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

ARTICLE IX –AMENDMENTS AND VARIANCES

A. Amendments or Changes. Amendments or changes to this Planned Development Agreement shall be processed using the same procedures for a new application in accordance with the Unified Zoning Regulations; however, minor modifications may be approved by the zoning coordinator if he/she finds that the change would not:

1. Change the overall character of the development;
2. Increase the number of residential units greater than two (2) percent. ~~five (5) percent~~;
3. Create additional allowed uses;
4. Reduce open space greater than two (2) percent in any Tract; and
5. Change the approved minimum setbacks, maximum lot coverage, or maximum allowed structure height.

B. Variance Procedures. Variance procedures shall comply with the Unified Zoning Regulations as established by the City of Billings. In no case shall a variance be granted for a use not listed within this Agreement or for uses prohibited within the Unified Zoning Regulations.

C. Zone Change Procedures. Zone change procedures shall comply with the Unified Zoning Regulations as established by the City of Billings.

ARTICLE X - GENERAL PROVISIONS

A. Neutral Interpretation. Founders and the City hereby stipulate and agree that this Agreement shall be construed using neutral interpretation, and that this Agreement shall not be construed in favor of any party or against any party.

B. Coordination with Other Regulations. In the event that there is any conflict between this Planned Development Agreement and other zoning regulations and/or ordinances, including the Unified Zoning Regulations, the terms and conditions of this Planned Development Agreement shall govern. If this Agreement does not prescribe rules for a particular aspect of the development or use of LENHARDT SQUARE either by its express terms or by implication, then the terms of any other applicable City zoning regulations or development ordinances, including the Unified Zoning Regulations, shall govern. If other zoning regulations and/or ordinances applicable to LENHARDT SQUARE are subsequently amended, the amended version of such regulations and/or ordinances shall likewise continue to be applicable to LENHARDT SQUARE to the extent they are not inconsistent with this Agreement.

C. Streets. Founders have provided a list of names for future streets in LENHARDT SQUARE. Developers may use any of these names without further approval of Founders. Proposed street names not contained on this list must be approved by Founders prior to adoption by the City. Both street names and addresses shall be determined in cooperation with the City and the City Fire Department.

D. Notices. All notices or demands required to be given hereunder shall be in writing and shall be served upon the other party either personally or by registered or certified mail. Service by registered or certified mail shall be conclusively deemed made three (3) days after deposit thereof in the United States Mail, postage prepaid, addressed to the party to whom service is to be given, as hereinafter provided, and the issuance of the registry or certification receipt therefore.

All notices or demands to Founders or the City shall be given at the following addresses or such other addresses as Founders or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to Founders:

Lenhardt Property, LP
4035 Cedarbrook Court
Bellingham, WA 98229-5007

[and]

Lenhardt Enterprises, LLC
c/o Allan R. Lenhardt
240 East Drive
Baton Rouge, LA 70806

[and]

Lenhardt Farm, LLC
c/o Janice L. Rehberg
4401 Highway 3
Billings, MT 59106

With copies to:

William A. Cole
Cole Law Firm, PLLC
3860 Avenue B, Suite C West
Billings, MT 59102-7550

If to the City:

City of Billings
Attn: City Clerk
P.O. Box 1178

Billings, Montana 59103

With Copies to:

City-County Planning Department
510 N. Broadway, 4th Floor Parmly Library
Billings, MT 59101

City Attorney's Office
P.O. Box 1178
Billings, MT 59103-1178

E. Waiver. Unless expressly so provided in this Agreement, failure of one party to notify the other party of a default in the manner provided in this Agreement shall not be deemed a waiver of any rights that the non-defaulting party may otherwise have at law or in equity as a result of the default.

F. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

G. Limitation on Enforcement. This Agreement is for the benefit of Founders, the City, the Unit Owners, the Master Association, and their heirs, devisees, assigns, and trustees, and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of this Agreement or to enforce the covenants, conditions, and restrictions contained herein, judicially or otherwise.

H. Force Majeure. Any prevention, delay or stoppage due to strikes, lock outs, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitute therefore, governmental restrictions, terrorist acts, governmental regulations, inclement weather, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. All parties shall use reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

I. Attorneys' Fees and Costs. In the event either party shall file any proceeding, whether at law or in equity, the prevailing party shall be entitled to receive reimbursement of reasonable outside attorney's fees and court costs, if any, from the other party.

J. Severability. Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Agreement, and the remaining provisions shall remain in force and be binding upon the parties hereto as though such invalid, void, illegal or unenforceable provision had not been included.

K. No Partnership. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

L. Captions and Headings. The paragraph headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

M. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

N. Construction. In construing the provisions of this Agreement, whenever the context has required, the use of a gender shall include all other genders, and the use of the singular shall include the plural, and the use of the plural shall include the singular.

O. Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

P. Recordation. This Agreement and any amendments or modifications shall be recorded in the office of the clerk and recorder of the County of Yellowstone, State of Montana.

NOTICE

THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY WITHIN LENHARDT SQUARE, OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY WITHIN LENHARDT SQUARE, AND SHALL FURTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS AGREEMENT BE VIOLATED, THE PARTIES TO THIS AGREEMENT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.

Q. Run with the Land. The terms and conditions of this Agreement shall run with the land, and shall be binding upon and shall inure to the benefit of Founders, the City, Developers, Unit Owners, the Master Association, and their heirs, successors, and assigns.

R. Contact Person. The Founders hereby designate a contact person who may be contacted with respect to any questions, comments, or concerns. The contact person shall be Janice Rehberg, 4401 Highway 3, Billings, MT 59106.

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

FOUNDERS:

LENHARDT PROPERTY, LP

By: _____
LORRAINE NEWMAN
Its: _____

LENHARDT FARM, LLC

By: _____
JANICE L. REHBERG
Its: _____

LENHARDT ENTERPRISES, LLC

By: _____
ALLAN R. LENHARDT
Its: _____

CITY:

CITY OF BILLINGS

By: _____
Ron Tussing
Its: Mayor

By: _____
Cari Martin
Its: City Clerk

STATE OF _____)
_____)ss.
County of _____)

This instrument was acknowledged before me on the ____ day of _____, 2008, by ____
_____ known to me to be a partner of Lenhardt Property,
L.P.

[signature]

[typed/printed name]
Notary Public for the State of _____
Residing at: _____, _____
My Commission Expires: _____, 20__

STATE OF _____)
_____)ss.
County of _____)

This instrument was acknowledged before me on the ____ day of _____, 2008, by
Janice L. Rehberg known to me to the _____ of Lenhardt Farm, LLC

[signature]

Notary Public for the State of _____

My Commission Expires: _____, 20__

County of Yellowstone)

Allan R. Lenhardt known to me to the _____ of Lenhardt Enterprises, LLC

[typed/printed name]

Residing at: _____, Montana

My Commission Expires: _____, 20____

County of Yellowstone)

Ron Tussing, known by me to be the Mayor of the City of Billings.

[typed/printed name]

Residing at: _____, Montana

My Commission Expires: _____, 20____

STATE OF MONTANA)
)ss.
County of Yellowstone)

 This instrument was acknowledged before me on the ____ day of _____, 2008, by
Cari Martin, known by me to be the City Clerk of the City of Billings.

[signature]

[typed/printed name]

Notary Public for the State of Montana

Residing at: _____, Montana

My Commission Expires: _____, 20__

* Streets and area shown as right-of-way will be stricken and the area added to the developable area of each Tract

EXHIBIT B
GENERAL REQUIREMENTS*

| <i>Minimum Lot Size Per Structure</i> | <i>MF-4**</i> | <i>MF-R**</i> | <i>MU**</i> |
|---|---------------|---------------|-------------|
| 1 dwelling unit | 6,000 | 6,000 | |
| 2 dwelling units | 7,000 | 7,000 | |
| 3 dwelling units | 8,500 | 8,500 | |
| 4 dwelling units | 10,000 | 10,000 | |
| 5 dwelling units | | 11,000 | |
| 6 dwelling units | | 12,000 | |
| 7 dwelling units | | 13,000 | |
| 8 dwelling units | | 14,500 | |
| 9 dwelling units | | 16,000 | |
| 10 or more dwelling units | | 1,500 | |

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| | | | | Living Unit |
|---|-----------------|----------------|--|-----------------|
| Setback Requirements (in feet) ⁴ | | | | |
| Front:² | | | | |
| From Linear Parkway closest to building | 5 ³ | 5 | | 5 |
| From streets (56 ft. right-of-way) | 20 ³ | 20 | | 0 ⁴ |
| Sides:⁵ | | | | |
| 1 Story | 5 | 5 | | 5 |
| 2 Story | 8 | 8 | | 8 |
| 3+ Story | 9 + 1 | 9 + 1 | | 0 |
| Side Adjacent to Street | 10 | 10 | | 0 |
| Rear:⁵ | | | | |
| Arterials | 20 | 15 | | 0 |
| Maximum Height (in feet) | 25 | 25 | | 25 |
| | 34 | 40 | | 80 ⁶ |
| Maximum Lot Coverage | 50% | 50% | | 100% |
| Maximum Average Densities (Dwelling Units/Acre) | 10 | 20 (Tract 1 A) | | 20 ⁷ |
| | | 15 (Tract 3 A) | | |
| Fence/Wall/Berm/Shrub Max. Height | | | | |
| Front Yard and | 2 | 2 | | 2 |

***Adjacent to Street
Rear and Side Yards
not on Street***

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* The limitations described in this table are subject to, and in no way supersede, all applicable building codes and regulations. Developers shall at all times comply with the International Building Code, the International Fire Code, and all other local, state, or federal building codes or regulations.

** As of the date this Agreement was originally approved, these zones correspond to the following Tracts: MF-4 (Tract 2A, Tract 5A.1); MF-R (Tract 1A, Tract 3A); MU (Tract 4A, Tract 5A.2).

¹ Upon request, Reviewer may in its sole discretion authorize a reduction in the setback requirements of up to 10%.

² Pursuant to Master Design Guidelines and upon approval of Reviewer, front setback may be reduced to 0 feet, provided structure is a minimum of 5 feet from hard surface walkway or bikeway.

³ Staggered and angled placement allowed; one structural corner of structure must be at setback line if set at angle, while 20% of façade must be at setback for staggered parallel placement.

⁴ At 40 feet or 3 stories visible from street, remainder of floors must be set back at least 30% of the depth of the lot.

⁵ Zero lot lines allowed pursuant to 27-617 Unified Zoning Regulations and for accessory structures and garages.

⁶ Height limitation applies to the uppermost, enclosed portion of the structure. Antennae, towers, and non-enclosed portions of a structure may extend fifteen feet (15') above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

~~⁷ Upon request of the applicant and consent of the Reviewer, the zoning coordinator may approve in his or her discretion and without further hearing, review or approval average density limits that are up to ten percent (10%) greater than the standard limits described herein if the zoning coordinator determines that the increase in density would not materially prejudice any neighboring or nearby property.~~

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, February 25, 2008**

TITLE: Reasonable Accommodation – 1721 8th Avenue North

DEPARTMENT: City Administrator's Office

PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: The City Council is being asked to extend a reasonable accommodation to the Rimrock Foundation for a residential treatment facility at 1721 8th Avenue North for drug- and alcohol-addicted patients who are covered under the Federal Fair Housing Act. Special Review (SR) #800 for the property originally was considered by the Council on Feb. 13, 2006.

ALTERNATIVES ANALYZED:

- Approve the proposed reasonable accommodation;
- Postpone or amend the proposal;
- Do not approve the proposal.

FINANCIAL IMPACT: There will be no cost to the City for approving the proposed reasonable accommodation.

RECOMMENDATION

Approve the proposed reasonable accommodation for the Rimrock Foundation residential treatment facility at 1721 8th Avenue North for drug- and alcohol-addicted patients.

Approved By: City Administrator ____ City Attorney ____

Attachments:

A: Proposed reasonable accommodation letter

February 13, 2008

Mona Sumner, Chief Executive Officer
David Cunningham, Chief Operating Officer
Rimrock Foundation Board of Directors
1231 North 29th Street
Billings, MT 59101

Re: *Rimrock Foundation vs. City of Billings, et al.*

Dear Ms. Sumner, Mr. Cunningham, and Rimrock Foundation Board of Directors:

We are sending this letter to formally confirm the City of Billings' proposed reasonable accommodation for Rimrock Foundation in response to Rimrock Foundation's request to construct a residential treatment facility at 1721 8th Avenue North. As you are aware, it is the City of Billings's position that it was not made clear to the City a number of matters related to the scope of Rimrock Foundation's proposed construction, including issues related to the design of the facility, the need for the proposed structure, and the services to be provided. This resulted in confusion regarding Rimrock Foundation's proposal, as well as the City of Billings's outstanding offers to accommodate the construction of the property proposed by the Foundation in its revised Application for Special Review No. 800 and the Building Permit submitted in January 2007.

The City of Billings City Council has now approved and the City of Billings is formally offering to reasonably accommodate Rimrock Foundation by permitted the construction of the "t-shaped building" that Rimrock Foundation proposed with its Building Permit submitted in January 2007, with the agreement that all future construction on the lot will be in the form of duplexes. Specifically, the following accommodation has been approved by the City of Billings City Council:

Pursuant to the following conditions, the City of Billings has approved the construction proposed by Rimrock Foundation under SR 800, as amended, and will accommodate Rimrock Foundation under the following conditions:

1. The special review approval shall be limited to Tract A of Certificate of Survey 2237.
2. This special review approval is for one two story "t-shaped" building (as reflected on the modified Plans submitted to the City of Billings of Billings pursuant to Rimrock Foundation's Building Permit Application in January 2007) to be used as a Community Residential Facility for more than eight (8) persons as defined in BMCC 27-201 (hereinafter "the structure") and no other use or expansion of this special review use is approved or implied with this authorization. The structure may provide common facilities for the residents of the property.
3. The owner shall ensure any operations conducted in the structure comply with all local ordinances and with state laws and regulations.
4. Prior to occupation of the structure, a 6-foot tall sight obscuring fence or wall shall be installed along the west property line beginning at a point not more than 56 feet north of the property corner at the intersection of the alley and 8th Avenue North and ending at the northwest property corner. A continuous evergreen hedge may be substituted for the required fence if the evergreen trees or shrubs are at least 4 feet in height when planted, reach a mature height of at least 8 feet, a mature width of at least 6 feet and are planted no greater than 7 feet on center. Any sight obscuring fence must be constructed of wood, stone, vinyl, brick or block or other conventional fencing materials. No chain-link or wire fencing is allowed in this application.
5. The applicant shall maintain the existing healthy trees within the subject site, except where specific construction of the structure will be. Prior to the occupation of the structure, the applicant must install at least four (4) canopy trees, of a 2-inch caliper and 8-foot tall minimum. These four (4) trees shall be evenly spaced within the front yard setback along the northern 200 feet of property frontage on North 17th Street. Except as otherwise provided herein, the remaining landscaping of the subject property shall comply with the landscaping standards in BMCC 27-1105; 27-1106; 27-1107; and 27-1110.
6. No stone materials shall be used on the exterior finishing of the structure.
7. The structure shall be finished with siding in a neutral color.

8. All City of Billings ordinances and regulations related to parking for multi-family dwellings shall be complied with in their entirety.
9. There shall be no berms greater than one two (2) feet in elevation within the landscaped areas along the public street frontage.
10. The structure may not exceed 4,100 square feet.
11. Any lighting within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
12. Failure to comply with these conditions of approval of the special review use shall be deemed a violation of the zoning regulations. Enforcement of the regulations and conditions shall be as set forth in Section 27-1601 et seq. of the Unified Zoning Regulations.
13. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations that apply.

The City of Billings's approval of the construction contemplated by Special Review Application No. 800, as amended and clarified in discussions between Rimrock Foundation and the City of Billings, and pursuant to the conditions set forth herein, is not an admission of liability as to the underlying litigation between Rimrock Foundation and the City of Billings. By this approval, the City of Billings is attempting to address the issues that have only recently come to light between Rimrock Foundation and the City of Billings, specifically regarding Rimrock Foundation's proposed construction, the necessity of the "t-shaped building" for Rimrock Foundation's operations, and the scope of the accommodation requested by Rimrock Foundation. It is the City of Billings's intention that this approval will address Rimrock Foundation's request for a reasonable accommodation.

Sincerely yours,

CITY OF BILLINGS

By _____
Mayor Ron Tussing

cc: Brent Brooks, City Attorney

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