

# CITY OF BILLINGS

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

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## AGENDA

COUNCIL CHAMBERS

FEBRUARY 26, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Boy Scout Troop #7, (1<sup>st</sup> Methodist Church, sponsor)

INVOCATION – Councilmember Vince Ruegamer

ROLL CALL

MINUTES – February 12, 2007

COURTESIES

PROCLAMATIONS

- March 8: World Kidney Day

ADMINISTRATOR REPORTS – Tina Volek

### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 AND #12 ONLY. Speaker sign-in required.**

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

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

### **CONSENT AGENDA:**

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

	Name	Board/Commission	Term	
			Begins	Ends
1.	Steve Zeier	Traffic Control Board	2/26/07	12/31/07

Unexpired term of Jill Krueger

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

#### **B. Bid Awards:**

**(1) Athletic Park Swimming Pool Demolition.** (Opened 2/13/07).

Recommend Magnum Contractors LLC DBA Magnum Demolition, \$62,430.00.

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

**(2) SID #1372: Summerhill Subdivision.** (Opened 2/13/07).  
Recommend rejecting all bids.

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

**(3) W.O. 07-03, Contract #1: 2007 Street Maintenance.** (Opened 2/13/07). Recommend delaying to 3/12/07.  
[\(Corresponding Staff Memo B3\)](#)

**C. Bus/Bench Advertising Concession Agreement** with Blair Unlimited, 40% annual gross sales or minimum annual guarantee of \$50,000.00 (whichever is greater), term: 5 years.

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

**D. Contract for Professional Services** with Great West Engineering, Inc., for the design and construction administration of Phase 3 landfill cell, \$155,000.00.

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

**E. Contract for Professional Services** with Engineering, Inc., for SID 1375 (water, sewer, storm drain, curb and gutter and street improvements to Claremont Rd. between Lake Hills Dr. and Gleneagles Blvd.), \$64,920.08

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

**F. Contract for Professional Services** with Engineering, Inc., for SID 1377 (water, sewer, storm drain, curb and gutter and street improvements to Greenbriar Rd. between Lake Hills Dr. and Hillcrest Dr.), \$26,522.61.

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

**G. W.O. 06-20: Downtown Billings Wayfinding Signage** Memorandum of Agreement with Montana Dept. of Transportation (MDT).

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

**H. STPHS 56(61): Various Intersections West of Billings,** City & County Construction Agreement with Montana Dept. of Transportation (MDT).

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

**I. W.O. 07-04: Garden Avenue Waterline,** contribution and Memorandum of Agreement with Yellowstone County, \$311,782.50.

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

**J. Reimbursement Agreement** for Private Contract #530 – the Estates at Briarwood Subdivision, First Filing.

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

**K. Easement with** QWest Corporation for telephone cabinet site for Copper Ridge Sub., 1<sup>st</sup> Filing, Block 1 – Park, \$2,000.00.

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

**L. Authorization** to submit application for Environmental Protection Agency (EPA) *Smart Growth Implementation Assistance Grant*.  
[\(Corresponding Staff Memo L\)](#)

**M. W.O 00-15: Grand Avenue, Right-of-Way purchase from McDonald's Real Estate Company:**

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

(1) Approval of the subdivision plat

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

(2) Accept Quit Claim Deed for Lots 1A, 2A and 3A, Amended Lots 1 – 3, C/S 269, located at 1046 Grand Ave.

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

(3) Accept temporary construction easement

[\(Corresponding Staff Memo M3\)](#)

**N. Downtown Billings Association (DBA) Street Closures:**

(1) *Alive After 5*: June 21, Host: Buchanan Capital, N. 28<sup>th</sup> from 2<sup>nd</sup> to 3<sup>rd</sup> Ave., 3 p.m. to 9 p.m.

(2) *Alive After 5*: June 28, Host: MSU-B Downtown, N. 28<sup>th</sup> from 2<sup>nd</sup> to 3<sup>rd</sup> Ave., 3 p.m. to 9 p.m.

(3) *Alive After 5*: July 5, Host: Special Gold Wing, N. 28<sup>th</sup> from 1wst and 2<sup>nd</sup> Ave. N from 29<sup>th</sup> to the alley west of N. 27<sup>th</sup>, 3 p.m. to 9 p.m.

(4) *Alive After 5*: August 2, Host: Montana Brewing Company, N. 28<sup>th</sup> from 1<sup>st</sup> to 2<sup>nd</sup> Ave., 3 p.m. to 9 p.m.

(5) *Alive After 5*: June 14, Host: The Carlin, N. 25<sup>th</sup> St. between Montana Ave. And 1<sup>st</sup> Ave. N (1 block), 3 p.m. to 9 p.m.

(6) *Alive After 5*: July 19, Host: Pug Mahons, N. 30<sup>th</sup> St. between 1st Ave. N. and 2<sup>nd</sup> Ave. N., 3 p.m. to 9 p.m.

(7) *Alive After 5*: July 26, Host: Tiny's Tavern, N. 24<sup>th</sup>. St. between 4<sup>th</sup> Ave. N and 3<sup>rd</sup> Ave. N. (1 block), 3 p.m. to 9 p.m.

(8) *Alive After 5*: August 9, Host: Monte Carlo Casino, N. 29<sup>th</sup> St. between Montana Ave. and 1<sup>st</sup> Ave. N., 3 p.m. to 9 p.m.

(9) *Alive After 5*: August 16, Host: Western Wheel Bar, Minnesota Ave. between 27<sup>th</sup> St. N and 28<sup>th</sup> St. N., 3 p.m. to 9 p.m.

(10) *Strawberry Festival*: June 9, N. 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Ave., and 2<sup>nd</sup> Ave. from the alley west of N. 27th to N. 29<sup>th</sup>, and N. 29th from 1<sup>st</sup> to 2<sup>nd</sup> Ave., 3 a.m. to 7 p.m.

(11) *Farmers' Market*: Saturdays: July 21 to October 6, N. 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Ave., and 2<sup>nd</sup> Ave. from the alley west of N. 27<sup>th</sup> to N. 29th and N. 29<sup>th</sup> from 1<sup>st</sup> to 2<sup>nd</sup> Ave., 6 a.m. to 1 p.m.

(12) *Farmers' Market*: Wednesday nights: August 1 – August 22, N. 28<sup>th</sup> from 1<sup>st</sup>. to 2<sup>nd</sup> Ave. and 2<sup>nd</sup> Ave. from N. 28<sup>th</sup>. to N. 29<sup>th</sup>, 3 p.m. to 9 p.m.

(13) *Harvestfest*: October 13, N. 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Ave. and 2<sup>nd</sup> Ave. from the alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup>., 6 a.m. to 5 p.m.

(14) *Holiday Parade*: November 23, established Downtown Parade Route.

(15) *Christmas Stroll*: December 7, N. 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Ave. and 2<sup>nd</sup> Ave. from the alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup>, 4 p.m. to 9:30 p.m.  
[\(Corresponding Staff Memo N\)](#)

**O. Resolution** authorizing construction bids for SID 1375: Claremont Rd.  
[\(Corresponding Staff Memo O\)](#)

**P. Resolution** authorizing construction bids for SID 1377: Greenbriar Rd.  
[\(Corresponding Staff Memo P\)](#)

**Q. Resolution of Intent** to order in W.O. 05-02: 2005 Miscellaneous/Developer-Related Improvements and setting a public hearing for 3/26/07.  
[\(Corresponding Staff Memo Q\)](#)

**R. Resolution of Intent** to create Expanded Park Maintenance District (PMD) #4025: Rehberg Ranch Estates Sub., 1<sup>st</sup> & 2<sup>nd</sup> Filings, repealing Res 06-18454 and setting a public hearing for 3/26/07.  
[\(Corresponding Staff Memo R\)](#)

**S. Second/final reading ordinance** expanding the boundaries of Ward I to include recently annexed property described as: Annex #07-01: an 11,160 square foot parcel of property described as Lot 3, Block 7, Kimble Subdivision, 2nd Filing and located at 215 Garden Ave. and including all adjacent right-of-way of Garden Avenue.  
[\(Corresponding Staff Memo S\)](#)

**T. Extension** for Cenex Park Subdivision, Amended Lot 4, Block 4 until May 10, 2008.  
[\(Corresponding Staff Memo T\)](#)

**U. Preliminary Plat** of Amended Lot 7, Block 4, Meadowlark Subdivision, generally located between Phoebe Dr. and Willet Dr. south of Sharron Ln.  
[\(Corresponding Staff Memo U\)](#)

**V. Bills and Payroll.**  
(1) January 26, 2007  
[\(Corresponding Staff Memo V1\)](#)  
(2) January 1 - 31, 2007 (Court)  
[\(Corresponding Staff Memo V2\)](#)

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

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION** approving the FY08 – FY12 Capital Improvement (CIP), Equipment Replacement Plan (ERP), and Technology

Replacement Plan (TRP). Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

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

**3. PUBLIC HEARING AND RESOLUTION** to revise the 2006 Limits of Annexation Map. Annexation Committee recommends approval. (**Action:** approval or disapproval of Annexation Committee recommendation.)

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

**4. AMENDED LOT 65 A-4, SUNNY COVE FRUIT FARMS SUBDIVISION:**

(A) **PUBLIC HEARING AND RESOLUTION** for Annexation #07-02, annexing approximately 13.01 acres, described as Lot 65 A-4, Amended Plat of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms, located on the northwest corner of the intersection of Grand Avenue and 54<sup>th</sup> St. W south of Cottonwood Grove Sub., Mary Kramer, owner and petitioner. Staff recommends conditional approval of the resolution. (**Action:** approval or disapproval of Staff recommendation.)

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

(B) **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #798:** A zone change from Agricultural Open (AO) to Neighborhood Commercial (NC) and Community Commercial (CC) on an 11.6-acre parcel of land, described as Amended Lot 65A-4, Sunny Cove Fruit Farms Subdivision. Mary Kramer, owner; Charlie Gamble, agent. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

**5. PUBLIC HEARING AND RESOLUTION** approving and adopting a budget amendment for FY 2006/2007. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

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

**6. PUBLIC HEARING AND SPECIAL REVIEW #834:** A special review to amend the master plan for a Senior Housing Community, new layout for the site and the buildings on the site in a Residential-9,600 (R96) zone on Tract 1, of Corrected Amendment of Tracts 1 and 3 and Remainder Tract 2 to be Amendment of Tracts 1, 2, and 3, C/S 1648, generally located at the northwest corner of Bell Avenue and Shiloh Road. Robert D. and Bonnie E. Bell Trustees, owners; Carl Sanders, Mountain West Senior Housing LLC, agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

**7. PUBLIC HEARING AND SPECIAL REVIEW #835:** A special review to replace an existing beer and wine license with gaming with an all-beverage license in a Community Commercial (CC) zone on Lots 43 through 50, Block 4, Broadwater

Subdivision, and located at 1106 and 1110 Broadwater Avenue. Suds Hut of Billings Inc., owner; Bob Pulley, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

8. **PUBLIC HEARING AND SPECIAL REVIEW #836:** A special review for a beer and wine license with gaming in a Controlled Industrial (CI) zone on Lots 11A and 12A, Block 1, CBH Industrial Subdivision, and located at 1911 King Avenue West. KRP, LLC, owner; Dan Pendergrass and Bob Pulley, agents. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

9. **PUBLIC HEARING AND SPECIAL REVIEW #837:** A special review to allow a change from an existing nonconforming use (vehicle repair) to another nonconforming use, Scott's Lawn Service in a Residential-6000 (R-60) zone on Lot 1, Block 4 Central Avenue Addition and all of Block 1, Central Avenue Addition, 2<sup>nd</sup> Filing, located at 640 St. Johns Avenue. Michael W. and Colleen Mannion, owner; Dick Zier, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

10. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #797:** A zone change from Residential-6,000 (R-60) to Community Commercial (CC) on a 14,383 square foot parcel of land, described as: Lots 26 and 27, Block 5, Central Heights Subdivision, 4<sup>th</sup> Filing, located at 2156 Central Avenue. Michael D. Stock, owner. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

11. **PUBLIC HEARING AND RESOLUTION OF INTENT** to adopt the Highland Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy. Planning Board recommends approval. (Continued from 2/12/07). **(Action:** approval or disapproval of Planning Board recommendation.)

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

12. **2005 TRANSPORTATION PLAN AMENDMENT.** Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

13. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** *(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)*

## **Council Initiatives**

### **ADJOURN**

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

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

### **CALENDAR (Council AND Boards & Commissions)**

#### **FEBRUARY:**

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

2/28/2007	Housing Authority Development Process Advisory Review Board (DPARB) Traffic Control Board	NOON 1:00 p.m. NOON	2415 1 <sup>st</sup> Avenue North CH Conference Room 4 <sup>th</sup> Floor Library
<b><u>MARCH:</u></b>			
3/01/2007	EMS Commission Human Relations Commission	7:30 a.m. 12:15 p.m.	Main Fire Station CH Conference Room
3/05/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 <sup>rd</sup> St
3/06/2007	Community Development Board Zoning Commission Aviation & Transit Commission	3:00 p.m. 4:30 p.m. 5:30 p.m.	4 <sup>th</sup> Floor Library Council Chambers Airport Terminal
3/07/2007	Board of Adjustment	6:00 p.m.	Council Chambers
3/08/2007	Library Board Committee on Homelessness	11:30 a.m. 1:30 p.m.	Library 3 <sup>rd</sup> Floor Library
3/09/2007	Community Development Board	3:00 p.m.	Tentative – Call for Info.
3/12/2007	Energy & Conservation Commission  Parking Advisory Board REGULAR Council Meeting	3:00 p.m. 4:00 p.m. 6:30 p.m.	Billings Operations Ctr. 4848 Midland Rd. CH Conference Room Council Chambers
3/13/2007	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 <sup>th</sup> Floor Library
3/14/2007	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 <sup>rd</sup> St.
3/19/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 <sup>rd</sup> St
3/20/2007	Yellowstone Historic Preservation Board	8:00 a.m.	4 <sup>th</sup> Floor Library
3/22/2007	Yellowstone County Board of Health  Community Development Board	7:00 a.m. 9:00 a.m.	Community Health Center 123 So. 27 <sup>th</sup> Street 4 <sup>th</sup> Floor Library
3/23/2007	Community Development Board	9:00 a.m.	4 <sup>th</sup> Floor Library
3/26/2007	REGULAR Council Meeting	6:30 p.m.	Council Chambers
3/27/2007	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 <sup>th</sup> Floor Library
3/28/2007	Development Process Advisory Review Board (DPARB) Traffic Control Board Housing Authority	1:00 p.m. NOON NOON	CH Conference Room 4 <sup>th</sup> Floor Library 2415 1 <sup>st</sup> Avenue North

A



**CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, FEBRUARY 26, 2007**

**TITLE:** Boards & Commissions –Appointment

**DEPARTMENT:** City Administrator's Office

**PRESENTED BY:** wynnette Maddox, Administration

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

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

**RECOMMENDATION**

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Steve Zeier	Traffic Control Board	2/26/07	12/31/07

Unexpired term of Jill Krueger

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

Attachment

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# B1

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 26, 2007

**TITLE:** New Billings Baseball and Multi-Use Stadium – Award of Bid for Demolition of Athletic Pool Facility

**DEPARTMENT:** Parks, Recreation, and Public Lands Department

**PRESENTED BY:** Mike Whitaker, Director, PRPL Department

#### PROBLEM/ISSUE STATEMENT:

On November 7, 2006 the citizens of Billings voted to give the City authority to sell bonds up to 12.5 Million Dollars to design and build a new Billings Baseball and Multi-Use Stadium to replace the existing Cobb Field. HNTB Montana has been retained as the Architects of Record to design, develop contract documents and oversee the construction of the new stadium.

The first phase of this project is to remove the existing Athletic Pool facility to make way for construction of the new Baseball and Multi-Use Stadium. Bids were opened for the project at the regular bid opening, at 2:00 p.m., on February 13, 2007 at City Hall. Bids were received from 8 firms.

#### FINANCIAL IMPACT:

Funding for the project is through the sale of General Obligation Bonds approved by Voters in the November 7, 2006 General Election.

**Location of Work:** At Athletic Park comprising the entire block bounded by 27<sup>th</sup> Street North, 26<sup>th</sup> Street North, 9<sup>th</sup> Avenue North and 10<sup>th</sup> Avenue North.

**Funding Sources:** Up to 12.5 Million Dollar General Obligation Bond.

The lowest and best bid received was from **Magnum Contractors LLC (DBA Magnum Demolition)** of Boise, Idaho, for a total amount of \$62,430.00. The low bid received is within the budget for the project. The bid tabulation summary is attached.

#### ALTERNATIVES ANALIZED:

- Award contract to the recommended finalist, or
- Award contract to another finalist, or

- Reject all bid proposals.

**RECOMMENDATION:**

Staff recommends that Council approve the award of the bid for Demolition of Athletic Park Swimming Pool to **Magnum Contractors LLC (DBA Magnum Demolition)** for the amount of **\$ 62,430.00**.

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

**ATTACHMENTS:**

Attachment A: Contract Document

Attachment B: Bid Tabulation

Attachment A – Bid Documents

Attachment B – Bid Tabulation

CITY OF BILLINGS  
 PARKS, RECREATION AND PUBLIC LANDS  
 ATHLETIC PARK SWIMMING POOL DEMOLITION  
 BID TABULATION - FEBRUARY 13, 2007  
 CTA Architects Engineers

General Contractor	Base Bid	Total
C & S Construction, Inc.	\$ 150,033	\$ 150,033
Tebay Contracting and AW Construction	\$ 290,000	\$ 290,000
HL Construction Inc.	\$ 117,930	\$ 117,930
Matriarch Construction Inc.	\$ 247,000	\$ 247,000
Magnum Contractors LLC	\$ 62,430	\$ 62,430
JTL Group Inc.	\$ 122,420	\$ 122,420
Huppert Construction Co.	\$ 131,500	\$ 131,500
Jim's Excavating Service, Inc.	\$ 295,000	\$ 295,000
Lowest and Best Bid: <b>Magnum Constructors LLC</b>		\$ 62,430

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# B2

## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, February 26, 2007

**TITLE:** SID 1372 – Summerhill Subdivision

**DEPARTMENT:** Public Works/Engineering

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

**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for SID 1372 – Summerhill Subdivision on February 13, 2007. This project consists of installing sanitary sewer, water, storm drain and street improvements for a portion of Winter Green Drive, West Antelope Trail and Antelope Place located within Summerhill Subdivision.

### ALTERNATIVES ANALYZED:

1. Award SID 1372 – Summerhill Subdivision, to Western Municipal Construction, Inc. in the amount of \$476,097.50; or
2. Reject all bids and do not award SID 1372 – Summerhill Subdivision.

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

	<u>Bids</u>
Engineer's Estimate	\$ 383,875.16
Western Municipal Construction, Inc.	\$ 476,097.50
Paradise Excavating, Inc.	\$500,265.00

### RECOMMENDATION

Staff recommends that Council reject all bids and do not award SID 1372 – Summerhill Subdivision.

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

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# B3

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 26, 2007

**TITLE:** Work Order 07-03, 2007 Street Maintenance Contract No. 1

**DEPARTMENT:** Public Works/Engineering

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

**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for the 2007 Street Maintenance Contract No. 1 on February 13, 2007. This project will chip seal various streets throughout the city. Approximately 20 miles of residential and commercial streets will be chip sealed.

#### **ALTERNATIVES ANALYZED:**

1. Delay awarding Work Order 07-03, 2007 Street Maintenance Contract No. 1 until the March 12, 2007, City Council Meeting to allow the '08 CIP to be approved.

**FINANCIAL IMPACT:** Funding for the 2007 Street Maintenance Program, Contract No. 1, will be provided from Gas Tax and Street Maintenance Funds. This project will use the remaining funds in Paver from FY '07 and utilize funds from FY '08 to be approved with the CIP at the March 13, 2007, City Council Meeting. Chip Sealing will not start until after July 1, 2007, allowing funds from FY '08 to be utilized.

#### **RECOMMENDATION**

Staff recommends that Council delay awarding Work Order 07-03, 2007 Street Maintenance Contract No. 1 until the March 12, 2007, City Council Meeting.

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

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# C

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 26, 2007

**TITLE:** Approval of Aviation and Transit Department Bus/Bench Advertising Concession Agreement

**DEPARTMENT:** Aviation and Transit Department

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

**PROBLEM/ISSUE STATEMENT:** Staff advertised for the opportunity for qualified concessionaires to submit proposals for the Bus/Bench Advertising Concession. The advertising opportunities with the MET consist of 25 buses with various side and back sign panels, as well as buses available for vinyl advertising wraps. The concession also includes 15 paratransit vans, each of which have one back advertising panel or are available for a back wrap. In addition, the MET currently has 146 bench sites throughout the City, with the potential to increase that number with the City's approval.

Seven RFPs were distributed to a number of advertising concessionaires around the region. The City only received one response from Blair Unlimited, the current concessionaire.

**ALTERNATIVES ANALYZED:** Alternatives for Council consideration include rejecting the single proposal and directing staff to seek new proposals, or enter into a new five-year agreement with Blair Unlimited. Blair Unlimited has been the concessionaire for the Bus/Bench Advertising Concession for almost twenty years.

**FINANCIAL IMPACT:** The Bus/Bench Advertising Concession Agreement calls for the City of Billings Aviation and Transit Department to receive 40% of the annual gross sales revenue or a minimum annual guarantee of \$50,000, whichever is greater. For this past fiscal year the Transit Division received \$85,900 in revenue through this agreement.

### **RECOMMENDATION**

Staff recommends that Council award the five-year Bus/Bench Advertising Concession to Blair Unlimited.

Note: A copy of the MET Transit Bus/Bench Advertising Concession Agreement is on file at the City Clerk's office.

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

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# D

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 26, 2007

**TITLE:** Billings Regional Landfill Phase 3 Expansion Project - Contract for Professional Engineering Services

**DEPARTMENT:** Public Works – Solid Waste Division

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

**PROBLEM/ISSUE STATEMENT:** Mayor and Council are asked to consider a motion authorizing the Mayor to sign a Contract for Professional Services with Great West Engineering, Inc. for engineering services for design and construction administration for the next landfill cell, identified as Phase 3 in the Master Plan. Services will include surveying, geotechnical, liner design, and construction administration. Great West Engineering, Inc. was selected to perform these services according to the City's Request for Proposals and Consultant Selection Policy.

#### ALTERNATIVES ANALYZED:

1. Authorize the Mayor to sign the contract with Great West Engineering, Inc.
2. Do not authorize the Mayor to sign the contract with Great West Engineering, Inc.

**FINANCIAL IMPACT:** The City's funding for the design of this project has been approved in the FY07 Solid Waste Division budget. Funding for construction has been included in the most recently updated CIP Plan for FY08, when the project is scheduled to be bid.

#### RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign the Contract for Professional Engineering Services for the design, and construction administration of Phase 3 landfill cell with Great West Engineering, Inc. in the amount not to exceed \$155,000.

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

## **INTRODUCTION**

As landfill cells fill up with waste it becomes necessary to build new cells. The Master Plan has projected that our current fill area will reach capacity in October 2008. The next cell to be developed is identified as Phase 3 in the Master Plan. This will be the first lined cell developed at the landfill and will include a leachate collection system.

## **PROCEDURAL HISTORY**

- Request for Proposals was advertised October 19 and 26, 2006.
- Three proposals were submitted by the November 10, 2006 submittal deadline.
- The selection committee consisting of Ken Behling, Barb Butler, and Clarence Kostenko of the Solid Waste Division, Tyler Westrope from the Engineering Division, and Councilmember Vince Ruegamer reviewed the three proposals and recommended the selection of Great West Engineering, Inc.

## **BACKGROUND**

The Billings Regional Landfill has been accepting waste since the early 1960's. Approximately 80 acres was foot printed with waste by 1993 when new regulations became effective that required any expanded fill areas to have liners and leachate collection systems. Billings continued to fill that original 80 acres until 2002 when a 30 acre area that had reached capacity was closed and the required top cap was constructed. The landfill continues to fill the remaining 50 acre open area at this time. That remaining area is projected to be near capacity by October 2008. Great West Engineering will provide all necessary services to design, approve, and construct the next landfill cell which will have an approved bottom liner and leachate collection system.

## **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign the Contract for Professional Engineering Services for the design, and construction administration of Phase 3 landfill cell with Great West Engineering, Inc. in the amount not to exceed \$155,000.

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 26, 2007**

---

**TITLE:** Professional Services Contract for SID 1375

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** SID 1375 was created at the December 18, 2006, City Council Meeting. The improvements to be constructed with SID 1375 generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements to Claremont Road between Lake Hills Drive and Gleneagles Boulevard. The City Engineer's Office sent out a Request for Proposals (RFP) for engineering services for the design and contract administration for SID 1375 with Engineering, Inc. being the only firm to submit a proposal. Therefore, Engineering, Inc. was selected for the project. The engineering contract is for \$64,920.08, which is reasonable for a project of this size and is on file at the City Clerk's Office.

**ALTERNATIVES ANALYZED:**

1. Approve the professional services contract for SID 1375 with Engineering, Inc. in the amount of \$64,920.08.
2. Do not approve the professional services contract for SID 1375 with Engineering, Inc.

**FINANCIAL IMPACT:** The total estimated costs of the Improvements, including the professional services contract, are \$424,476.45. The costs of the Improvements are to be paid from the following sources: (1) \$110,000.00 of Special Improvement District bonds to be assessed to 4 properties with equal assessments; and (2) \$314,476.45 of cash contribution by Jeff Engel Construction, Inc., owner of 13 of the 17 lots in the District.

**RECOMMENDATION**

Staff recommends that Council approve the professional services contract for SID 1375 with Engineering, Inc. in the amount of \$64,920.08.

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 26, 2007**

---

**TITLE:** Professional Services Contract for SID 1377  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** SID 1377 was created at the February 12, 2007, City Council Meeting. The improvements to be constructed with SID 1377 generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements to Greenbriar Road between Lake Hills Drive and Hillcrest Drive. The City Engineer's Office sent out a Request for Proposals (RFP) for engineering services for the design and contract administration for SID 1377 with Engineering, Inc. being the only firm to submit a proposal. Therefore, Engineering, Inc. was selected for the project. The engineering contract is for \$26,522.61, which is reasonable for a project of this size and is on file at the City Clerk's Office.

**ALTERNATIVES ANALYZED:**

3. Approve the professional services contract for SID 1377 with Engineering, Inc. in the amount of \$26,522.61.
4. Do not approve the professional services contract for SID 1377 with Engineering, Inc.

**FINANCIAL IMPACT:** The total estimated costs of the Improvements, including the professional services, are \$158,449.80. The costs of the Improvements are to be paid from the following sources: (1) \$58,000.00 of Special Improvement District bonds hereinafter described; and (2) \$100,449.80 of cash contribution by Ron Hill, owner of 5 of the 8 lots in the District.

**RECOMMENDATION**

Staff recommends that Council approve the professional services contract for SID 1377 with Engineering, Inc. in the amount of \$26,522.61.

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

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, February 26, 2007**

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**TITLE:** Work Order 06-20, Downtown Billings Wayfinding Signage – Memorandum of Agreement with MDT**DEPARTMENT:** Public Works/Engineering Division**PRESENTED BY:** David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The City of Billings, in conjunction with the Downtown Billings Partnership, is planning to install wayfinding signs in Billings. The project was awarded to Epcosigns at the February 12, 2007 City Council meeting. The project will install 24 wayfinding signs in the downtown area to direct pedestrians and drivers to points of cultural interest. Included in the project are 24 wayfinding directional signs in the downtown area and a gateway monument sign at 4<sup>th</sup> Avenue South and South 27<sup>th</sup> Street. A majority of these signs are along state routes in state right of way (ROW). In order to install these signs in the state ROW, Montana Department of Transportation (MDT) requires a Memorandum of Agreement between MDT and the City regarding the installation and maintenance of these signs.**ALTERNATIVES ANALYZED:**

1. Approve the Memorandum of Agreement with MDT for installation of the wayfinding signs; or
2. Do not approve the Memorandum of Agreement with MDT.

**FINANCIAL IMPACT:** There is no financial impact to the City with this agreement as long as the Downtown Billings Partnership is in existence. Downtown Billings Partnership is funding the installation and maintenance of the project. In the event the Downtown Billings Partnership ceases to exist, the City of Billings will be responsible for maintenance.**RECOMMENDATION**

Staff recommends Council approve the Memorandum of Agreement with MDT that grants the City permission to install and maintain wayfinding signs in the State Right of Way.

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

**ATTACHMENT**

A.      Montana Department of Transportation, Memorandum of Agreement

## **MEMORANDUM OF AGREEMENT**

THIS Memorandum of Agreement is made and entered into by and between the State of Montana, acting by and through its Department of Transportation (hereinafter MDT), and the City of Billings (hereinafter City).

### **WITNESSETH:**

THAT, WHEREAS, MDT and the City are cooperatively working to allow construction of City work order 06-20 (Downtown Billings Wayfinding Signage); (hereinafter the "Project"); and

WHEREAS, the City has submitted and received approval, through MDT from the Federal Highway Administration (hereinafter FHWA), for an experimental Wayfinding Guide Sign Project; and

WHEREAS, the FHWA official ruling number and title of request for said experimental Wayfinding Guide Sign Project is "2-577(E)", and

WHEREAS, the Project is for the purpose of guiding motorists to a destination and not an advertising medium – the signs are not intended to benefit any business or landowner; and,

WHEREAS, MDT will issue an encroachment permit for all signs installed with the Project on State-maintained routes as submitted and approved by MDT and FHWA and stipulations contained herein;

NOW, THEREFORE, for and in consideration of the stipulations contained herein, the parties agree as follows for all such work within MDT right of way:

1. The City agrees, as written in such correspondence dated November 15, 2005 from City's Mayor Charles Tooley to MDT's Bruce Barrett, the following conditions.
  - a. As the sponsoring agency for experimentation, the City hereby certifies that these signs are not protected by patent or copyright. The time period and location(s) of the experiment are as follows:
    - i. Experimentation to commence: December 2006 for a period of 4 years.
    - ii. Locations for the experiment are as follows: local conventional highways in the downtown area of Billings.
  - b. The City's Research and Evaluation Plan is to conduct a survey of out of town drivers'/visitors' understanding of current guide and destination

signs by sampling these drivers at two locations in the jurisdiction before the experimentation, and then to conduct two follow-up surveys of driver understanding of the Wayfinding signing at the same two locations 3-4 months after the signs are in place. The City will then conduct a third follow-up survey two years after the signs are installed to ascertain their long-term performance.

- c. The City will terminate the experiment at any time it is determined that significant safety concerns are directly or indirectly attributable to the experimentation.
- d. The FHWA's Office of Transportation Operations has the right to terminate approval of the experiment at any time if there is an indication of safety concerns.
- e. Restore the site of the experiment to a condition that complies with the provisions of the Manual of Uniform Traffic Control Devices, 2003 edition, within 3 months following the end of the time period of the experiment. If, as a result of the experiment, a request is made that this Manual be changed to include the device or application being experimented with, the device or application will be permitted to remain in place until an official rulemaking action has occurred.
- f. The City will provide semiannual progress reports for the duration of the experiment, and further agrees to provide a copy of the final results of the experiment to the FHWA's Office of Transportation Operations within 3 months following completion of the experiment. The FHWA's Office of Transportation Operations has the right to terminate approval of the experiment if reports are not provided in accordance with this schedule.

- 2. The City will bid, award, administer, and fund the total cost of the Project.
- 3. The City accepts total responsibility for the maintenance of all signs installed with the Project.
- 4. The City will ensure compliance with all conditions defined in FHWA's approval of the Project.
- 5. The City will ensure that all Wayfinding signs do not impair existing signs or other traffic control devices.
- 6. The City will ensure that all hardware and mounting specifics meets MDT guidelines.

7. The City will perform the appropriate analysis of existing sign/poles used to mount Wayfinding Signs to ensure they can adequately resist wind loads and have proper breakaway capabilities.
8. The City is responsible to obtain all necessary rights of way or permission for the installation of all signs not within MDT right of way.
9. The City will perform any and all utility locates and is responsible for any damage to utilities.
10. Only the signs submitted for and approved by FHWA shall be installed with the Project.
11. MDT may remove any Wayfinding Sign within MDT right-of-way if the sign is not properly maintained or creates a public safety issue.
12. Except for any suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts or omissions or misconduct of MDT employees, the City will protect, indemnify, and save harmless MDT against and from all claims, liabilities, demands, causes of action, judgments (with any cost and fees that might be awarded), and losses to them as a result of errors or omissions in design and/or plans, construction, maintenance or use including any suits, claims, actions, losses, costs or damages of any kind, including MDT's legal expenses, made against the MDT by anyone arising out of, in connection with, or incidental to the Project and its design, construction, maintenance or use.

This agreement shall be binding on both parties, and the heirs, successors, personal representatives or assigns of either party.

IN WITNESS WHEREOF, the Director of Transportation's authorized representative has signed on behalf of the State of Montana, and the Mayor of the City of Billings, on behalf of the City of Billings, has signed and affixed hereto the seal of the City.

**MONTANA DEPARTMENT OF TRANSPORTATION**

Jim Lynch  
Director of Transportation

By \_\_\_\_\_ December \_\_\_\_\_, 2006  
Loran Frazier, P.E., Administrator-Engineering Division

Approved for Legal Content

By \_\_\_\_\_  
MDT Legal Counsel

**CITY OF BILLINGS**

By \_\_\_\_\_, 200 \_\_\_\_\_  
Mayor

Approved for Legal Content

\_\_\_\_\_  
City Legal Counsel

I, \_\_\_\_\_, Clerk of the City of Billings, hereby certify  
that the above agreement was regularly adopted by the City Council of the City of  
Billings at a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_; and that  
the City Council of the City of Billings authorized the Mayor to sign this agreement on  
behalf of the Council.

\_\_\_\_\_  
Billings City Clerk

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 26, 2006**

---

**TITLE:** STPHS 56(61) Various Intersections West of Billings

**DEPARTMENT:** Public Works Department

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

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**PROBLEM/ISSUE STATEMENT:** The Montana Department of Transportation has developed a project to upgrade signing, pavement markings and other traffic control devices at 21 major intersections in the area west of Shiloh Road. Table A attached summarizes locations where new traffic control devices will be installed. Table B attached summarizes where existing traffic control devices will be removed, replaced or upgraded. The goal of the project is to reduce traffic accidents and to have major intersections signed and marked in a more consistent manner. Intersections included in the project were selected by MDT through their *Safety Engineering Improvement Program*.

MDT requires approval of a project agreement with the local governing body before federal funds can be expended on a project. The agreement is a standard form agreement from MDT that details maintenance responsibilities for the completed improvements, and requires the City to enforce & maintain certain laws related to traffic and parking. If approved, MDT anticipates construction would start later this year.

**FINANCIAL IMPACT:** The estimated \$135,000 construction cost will be funded entirely with State and Federal funds. Yellowstone County and the City of Billings will be responsible for maintenance of the completed improvements within their respective jurisdictions. The City is already maintaining traffic control devices at the project intersections within the City limits and the agreement does not impose any new obligations on the City.

**RECOMMENDATION**

Staff recommends that Council approve the agreement with the Montana Department of Transportation for installation and upgrading of traffic control devices at various intersections west of Shiloh Road.

**Approved By:**

**City Administrator**       

**City Attorney**       

**ATTACHMENTS**

Table A—New Traffic Control Devices

Table B—Traffic Control Devices being removed, replaced or upgraded

TABLE A

<u>Intersection</u>	<u>Stop Ahead Signs</u>	<u>Stop Signs</u>	<u>Intersection Warning Signs</u>	<u>Flashers</u>	<u>Chevron Arrow Board Signs</u>	<u>“Cross Traffic Does Not Stop” Signs</u>
Neibauer & 48 <sup>th</sup>	1 sign		1 sign			
Hesper & 48 <sup>th</sup>	3 signs	2 signs		1 new flasher		
King & 48 <sup>th</sup>						2 signs
Central & 48th						2 signs
Grand & 48 <sup>th</sup>			2 signs			
Rimrock & 54 <sup>th</sup>			2 signs			2 signs
Danford & 56 <sup>th</sup>			2 signs			
Neibauer & 56 <sup>th</sup>			2 signs			2 signs
Hesper & 56 <sup>th</sup>			2 signs			
King & 56 <sup>th</sup>						2 signs
Grand & 56 <sup>th</sup> /54 <sup>th</sup>			2 signs		1 set of chevrons	
Danford & 64 <sup>th</sup>			2 signs			
Hesper & 64 <sup>th</sup>			2 signs			
King & 64 <sup>th</sup>						2 signs
Central & 64 <sup>th</sup>			2 signs			
Grand & 64 <sup>th</sup> /62 <sup>nd</sup>	1 sign		2 signs		1 set of chevrons	
Airport & 72 <sup>nd</sup>				1 new flasher		
Danford & 72 <sup>nd</sup>			2 signs			
Neibauer & 72nd			2 signs			
Hesper & 72 <sup>nd</sup>			2 signs			
<b>TOTALS</b>	<b>5 signs</b>	<b>2 signs</b>	<b>25 signs</b>	<b>2 new flashers</b>	<b>2 sets of chevrons</b>	

**TABLE B**

<u>Intersection</u>	<u>Remove and Replace Stop Ahead Signs</u>	<u>Remove and Replace Stop Signs</u>	<u>Remove and replace Intersection Warning Signs</u>	<u>Upgrade Flashers</u>	<u>Upgrade Chevron Arrow Board</u>
Hesper & 48 <sup>th</sup>				1 flasher	
Central & 48 <sup>th</sup>				1 flasher	
Rimrock & 54 <sup>th</sup>				1 flasher	
Neibauer & 56 <sup>th</sup>				1 flasher	
King & 56 <sup>th</sup>				1 flasher	
King & 64 <sup>th</sup>				1 flasher	
Central & 64 <sup>th</sup>	1 sign				1 set of chevrons
Airport & 72 <sup>nd</sup>	2 signs		2 signs	1 flasher	
Hesper & 72 <sup>nd</sup>		2 signs			
King & 72 <sup>nd</sup>				1 flasher	
<b>TOTALS</b>	<b>3 signs</b>	<b>2 signs</b>	<b>2 signs</b>	<b>8 flashers</b>	<b>1 set</b>

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 26, 2007**

---

**TITLE:** Work Order 07-04, Garden Avenue Waterline – Contribution and Memorandum of Understanding with Yellowstone County

**DEPARTMENT:** Public Works/Engineering Division

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

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**PROBLEM/ISSUE STATEMENT:** Yellowstone County has created an RSID to replace the waterline in Garden Avenue. Approximately half of the existing services are City residents, so the City is planning to contribute half of the cost of the waterline replacement. The project was managed by the County and bid on February 12, 2007. The low bid was from Western Municipal in the amount of \$505,390, and half of that amount is \$252,695. The City's contribution is \$311,782.50, which includes engineering design, construction and construction administration. The City will own and maintain the line upon completion. County and City staff have drafted a Memorandum of Understanding (MOU) outlining the responsibilities of the City and the County regarding construction, funding, ownership and maintenance of the waterline. The MOU also includes a provision that splits all change orders evenly between the City and County. The project is planned to be constructed before the end of May 2007.

**ALTERNATIVES ANALYZED:**

1. Approve the City's funding contribution of \$311,782.50 and the Memorandum of Understanding with Yellowstone County; or
2. Do not approve the funding contribution of \$311,782.50 and the Memorandum of Understanding with Yellowstone County.

**FINANCIAL IMPACT:** The contribution of \$311,782.50 for the waterline is budgeted in the FY '07 water replacement projects.

## **RECOMMENDATION**

Staff recommends Council approve the contribution of \$311,782.50 and the Memorandum of Understanding with Yellowstone County that outlines the responsibilities of the City and the County in regards to the waterline replacement in Garden Avenue.

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

**ATTACHMENT :**

Yellowstone County, Memorandum of Understanding

## **MEMORANDUM OF UNDERSTANDING**

This document is a Memorandum of Understanding between Yellowstone County (County) and the City of Billings (City) to make water line improvements and street improvements in the area referred to as Garden Avenue and shown in the attached boundary map.

**WHEREAS**, Yellowstone County has created an RSID to partially fund a water line replacement in the Garden Avenue area, and

**WHEREAS**, the water line replacement in the Garden Avenue area will benefit both City and County residents in the area, and

**WHEREAS**, the County will engage an engineer and contractor to construct a 12" water line meeting City and Montana Department of Environmental Quality standards, and

**WHEREAS**, the City represents to the County that the City will cover 50% of the construction and engineering costs for a 12" water line replacement, or \$311,782.50, and

**WHEREAS**, the City and County will split 50% of the costs for change orders and liquidated damages, and

**WHEREAS**, the 50% funding for the 12" line was to cover costs for the city residents utilizing the line replacement, and

**WHEREAS**, After construction of the water line, the City will assume ownership and maintenance of the line, and

**WHEREAS**, the County will provide for the construction of the following work items:

1. replace any culverts that are needing replacement;
2. pulverize and used as road base any remaining pavement (asphalt material) after completion of the City water line replacement;
3. add any needed surface material, reshape surface prior to paving, and recompact prior to paving;
4. pave prepared areas with a 3" Asphalt Surface (from Belknap Avenue to the end of the water line project), and pave a 2" overlay over the existing asphalt surface from the end of the water line project to Sugar Avenue, (widening where possible);
5. stripe the completed paved surface; and
6. provide traffic control for any work done by County forces or by Contract for the portions of County work items.

**THE THEREFORE BE IT AGREED** by the County and City to provide for these improvements. After the water line is constructed, the County will make the road improvements outlined in item 6 above and fund these improvements from the County road fund.

**YELLOWSTONE COUNTY, MONTANA - BOARD OF COUNTY COMMISSIONERS**

By \_\_\_\_\_ Witness: \_\_\_\_\_  
James E. Reno Tony Nave, Clerk and Recorder  
Chair, Board of County Commissioners

By \_\_\_\_\_  
John Ostlund  
Member, Board of County Commissioners

By \_\_\_\_\_  
Bill Kennedy  
Member, Board of County Commissioners

**CITY OF BILLINGS, MONTANA**

By \_\_\_\_\_ (SEAL & ATTEST)  
Title \_\_\_\_\_ City Clerk

APPROVED AS TO FORM:

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City Attorney

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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, February 26, 2007**

**TITLE:** Reimbursement Agreement for Private Contract No. 530--  
The Estates at Briarwood Subdivision, First Filing

**DEPARTMENT:** Public Works

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

**PROBLEM/ISSUE STATEMENT:** In order to obtain city water and sewer service for The Estates at Briarwood Subdivision (1<sup>st</sup> Filing), the Developer, Jim Kisling, extended 8-inch (interior) water and sewer mains in McMasters Road. Ridgewood Estates Subdivision (2<sup>nd</sup> Filing) is located on the opposite side of McMasters Road from The Estates at Briarwood. Since Ridgewood Estates did not desire City services from these new water and sewer mains at the present time, the Developer paid for the entire cost of the project. At such time that lots in Ridgewood Estates with direct connections to the installed mains request city water and/or sewer service, the Developer desires to be reimbursed a portion of his construction costs. Under the above-described conditions, established Public Works Department (PWD) policy calls for reimbursement to be accomplished through the attached Reimbursement Agreement.

**FINANCIAL IMPACT:** Based on actual project costs for P-530, the PWD has determined that \$93,614.87 is eligible to be recovered by the Developer. In accordance with a PWD standard Reimbursement Agreement, reimbursement fees paid to the City are accumulated and paid to the Developer annually on each November 1<sup>st</sup> following acceptance of the constructed utilities. Payments are limited to reimbursement fees paid to the City on or before the seventh anniversary of the date of acceptance.

### **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute the attached Agreement. Reimbursement fees collected by the City shall be based on actual water and sewer utility construction costs.

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

ATTACHMENT

Attachment A--Reimbursement Agreement

## **BACKGROUND**

Interior (8-inch) water and sewer mains were extended in McMasters Road by the Developer in order to serve The Estates at Briarwood Subdivision, 1<sup>st</sup> Filing, which is located on the north side of McMasters Road. Ridgewood Estates Subdivision, 2<sup>nd</sup> Filing, is located on the south side of McMasters Rd., but they did not participate in the project. Water and/or sewer services were installed to 9 lots in Ridgewood Estates as part of this project even though these lots are not currently developed. Services were installed to these 9 lots at the present time so that McMasters Rd. does not need to be cut for the services to be installed in the future.

Under the City Utilities Fees Practice (A.O. 84), Developers desiring interior main extensions are responsible for the cost of their fair share portion of improvements that front the development or are necessary to get service to the development. In the case of the subject project, 9 lots in Ridgewood Estates will need to obtain future water and/or sewer service off the new 8-inch mains in McMasters Rd. The PWD utilizes a standard Reimbursement Agreement as the mechanism by which the original Developer may be paid back over time as these 9 lots connect directly to the utility mains constructed by the original Developer.

Under Item 3.B. in the attached Reimbursement Agreement, reimbursement fees paid to the City are to be accumulated and paid-back to the Developer annually on each November 1<sup>st</sup> following acceptance of the utility installation; in addition, payments are limited to reimbursement fees paid to the City on or before the seventh anniversary of the date of acceptance.

Based on the actual cost to construct P-530, the PWD has determined that \$93,614.87 is eligible to be recovered by the Developer. Since 9 lots in Ridgewood Estates receive water and/or sewer service from the water and sewer mains installed in this project, a reimbursement fee of \$10,401.65 will be assessed per lot as each desires city water and/or sewer service.

## **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute the attached Agreement. Reimbursement fees collected by the City shall be paid back to the Developer according to the schedule stipulated in the Agreement.

## **ATTACHMENT**

Attachment A--Reimbursement Agreement

Return to:  
Engineering, Inc.  
1300 North Transtech Way  
Billings, MT 59102

RECEIVED  
JAN 30 2007

DISTRIBUTION & COLLECTION

### AGREEMENT

THIS AGREEMENT entered into this 26<sup>th</sup> day of January,  
2007 between THE CITY OF BILLINGS, Billings, Montana, hereinafter referred to as  
the "CITY," and Jim Kisling of KW Signature Homes, hereinafter referred to as  
"DEVELOPER."

#### WITNESSETH:

WHEREAS, Article 26-500 of the Billings, Montana, City Code provides a procedure for certain developers to be reimbursed for a portion of the costs of constructing special benefit facilities under certain circumstances; and

WHEREAS, no person, developer, customer, or applicant shall acquire any vested rights under the terms and provisions of this agreement or Article 26-500 BMCC; and

WHEREAS, Developer has agreed to extend a special benefit facility for the purpose of providing water and/or wastewater service through plans and specifications approved by the City on the 23rd day of June, 2005. Said plans and specifications generally provide for the construction of special benefit facilities which are specifically described in Exhibit 1 attached hereto; and

WHEREAS, Developer is desirous of obtaining reimbursement for a portion of the special benefit facilities hereafter described; and

WHEREAS, the City is desirous of reimbursing the Developer for a portion of such special benefit facilities.

NOW, THEREFORE, City and Developer, in consideration of their mutual promises to each other hereinafter stated, agree as follows:

1. The special benefit facilities which are eligible for reimbursement to the extent set forth in this agreement are specifically described in Exhibit 1 attached hereto and by this reference incorporated herein as if fully set out.
2. With respect to Developer's entitlement to reimbursement, the City and Developer agree that the conditions specified in Section 26-504 BMCC, and the further conditions set forth hereinafter must be met before Developer is entitled to or will receive any reimbursement. Said conditions are:
  - A. Special benefit facilities, off site or perimeter, which front and abut property not owned by the Developer must be extended by the Developer at his expense. Costs of special benefit facilities, which are financed through special improvement districts, shall not be reimbursed.

- B. The extension of special benefit facilities must be for the purpose of serving property located within the corporate limits of the City. Costs of extensions of special benefit facilities to serve property outside the City limits shall not be reimbursed.
- C. Total project costs for the extension of the special benefit facilities must be at least \$10,000.00.
- D. Developer shall provide to the City sufficient verifiable cost data to determine the appropriate reimbursement fee to be charged to prospective customers under Section 26-503 BMCC within 30 days of final inspection of the special benefit facilities and approval and acceptance by the City that all construction was completed according to the approved plans and specifications.
- E. Developer shall enter into a standard reimbursement agreement with the City at the time the City approves the Developer's application for extension of special benefit facilities.
- F. Upon completion of the extension of the special benefit facilities, the Developer must convey all right, title, and interest in the facilities to the City.
- G. Developer shall at all times provide to the City a current address for purposes of mailing reimbursement payments to Developer.
- H. Extension of special benefit facilities must be done in compliance with all rules, regulations, resolutions, and ordinances of the City, including but not limited to standards for design and construction of the facilities.

Developer agrees that it will not be entitled to any reimbursement whatsoever until the above conditions have been completely satisfied. Developer's violation of any of the conditions set forth herein or in Article 26-500 of the Billings, Montana, City Code may, at the option of the City, result in denial of any and all reimbursement to the Developer.

- 3. In addition, it is expressly agreed that any reimbursement payment is conditioned upon the following:
  - A. Reimbursements are payable solely from revenues derived from payment of reimbursement fees as established in Article 26-500 BMCC. Reimbursement payments are limited to reimbursement fees actually collected for connections with the special benefit facilities described in Exhibit 1, less all administrative costs incurred by the City. In no event will reimbursement payments exceed the actual cost to the Developer of extending the special benefit facilities.
  - B. Reimbursement fees paid to the City shall be accumulated and paid to the Developer annually on each November 1st following acceptance of the special benefit facilities by the City beginning on November 1, 2006, and ending on November 1, 2013.
  - C. Reimbursement payments shall not include any interest charges.
  - D. Reimbursement payments to the Developer shall be limited to reimbursement fees paid to the City on or before the seventh anniversary of the date of acceptance by the City of the special benefit facilities described in Exhibit 1 attached hereto. Any reimbursement fees paid to the City after said anniversary date

shall be retained by the City and used for construction of additional water and/or wastewater system facilities.

Acceptance of the special benefit facilities for purposes of reimbursement as set forth in this agreement shall be evidenced by written notice or a letter from the Public Works Department of the City and directed to the Developer at the address set forth in the first paragraph of this agreement.

4. The City agrees that it will require prospective customers owning property located outside a Developer's subdivision and desiring to connect a service line or lines to any special benefit facilities which has been extended at the Developer's expense to pay a reimbursement fee to the City in compliance with Section 26-503 BMCC.
5. The City by this agreement is not guaranteeing that reimbursement fees in a sufficient amount to fund full reimbursement to the Developer will be collected within the seven-year period. The City is agreeing only that it will develop a plan under Section 26-503 BMCC that will assure that prospective customers owning property located outside a Developer's subdivision and desiring to connect a service line or lines to the special benefit facility described in Exhibit 1, which has been extended at the Developer's expense, shall pay a fee and said fee shall be distributed as set forth herein. This fee applies only to connections and does not apply to additional extensions of the special benefit facility. The fee to be charged said prospective customers shall be based upon the final total project costs and \$10,401.65/lot. The lots subject to this agreement include lots 15, 16, and 20 through 26, Block 2, Ridgewood Estates Subdivision, Second Filing.
6. The address for mailing the reimbursement payment to the Developer shall be that address specified in the first paragraph of this agreement. Any change in address of the Developer shall be sent to the Public Works Director of the City of Billings at P.O. Box 30958, Billings, Montana 59111. The designation of a new address shall be accompanied by a copy of this agreement.
7. This agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

Dated this 26 day of January, 2007.

DEVELOPER

By:



CITY OF BILLINGS

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

U-30-64 (01/87) NO11587

P:03126\_02\_PUD\_Reimburse\_Agrmt

3

(01/15/07) ccg

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## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, February 26, 2007**

**TITLE:** Approval of Easement for Telephone Cabinet Site for Copper Ridge Subdivision, 1<sup>st</sup> Filing, Block 1, Park.

**DEPARTMENT:** Department of Parks, Recreation, and Public Lands

**PRESENTED BY:** Mike Whitaker, PRPL Director

**PROBLEM/ISSUE STATEMENT:** Q West Corporation has requested an easement in the Block 1 Park in Copper Ridge Subdivision, 1<sup>st</sup> Filing, as shown on Exhibit "A", attached, to locate central telephone cabinets in order to extend phone service to the lots in Copper Ridge Subdivision as it continues to develop. The easement request is for an 8 foot wide by 109 foot long ingress/egress strip and a 15 foot by 20 foot pad site where 3 cabinets will be located. The pad site will be surrounded by a decorative fence matching the adjacent lot fencing that is taller than and conceals the cabinets on the pad and with suitable construction and landscaping to maintain the aesthetics of the site. The easement follows and is consistent with City policy on Park utility easements approved in January or 1996. Staff recommends approval because the cabinets are a necessary part of providing telephone service to all the lots in Copper Ridge Subdivision and the Subdivision Improvements Agreement as approved calls for utilities for the subdivision to be located in the public areas adjacent to the rear of the housing lots.

**FINANCIAL IMPACT:** The easement agreement provides for a one-time fee of \$2,000, or \$6.66 per square foot, to be paid for the pad site. The amount is based on the current market cost for a lot in Copper Ridge Subdivision, which is running about \$6.20 per square foot. There are other single utility box installations on street r.o.w. located on Golden Acres Road and on the corner of Rimrock Road and Golden Acres Road nearby. It is the staff recommendation that the easement fee be put into the Copper Ridge Subdivision Park Maintenance District fund 4031 to offset ongoing maintenance costs for the subdivision residents.

**RECOMMENDATION**

Staff recommends approval by the City Council of the Telephone cabinet easement with QWest Corporation.

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

**ATTACHMENTS:**

Qwest Corporation Easement for Copper Ridge Subdivision, 1<sup>st</sup> Filing

**CITY OF BILLINGS**  
**DEPARTMENT OF PARKS, RECREATION & PUBLIC LANDS**

**UTILITY RIGHT-OF-WAY EASEMENT**

The **City of Billings**, for and in consideration of: **(\$2,000.00) Two Thousand and No One Hundreds dollars**, in hand paid by the **Grantee**, the receipt whereof is hereby acknowledged, as agreed, hereby grants and conveys to: **QWEST Corporation, Grantee**, a **Utility right-of-way Easement** on the following described City property:

A tract of land fifteen feet by twenty feet (15' x 20') and ingress/egress strip as described, located in **Copper Ridge Subdivision, First Filing, Block 1, PARK**, situated in the SW1/4 of Section 25; Township 1 North, Range 24 East P.M.M., **Yellowstone County, Montana**. Said tract and easement strip located as shown on **Exhibit "A"** attached hereto and made a part hereof:

This easement to **QWEST Corporation, Grantee**, is for the purpose of constructing, operating, maintaining, replacing, and removing utility systems as described in **Exhibit "A"** attached on the above described property, together with the right of free ingress and egress over and across said property for the above stated purpose. However, the **City of Billings** reserves the right to occupy and/or use the property in question for all purposes not inconsistent with the rights herein granted.

**Utility Description:** A 15 foot by 20 foot base pad with 3 telephone cabinets as shown on **Exhibit "D"**, and ingress/egress strip 8 feet wide.

**(See attached plans and photos, Exhibits "A", "B", "C", "D", and "E").**

**It is understood and agreed that:**

1. All utility installations located within this easement shall be installed and situated as required in the **Policy on Utility Easements in Parks, January, 1996**, of the City of Billings.
2. **Grantee** shall install the utility and restore the park to its original conditions as specified by the **City of Billings**. Restoration to be completed within 10 days of the completion of installation and construction.
3. To allow travel over and across the park by the **Grantee** linear portions of the utility installation shall be eight (8) feet in width (sufficient to allow access to necessary equipment for installation and repair purposes).
4. Appropriate measures, as approved by the **City of Billings**, shall be implemented to protect any park trees (as attached: Exhibit "A" through "D") and irrigation lines and

heads in the vicinity of the utility during installation and during any replacements or repairs.

5. **Grantee** shall maintain the above ground installation in such a manner as to preserve or enhance the aesthetics of the surrounding park area and private housing lots, with a decorative fence matching the height, style, materials and color of the fence on adjacent Lot 1, Block 1, of Copper Ridge Subdivision, 1<sup>st</sup> Filing.
6. All underground wire and cable installations shall be in conduit.
7. This easement is not assignable and is expressly limited to use by the **Grantee** for only the purposes set forth herein.
8. The **City of Billings** shall be notified of any repairs to be made to the underground portion of the utility installation.
9. The **City of Billings** agrees that this easement shall be transferred should ownership of said described tract change in the future.
10. **Grantee** indemnifies and holds the **City of Billings** harmless from any and all claims for any injury or damages of any kind or nature to persons or property resulting from the utility or the operations of the **Grantee** on this property pursuant to this easement.
11. **Grantee** shall at its expense relocate the utility in the park to a mutually agreeable location, in the event that the installed location conflicts with any planned use of the park property by the **City**.
12. Noncompliance with any of the conditions and terms of this agreement shall, upon discovery and notification of the **Grantee**, cause it to become null and void and be terminated in its entirety. The **Grantee** shall, in that event, vacate the premises immediately and restore the park grounds to their original condition.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2007.

## City of Billings:

By: \_\_\_\_\_  
Ron Tussing, Mayor

Attest:

By: \_\_\_\_\_  
Marita Herold, MMC City Clerk

Approved As To Form:

By: \_\_\_\_\_  
City Attorney

State of Montana )  
 ) ss.  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me personally appeared \_\_\_\_\_, known to me and who executed the above and foregoing instrument and acknowledged to me that they executed the same.

NOTARY PUBLIC FOR THE STATE OF MONTANA  
Residing in Billings, Montana  
My Commission Expires:

Filed for record this \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
at \_\_\_\_\_ o'clock\_\_\_\_\_, and recorded in Book \_\_\_\_ of \_\_\_\_\_, on page \_\_\_\_ of the  
records of the County of Yellowstone, State of Montana.

## CLERK AND RECORDER

R/W# MT0201200701TB Job # 524A215 Exchange Billings West County Yellowstone  
1/4 Section SW 1/4 Section 24 Township 1 North Range 24 East

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, February 26, 2007**

---

**TITLE:** Environmental Protection Agency Smart Growth Implementation Assistance Grant

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Lora Mattox, AICP, Neighborhood Planner

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**PROBLEM/ISSUE STATEMENT:** The Environment Protection Agency has recently announced the availability of technical assistance through the Smart Growth Implementation Assistance Grant. If selected, the City of Billings will receive assistance in the form of a multi-day visit from a team of experts organized by EPA and other national partners to work with local leaders. The grant can be used to assist communities with conducting site design workshops for redevelopment areas, encourage specific smart growth techniques, smart growth techniques to reach economic development goals and the development of master plans for redevelopment areas. If selected, this grant will be used to facilitate meetings between members of the Billings Industrial Revitalization District Inc. (BIRD), North Park Task Force, Big Sky EDA, and the City of Billings to develop a master plan for the East End TIF District. The grant requires a letter of support from the primary elected official and signatures of other elected officials that support smart growth and this application.

**ALTERNATIVES ANALYZED:** Agree or decline to submit for the EPA Smart Growth Implementation Assistance Program Grant.

**FINANCIAL IMPACT:** If the City does not apply for or is not selected for this grant, the City may have to allocate other resources to complete a master plan for the East End TIF District. There is not a cash match for this grant, in-kind match such as providing the facilitation of meetings and providing materials will be utilized.

**RECOMMENDATION**

Staff recommends that the City Council authorize the submission of an application for a technical assistance grant through the Environmental Protection Agency.

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

**ATTACHMENT**

A.      Sample Letter of Support

**Attachment A**  
Sample Letter of Support

February 26, 2006

Ilana Preuss  
Development, Community and Environment Division  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Mail Code 1807T  
Washington, DC 20460

RE: Smart Growth Implementation Assistance Grant

Dear Ms. Preuss:

On behalf of the City of Billings, I respectfully submit this letter of support for the Smart Growth Implementation Assistance Grant. The City of Billings is committed to the concepts of smart growth by focusing the city's efforts on contiguous development in and around existing population centers by using the city resources in a cost effective manner, creating attractive developments, encouraging more mixed-use neighborhoods, and developing more non-motorized connections between residential neighborhoods and work places.

The East End TIF District is located in the core downtown area and has been designated as an area of urban renewal. Through cooperative efforts between the City of Billings, Big Sky Economic Development Authority, Downtown Billings Partnership, Billings Industrial Revitalization District Inc. and the North Park Task Force an initial visioning exercise was completed to identify future uses and redevelopment within this area. The City of Billings is requesting technical assistance to incorporate smart growth values into this large redevelopment project.

In closing, the City of Billings is pleased to submit this application for your consideration and we are looking forward to working with the EPA and the Smart Growth Implementation Assistance Grant.

Thank you.

Sincerely,

Ron Tussing  
Mayor, City of Billings

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# M

## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, February 26, 2007

**TITLE:** Purchase of Necessary Right-of-Way from McDonalds at 1046 Grand Avenue

**DEPARTMENT:** Public Works/Engineering

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

**PROBLEM/ISSUE STATEMENT:** Work Order 00-15 Grand Avenue will widen Grand Avenue from 8<sup>th</sup> St. W. to 12<sup>th</sup> St. W. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners for the last two years. The Right-of-Way needed was identified on the design plans for the project and must be acquired prior to construction. McDonalds Real Estate Company owns the property at 1046 Grand Avenue which encompasses Lots 1, 2, and 3 of Certificate of Survey 269. McDonalds has agreed to subdivide their property forming a street tract out of the necessary right of way and then quitclaim the street tract to the City of Billings for \$26,849.20 and grant a temporary construction easement for \$2,992.00, which is consistent with square foot costs of the past purchases on Grand Avenue.

### ALTERNATIVES ANALYZED:

1. Approve the Subdivision Plat of McDonalds, accept the quitclaim deed for the Street Tract, and accept the temporary construction easement.
2. Do not approve the Subdivision Plat of McDonalds, accept the quitclaim deed for the Street Tract, and accept the temporary construction easement.

**FINANCIAL IMPACT:** The cost of the street tract and construction easement from McDonalds is \$29,841.20. This will be paid out of Gas Tax allocated for WO 00-15 Grand Avenue Widening Project.

### RECOMMENDATION

Staff requests that Council approve the Subdivision Plat of McDonalds, accept the quitclaim deed for the Street Tract, and accept the temporary construction easement.

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

**ATTACHMENT**

- A. Copy of Subdivision Plat for McDonalds Property
- B. Quitclaim Deed
- C. Construction Easement

M1

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M2

**Billings, MT**  
**1046 Grand Avenue**  
**L/C: 025-0001**

Prepared by: Consuelo Boyd  
After recording return to: Amy Evans  
McDonald's USA, LLC  
One McDonald's Plaza  
Oak Brook, IL 60523

# QUITCLAIM DEED

**McDonald's Real Estate Company**, a Delaware corporation, For Value Received, does hereby convey release, remise and forever quit claim unto **The City of Billings, Montana**, the following described premises in Yellowstone County, Montana, to-Wit:

EXHIBITS A and B attached hereto and made a part hereof

together with their appurtenances.

**McDonald's Real Estate Company, a Delaware corporation**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_\_.

STATE OF ILLINOIS )  
: ss.  
County of DuPage )

I, \_\_\_\_\_, a Notary Public in and for the county and state aforesaid, DO  
HEREBY CERTIFY that \_\_\_\_\_, the \_\_\_\_\_ of McDonald's Real Estate  
Company, a Delaware corporation, having a principal place of business at Wilmington, Delaware who is  
personally known to me to be the same person whose name is subscribed to the foregoing instrument as  
such appeared before me this day in person and acknowledged that he/she signed, sealed and delivered  
the said instrument as his/her free and voluntary act as such, and as the free and voluntary act of said  
corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, this \_\_\_\_ day of \_\_\_\_\_, 2007.

---

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Printed Name)

(SEAL)

Notary Public for the State of Illinois  
Residing in \_\_\_\_\_  
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: \_\_\_\_\_  
MARITA HEROLD, City Clerk

STATE OF MONTANA    )  
                          : ss.  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, a Notary Public for the State of Montana, personally appeared RON TUSSING and MARITA HEROLD, 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.

\_\_\_\_\_ (Signature)

(NOTARIAL SEAL)

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

## EXHIBIT A

### **GRANTOR'S PROPERTY**

A tract of land located in Lots 1, 2, and 3, Certificate of Survey No. 269, situated in Government Lot 2, Section 5, township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana, said tract being more particularly described as follows:

Lot 4 of Amended Lots 1, 2, & 3, Certificate Of Survey No. 269 containing 2,230 square feet, 0.051 acres, more or less.

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# M3

**Billings, MT**  
**1046 Grand Avenue**  
**L/C: 025-0001**

**Prepared by: Consuelo Boyd**  
**After recording return to: Amy Evans**  
**McDonald's USA, LLC**  
**One McDonald's Plaza**  
**Oak Brook, IL 60523**

## TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT ("EASEMENT") is dated as of February \_\_\_, 2007, by and between **McDONALD'S REAL ESTATE COMPANY, a Delaware corporation** ("Grantor") and **THE CITY OF BILLINGS, MONTANA, a Montana Municipal Corporation, its agents or contractors** ("Grantee"). The following statements are a material part of this agreement:

- A. Grantee has requested and Grantor has agreed to grant an Easement upon, over, across, in, through and under a portion of the property shown in Exhibit A attached hereto and incorporated herein by reference. (Grantor's Property").
- B. Grantor agrees to grant to Grantee an Easement upon, over, across, in, through and under the area shown in Exhibit B, attached hereto and incorporated herein by reference ("Easement Area")

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. Grantor hereby grants to Grantee the Easement for ingress and egress upon, over, across, in, through and under the Easement Area for the purposes of curb, gutter, sidewalk, and street improvements to widen Grand Avenue to allow for a center left turn lane on and along the acquired property at no cost to the Grantor. The Grantee further agrees to relocate or remove obstructions such as; planters, lights, landscaping, etc. as required to accommodate the street widening at no cost to the Grantor. The Grantor further agrees to modify the existing property, as necessary, to reasonably match the new improvements at no cost to the Grantor. Grantee further agrees that it will have any impacted sprinklers replaced, the area re-landscaped to existing conditions and any other disturbed vegetation replaced. (Collectively "Grantee's Work")
2. Grantee will notify Grantor not less than 72 hours prior to commencement of Grantee's Work in the Easement Area and will perform all Grantee's Work in such a manner so as to not unduly disrupt the operation of the McDonald's restaurant on Grantor's Property, including its drive-thru operations.

3. This Easement shall remain in effect from the date Grantee commences construction and utilizes the Easement and shall terminate upon the earlier to occur of (a) completion of construction of Grantee's Work, or (b) October 31, 2008, unless extended by mutual agreement of the parties.

4. Grantee hereby covenants and warrants to Grantor that it has secured all of the necessary permits and approvals required to complete Grantee's Work.

5. Grantor hereby reserves all such rights and privileges in the Grantor's Property as may be used and enjoyed by Grantor subject to the terms of this Easement.

6. If any damage occurs to Grantor's Property or any improvements thereon arising out of, related to, or as a consequence of any of Grantee's Work in the Easement Area, Grantor will promptly notify Grantee in writing of the damage and Grantee will repair the damage within thirty (30) days after receipt of Grantor's notice. Notwithstanding the foregoing, if any damage occurs to the McDonald's directional sign arising out of, related to, or as a consequence of any of Grantee's Work in the Permit Area, Grantee shall reimburse Grantor for the cost to repair or replace such sign, upon receipt of written notice from Grantor of such damage and the cost incurred by Grantor therefore.

7. Grantee will not park on or store any construction vehicles, equipment or materials within the Easement Area or on Grantor's Property.

8. Grantee will hold harmless, indemnify and defend Grantor, its lessees, licensees, employees, agents, contractors and assigns, and each of their lessees, licensees, employees, agents, contractors and assigns, against any and all claims, losses, damages, liabilities, expenses and costs (including, but not limited to, reasonable attorney's fees and court costs) suffered or incurred by Grantor for injuries to any person and damage to any property arising out of, in connection with, or as a result or consequence of Grantee's Work in or use of the Easement Area.

9. Grantee shall enter upon the Easement Area and conduct Grantee's Work at its sole risk, cost and expense. Grantee hereby waives and relinquishes any and all claims, liabilities, causes of action, demands, costs and expenses related to the subject matter of this Easement now or hereafter arising in Grantee or any of its employees', contractors' or agents' favor with respect to injury to persons or property occasioned by, directly or indirectly, the conditions of the Grantor's Property or any improvements thereon or any other facts or occurrences with respect to Grantee's conduct under this Easement. It is further understood that consideration of Two Thousand Nine Hundred and Ninety Two Dollars and 00/100's Dollars (\$2,992.00) will be given to Grantor under the terms of this Easement.

10. If there is a failure by either party to perform, fulfill or observe any agreement contained within this Easement, to be performed, fulfilled or observed by it, continuing for thirty (30) days, or in situations involving potential danger to the health or safety of persons in, on or about or substantial deterioration of the Grantor's Property, in each case after written notice, the other party may, at its election, cure such failure or breach on behalf of the defaulting party. Any

amount which the party so electing shall expend for such purpose, or which shall otherwise be due by either party to the other, shall be paid to the party to whom due on demand, without contest, upon delivery of its invoice, together with interest at the lower of (1) the rate of 10% per annum, or (2) the maximum rate permissible from time to time under applicable law, from the date of the expenditure or the date when it shall have become due to the date of payment in full.

11. The provisions of this Easement shall be binding upon the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Easement on the date first set forth above.

GRANTOR

McDONALD'S REAL ESTATE COMPANY,  
a Delaware corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007 before me a Notary Public for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, and acknowledged to me that they executed the foregoing instrument of behalf of and as the act of McDonald's Real Estate Company.

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

\_\_\_\_\_ (Signature)

(NOTARIAL SEAL)  
(Printed Name)

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

GRANTEE

CITY OF BILLINGS

---

RON TUSSING, Mayor

ATTEST:

By: MARITA HEROLD, MMC City Clerk

## **ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE**

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

### **CITY OF BILLINGS**

ATTEST:

RON TUSSING, Mayor

By: MARITA HEROLD, MMC City Clerk

STATE OF MONTANA)

: ss.

County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me, a Notary Public for the State of Montana, personally appeared RON TUSSING and MARITA HEROLD, 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.

(Signature)

(NOTARIAL SEAL)  
Name)

Montana

\_\_\_\_\_ (Printed

Notary Public for the State of

Residing in Billings, Montana

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**GRANTOR'S PROPERTY**

Lots 1-A, 2-A, and 3-A, Amended Lots 1, 2, & 3, Certificate of Survey No. 269 in the City of Billings, Yellowstone County, Montana.

## **EXHIBIT B**

### **Legal Description of Easement Area**

Legal Description of Construction Easement for Lots 1-A, 2-A, and 3-A, Amended Lots 1, 2, & 3, Certificate of Survey No. 269:

Beginning at the northwest corner of Lot 1-A; thence N89°59'47"E a distance of 154.79 feet; thence S00°15'22"E a distance of 10 feet; thence S89°59'47"W a distance of 154.78 feet; thence N00°16'27"W a distance of 10 feet to the point of beginning, containing 1,548 square feet, more or less, and all according to the attached Exhibit B.

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**AGENDA ITEM:**



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 26, 2007**

**TITLE:** Downtown Billings Association (DBA) Street Closures

**DEPARTMENT:** Parks, Recreation and Public Lands

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

**PROBLEM/ISSUE STATEMENT:** The DBA requests temporary street closures for its annual events as outlined in the attached document. These annual events are following the same basic outline as in previous years.

Recommended conditions of approval include DBA:

1. Contact all businesses and make them aware of the event 60 days in advance
2. Clean the area to be used and provide and empty waste cans after the event
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide a certificate of insurance naming the City of Billings as additional insured
5. Obtain proper alcohol and noise permits from the Police Department for events that require them

**ALTERNATIVES ANALYZED:**

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

**FINANCIAL IMPACT:** There are no costs to the City of Billings other than administrative time to process permit. Police, traffic control and litter removal are to be paid for the DBA.

**RECOMMENDATION**

Staff recommends that Council approve the closures as outlined in the attached document.

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

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AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 26, 2007

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**TITLE:** SID 1375 Claremont Road Resolution Authorizing for Construction Bids

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** SID 1375 was created at the December 18, 2006, City Council Meeting. The improvements to be constructed with SID 1375 generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements to Claremont Road between Lake Hills Drive and Gleneagles Boulevard. As required by statute, the City Council must adopt Resolutions authorizing staff to advertise and receive bids for construction and the sale of SID bonds.

**FINANCIAL IMPACT:** The total estimated costs of the Improvements are \$424,476.45. The costs of the Improvements are to be paid from the following sources: (1) \$110,000.00 of Special Improvement District bonds to be assessed to 4 properties with equal assessments; and (2) \$314,476.45 of cash contribution by Jeff Engel Construction, Inc., owner of 13 of the 17 lots in the District.

**RECOMMENDATION**

Staff requests that Council pass a Resolution Authorizing Construction Bids for SID 1375.

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

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**AGENDA ITEM:**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 26, 2007**

---

**TITLE:** SID 1377 Greenbriar Road Resolution Authorizing for Construction Bids  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** SID 1377 was created at the February 12, 2007, City Council Meeting. The improvements to be constructed with SID 1377 generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements to Greenbriar Road between Lake Hills Drive and Hillcrest Drive. As required by statute, the City Council must adopt Resolutions authorizing staff to advertise and receive bids for construction and the sale of SID bonds.

**FINANCIAL IMPACT:** The total estimated costs of the Improvements are \$158,449.80. The costs of the Improvements are to be paid from the following sources: (1) \$58,000.00 of Special Improvement District bonds hereinafter described; and (2) \$100,449.80 of cash contribution by Ron Hill, owner of 5 of the 8 lots in the District.

**RECOMMENDATION**

Staff requests that Council pass a Resolution Authorizing Construction Bids for SID 1377.

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

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# Q

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 26, 2007

**TITLE:** W.O. 05-02, 2005 and 2006 Miscellaneous/Developer Related Project

**DEPARTMENT:** Public Works - Engineering

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

**PROBLEM/ISSUE STATEMENT:** Each year staff receives numerous complaints of defective concrete improvements, some the result of trip and fall claims, and other requests from property owners that the City construct certain public improvements adjacent to their property.

Additionally, some developers do not complete the new development public improvement requirements. These improvements have historically been constructed under the annual Miscellaneous/Developer Related Program. In order to construct this year's improvements, Council must pass a Resolution of Intent and set a Public Hearing for the project in order to allow adjacent property owners to be assessed.

**FINANCIAL IMPACT:** The proposed project is funded through multiple sources, including direct property assessments for a total project cost of \$616,020, as follows:

Estimated Assessed Costs	\$343,000
Street Light Funds	\$ 5,000
Curb and Gutter Funds	\$ 50,000
Corner Lot Funds	\$ 60,000
Storm Drain Funds	\$ 50,000
Gas Tax Funds	\$100,000
Public Works Belknap Funds	\$ 5,000
Parks and Rec. Funds	\$ 3,020

Funding for the proposed project has already been authorized in the Capital Improvement Plan and is identified in the Fiscal Year 2007 budget.

### **RECOMMENDATION**

Staff recommends that Council pass a Resolution of Intent to construct the improvements identified in Work Order 05-02, 2005 and 2006 Miscellaneous/Developer Related Project, and establish a Public Hearing date of March 26, 2007.

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

**ATTACHMENT**

A.      Resolution of Intent

## **INTRODUCTION**

The proposed project represents curb, gutter, and sidewalk improvements at various locations in the city. This is a continuation of a long-standing annual program to deal with these various improvements. Council must pass a Resolution of Intent and establish a Public Hearing to have the improvements constructed.

## **PROCEDURAL HISTORY**

- Project requested by property owners – 2005 and 2006
- Field inventory completed and estimated project cost calculated – Winter 2006
- Resolution of Intent – February 26, 2007
- Notify affected property owners of proposed project – March 8, 2007
- Public Hearing and Resolution Ordering Improvements – March 26, 2007
- Construction – Summer 2007

## **BACKGROUND**

The proposed project represents two categories of properties. The first category is unfulfilled building permit obligations. The City of Billings Site Development and/or Subdivision Ordinances require the installation of public improvements in conjunction with the issuance of building permits. A small number of these properties either did not complete the requirements of the right-of-way permits or have requested that the improvements be completed under the City's project. Per Council policy, the uncompleted right-of-way permits are included in the next annual Developer Related Program. The costs of completing these improvements are assessed to the property owner.

The second category represents continuation of the annual improvements project for dealing with tripping hazards, drainage problems, property owner requests, citizen complaints, and other miscellaneous concrete work brought to the attention of the City Engineer's Office. This program proposes a continuation of the Council policy of allocating Gas Tax Funds for reconstruction of side street frontages on corner lots and the use of Curb and Gutter Funds to cover the cost of curb and gutter repair.

The proposed project also uses additional funding allocations to cover costs not normally assessed to property owners. A Storm Drain Fund allocation is used for repairing defective valley gutters, improperly graded curb and gutter, and substandard storm drain inlets; and a Public Works/Belknap Repair Fund allocation allows for minor adjustments of water lines.

## **RECOMMENDATION**

Staff recommends that Council pass a Resolution of Intent to construct the improvements identified in Work Order 05-02, 2005 and 2006 Miscellaneous/Developer Related Project, and establish a Public Hearing date of March 26, 2007.

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 26, 2007**

---

**TITLE:** Resolution of Intent to Create Expanded Park Maint. District No. 4025, Rehberg Ranch Estates Subdivision, First Filing and Second Filings, and Repealing Resolution of Intent 06-18454

**DEPARTMENT:** Department Of Parks, Recreation, & Public Lands

**PRESENTED BY:** Mike Whitaker, PRPL Director

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**PROBLEM/ISSUE STATEMENT:** The Rehberg Ranch Estates Subdivision Park Maintenance District No. 4025 currently includes only the First Filing park area and properties. This action will expand the PMD to include the recently approved Second Filing in the Park Maintenance District. The Second Filing adds approximately 22.47 acres of dedicated park and public open space to the area to be maintained, and 705,138 square feet of assessable property to the district. Development and improvement of the park areas will be by the developer through private contract. The Park Maintenance District needs to be expanded at this time to provide for the maintenance of the public area and improvements in the Second Filing. As a condition of the Rehberg Ranch Estates Subdivision, Second Filing final plat approvals, the Subdivision Second Filing must be included in the subdivision park maintenance district. The Resolution of Intent to Create the District is the first step in the process to include all lots of Rehberg Ranch Estates Subdivision Second Filing in Park Maintenance District No. 4025. The Resolution of Intent also repeals the Resolution of Intent No. 06-18454 approved on July 24<sup>th</sup>, 2006. The required Public Notice of Intention to Create the Expanded District was not available for publication as required on the Thursday following the passage of the Resolution, No. 06-18454, with the result that the creation process for the expanded district could not be completed at that time.

**ALTERNATIVES ANALYZED:**

- Create the Park Maintenance District now to assure assessments can be collected in November 2007, to pay costs of park maintenance in the 2<sup>nd</sup> Filing of Rehberg Ranch Estates as it is developed. This is the requirement approved in the Rehberg Ranch Estates Subdivision Improvement Agreement for the Second Filing and the staff recommendation.
- Do not create the Park Maintenance District at this time.

**FINANCIAL IMPACT:** The maintenance costs for the maintenance of the public area and improvements are estimated to be \$22,149.00 for the expanded district. The assessment rate for this amount is \$00.00713 per square foot in District 4025. The first year assessment for the 2<sup>nd</sup> Filing lots is shown in "Exhibit E" of the attached PMD documents for the coming year, and ranges from \$72 to \$130 for the single family residential lots.

### **RECOMMENDATION**

Staff recommends Council approve the Resolution of Intent to Create the Expanded Park Maintenance District No. 4025 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the March 26, 2007, City Council meeting, and to repeal Resolution 06-18454.

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

### **ATTACHMENT**

- A: Resolution of Intent to Create Park Maintenance District No. 4025;
- B. Exhibit B Rehberg Estates Sub., 2<sup>nd</sup> Filing Plat
- C. Exhibit C Rehberg Estates Sub., 2<sup>nd</sup> Filing Metes and Bounds Description
- D. Exhibit D Proposed District Expansion Property Ownership List
- E. Exhibit E Estimated cost First Year Assessments

## **INTRODUCTION**

Approval of the Resolution of Intent to Create the Expanded Park Maintenance District No. 4025 for the maintenance of Rehberg Ranch Estates, First Filing and Second Filing public areas is the first step in creating the expanded Park Maintenance District by setting a date for the Public Hearing and consideration of the Resolution to Create the district, and to notify the property owners included within the district of the intended action. The Resolution of Intent also repeals Resolution of Intent 06-18454, approved on July 24<sup>th</sup>, 2006.

## **PROCEDURAL HISTORY**

- The Rehberg Ranch Estates Subdivision, Second Filing plat has been approved and filed.
- The process to expand the Rehberg Ranch Estates Subdivision Park Maintenance District was begun in the Summer of 2006, and a Resolution of Intention To Create the Expanded District was considered and approved by the City Council on July 24<sup>th</sup>, 2006. The required Notice of Passage for the Resolution, Number 06-18454, was not available for publication as required and the process had to be discontinued.
- The Resolution of Intent To Create the Park Maintenance District provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and protest period and setting a date for a Public Hearing and Council consideration of the Resolution to Create the district at the March 26, 2007, regular City Council meeting.

## **BACKGROUND**

To provide the funding needed to develop and to maintain park areas in new subdivisions, subdivisions annexed and platted since 1982 have been required to develop parks and to create a Park Maintenance District to maintain them. It assures that there are well maintained parks in new areas of Billings without increasing the demand on the expenditures of the city general fund and to relieve the pressures on existing developed parks that adding new subdivisions to the city results in. The Rehberg Ranch Estates Subdivision Improvement Agreements call for the park improvements to be made and the Park Maintenance District to be created. The proposed expanded maintenance district will include all lots and blocks of Rehberg Ranch Estates, First Filing and Second Filing. Said lots shall eligible for assessment by square foot. All filings have or will have on file Waivers of Protest for the formation of the park maintenance district for all lots within Rehberg Ranch Estates, First Filing and Second Filing.

Approval of the Resolution of Intent to Create Expanded Park Maintenance District No. 4025 for Rehberg Ranch Estates, First Filing, is the first step in the creation process. The Resolution of Intent to Create the district provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures. The Public Hearing and consideration of the Resolution to Create the district will take place at the March 26<sup>th</sup>, 2007, City Council Meeting.

## **ALTERNATIVES ANALYSIS**

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

## **STAKEHOLDERS**

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

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

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

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

## **RECOMMENDATION**

Staff recommends Council approve the Resolution of Intent to Create the Expanded Park Maintenance District No. 4025 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the March 26, 2007, City Council meeting, and to repeal Resolution 06-18454.

### **ATTACHMENTS:**

A: Resolution of Intent to Create Park Maintenance District No. 4025;

**RESOLUTION NUMBER 07-**  
**DECLARING IT TO BE THE INTENTION OF THE BILLINGS,**  
**MONTANA, CITY COUNCIL TO EXPAND THE**  
**BOUNDARIES OF THE EXISTING SPECIAL**  
**IMPROVEMENT MAINTENANCE DISTRICT NO. 4025 FOR**  
**THE PURPOSE OF MAINTAINING THE EXISTING AND**  
**FUTURE PARK IMPROVEMENTS IN REHBERG RANCH**  
**ESTATES SUBDIVISION, FIRST FILING, TO INCLUDE**  
**REHBERG RANCH ESTATES SUBDIVISION, SECOND**  
**FILING, AND REPEALING CITY COUNCIL RESOLUTION**  
**NUMBER 06-18454**

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

**Section 1.** Proposed Expansion Of Extended Special Improvement Maintenance District No. 4025: Intention to Expand the Boundaries of Existing Special Improvement Maintenance District. The City proposes to maintain certain improvements to benefit certain property located in the City of Billings, Montana. The improvements consist of **the existing and future public area improvements located in Rehberg Ranch Estates Subdivision, First Filing plus any public area improvements located in Rehberg Ranch Estates Subdivision, Second Filing, installed by the developer, Parks Department and/or as part of a future Special Improvement District**, as more particularly described in Section 5. It is the intention of the Billings City Council to expand the boundaries of the existing Special Improvement Maintenance District No. 4025, created and established in the City under Montana Code annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing the maintenance costs for the landscaping and other public area improvements. The estimated annual costs for the maintenance of the improvements to be set by the Resolution of the Council each year.

**Section 2.** Number of District. The District, if the same shall be created and established, shall be known and designated as the Extended Special Improvement Maintenance District No. 4025 of the City of Billings, Montana.

**Section 3.** Boundaries of District. The boundaries of the District are to be extended to include the property depicted on a map attached as "Exhibit A" hereto (which is hereby incorporated herein and made a part hereof). The boundary of the extended District is more particularly described on "Exhibit B" hereto (which is hereby incorporated herein and made a part hereof), which boundary is designated and confirmed as the boundary of the District. A listing of each property to be added to the District is shown on "Exhibit C" hereto.

**Section 4.** Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits "A", "B" and "C" are hereby declared to be the Extended Special Improvement Maintenance District and the territory which

will benefit and be benefited by the maintenance of the existing and future public area improvements in Rehberg Ranch Estates Subdivision, First Filing to include Rehberg Ranch Estates Subdivision, Second Filing, and will be assessed for a portion of the costs of the maintenance as described in Section 1.

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

**Section 6. Assessment Methods: Property To Be Assessed.** All properties within the District are to be assessed for a portion of the costs of maintaining the existing and future public area improvements in Rehberg Ranch Estates Subdivision, First Filing to include Rehberg Ranch Estates Subdivision, Second Filing, as specified herein. The costs of maintaining the Improvements shall be assessed against the benefiting property, based on the assessable area method of assessment described in Section 7-12-4162 through 7-12-4165, M.C.A., as particularly applied and set forth herein.

**Section 7. Assessable Area.** All properties in the District will be assessed for their proportionate share of the costs of maintaining the existing and future public area improvements in Rehberg Ranch Estates Subdivision, First Filing to include Rehberg Ranch Estates Subdivision, Second Filing. The total assessable area to be added to the District is **705,138** square feet bringing the total assessment area within the District to **3,108,220** square feet. The costs of maintaining the Improvements per square foot of assessable area for the current year shall be **\$0.00713** per square foot as shown in Exhibit "D" (which is hereby incorporated herein and made a part hereof).

**Section 8. Payment of Assessments.** The assessments for the costs of maintaining the existing and future public area improvements in Rehberg Ranch Estates Subdivision, First Filing to include Rehberg Ranch Estates Subdivision, Second Filing, shall be payable, as prescribed in Section 7-12-4162 through 7-12-4165, M.C.A.

**Section 9. Public Hearing: Protests.** At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property being added to Extended Special Improvement Maintenance District No. 4025 subject to assessment and taxation for the cost and expense of maintaining the existing and future public area improvements in Rehberg Ranch Estates Subdivision, First Filing to include Rehberg Ranch Estates Subdivision, Second Filing may make and file with the City Clerk until **5:00 p.m. M.D.T.**, on the expiration date of said 15-day period, **March 16<sup>th</sup>, 2007**, written protest against being included in Extended Special Improvement Maintenance District No. 4025, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said regular meeting will be held on **Monday, March 26<sup>th</sup>, 2007, at 6:30**

**p.m., M.D.T.** in the Council Chambers, located on the Second Floor of the Police Facility at 220 North 27<sup>th</sup> Street, in Billings, Montana.

**Section 10. Notice of Passage of Resolution of Intention.** The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of the Resolution in the Billings Times, a newspaper of general circulation in the county on March 1<sup>st</sup> and March 8<sup>th</sup>, 2007 in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said Notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property that is being added to Extended Special Improvement Maintenance District No. 4025 listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

**Section 11. Repeal of Resolution of Intention 06-18454** City Council Resolution of Intention to Create the Expanded District No. 4025 passed on July 24<sup>th</sup>, 2006, is hereby repealed.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this  
\_\_\_\_\_  
day of \_\_\_\_\_, 2007.

THE CITY OF BILLINGS

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

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, MMC      City Clerk

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# S

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 26, 2007

**TITLE:** Second Reading of an Ordinance Expanding Ward I (Annexation #07-01)

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Wyeth Friday, AICP, Planner II

**PROBLEM/ISSUE STATEMENT:** On January 22, 2007, the City Council approved the annexation of Lot 3, Block 7, of Kimble Subdivision, Second Filing, (Annexation #07-01) containing 0.256 acres. The property is located at 215 Garden Avenue. Property owners Herbert and Laura Alvin requested the annexation. After annexation, the property must be added to one of the City's election wards. Council held a public hearing and approved on first reading the ordinance to add the property to Ward I on February 12, 2007. A second reading of the ordinance is the final step in the procedure to expand the ward boundaries.

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

### **RECOMMENDATION**

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

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

### ATTACHMENT

**A.** Ward Ordinance and Exhibit A

**ORDINANCE NO. 07-\_\_\_\_\_**

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

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

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

Portions of land situated in the NE1/4 and the NW1/4 of Section 11, T.1S., R.26E., P.M.M.,

Yellowstone County, Montana, more particularly described as:

Lot 3, Block 7 of Kimble Subdivision, Second Filing, Recorded March 1, 1956, Under

Document No. 558883, Records of Yellowstone County, Montana; including all adjacent right-of-way of Garden Avenue. Containing 0.342 gross and 0.256 net acres, more or less.

(# 07-01) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 12<sup>th</sup> day of February, 2007.

PASSED by the City Council on the second reading this 26<sup>th</sup> day of February, 2007.

THE CITY OF BILLINGS:

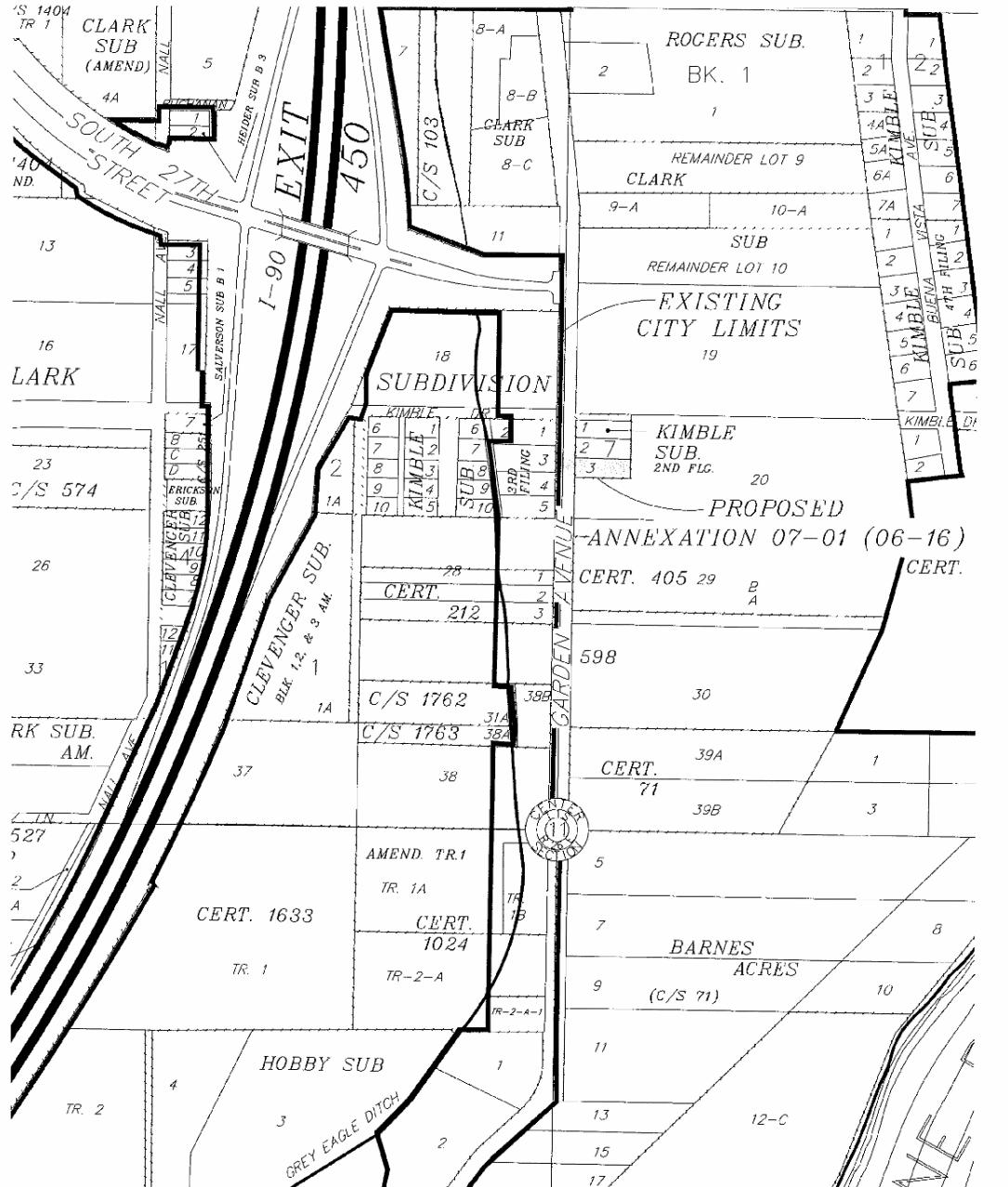
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Ron Tussing, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, MMC CITY CLERK

*EXHIBIT A*



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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, February 26, 2007**

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**TITLE:** Cenex Park Subdivision, Amended Lot 4, Block 4, final plat one-year extension request

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** The Cenex Park Subdivision, Amended Lot 4, Block 4, was conditionally approved by the City Council on May 10, 2004. Cenex Park Subdivision, Amended Lot 4, Block 4, is a 3-lot commercial subdivision located at the southwest corner of the intersection of South 24<sup>th</sup> Street West, Overland Avenue and Gabel Road. State law and City Subdivision Regulations give the subdivider three years in which to record a final plat, after which an extension of up to one year may be requested by the owner and granted by the City Council.

The property owner, John Negu, and his agent, Engineering, Inc., submitted a request to extend the time limit by one year (see attached letter). The 3-year review time for this minor plat will expire on May 10, 2007. The owner has stated that he has had delays in securing a liquor license for the property and in finalizing his site design. The owner is requesting a one year extension until May 10, 2008. The Planning Department believes that an extension is reasonable because the subdivider is progressing toward recording the final plat.

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

**RECOMMENDATION**

Staff recommends that the City Council approve a one year time extension for the Cenex Park Subdivision, Amended Lot 4, Block 4, until May 10, 2008.

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

**ATTACHMENTS**

- A. Extension Request Letter
- B. Preliminary Plat



January 4, 2007

Mr. Wyeth Friday  
Planning and Community Services  
510 North Broadway, 4th Floor  
Billings, MT 59101

Reference: Cenex Park Subdivision, Amended Lot 4, Block 4  
E.I. No. 79130.39

Dear Mr. Friday:

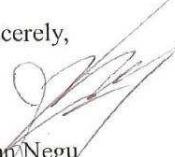
I would like to respectfully request a one-year extension of the preliminary plat approval from the City Council.

The council conditionally approved the preliminary plat at their meeting on May 10, 2004.

If you or the council have any questions, feel free to contact my agent, Engineering, Inc., in regards to this request.

Thank you in advance for consideration of this request.

Sincerely,

  
John Negu  
Owner/Applicant

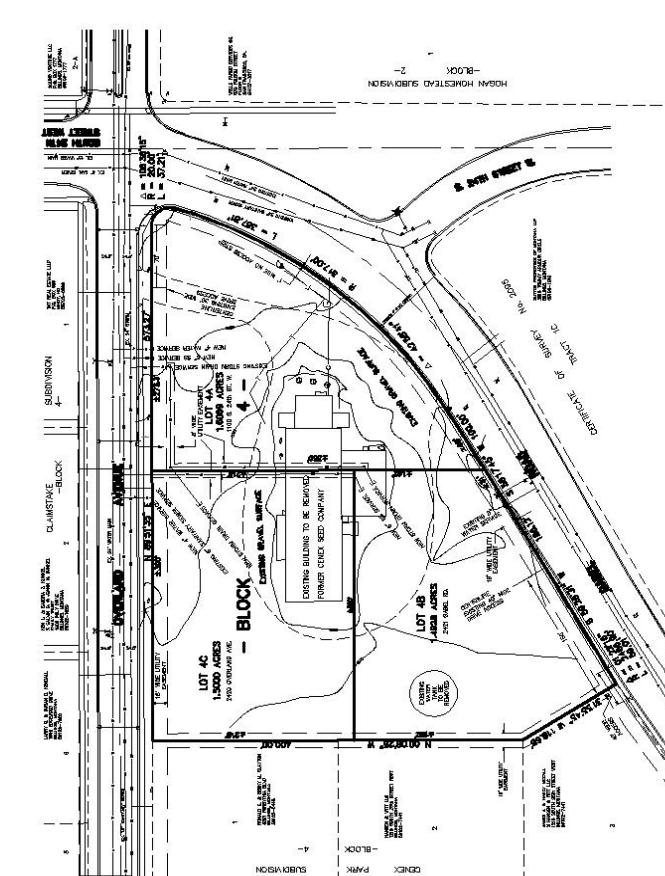
/dml  
P:79130\_39\_Friday\_Ltr\_010407

PRELIMINARY PLAT OF AMENDED LOT 4, BLOCK 4  
**CENEX PARK SUBDIVISION**  
SITUATED IN THE NE 1/4 OF SECTION 13, T. 1 S., R. 25 E., P.M.M.  
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: JOHN V. NEGU  
PREPARED BY: ENGINEERING, INC.  
SCALE: 1" = 50'

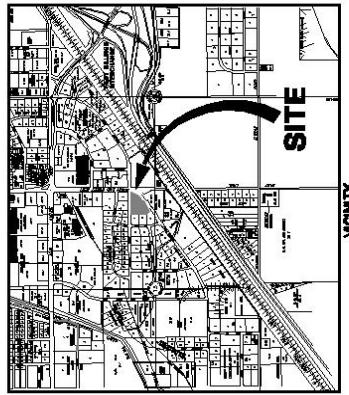
APRIL 2004  
BILLINGS, MONTANA

NOTE: H



PLAT DATA

GROSS AREA	4.9887 ACRES
NET AREA	4.9887 ACRES
NUMBER OF LOTS	3,429 LOTES
MAXIMUM LOT SIZE	1.6689 ACRES
MINIMUM LOT SIZE	0.0001 ACRES
MAXIMUM FEET OF STREETS	1,6689 FEET
MINIMUM FEET OF STREETS	0 FEET
PARKLAND REQUIREMENT	0%
HOME REQUIRED	HOME REQUIRED
HOME CONTROLLED	HOME CONTROLLED
INDUSTRIAL CONTROLLED	INDUSTRIAL CONTROLLED
SURROUNDING ZONING	NORTH: INDUSTRIAL EAST: INDUSTRIAL WEST: COMMERCIAL SOUTH: COMMERCIAL EXISTING ZONING: COMMERCIAL PROPOSED LAND USE: COMMERCIAL DEVELOPMENT



# U

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 26, 2007

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**TITLE:** Preliminary Plat Amended Lot 7, Block 4, Meadowlark Subdivision

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On January 17, 2007, the Planning Department received an application for a subsequent minor plat approval for Amended Lot 7, Block 4, Meadowlark Subdivision, which contains two lots on approximately 14,344 square feet (.33 acres) of land for residential development. The proposed subdivision is located in the Billings Heights between Phoebe Drive and Willet Drive south of Sharron Lane. The owner is Mary L. Mahoney and the representing agent is Pinpoint Land Surveys, Clay Schwartz.

**ALTERNATIVES ANALYZED:** In accordance with state law, the City Council has 35 working days to act upon this minor plat; the 35 working day review period for the proposed plat ends on March 6, 2007. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

### **RECOMMENDATION**

Staff recommends conditional approval of the preliminary plat of Amended Lot 7, Block 4, Meadowlark Subdivision, approval of the variance and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

**ATTACHMENTS**

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

## **INTRODUCTION**

On January 17, 2007, the subdivider applied for preliminary plat approval for a subsequent minor subdivision of Amended Lot 7, Block 4, Meadowlark Subdivision. The subject property contains 14,344 square feet (.33 acres) of land for residential development. The surrounding property zoning is Residential 7000, (R-70).

## **PROCEDURAL HISTORY**

- The preliminary plat application was submitted to the Planning Department on January 17, 2007.
- The City Council will consider the preliminary plat application on February 26, 2007.

## **BACKGROUND**

General location:	Between Phoebe Drive and Willet Drive south of Sharron Lane.
Legal Description:	Lot 7, Block 4, Meadowlark Subdivision
Subdivider:	Mary L. Mahoney
Owner:	Same
Engineer and Surveyor:	Pinpoint Surveys
Existing Zoning:	Residential-7000 (R-70)
Existing land use:	Residential
Proposed land use:	Residential
Gross area:	14,344 square feet
Net area:	14,344 square feet
Proposed number of lots:	2
Lot size:	Max: 7,174 square feet (.16 acres) Min.: 7,170 square feet (0.16 acres)
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 Findings of Fact, which are presented as an

attachment, discuss the potential negative impacts of the subdivision and the following conditions of approval are recommended as measures to further mitigate any impacts.

### **RECOMMENDED CONDITIONS OF APPROVAL**

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. (*Recommended by the Engineering Division*)
2. To minimize the impact on local services the final SIA document shall be revised to include street and utility improvements including, but not limited to, curb and gutter, sidewalk, street paving, and storm drain improvements. The SIA shall state the improvements required and they will not be done at this time but will be included in the attached Waiver of Right to Protest. (*Recommended by the Public Works, Engineering Division*)
3. Paragraph 3 of section VI of the SIA shall be removed. (*Recommended by the Public Works Department, Distribution and Collection Division*)
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

### **VARIANCES REQUESTED**

A variance from the provisions of Section 23-406(b)(6), BMCC from the requirement to dedicate a 28 foot half right-of-way on Willet Drive and Phoebe Drive, engineering staff is supportive of this variance. For further justification, the applicant did submit responses to the five required variance criteria (please see Attachment C).

### **STAKEHOLDERS**

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

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

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

## **RECOMMENDATION**

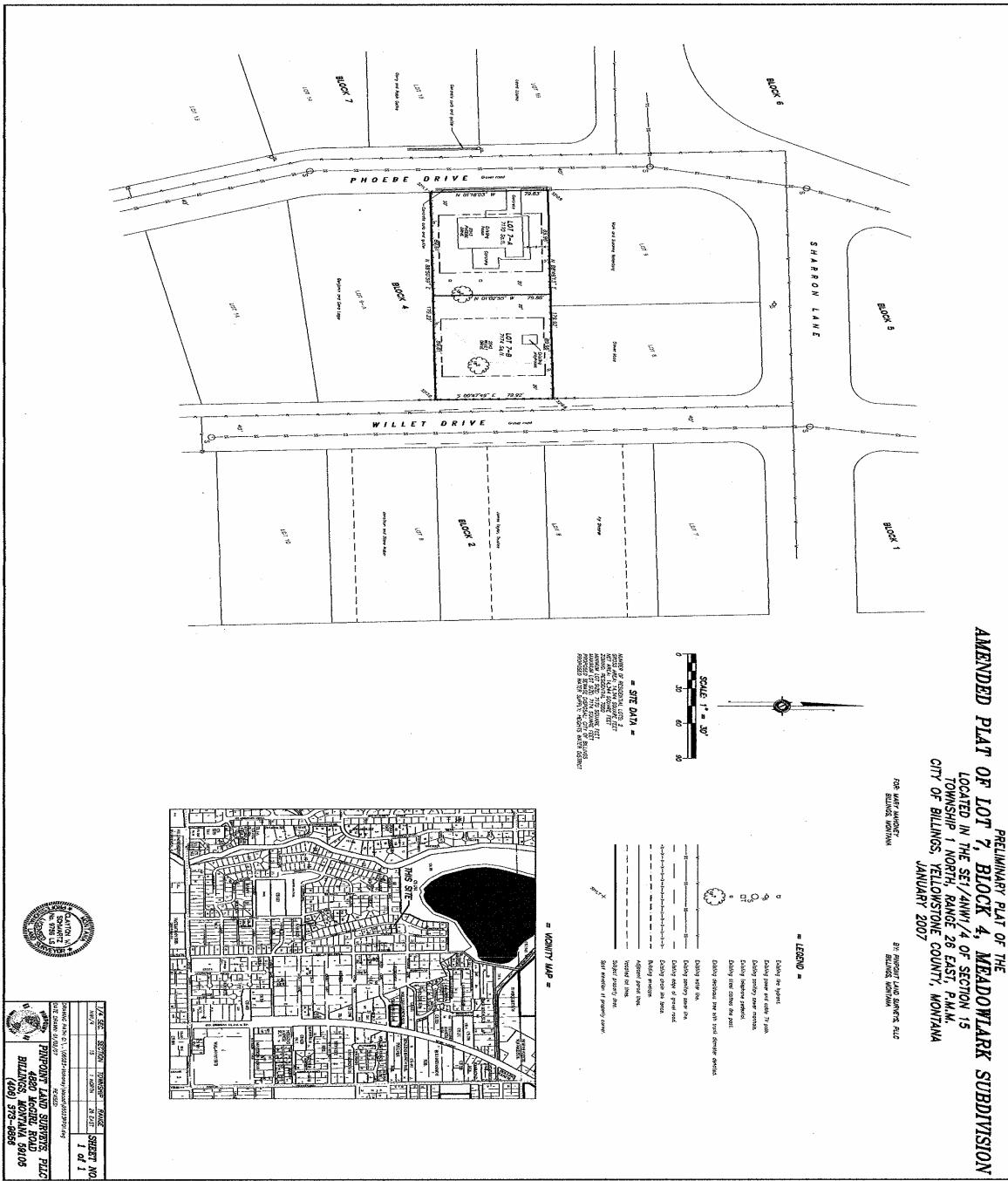
Staff recommends conditional approval of the preliminary plat of Amended Lot 7, Block 4, Meadowlark Subdivision, approval of variance and adoption of the Findings of Fact as presented in the staff report to the City Council.

## **ATTACHMENTS**

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

## ATTACHMENT A

### Preliminary Plat of Amended Lot 7, Block 4, Meadowlark Subdivision



**ATTACHMENT B**  
Site Photographs



Figure 1: Existing house on property from Phoebe Drive.



Figure 2: Back of existing house on property from Willet Drive.



Figure 3: Looking south from subject property on Phoebe Drive.



Figure 4: Looking south from subject property on Willet Drive.

## **ATTACHMENT C**

### Variance Justification

#### **REQUEST FOR VARIANCE**

The subdivider of the proposed **Amended Plat of Lot 7, Block 4, Meadowlark Subdivision** is hereby requesting a variance from Section 23-406(B)(6) of the subdivision regulations which requires a right-of-way width of 56 feet.

Findings in support of this variance are as follows:

1. **The granting of this variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.** This subdivision is bounded on the west side by Phoebe Drive and bounded on the east side by Willet Drive. These streets were created by a 40-foot wide dedication on the original plat of Meadowlark Subdivision in 1955. All adjoining properties are a part of Meadowlark Subdivision and, along with much of the surrounding neighborhood, have been served by the 40-foot wide streets for many years without detriment to public health, safety and welfare. The subdivider proposes to maintain the status quo.
2. **Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.** Due to the age of Meadowlark Subdivision, build out has occurred in this neighborhood and many private improvements to the lots have been constructed. It is unlikely that traffic volume will increase on these streets at a magnitude that would necessitate the need to purchase right-of-way from neighboring properties and relocate improvements. Certainly, the traffic increase from this subdivision would not trigger the need to widen the streets.
3. **The variance will not result in an increase in taxpayer burden.** It is anticipated that any street improvements, when necessary, would be financed by a neighborhood special improvement district (SID). The owners of the lots within this subdivision will waive their right to protest the creation of the SID.
4. **The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.** This variance will maintain the status quo. Strict compliance would actually decrease lot sizes and would infringe on the front setback requirement of the zoning regulations.
5. **The alternative design (status quo) is equally effective and the objectives of the improvements are satisfied.** These streets, as well as many other nonconforming streets in the neighborhood, have effectively served the residents of this neighborhood for more than 40 years as residential local access streets. Due to the existing street network and topography of the neighborhood, traffic volume is not expected to increase at any time in the near future. These streets presently meet the objectives of the regulations and will do so for many years.

## **ATTACHMENT D**

### **Findings of Fact**

Staff is forwarding the recommended Findings of Fact for Amended Lot 7, Block 4, Meadowlark Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Sections 23-304(c), BMCC).

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

**1. Effect on agriculture and agricultural water user facilities**

The subject property currently contains a residence; there is no anticipated effect on agricultural lands or wildlife habitat.

**2. Effect on local services**

- a. **Utilities** – There are water lines and sanitary sewer lines in both Phoebe Drive and Willet Drive. The property owner will be responsible for all connection fees and improvement cost as stated in the SIA.
- b. **Storm water** – As specified in the submitted SIA, there is currently no storm water management system in the neighborhood. This item will be addressed with the Waiver of Right to Protest when at a future date a Special Improvement District (SID) is created.
- 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 proposed Lot 7-A will be from Phoebe Drive, access to proposed Lot 7-B will be from Willet Drive. Public Works, Engineering Division, is supportive of a variance from the requirement to dedicate a 28-foot half right-of- way Phoebe Drive and Willet Drive. The subdivider will also provide a Waiver to Protest any future street improvements in the area and note all improvements required in the (SIA). (See Condition #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 1601 St. Andrews Drive (Station #6). The subdivision is located within the ambulance service area of American Medical Response.
- f. **Schools** –Schools for this subdivision are; High School; Skyview, Middle School; Castle Rock, Elementary School; Bench. The schools were sent applications but there were no comments received back from them.

g. **Parks and Recreation** - A parkland dedication is not required, as this is a subsequent minor subdivision.

### **3. Effect on the natural environment**

The proposed subdivision should have only minor effects on the natural environment, as there will be short term air and noise pollution associated with construction on the property. However, the property is surrounded by other residential lots of the city and these effects should be minimal.

### **4. Effect on wildlife and wildlife habitat**

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

### **5. Effect on the public health, safety and welfare**

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

## **B. Was an Environmental Assessment required? (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 Urban Area 2000 Transportation Plan and the Heritage Trail Plan? (23-301, BMCC)**

### **1. Yellowstone County-City of Billings 2003 Growth Policy**

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

- a. Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, Page 5)  
*The proposed subdivision is consistent with the surrounding residential neighborhood.*
- b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element Goal, Page 6)  
*The subject property is zoned R-70 and is surrounded by R-70; the proposed development is consistent with the neighborhood as single-family residential.*
- c. Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, Page 6)  
*The subject property is within a portion of the City is surrounded by existing residential properties; this would 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 Heritage Trail Master Plan has no trail through this subdivision. A primary bike way is identified on Lake Elmo Drive to the east of this subdivision.

## **4. Billings Heights Plan**

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

- The development is encouraging infill development.
- It will provide a building lot for housing that is similar to what is in the existing neighborhood.

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

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

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

The property is served by Billings Heights water, City of Billings sewer and solid waste services.

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

The subject property is located within the R-70 zoning district and complies 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? [MCA 76-3-608 (3) (c) and (23-410(A)(1), BMCC)]**

The City Engineering Department will work with the utility companies to provide easements in acceptable locations on the plat. The City maintains that utility easements provided on front lot lines creates conflicts with sanitary water and sewer lines and have requested that they be located on the rear and sides of lots for public health and safety. Condition #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? [MCA 76-3-608 (3) (d) and (23-406, BMCC)]**

Accesses from Phoebe Drive and Willet Drive will provide legal and physical access to the lots.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Amended Lot 7, Block 4, of Meadowlark Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, February 26, 2007

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Ron Tussing, Mayor

**ATTACHMENT E**  
Mayor's Approval Letter

February 26, 2007

City of Billings  
Engineering Department  
510 North Broadway, 4th Floor  
Billings, Montana 59101

Dear Applicant:

On February 26, 2007, the Billings City Council conditionally approved the preliminary plat of Amended Lot 7, Block 4, of Meadowlark Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. (*Recommended by the Engineering Division*)
2. To minimize the impact on local services the final SIA document shall be revised to include street and utility improvements including, but not limited to, curb and gutter, sidewalk, street paving, and storm drain improvements. The SIA shall state the improvements required and that they will not be done at this time but will be included in the attached Waiver of Right to Protest. (*Recommended by the Public Works, Engineering Department*)
3. Paragraph 3 of section VI of the SIA shall be removed. (*Recommended by the Public Works Department, Distribution and Collection*)
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

*A variance to waive the requirement to dedicate a 28-foot half right-of-way for Willet Drive and Phoebe Drive to a 20-foot half right-of-way, Section 23-406(b)(6), BMCC, requires a 28-foot half right-of-way for residential local access streets.*

Should you have questions please contact Dave Green with the Planning Division at 247-8654 or by email at [greend@ci.billings.mt.us](mailto:greend@ci.billings.mt.us).

Sincerely,

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Ron Tussing, Mayor

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# V1

AGENDA ITEM:

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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 26, 2007

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**TITLE:** Payment of Claims

**DEPARTMENT:** Administration – Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,244,968.31 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 26, 2007, is on file in the Finance Department.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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V2



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 26, 2007

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**SUBJECT:** Payment of Claims

**DEPARTMENT:** Municipal Court

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$292,964.02 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 1, 2007 to January 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       

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 26, 2007**

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TITLE:	Public Hearing and Resolution Approving the FY08 – FY12 Capital Improvement Plan (CIP), Equipment Replacement Plan (ERP), and Technology Replacement Plan (TRP)
DEPARTMENT:	City Administration/Public Works
PRESENTED BY:	Tina Volek, City Administrator & Vern Heisler, Deputy Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The final drafts of the FY 2008-2012 Capital Improvement Plan (CIP), Equipment Replacement Plan (ERP), Technology Replacement Plan (TRP) were presented to the City Council at the February 5, 2007, 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 26, 2007.

**ALTERNATIVES ANALYZED:**

- Hold a public hearing and defer action to March 12, 2007.
- Hold a public hearing, amend the program to include any desired projects, and defer final action to March 12, 2007, 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 2008 budget year, the proposed CIP would result in expenditures totaling \$50.6 million if fully funded; the ERP would result in expenditures totaling \$3.3 million; and the TRP would result in expenditures totaling \$850,758. Projects are proposed in order by staff, but Council amendments and the availability of funds in 2008 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**

Staff recommends that Council approve the FY 2008-2012 CIP, ERP, and TRP as presented.

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

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

**AGENDA ITEM:**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 26, 2007**

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**TITLE:** Public Hearing and Resolution to Revise the 2006 Limits of Annexation Map

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Wyeth Friday, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** The City Council adopted the current Annexation Policy and Limits of Annexation Map on April 10, 2006. 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 2008-2012 Capital Improvements Plan at the February 26, 2007, Council meeting, and consider revisions to the Limits of Annexation Map at the same meeting. To provide guidance on these map amendments, 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 created. The Committee met several times from October 2006 through January 2007 to provided input into the proposed map revisions based on the ability to serve the areas located within the Limits of Annexation area. To develop the proposed map revisions, the committee took into account the 2006 Water and Wastewater Facilities Master Plan, the Draft 2007-2012 Capital Improvements Plan, individual developers' requests, and the effects of additional growth on the health and quality of life of City residents. The Committee is presenting the Council with its recommendations in the form of a resolution to revise the Limits of Annexation Map.

**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 revisions 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 limitation.

**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**

Staff recommends that Council adopt the resolution to revise the Limits of Annexation Map as recommended by the Annexation Committee.

**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 2008-2012 CIP on February 26, 2007, at the same meeting that amendments to the Limits of Annexation Map are 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 recommended changes to the City Council. The City Annexation Committee considered the proposed revisions to the Capital Improvements Plan, the 2006 Water and Wastewater Facilities Master Plan, revisited the 2006 map to confirm or modify previous recommendations, reviewed specific landowner requests, and considered the effects on the quality of life and health of the Billings Community in making its recommendations to the City Council. The guiding principal for recommendations was to not increase costs to the City that were not already programmed.

## **PROCEDURAL HISTORY**

- April 10, 2006, Amendments to the Annexation Policy and Limits of Annexation Map adopted by City Council
- November and December 2006, Four public meetings were held to take comment on the Annexation Policy, Limits of Annexation Map and the proposed changes to the CIP
- November 2006, Formal property owner requests were submitted to amend the Limits of Annexation Map for 2007
- October 2006, through January 2007, The City Annexation Committee met monthly to review the requests and formulate recommendations to amending the Limits of Annexation Map
- February 5, 2007, Recommended revisions to the Limits of Annexation Map presented to City Council at its work session
- February 26, 2007, Proposed FY 2008 Modifications to the CIP presented to the City Council
- February 26, 2007, Public Hearing and Resolution revising the Limits of Annexation Map presented to City Council

## **BACKGROUND**

The City of Billings has annexed more than seven square miles in the past 7 years (32.8 to 40.1 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 April 2006, established three limits of annexation. The red area (2006-2012) 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 as 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, revisited the 2006 map to confirm or modify previous recommendations, reviewed specific landowner requests, and considered the effects on the quality of life and health of the Billings Community in making its recommendations to the City Council.

Staff received six requests from individual property owners to include their properties in the 2007-2012 Limits of Annexation (red). Three of these properties are recommended for inclusion in the 2007-2012 classification. The remaining three are not recommended for addition to the red area at this time. The basis for the recommendation for each property is detailed below:

1. **Staley and Forbes Properties:** This 116.2-acre property is located north of Rimrock Road, and north and west of 70<sup>th</sup> Street West. The property is currently classified in the yellow (Unknown). Staff cannot support reclassifying these properties as red. Extending the City Limits this far west will continue to strain the response time, staffing and service levels of the Fire Department and Police Department. In addition, while the new fire station to be completed on 54<sup>th</sup> Street West will improve response times to the western portion of Billings, it is not designed to accommodate unlimited westward expansion. Providing services in this area also is likely to strain the service levels of the Solid Waste Division and Street and Traffic Division. MET Transit has no plans to serve this area at the present time. From a community quality life and health standpoint, the properties are isolated from any real City neighborhoods or community service centers, would place additional pressure on schools that are already over capacity, and would require significant transportation demands for all services. The property also is outside of the City-County Unified Zoning Jurisdiction and would require an expansion of that jurisdiction. The 2006 Water and Wastewater Facilities Master Plan does show the area as serviceable from the new Zone 4/5 West Water Reservoir that is in the CIP and currently under design, and the Public Works Department thought this property could be served for water and sewer if the owner built the lines to serve the property. However, the possibility of providing water and sewer service to this property was not a strong enough justification alone to support annexation of the property in the short term.
2. **Mahan Property, Lot 122, Sunny Cove Fruit Farm:** This 9-acre property is located just west of the Foxtail Subdivision and north of Grand Avenue and is currently classified as yellow (Unknown). Based on the analysis below, staff is recommending it be reclassified as red (2007 – 2012). The Public Works Department supports this change contingent on the owner paying for extension of sewer and water lines from 58<sup>th</sup> Street West to the property. The property owner may enter into a reimbursement agreement with the City for the sizing of the lines. This property also is within the half mile distance from existing city infrastructure that has helped shape the red annexation area along

Grand Avenue where City water and sewer lines exist, and where the City has indicated service is possible. Administration, Planning, Parks, Fire and Police Departments also support this map change. MET Transit has no plans to serve this area in the near future. Property north of this area toward Rimrock Road is already classified in the red area of the Limits of Annexation Map as is property to the south of Grand Avenue. Some of the property along Rimrock Road to the north was annexed in 2006. The new fire station will be a few blocks west on 54<sup>th</sup> Street West. Billings School District 2 could not support this request since several west end schools are already at, or over, student capacity.

3. **Lenhardt Home Place Property:** This 114-acre property is located north of King Avenue West between 48<sup>th</sup> Street West and Shiloh Road. This property is classified in orange (2013-2023) and staff is not recommending reclassifying this property to red at this time. The property owners in their request did not specify any imminent plans for the property to develop which led staff to believe that there is no immediate plan to bring this property into the City. Sanitary sewer currently ends at 32<sup>nd</sup> Street West, more than 10-blocks from this property, and the city draft CIP shows King Avenue West water and sanitary sewer line extensions in this area in Fiscal Year 2009. Administration, Planning, Parks, Fire and Police Departments, and Billings School District 2, also found no reason to support this map change at this time.
4. **Weber Property:** This 84-acre property is located at the southwest corner of the intersection of Mullowney Lane and Elysian Road. This property is across Mullowney Lane from the recently platted Josephine Crossing Subdivision. In October 2006, the Board of County Commissioners approved a zone change request that would allow the property to develop at urban densities. The property is classified in the orange at this time. Staff recommends changing classification of the property to red. The Public Works Department supports this change contingent on the owner paying for extension of sewer and water lines from across Mullowney Lane. Access to serve this property for Fire and Police is adequate, with annexed property across Mullowney Lane, and the Billings Operation Center less than two miles away. Planning supports annexation of this area to enable urban development that is served by municipal water and sewer to help protect the Yellowstone River Corridor. The proximity of existing community services and transportation infrastructure also makes this an efficient area for City expansion.
5. **Dover Ranch Property:** This 402-acre property is located north of Skyview High School and west of Annandale Road. The property is currently classified in the orange. Staff supports reclassifying this property to red because it is able to be served by water and sewer infrastructure and will provide some needed transportation connections and circulation in the north-central portion of the Heights. During the public meetings to update the CIP, it was recommended that arterial street upgrades for Gleneagles Boulevard and Annandale Road be placed in the CIP for 2011 or 2012. The development of the Dover Ranch property could provide for some of the road improvements and connections related to Gleneagles Boulevard and Annandale Road. Public Works supports this change contingent on the property owner constructing the water and sewer

infrastructure to serve the property. Parks was supportive of this change provided the developer is open to discussion about adequate park areas to serve this potentially large residential development. Planning supports this change based on the potential for improved neighborhood connectivity in this area of the Heights, the property's proximity to existing community services and the long-range plans for the Inner Belt Loop and the North Bypass that would enable further development in this area. The land is not irrigated and is not prime agricultural land in the County.

6. **Kanavos Property:** This 640-acre property is located south of Rimrock Road and west of 70<sup>th</sup> Street West in northwest Billings. This property is classified partly in the yellow (unknown) and partly outside of the Limits of Annexation Map analysis area entirely. The property also is outside of the City and County Unified Zoning Jurisdiction. Staff cannot support reclassifying this property as red for many reasons. Public Works is not clear on how the property could adequately be served for water and sewer in this location in the near future. The Solid Waste Division was not supportive of trying to provide service to the property. MET Transit has no plans to provide service to this property. The property is very isolated from the City of Billings, with an entire 640-acre section of land developing at County standards separating it from any potential connection to the City Limits in the future. Planning does not support this request because the property is isolated from the Billings Community, would require significant transportation demands for all services, and has significant natural and man-made features that could make high-density development challenging, including the Little Cove Creek drainage, a railroad corridor, and a large wetlands area along the southeast portion of the property.

## **STAKEHOLDERS**

Written requests for including property within the 2007 – 2012 Limits of Annexation red area were received from the property owners. These requests were distributed to the City Annexation Committee for review and comment. Public comment on the Annexation Policy and Limits of Annexation Map also were taken at four CIP public meetings in November and December around Billings. While there were no specific requests to amend the map or policy at these meetings, several residents commented that they preferred to see the City provide improvements and services to areas already within the City Limits instead of adding new areas to the City that would require additional services. These comments were considered as the Annexation Committee discussed amendments to the map. The Committee recommendations are summarized in the **Alternatives Analysis** section of this report.

## **RECOMMENDATION**

Staff recommends that Council adopt the resolution to revise the Limits of Annexation Map as recommended by the Annexation Committee.

## **ATTACHMENTS**

- A. Resolution and Limits of Annexation Map

**ATTACHMENT A**

RESOLUTION NO. 07 -\_\_\_\_\_

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

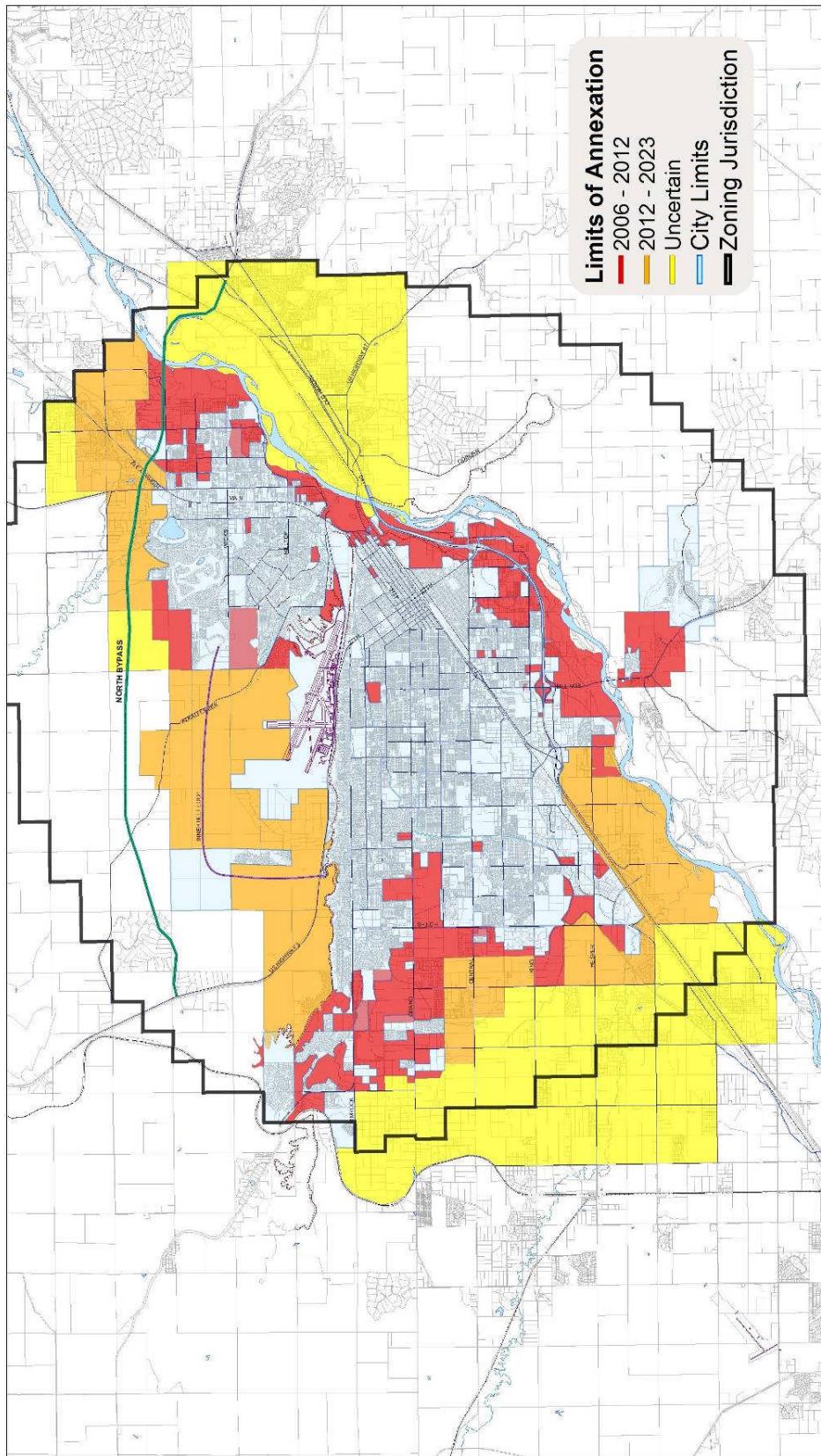
WHEREAS, the Policy states that the Map shall be revised whenever the Capital Improvements Plan is revised; and

WHEREAS, the City Council approved the FY 2008 Modifications to the Capital Improvements Plan on February 26, 2007.

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

**LIMITS OF ANNEXATION MAP**  
**Revised, February 26, 2007**



APPROVED AND PASSED by the City Council of the City of Billings, this 26<sup>th</sup> day of February, 2007.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, MMC   City Clerk

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

# 4A

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 26, 2007

**TITLE:** Public Hearing and Resolution for Annexation #07-02

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Aura Lindstrand, Planner II

**PROBLEM/ISSUE STATEMENT:** Owner and petitioner, Mary Kramer, is requesting annexation of an approximate 13.01 acre property legally described as Lot 65A-4, Amended Plat of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms located in the SE 1/4, Section 31, Township 1N, Range 25E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is on the northwest corner of the intersection of Grand Avenue and 54<sup>th</sup> Street West south of Cottonwood Grove Subdivision. The petitioner is requesting annexation in order to obtain city water and sewer services for completion of a minor commercial subdivision including a zone change on the property. The subject property is currently vacant agricultural land and is zoned Agricultural Open Space (AO). A concurrent zone change and 5-lot minor subdivision has been submitted for the subject property.

**ALTERNATIVES ANALYZED:** The City Council may approve or deny 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:** The City can provide municipal services to the subject property. If the proposed zone change is approved, the property could further develop as commercial, thereby increasing the tax revenue for the city.

### **RECOMMENDATION**

Staff recommends that the City Council approve the Resolution Annexing Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms, subject to the following conditions of approval:

- a. 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
- b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

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

**ATTACHMENT**

A. Resolution

## **INTRODUCTION**

This petition for annexation is for an approximate 13.01 acre property legally described as Lot 65A-4, Amended Plat of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms located in the SE 1/4, Section 31, Township 1N, Range 25E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is on the northwest corner of the intersection of Grand Avenue and 54<sup>th</sup> Street West south of Cottonwood Grove Subdivision. The petitioner is requesting annexation in order to obtain city water and sewer services for completion of a minor commercial subdivision including a zone change on the property. The subject property is currently vacant agricultural land and is zoned Agricultural Open Space (AO). It is located within the Urban Planning Area and is identified on the Limits of Annexation map for annexation within the next seven (7) years.

## **PROCEDURAL HISTORY**

- On January 3, 2007, the Annexation Petition and zone change application was submitted to the Planning Department.
- On February 6, 2007, the Zoning Commission conducted a public hearing for the zone change and forwarded a recommendation of approval to the City Council by a 5-0 vote.
- On February 12, 2007, the City Council acknowledged the annexation petition and set a public hearing date for February 26, 2007.
- On February 26, 2007, the City Council will conduct the public hearing and potentially adopt a resolution annexing the subject property and will conduct a public hearing on the proposed zone change.
- On March 12, 2007, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary I will be conducted. In addition, if the zone change is approved on first reading, the 2<sup>nd</sup> reading of the proposed zone change will be conducted. The minor preliminary plat for MK Subdivision will be on the Council consent agenda for this meeting.
- On March 26, 2007, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading for ward boundary expansion.

## **BACKGROUND**

The subject property is surrounded on three sides by properties located within the City Limits and is within the limits of annexation as specified by the Annexation Policy adopted by the City Council in 2004 and updated in 2006.

## **ALTERNATIVES ANALYSIS**

The City Council has expressed concerns regarding how annexations may affect the City's ability to provide services to annexed properties without diminishing the services provided to existing City residents. To address these concerns, the City Council adopted an annexation policy that lists criteria for suitable annexations. The proposed annexation *complies* with the adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements for the subdivision, including streets, satisfy City standards.
4. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the creation of any Special Improvement Districts.

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 and Yellowstone County were given the opportunity to comment on this annexation. All City departments, with the exception of the police department responded favorably. No comments were received from Yellowstone County.

**City Facilities:** The following improvements and facilities are necessary to provide adequate services to the subject property.

- **Water:** Water to the subject property will be extended from the main lines within Grand Avenue and 54<sup>th</sup> Street West.
- **Sewer:** Sanitary sewer will be connected to the existing main line within 54<sup>th</sup> Street West.
- **Stormwater:** A stormwater improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- **Transportation:** The subject property will be accessed from internal streets off of Grand Avenue and 54<sup>th</sup> Street West. These streets will be constructed to city standards and are being reviewed with the subdivision. A Traffic Accessibility Study (TAS) was submitted with the subdivision application and states that the proposed subdivision will create approximately 2,352 trips per day. The applicant will be required to provide a monetary contribution for the future improvements to the intersection of Grand Avenue and 54<sup>th</sup> Street West and potentially the intersection of Rimrock Road and 54<sup>th</sup> Street West.
- **Fire Station:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. The nearest fire station is located at 604 S 24<sup>th</sup> Street West (Station #5). The proposed fire station on 54<sup>th</sup> Street

West is to be located directly adjacent to the east of the subject property on Lot 2, Bishop Fox Subdivision.

- **Parks:** The proposed Cottonwood Park is to be located northwest across 54<sup>th</sup> Street West from the subject property. Since the proposed subdivision is for commercial purposes, a parkland dedication is not required.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. Along the eastern boundary of the site, 54<sup>th</sup> Street West is identified as a primary bikeway; however, no improvements are required at this time.

**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. The service providers that responded did not object to the annexation of this property.

- **Transit:** The MET transit system had no objection with the annexation request.
- **Fire:** The Fire Department had no objection with this annexation request.
- **Police:** The police department did state that continued annexations without an increase in assets will affect their ability to respond to calls in a timely manner.
- **Public Utilities Department:** The Public Utilities Department has no objection with the annexation request.
- **Ambulance Service:** The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City Ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.
- **Legal and Finance:** General Fund services, such as Legal and Finance have indicated that they will not be negatively impacted.
- **Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

## **STAKEHOLDERS**

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct a public hearing. Notice of the public hearing was posted on the property on February 7, 2007, and published in the Billings Times on February 8, 2007. The Planning Division has received no public comments regarding the proposed annexation.

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

Annexation of this property would adhere to the following goals, objectives and policies of the *Yellowstone County and City of Billings 2003 Growth Policy*:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns (Land Use Element Goal, page 5)
- More housing and business choices within each neighborhood. (Land Use Element Goal, page 6)
- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10).

### **RECOMMENDATION**

Staff recommends that the City Council approve the Resolution of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms, subject to the following conditions of approval:

- a. 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
- b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

### **ATTACHMENT**

- A. Resolution

**RESOLUTION NO. 07-**

**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:

Territory situated in the SE1/4 of Section 31, T.1N, R.25E, P.M.M, Yellowstone County, Montana, more particularly described as:

Lot 65A-4, Amended Plat of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms, Recorded December 29, 2004, Under Document No. 3317043, Records of Yellowstone County, Montana; including all adjacent right-of-way of Grand Avenue and 54<sup>th</sup> Street West.

Containing 13.008 gross and 11.592 net acres.

(# 07-02 Exhibit "A" Attached)

2. **CONDITIONS.** The annexation is approved, subject to the following conditions:

- a. 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

- b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID 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.
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 26th day of February, 2007.

THE CITY OF BILLINGS:

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

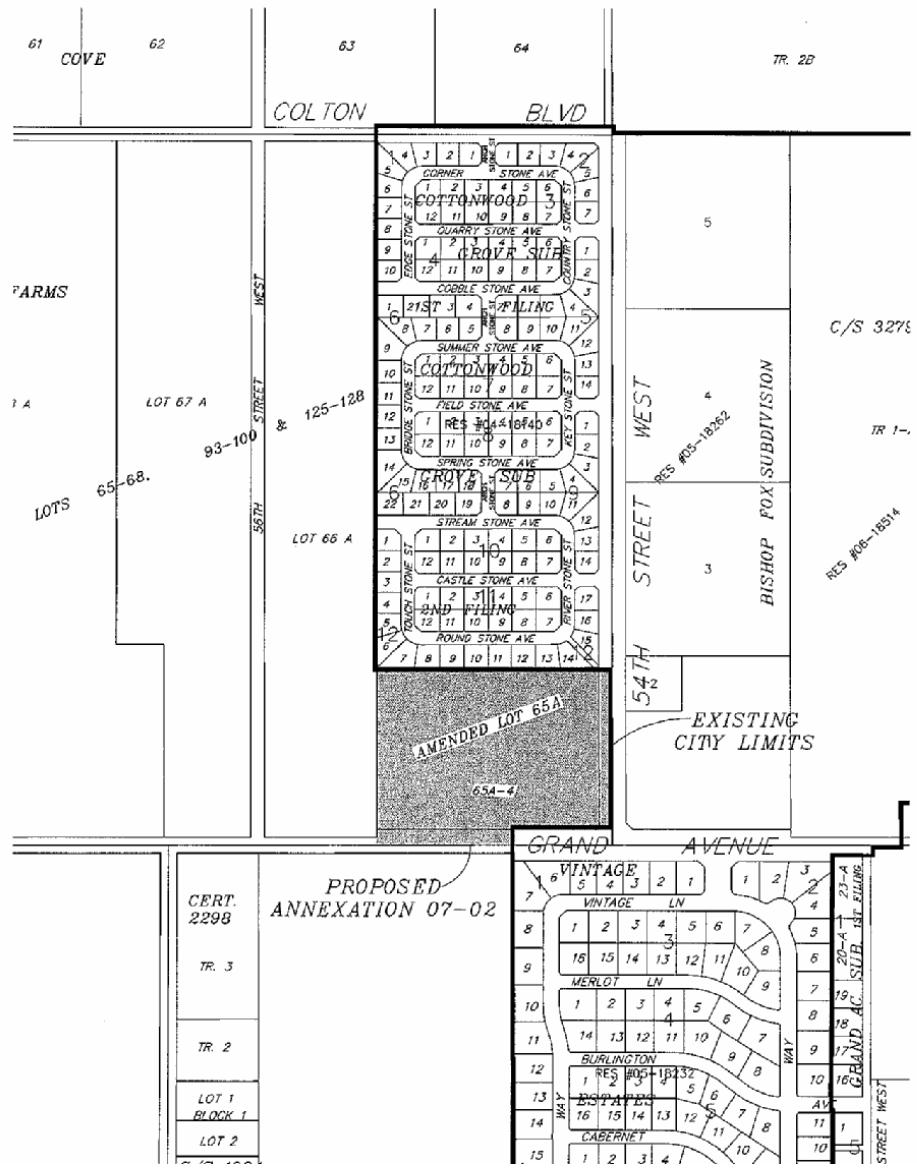
ATTEST:

BY: \_\_\_\_\_  
Marita Herold, MMC CITY CLERK

(AN 07-02)

## EXHIBIT A

*EXHIBIT A*



### (Back to Regular Agenda)



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 26, 2007

**SUBJECT:** Zone Change #798, Amended Lot 65A-4 Sunny Cove Fruit Farms  
Subdivision Public Hearing and 1<sup>st</sup> Reading of Ordinance

**DEPARTMENT:** Planning and Community Services

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

**PROBLEM/ISSUE STATEMENT:** The applicant is requesting to rezone Amended Lot 65A-4 Sunny Cove Fruit Farms Subdivision from Agricultural Open (AO) to Community Commercial (CC) and Neighborhood Commercial (NC). The subject property is generally located on the north west corner of Grand Avenue and 54<sup>th</sup> Street West and is vacant agricultural land. The owner of the property is Mary Kramer, Charlie Gamble is representing agent with Engineering Incorporated providing engineering services. There is an annexation request in the process for this property, which will be heard by the Billings City Council on February 26, 2007. The Zoning Commission conducted a public hearing on February 6, 2007, and is forwarding a recommendation for approval with a vote of 5-0.

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

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

**FINANCIAL IMPACT:** Upon development, the proposed zone change should increase the City's tax base.

### **RECOMMENDATION**

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #797 and adopt the determinations of the 12 criteria, as discussed within this report.

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

**ATTACHMENTS**

- A: Proposed site layout
- B: Surrounding zoning
- C: Site Photographs
- D: Letter of Opposition from Durand and Janice Ward
- E: Ordinance

## **INTRODUCTION**

The applicant is requesting to rezone Amended Lot 65A-4 Sunny Cove Fruit Farms Subdivision, an 11.59 acre parcel, from Agricultural Open (AO) to Community Commercial (CC) and Neighborhood Commercial (NC). The proposed zoning will allow for community commercial uses directly on the north west corner of Grand Avenue and 54<sup>th</sup> Street West and neighborhood commercial uses on the remaining area of the property. It is the property owner's stated intent to create a neighborhood shopping node to serve the residents in the surrounding subdivisions.

The uses proposed for this property are a gas station with convenience store, a bank, two (2) fast food restaurants both with a drive through, and three additional buildings with multiple tenants in each building.

The Zoning Commission conducted a public hearing on February 6, 2007, and is forwarding a recommendation for approval with a vote of 5-0.

## **PROCEDURAL HISTORY**

- A zone change request was received on January 2, 2007, for the subject properties.
- The Zoning Commission conducted a public hearing on February 6, 2007, 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 26, 2007, 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 12, 2007.

## **BACKGROUND**

The applicant is requesting to rezone Amended Lot 65A-4 Sunny Cove Fruit Farms Subdivision, an 11.59 acre parcel, on the north west corner of Grand Avenue and 54<sup>th</sup> Street West, from Agricultural Open (AO) to Community Commercial (CC) and Neighborhood Commercial (NC). The applicant is proposing CC zoning uses on proposed Lot 1, the north west corner right on Grand Avenue and 54<sup>th</sup> Street West. The applicant is proposing neighborhood commercial zoning on proposed Lots 2 through 5. It is the property owner's stated intent to create a neighborhood shopping node to serve the residents in the surrounding subdivisions.

To the north of the subject property is Cottonwood Grove Subdivision zoned Residential 7000 (R-70), to the south is Vintage Estates Subdivision zoned Residential 9600 (R-96), also to the south is Agriculture Open zoning and a private residence on that land. To the west is Agricultural land and to the east is a parcel of Bishop Fox Subdivision zoned Community Commercial (CC). There is also a parcel to the east zoned Public for the future fire station.

## **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA.

Since 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 annexation is generally consistent with the following goals of the Growth Policy:

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

This property is in an area of West Billings that is experiencing rapid residential growth. The addition of this parcel will focus new commercial growth at an intersection where commercial activities are encouraged.

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

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

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

The proposed zoning will permit commercial uses intended to serve the residential neighborhoods in the surrounding area and proposed development in the future.

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

The new zoning is expected to generate more traffic than current agricultural uses. A Traffic Accessibility Study (TAS) was submitted with the subdivision application and states that the proposed subdivision will create approximately 2,532 trips per day. Planning and Engineering staff have been in discussion regarding the proposed accesses to the subdivision. The first access proposed west of 54<sup>th</sup> Street West has raised some concerns regarding driver safety. There will be traffic entering and exiting Grand Avenue with a likelihood of cross traffic between businesses on lots 1 and 2. This will create a potentially dangerous situation with vehicles moving in many directions in a confined area. With future development the traffic on Grand Avenue will increase making the situation more hazardous. It also lends itself to being a 'cut through' for those that do not want to wait for traffic getting on to or off of Grand Avenue. This will be the same situation that currently exists at the northwest

corner of Grand Avenue and Shiloh Road. Traveling east on Grand Avenue toward Shiloh Road there is a left turn lane in to the commercial area and directly after that there is a left turn lane from Grand Avenue on to Shiloh Road. These two turns lanes, one right after the other, are confusing. Also once a driver turns into the commercial area there is cross traffic just off of Grand between the two businesses, similar to the possible situation proposed with this access. The TAS has been submitted and any access changes deemed necessary by the Engineering Department will be part of the subdivision approval.

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

There are three proposed accesses to the subdivision, one to 54<sup>th</sup> Street West and two on Grand Avenue. A new fire station will be constructed east of the subject property.

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

The proposed zoning will permit Community Commercial and Neighborhood Commercial uses. The Unified Zoning Regulations specify minimum setbacks and lot coverage requirements, height restrictions, and maximum business building square footage for the proposed zoning districts.

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 zoning is for commercial 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?*

*Transportation:* The Traffic Accessibility Study submitted with the subdivision is being reviewed by the Engineering Division. Required improvements will be reviewed with the subdivision.

<i>Water and Sewer:</i>	The property is in the process of being annexed and the City will provide water and sewer to the property through existing lines from Grand Avenue and 54 <sup>th</sup> Street West.
<i>Schools and Parks:</i>	The proposed commercial zoning is not required to contribute park land and 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. Provisions for adequate emergency service will be reviewed with the subdivision application.

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

The proposed zoning will be alike in character with the adjacent commercial zoning to the east and will provide services to the adjacent single-family residences to the north and south.

*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. The West Billings Plan shows the area at 54<sup>th</sup> Street West and Grand Avenue as a Neighborhood/Community Center node to provide services to the surrounding residential neighborhoods.

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

The applicant has proposed the Community Commercial zoning in the south east corner of the property with the remaining property as Neighborhood Commercial. The Neighborhood Commercial zoning is more restrictive on building size therefore it will be less obtrusive next to the residential zone to the north. Furthermore, as depicted along the north property line, a 25 foot wide landscape easement and 6 foot privacy fence to buffer the commercial uses from the residential properties that exist in Cottonwood Subdivision.

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

The proposed zoning will permit a neighborhood/community center node that will provide services to the home owners in the area plus any that may be developed in the future.

**CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

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

## **STAKEHOLDERS**

Will Ralph from Engineering Incorporated spoke in favor of this zone change reiterating that the West Billings Plan shows this intersection as a Neighborhood/Community Center node and it will provide local residents retail conveniences closer to their home.

Charlie Gamble, representing Mary Kramer, spoke in favor of this zone change stating this will be a great amenity for the surrounding residential developments. Also the development will have a gas station, fast food services, a bank and other small shops for the local residences. It will enable people to only have to drive a short distance instead of a 4 mile trip one way for a bottle of milk, a 6 pack or other small items.

One letter was received in opposition of the proposed zone change from Durand and Janice Ward, a neighbor to the property, see Attachment D.

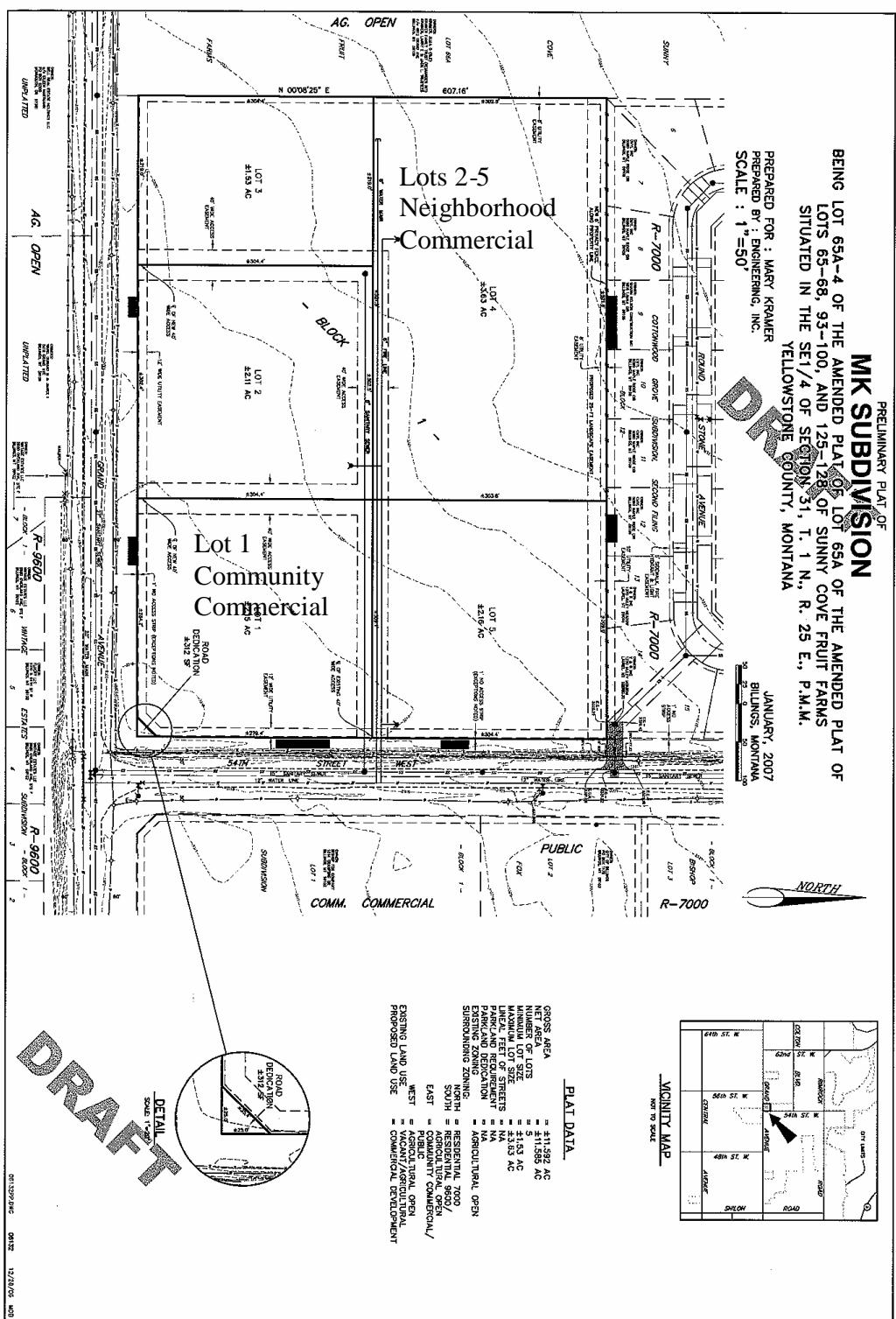
## **RECOMMENDATION**

The Zoning Commission forwards a recommendation of approval to the City Council for Zone Change #798 with a vote of 5-0.

### ATTACHMENTS:

- A: Proposed site layout
- B: Surrounding zoning
- C: Site Photographs
- D: Letter of Opposition from Durand and Janice Ward
- E: Ordinance

ATTACHMENT A  
Proposed site Layout with zoning



ATTACHMENT B  
Surrounding Zoning

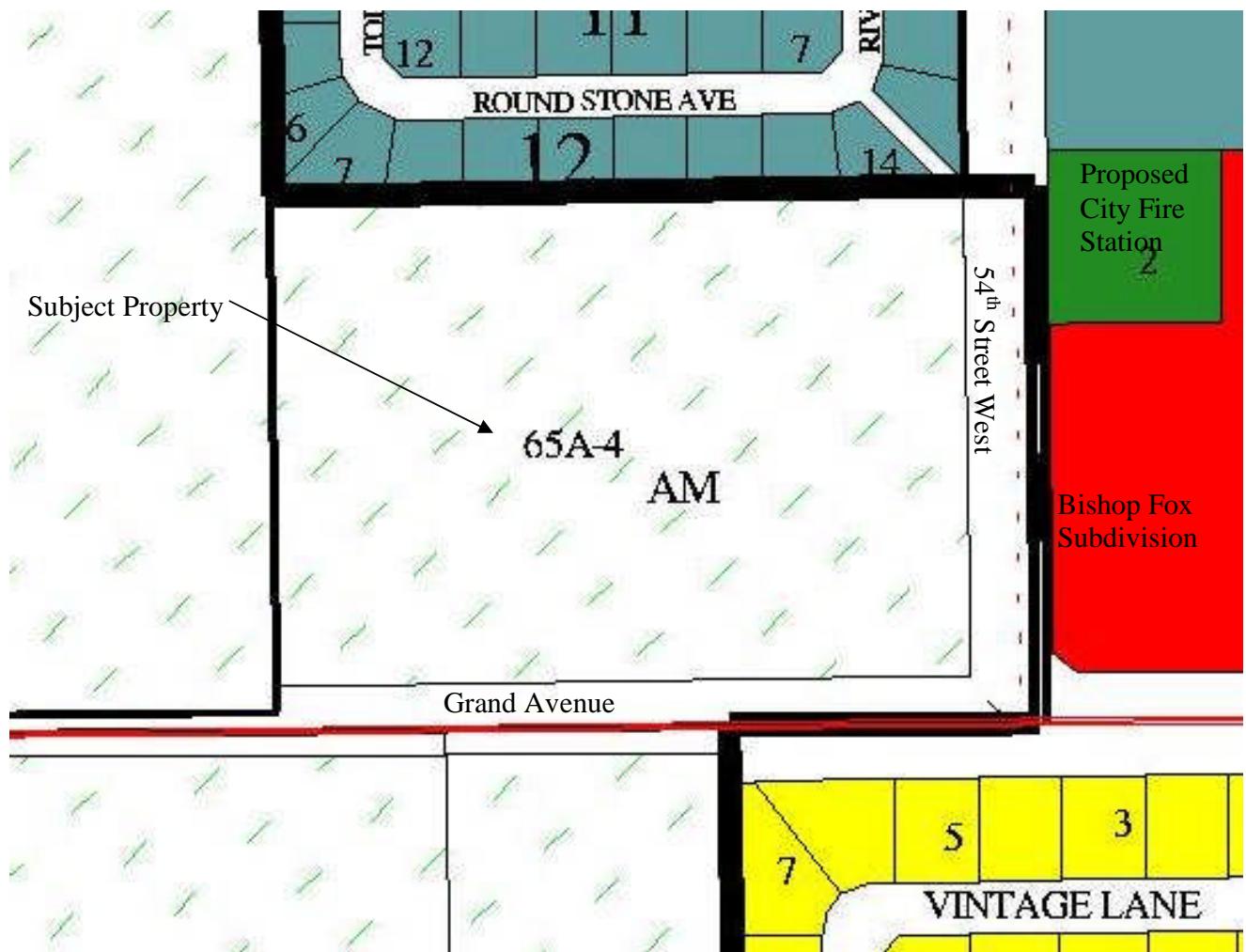




Figure 1: View north from Grand Avenue across the property, west of 54<sup>th</sup> Street West.



Figure 2: View east from Grand Avenue toward 54<sup>th</sup> Street West.

**ATTACHMENT D**  
**Letter of Opposition**

February 4, 2007

Planning & Community Services Department  
510 N. Broadway, 4<sup>th</sup> Floor  
Billings, Montana 59101

Re: City ZC#798 – Project #07-006

To Staff of City/County Planning Dept:

The purpose of this letter is to protest the city zone change #798 – Northwest Corner of Grand Avenue & 54<sup>th</sup> St., West. We are property owners of 10 acres directly across, to the South of, this parcel of land that is requesting a zone change. Our address is 5416 Grand Ave. The sole reason we are writing this letter, rather than being there in person to voice our protest, is due to several factors. We left our home address to travel on 1-17-07 and the date on your letter is 1-19-07. We are currently in Arizona & had not been able to receive our mail directly during 1-17-07 through 2-2-07. Therefore, our first knowledge of this letter was on 2-2-07 when we received our mail. Due to this fact, we are unable to make arrangements to be back in Billings in time to attend your February 6, meeting date. We are very concerned and unhappy that this was insufficient notification of this meeting for the very reason just explained.

Our concerns regarding & requesting you deny this zone change are as follows: We have owned and lived on our property since 1978. We bought land & built a home there to live in a rural, country, quite setting. Quality of life is very important – we have an abundance of wildlife in our back yard – deer, pheasants, fox, ducks, geese – all the things you associate with the quality of life in a rural setting. As property owners, we feel compelled to try to preserve that quality of life. With this proposed zone change, that quality of life would be drastically changed.

Commercial development creates additional concerns such as increased traffic, increased noise, increased air pollution, & a negative effect on our ground water. Since our house water supply is provided by a well from the underground water aquifer, our water concerns are as follows: First there is a growing knowledge that certain types of businesses can contaminate the ground water supply such as gas stations or dry cleaners. Because of the close proximity of our property to this parcel of land, contaminated ground water would certainly affect us. Secondly, every time irrigated farm land is taken out of production we lose the benefit of the ground water being replenished by the irrigation. As you well know, there have been numerous housing developments to the North & West of our area decreasing our irrigated land, therefore, depleting our underground water supply. Houses with lawns to be watered returns and replenishes

some of the ground water. Commercial development with large concrete areas do not. This is a major concern to us.

This is a residential area we are talking about, whether it is a subdivision of several houses or ten acre parcels with one house such as ours & others near us. We do no feel this is a proper area for commercial development. We most certainly do not want to see a gas station or fast food, or retail shopping across from our drive way & home.

We strongly urge you to take our concerns into consideration when making your decision for this zone change request.

Thank you for your time & consideration.

Sincerely,

*Durand & Janice Ward*  
Durand & Janice Ward.

**ATTACHMENT E**  
Ordinance  
**ORDINANCE NO. 07-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR AMENDED LOT 65A-4 SUNNY COVE FRUIT FARMS,  
CONTAINING APPROXIMATELY 11.59 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 Amended Lot 65A-4 Sunny Cove Fruit Farms, containing approximately 11.59 acres and is presently zoned Agricultural Open 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 **Agricultural Open to Community Commercial and Neighborhood Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Community Commercial and Neighborhood Commercial** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading February 26, 2007.

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

CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, MMC City Clerk

ZC#798

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, FEBRUARY 26, 2007**

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**SUBJECT:** Public Hearing and Approval of Resolution Approving and Adopting a Budget Amendment for Fiscal Year 2006/2007

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The budget adjustments are requested for Fiscal Year 2006/2007. The adjustments are for the Ball Field/Stadium Construction Fund and for transfers from the Public Safety Fund to the Fire Station Capital Project Fund and for the capital construction in the Capital Project Fund.

**RECOMMENDATION**

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the budget amendment for Fiscal Year 2006/2007 per attached.

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

**ATTACHMENT**

A-Resolution to Make Fiscal Year 2006/2007 Adjustment Appropriation (with Exhibit A)

***Attachment A***

**RESOLUTION 07-**

A RESOLUTION TO MAKE **FISCAL YEAR 2007** ADJUSTMENTS 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.

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)

PASSED AND APPROVED by the City Council, this 26<sup>th</sup> day of February, 2007.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, MMC CITY CLERK

**ATTACHMENT A**

**BUDGET ADJUSTMENTS**

**Revenue**      **Expenditure**

494-5163-452 9250	\$12,500,000 Capital construction
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New ball field and stadium construction

150-2226-422 8214	\$1,300,000 Transfer to construction
150-2226-422 9250	(100,000) Construction architects
150-2226-422 9290	(1,200,000) Building construction

To change the budget authority from capital accounts to a transfer to a capital project fund, where the fire station construction will be reported.

495-2241-383 7553	\$1,300,000	Transfer from public safety
495-2241-422 9250		\$100,000 Construction architects
495-2241-422 9290		1,200,000 Building construction

To provide budget authority in a capital project fund for the construction of fire station number seven. Funds for the project will be transferred from the public safety fund.

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, FEBRUARY 26, 2007**

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**TITLE:** Public Hearing for Special Review #834

**DEPARTMENT:** Planning & Community Services

**PRESENTED BY:** Lora Mattox, AICP, Neighborhood Planner

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**PROBLEM/ISSUE STATEMENT:** A Special Review request to amend the previously approved master plan for a 204-unit Senior Housing Community, a new layout for the site and buildings in a Residential 9600 zone and also subject to the requirements of the Shiloh Corridor Overlay District. The parcel is located near the southwest corner of the intersection of Central Avenue and Shiloh Road, and is legally described as Tract 1, of corrected amendment of Tracts 1 and 3, and remainder Tract 2 to be amendment of Tracts 1, 2, and 3, Certificate of Survey 1648. The owners are Robert and Bonnie Bell, Trustees, and the agent is Mountain West Senior Housing, LLC. The property is currently used for agricultural purposes.

The Zoning Commission conducted a public hearing on February 6, 2007, and is forwarding a recommendation to the City Council of conditional approval 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 to the City Council on a 5-0 vote on Special Review #834.

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

### **ATTACHMENTS**

- A. Zoning/Location Map
- B. Photographs of the Site
- C. Previously Approved/Proposed New Site Plan
- D. Photographs and Renderings of Similar Developments

## **INTRODUCTION**

The subject property was granted conditional approval for a Special Review to develop a community housing facility for seniors on September 25, 2006. The property is within the Shiloh Corridor Overlay District. Community housing facilities for seniors are allowed in an R-9,600 zone by Special Review only. The developer has worked with staff to ensure the proposed development meets the requirements for R-9,600 as well as the Shiloh Corridor Overlay District.

## **PROCEDURAL HISTORY**

- January 2, 2007: Robert and Bonnie Bell submitted an application for Special Review on behalf of Mountain West Senior Housing.
- February 6, 2007: The City Zoning Commission held a public hearing and voted 5-0 to forward a recommendation of conditional approval for this the special review request.
- The City Council will conduct a public hearing and consider this application on February 26, 2007.

## **BACKGROUND**

Mountain West Senior Housing, LLC, is requesting to amend the previously approved master plan to develop a community campus that will provide a variety of housing options to senior residents. The proposed project will consist of 66 units of assisted living, 36 memory care beds, 72 units of congregate care and 32 senior cottage units. On-site amenities will include beauty and barber salon, exercise area, activity rooms, hospitality room, computer room and outdoor areas. The services to be provided include weekly housekeeping, 24-hour on-site staff, social, educational and recreational programs, scheduled transportation, emergency call system and meal plans.

With the exception of the cottages, all units will be housed in a multi-story building. The memory care facility will be a single-story wing with its own outdoor area. The remainder of the building will be three-stories. The north wing will provide independent or congregate care units for more active seniors. This wing is separated from the assisted living wing by a common dining and kitchen area, which also serves as the main entryway. The assisted living units are designed specifically for seniors who have a need for assistance with certain daily activities that can be delivered in a non-institutional environment. There are also 16 separate duplex structures with 32 units that provide a greater degree of independent living. All the structures are situated in a campus-like setting that is abundantly landscaped and provides sidewalk connections throughout the complex.

The original Master Plan for Mountain West Senior Housing, LLC, included 80 assisted living units, 40 memory care beds, 144 units of congregate care and 26 senior cottages. In addition, the building size proposed in the previously approved Special Review approximately totaled 250,000 square feet with a footprint of 103,700 square feet. The new request proposes 66 assisted living units, 36 memory care beds, 72 congregate care and 32 senior cottages. The request also proposes a decrease in square footage to approximately 160,000 square feet with a footprint of 85,700 square feet. The applicant is requesting to review the master plan to incorporate the new number of units provided and building size and layout.

Community facilities are allowed in Residential 9,600 zoning districts by Special Review only. The adjoining zoning is primarily residential with the exception of Neighborhood Commercial at the intersection of Central and Shiloh. The property also lies within the Shiloh Corridor Overlay District and must comply with the requirements of that district. The Overlay District requires a fence and a 15-foot bufferyard between residential and commercial uses. Outside lighting must be shielded and freestanding signs are restricted to 20 square feet. These standards will help ensure that the development is compatible with the surrounding residential area. There will be three accesses to the complex; one from Central Avenue and two from Bell Avenue. Bell Avenue intersects with Shiloh Road. Both Central and Shiloh are principal arterial that are designed to handle the increase in traffic volumes. The proposed number of parking spaces meets City site development standards.

### **ALTERNATIVES ANALYSIS**

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

1. Complies with all requirements of this Article (27-1500).  
*This application does comply with the requirements of the zoning regulations.*
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.  
*This application is generally consistent with the purposes of Chapter 27, the 2003 Growth Policy and the West Billings Neighborhood Plan.*
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.  
*The proposed use is compatible with the adjoining land uses and conditions of approval are recommended to ensure compatibility.*

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

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

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

## **CONDITIONS OF APPROVAL**

1. The special review approval shall be limited to Tract 1, of corrected amendment of Tracts 1 and 3, and remainder Tract 2 to be amendment of Tracts 1, 2, and 3, Certificate of Survey 1648 as shown on the site plan dated December 28, 2006.
2. The special review approval is for Senior Housing and no other use or expansion of this use is approved or implied with this authorization.
3. Development of the site shall be in substantial conformance with the site plan dated December 28, 2006. Deviations from the approved site plan that change the location of buildings, parking lot access or parking areas will require additional special review approval.
4. All exterior lighting shall have full cut-off shields per Section 27-1400, Shiloh Road Corridor Overlay District of the Unified Zoning Regulations.
5. Signs on the property shall be limited to restrictions stated in Section 27-1400, Shiloh Road Corridor Overlay District of the Unified Zoning Regulations.
6. Landscaping shall be provided as shown on the site plan dated December 29, 2006 and as required by Section 27-1400, Shiloh Road Corridor Overlay District of the Unified Zoning Regulations.
7. Any expansion of the gross floor area of the buildings 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.
8. Dedicate additional 30-feet of right-of-way on Central Avenue adjacent to proposed project.
9. 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 level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

## **STAKEHOLDERS**

The public hearing was held on February 6, 2007, before the City Zoning Commission. All property owners within 300 feet of the property were notified of the public hearing by mail and the property was posted. Charlie Yegen, agent for Robert and Bonnie Bell, Trustees, was present to answer questions in regards to this special review request. No other testimony was given on the request.

## **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 and the West Billings Plan, specifically:

Growth Policy

- Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6). *The property adjoins existing City limits.*

West Billings Plan

- Establish Development Patterns that Use Land More Efficiently. *The development will utilize available infrastructure that can service the proposed development.*
- Plan for the Orderly and Efficient Urbanization of Agricultural Lands. *The development is located on the edge of the urban area where agricultural operations are least attractive. The development will act as a buffer between existing residential housing and a major arterial.*

**RECOMMENDATION**

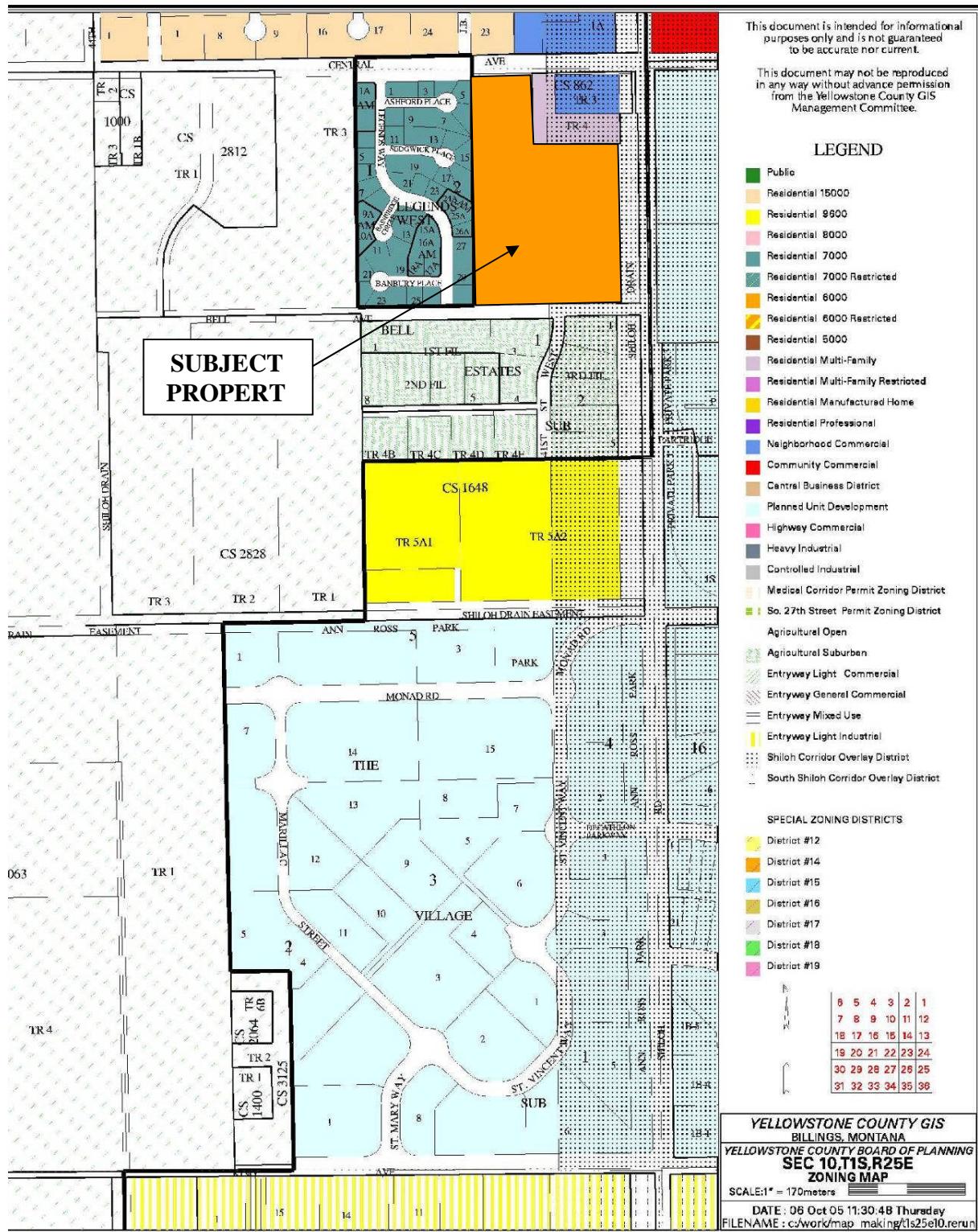
The Zoning Commission is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote on Special Review #834.

**ATTACHMENTS**

- A. Zoning/Location Map
- B. Photographs of the Site
- C. Previously Approved/Proposed New Site Plan
- D. Photographs and Renderings of Similar Developments

## ATTACHMENT A

### Zoning Map



**ATTACHMENT B**  
**Site Photographs**



View looking north along east edge of subject property. Berming along Shiloh Drain is visible on right side of photo.



View looking northwest across subject property. Legends West Subdivision is visible in background.

**ATTACHMENT B**  
**Site Photographs**

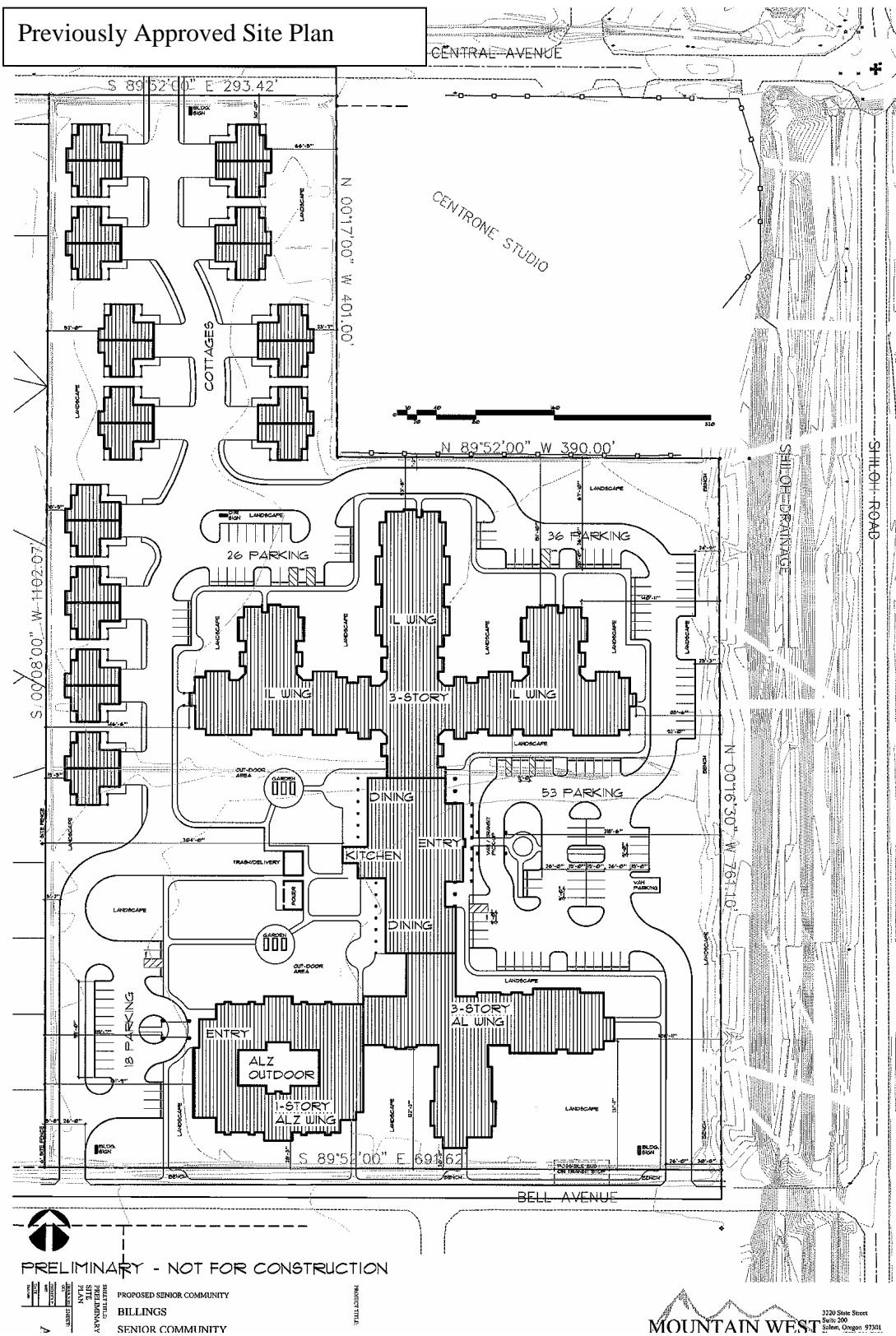


View looking west along Bell Avenue. Subject property is on right of photo.

## ATTACHMENT C

## Site Plan

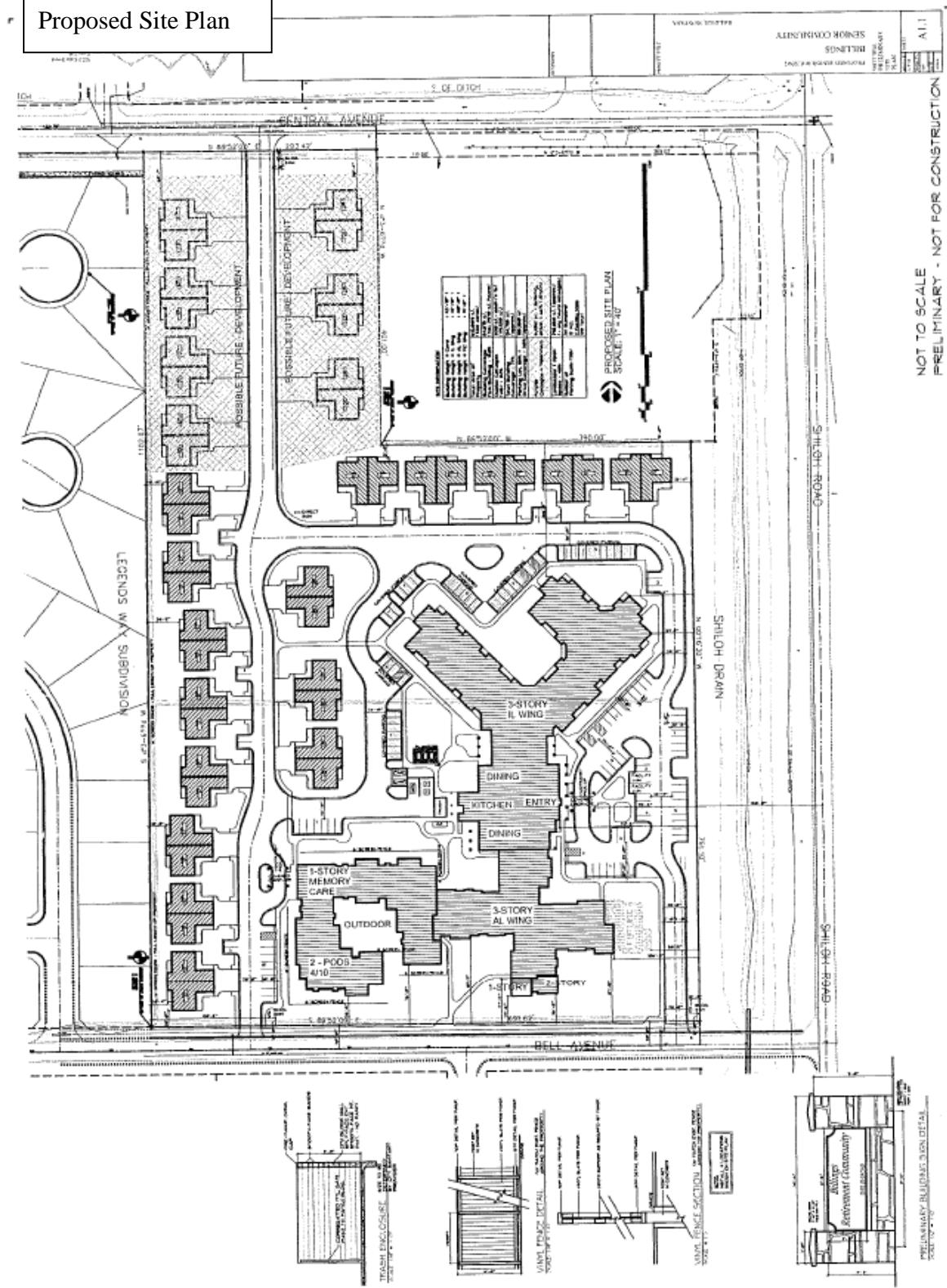
## Previously Approved Site Plan



## ATTACHMENT C

## Site Plan

## Proposed Site Plan



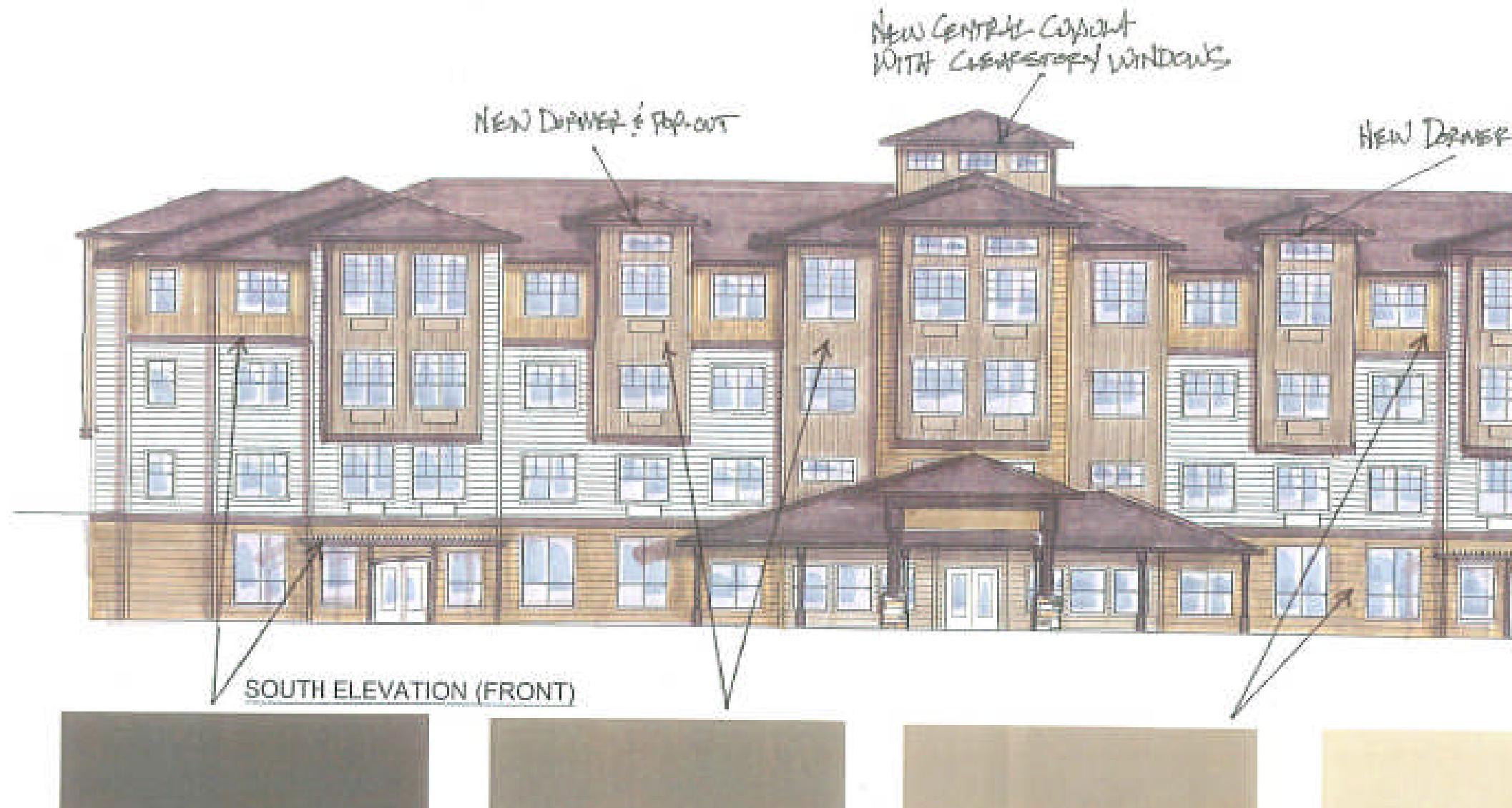
**ATTACHMENT D**  
Photographs and Renderings of Similar Developments



Revised Balcony Facade & Color Set MC

- STONE MASONRY
- VINYL WINDOWS
- FLASHINGS, GUTTERS, DOWNSPOUTS
- ROOFING, STEEL ROOFING

ALL Revised AS PER ORIGINAL SUBMITTAL





WEST ELEVATION - FRONT (View from Balfour Road)  
Scale 1:100

NOTE:  
THE PARAPET LINE INDICATES THE FUTURE COCKLE  
COURT AS IT COULD SWELL IN FRONT OF THE  
ENTRANCE UNPREDICTED TO THE BUILDING AND  
PARTIAL ELEVATION WOULD BE NORMALLY PERMITTED.



EAST ELEVATION - BACK (View from Balfour Road)  
Scale 1:100



## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, FEBRUARY 26, 2007**

**TITLE:** Public Hearing for Special Review #835

**DEPARTMENT:** Planning & Community Services

**PRESENTED BY:** Aura Lindstrand, Planner II

**PROBLEM/ISSUE STATEMENT:** This is a special review to replace an existing beer and wine license with gaming with an all beverage license with gaming on a property described as Lots 43-50, Block 4, Broadwater Subdivision, addressed as 1106 and 1110 Broadwater Avenue (Suds Hut and Royal Diamond Casino) and zoned Community Commercial (CC). The owner and applicant is Suds Hut of Billings, Inc. and the representing agent is Bob Pulley. The Zoning Commission conducted a public hearing on February 6, 2007, 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 #835 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 special review to replace an existing beer and wine license with gaming with an all beverage license with gaming on a property described as Lots 43-50, Block 4, Broadwater Subdivision, addressed as 1106 and 1110 Broadwater Avenue (Suds Hut and Royal Diamond Casino) and zoned Community Commercial (CC).

## **PROCEDURAL HISTORY**

- **Special Review #353** – A special review to permit beer and wine consumption on an exterior deck attached to the Suds Hut was denied on June 27, 1988.
- **Special Review #663** – A special review to permit the expansion of a beer and wine license with gaming into an existing structure adjacent to the Suds Hut (the Royal Diamond Casino) was conditionally approved on July 26, 1999.
- On January 1, 2007, the special review application was submitted to the Planning Department.
- On February 6, 2007, the Zoning Commission conducted a public hearing on this request and forwarded a recommendation of Conditional Approval to the City Council on a 5-0 vote.
- On February 26, 2007, the City Council will vote to approve, conditionally approve, or deny the special review.

## **BACKGROUND**

The applicant is requesting a Special Review to replace a beer and wine license with gaming with an all beverage license with gaming in a Community Commercial zoning district within the existing Suds Hut and Royal Diamond Casino (1106 and 1110 Broadwater Avenue). The special review request will allow for full beverage service for onsite consumption only within the restaurant and casino. There is no proposal for expansion of these businesses. The Planning Department did not receive any comments from city departments. There are no schools, churches or public parks with playground equipment within 600 feet of this proposed location.

Section 27-612.A. Supplemental Commercial Development Standards specifies that a special review is necessary for any commercial establishment that serves alcoholic beverages as a primary or accessory use. Staff finds that this application satisfies the requirements set forth for the special review. The restaurant and casino already exist at this site and the all beverage license with gaming will be restricted to these units within the building, as there is also a barber shop located at the west end of this building. Based on the special review criteria, staff is recommending conditional approval.

## **ALTERNATIVES ANALYSIS**

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

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

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

- a. 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 requested change from a beer and wine license to an all beverage license will not change the existing structure or use.*
- b. 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 existing restaurant is commercially zoned and has been at this location for approximately 30 years. It is compatible with the surrounding commercial uses.*

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.

### **CONDITIONS OF APPROVAL**

1. The special review approval shall be limited to the area currently occupied by the Suds Hut and Royal Diamond casino located at 1106 and 1110 Broadwater Avenue.
2. No outdoor seating, outdoor music or outdoor public announcement systems shall be permitted.
3. All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code.

**\*\*NOTE\*\*** Approval of this special review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a special review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

### **STAKEHOLDERS**

The City Zoning Commission conducted a public hearing on February 6, 2007. Bob Pulley, the representing agent, was present at the hearing to answer any questions from the Zoning Commission. There were no surrounding property owners present; and no letters in favor or opposed to the application were received by the Planning Department.

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

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the following goal of the 2003 City of Billings/Yellowstone County Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns (Land Use Element Goal, page 5)
- More housing and business choices within each neighborhood. (Land Use Element Goal, page 6)

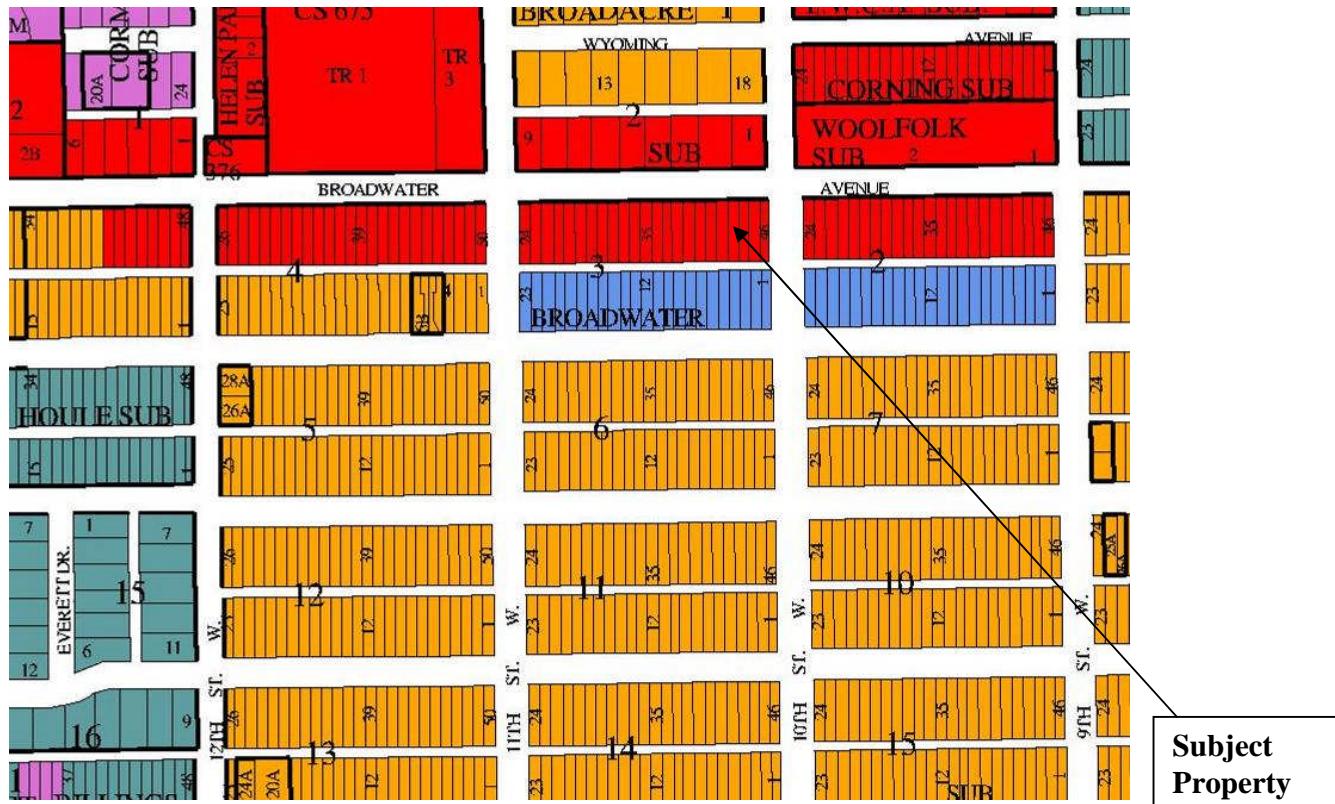
### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of special review #835 on a 5-0 vote.

### **ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs

**ATTACHMENT A**  
**Zoning Map – Special Review #835**



**ATTACHMENT B**  
**Site photographs –Special Review #835**



Photo 1: View west from the subject property along Broadwater Avenue toward adjacent commercial uses.



Photo 2: View southeast toward the Suds Hut. The Royal Diamond casino is located to the right in the photo.



Photo 3: View east along Broadwater Avenue toward adjacent commercial uses.

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

**AGENDA ITEM:**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, FEBRUARY 26, 2007**

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**TITLE:** Public Hearing for Special Review #836

**DEPARTMENT:** Planning & Community Services

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

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**PROBLEM/ISSUE STATEMENT:** This is a request for a special review for a beer and wine license with gaming for a new casino, Silver City Casino, at 1911 King Avenue West, Lots 11A & 12 A, Block 1 CBH Industrial Park Subdivision in an Controlled Industrial zoning district. The owner is KRP, LLC Jim Kisling and Dan Pendergrass and Bob Pulley are the agents. The Zoning Commission conducted a public hearing on February 6, 2007, 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 #836 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 locate a beer & wine license with gaming for a proposed new casino, Silver City Casino, on Lots 11A and 12A, Block 1 of CBH Industrial Park Subdivision located at 1911 King Avenue West. The property is zoned Controlled Industrial and on-premise consumption of alcoholic beverages and gaming can be allowed only by special review approval. The property is currently developed as an ATM Express business. The new owner proposes to re-develop the property with a multi-tenant commercial building.

## **PROCEDURAL HISTORY**

- A special review application to locate a beer and wine license with gaming for a new casino was received on January 2, 2007.
- The City Zoning Commission held a public hearing on February 6, 2007, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.
- The City Council will conduct a public hearing and consider this application on February 26, 2007.

## **BACKGROUND**

One of the tenant spaces in the proposed new building will be the location of the 1,980 square foot Silver City Casino (See Attachment C – Site Plan). Most of the property surrounding this site has been developed for services such as the Holiday gas station to the west, the Springhill Suites hotel, the Texas Roadhouse restaurant, the Hu Hot Mongolian Grill as well as several car dealerships and other service oriented commercial establishments. The City Council has proposed to develop a casino overlay zoning district that would provide further regulation of casinos and gaming establishments. The Silver City Casino has been proposed in other locations within the city limits including South 24<sup>th</sup> Street West, and Grand Avenue. The Silver City Casino at this proposed location will be located in a 1,980 square foot space within a new multi-tenant building. There is no proposed outdoor patio lounge.

There are three liquor licenses within the immediate area that were approved at existing or proposed restaurant locations – the Texas Roadhouse, the Hu Hot Mongolian Grill and a new restaurant and casino east of this location. There are no schools, churches, or play grounds with equipment within 600 feet of the proposed location.

The Planning Department reviewed this application and recommended 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 is within a Controlled Industrial zoning district where on premise consumption of alcoholic beverages and gaming may be allowed by special review approval. The form of the application is correct and the proposed development of the property for the casino in the multi-tenant building appears to conform to site development standards. More detailed landscaping and parking plans are normally reviewed at the

time of building permit submittal.

The application does conform to the second and third criteria. The zoning regulations adopted by the City Council have designated several zoning districts where on premise consumption of alcoholic beverages and gaming may be allowed. The proposed Silver City Casino at 1911 King Avenue West will be the only casino proposed within the immediate area. The other three locations are primarily restaurants that also have alcoholic beverages and a small area for gaming. There are no proposed residential developments in the immediate area and the Controlled Industrial zone is intended *“to accommodate a variety of business, warehouse and light industrial uses related to wholesale plus other business and light industries not compatible with other commercial zones, but which need not be restricted in industrial or general commercial zones, and to provide locations directly accessible to arterial and other transportation systems where they can conveniently serve the business and industrial centers of the city and county.”* The development of a casino in this location will fit in with the intention to provide a service to the other businesses and travelers to this area of West Billings. The proposal is consistent with goals of the 2003 Growth Policy specifically the goal of encouraging new developments that are sensitive to and compatible with the character of the adjacent land use patterns. The Controlled Industrial district and the Highway Commercial district south of this area are intended for concentration of commercial and service-oriented businesses. The site plan submitted shows the intent to develop a well-landscaped and designed commercial use.

### **ALTERNATIVES ANALYSIS**

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

- Complies with all requirements of this Article (27-1500).  
*This application does comply with the requirements of the zoning regulations.*
- 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.
- 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 beer and wine license with gaming at this location 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:

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 #836 on a 5-0 vote.

### **CONDITIONS OF APPROVAL**

1. The special review approval shall be limited to Lots 11A and 12A of Block 1 of CBH Industrial Park Subdivision as shown on the site plan as revised February 2, 2007.
2. Development of the site shall be in substantial conformance with the site plan as revised February 2, 2007. The location of the proposed casino will be in "Unit B" as shown on the site plan. Deviations from the approved site plan that change the location of proposed casino, landscaping, parking lot access or parking areas will require additional special review approval.
3. There shall be no outdoor patio lounge developed for this casino.
4. 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.
5. Landscaping shall be provided as shown on the site plan as revised February 2, 2007 and as required by Section 27-1101 (Landscaping) of the Unified Zoning Regulations.
6. 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.
7. 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, MT 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 public hearing was held on February 6, 2007, before the City Zoning Commission. Dan Pendergrass and Bob Pulley as agents were present at the hearing and explained the proposal to the Zoning Commission. There were no surrounding property owners present and no letters in favor or opposed to the application were received by the Planning Department.

Mr. Pulleys explained the proposal to the Zoning Commission. The new multi-tenant building will be under construction soon. The plan is to have a variety of tenants including at least two new restaurants, the Silver City Casino and a cellular telephone store. The location is not near any neighborhoods, parks or churches. Mr. Pulley expects the building to be ready for its first occupants in October 2007.

Mr. Pendergrass, owner of Silver City Casino, intends to relocate to this area. The average daily traffic on this portion of King Avenue West is over 40,000 vehicles per day. Mr. Pendergrass explained he has been looking for a new location for 18 months and this site seems to be the best location so far. The Silver City Casino will be about 2,000 square feet total and will be a good neighbor to the other tenants in the new building.

The Zoning Commission considered the testimony and the staff recommendation of conditional approval. Mr. Michael Larson commented that it is difficult to locate a new liquor license and each neighborhood and setting must be considered. This particular location appears to have a lot to recommend for a new liquor license. He commented there were no sensitive uses within the area and it would have minimal impact on the surrounding property. 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**

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.

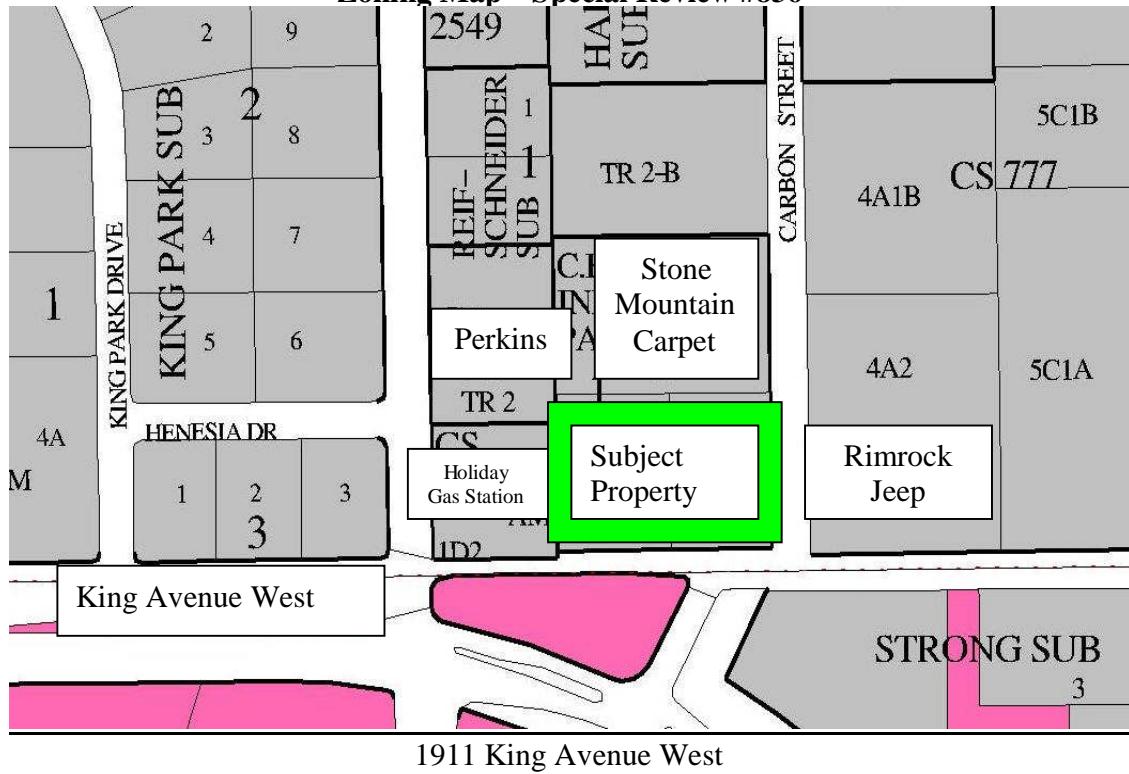
### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #836 on a 5-0 vote.

### **ATTACHMENTS**

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

**ATTACHMENT A**  
**Zoning Map – Special Review #836**



**ATTACHMENT B**  
**Site photographs –Special Review #836**

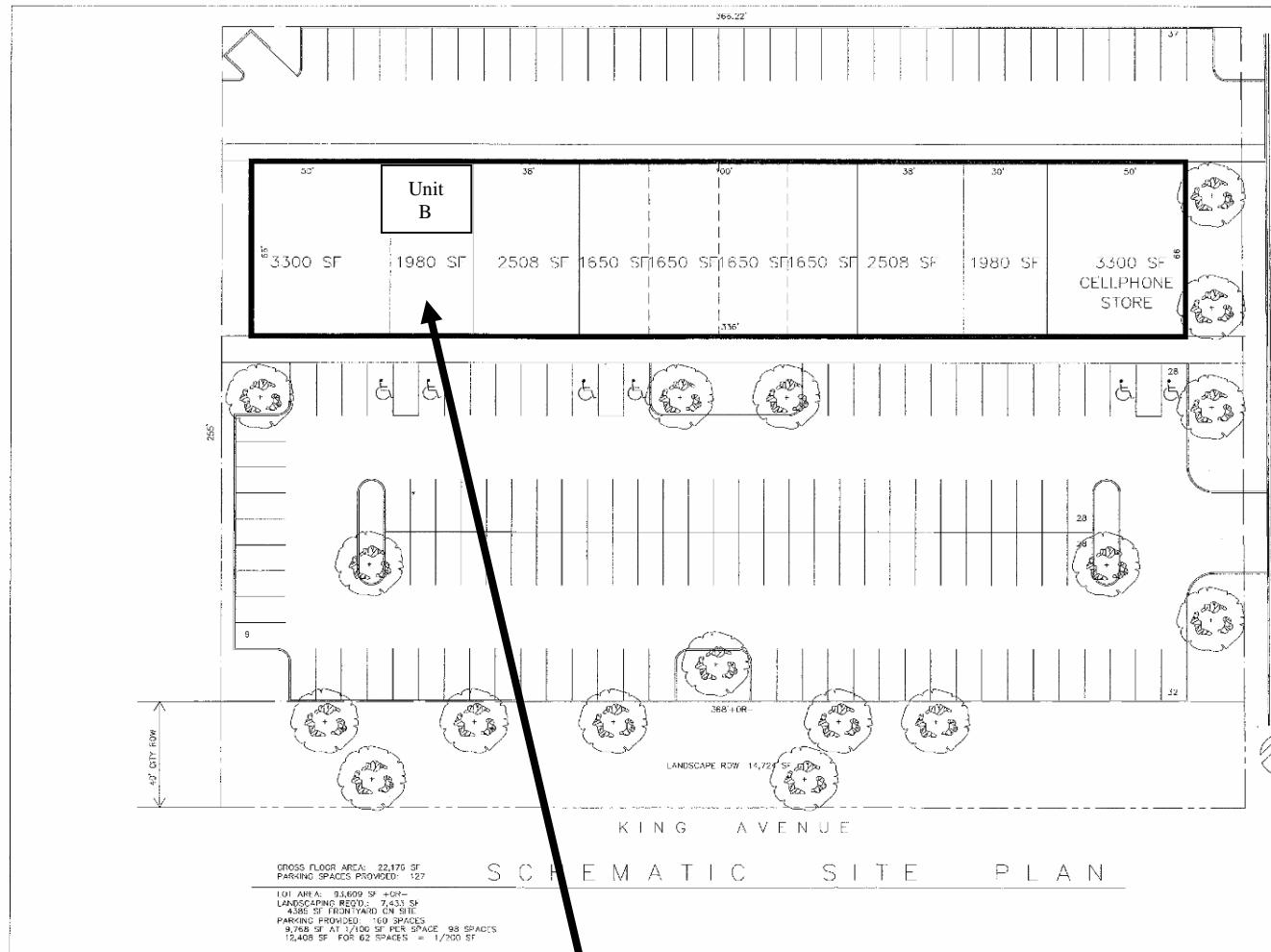


Subject property at 1911 King Avenue West



View east from subject property – Rimrock Jeep

**Attachment C**  
**Site Plan –Special Review #836**



Proposed Silver City Casino – 1911 King Avenue West – Unit B

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

**AGENDA ITEM:**


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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, FEBRUARY 26, 2007**

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**TITLE:** Public Hearing for Special Review #837  
**DEPARTMENT:** Planning & Community Services  
**PRESENTED BY:** Wyeth Friday, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a Special Review to allow the change from one nonconforming use, a general automobile repair shop with storage and cleaning of automobiles, to another nonconforming use, a lawn care business. The subject property is legally described as Lot 1, Block 4, Central Avenue Addition, and all of Block 1, Central Avenue Addition, 2<sup>nd</sup> Filing. The property is located at 640 St. Johns Avenue. The owner is Michael and Colleen Mannion, and the representing agent is Dick Zier. The Zoning Commission conducted a public hearing on February 6, 2007, and is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote with one abstention.

**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 and acted on by the applicant, may increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval for Special Review #837 on a 4-0 vote with one abstention.

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

**ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan
- D. Applicant Letter

## **INTRODUCTION**

This is a Special Review to allow the change from one nonconforming use, a general automobile repair shop with storage and cleaning of automobiles, to another nonconforming use, a lawn care business. The subject property is legally described as Lot 1, Block 4, Central Avenue Addition, and all of Block 1, Central Avenue Addition, 2<sup>nd</sup> Filing. The property is located at 640 St. Johns Avenue.

## **PROCEDURAL HISTORY**

- Agent Dick Zier submitted a special review application on January 2, 2007, on behalf of property owners Michael and Colleen Mannion.
- The City Zoning Commission held a public hearing on February 6, 2007, and voted 4-0, with one abstention, to forward a recommendation of conditional approval for this special review request.
- The City Council will conduct a public hearing and consider this application at its meeting on February 26, 2007.

## **BACKGROUND**

The applicants are requesting a Special Review to convert one non-conforming use, an automobile repair and storage business, to a new non-conforming use, Scotts Lawn Service, on property legally described as Lot 1, Block 4, Central Avenue Addition, and all of Block 1, Central Avenue Addition, 2<sup>nd</sup> Filing. The property is in the R-60 zoning district, where lawn service businesses are not allowed. Property assessment information indicates the commercial building located on the property has been there since 1946 and the property has had a variety of legally-nonconforming uses on it over the years. The property is located at 640 St. Johns Avenue. The property was the subject of Special Review requests in January 1996 and November 2005 to change from one non-conforming use to another. A special review was approved to switch the use from a paint shop to a muffler shop in 1996 and a special review was approved to switch the use from a muffler shop to an auto repair and cleaning shop in 2005.

The Planning Department recommended conditional approval of this special review application. This property has been used for various legally nonconforming uses for many years. The past few allowed uses have been automotive, including a muffler shop and a vehicle repair and parking operation. The new proposed use of a lawn service business appears to be a similar use of the property compared to what it has been used for previously. The lawn service business would use the property for vehicle parking, material storage and office space. Scotts Lawn Service is currently operated out of the owner's home in the Billings Heights. Owner Allen Green states that his business currently operates a total of five vans and trucks, and two small trailers. There are three employees. Green said that using the property at 640 St. Johns Avenue will enable him to have all of his equipment and office in one location. Green said a semi truck delivers bags of granular fertilizer about three times per year to his business. He said the business operates from approximately 7 a.m. to 5 p.m., Monday through Friday from March through October.

The subject property sits on the edge of a residential neighborhood near a commercial area along Central Avenue. The new Albertson's grocery store is one block east of the subject property at 6<sup>th</sup> Street West and St. Johns Avenue. There are single family and multi-family dwellings on the north, east and west of the property, and some residential and office development to the south of the property along Central Avenue. Some potential impacts to the surrounding properties are proposed to be mitigated through conditions, including potential light and noise pollution. Several of the conditions also may help to make the property fit in better with the surrounding neighborhood, including a sight-obscuring fence and limited signage.

### **ALTERNATIVES ANALYSIS**

Section 27-405 of the Unified Zoning Code allows the conversion of the property to another nonconforming use through a special review process under 27-405 (C). Part C states: "If no structural alterations are made, any nonconforming use of a structure, or structures and premises, may be changed to another nonconforming use provided that the governing body with jurisdiction on the property shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the governing body with jurisdiction on the property may require appropriate conditions and safeguards in accordance with the provisions of this chapter. Any proposed change from one nonconforming use to another nonconforming use shall be processed and reviewed under the Special Review provisions of BMCC Section 27-1501, et seq., and the following criteria shall be considered:

- (1) The nature and purpose of the existing nonconforming use;
- (2) The difference in quality and character of the proposed use;
- (3) The difference in the degree of use of the proposed use, including but not limited to hours of operation and parking requirements;
- (4) The reasons for the proposed change; and
- (5) The overall impact of the proposed use on the surrounding 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.

### **CONDITIONS OF APPROVAL**

1. The special review approval shall be limited to Lot 1, Block 4, Central Avenue Addition and all of Block 1 of Central Avenue Addition, 2<sup>nd</sup> Filing.

2. The special review is for a lawn service business only. No other use is allowed or intended by this special review approval.
3. The following conditions must be met prior to the operation of a lawn service business out of the property:
  4. The roof sign on the building shall be removed and the total allowed signage for the property shall follow the sign requirements in 27-705 (b) of the Unified Zoning Regulations for the Residential Professional zoning district. Signs shall not be illuminated. A sign permit is required for any signage for the property.
  5. Privacy slats shall be installed on the existing chain link fence that is on three sides of the property.
  6. All repair of lawn service equipment shall take place inside the building.
  7. Any lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
  8. There shall be no public address system designed to broadcast outside the building.
  9. All vehicles parked on the site shall be operable and shall be parked inside the fenced enclosure on the property at all times.
  10. There shall be no outside storage of lawn or garden waste on the property.
  11. The only access to the property shall be the existing curb cut on St. Johns Avenue.
  12. A change to any other use shall be in conformance with the uses and restrictions for the R-60 zone.

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

## **STAKEHOLDERS**

The City Zoning Commission conducted a public hearing on February 6, 2007. Scotts Lawn Service owner Allen Green attended the hearing to answer any questions from the Zoning Commission. There were no surrounding property owners present. No letters in favor or opposed to the application were received by the Planning Department.

Green told the Commission that he planned to do some minor repairs to the building and planned to put the privacy slats in the fence. He said signage was not an issue for him because he does not need to draw customers to the property. "We go out to our customers at their properties. We don't expect to have customers come and visit us at the business," Green said. He said his business provides weed control, fertilizing and lawn aerating services. Scotts Lawn Service does not mow lawns or provide other landscaping services, Green said.

Zoning Commission Members Ed Workman and Michael Larsen expressed concern about the storage of chemicals at the property, and the cleaning of tanks and spraying equipment. Green said he receives deliveries of granular fertilizer that he would store on the property before taking the fertilizer in his vehicles to customers' lawns. He said the mixing of chemicals is done in the vans he uses and would be done in 100- to 200-gallon batches. Green said the small quantities that are mixed will not create any odors in the neighborhood around his business. He also explained that the washing of tanks, spray equipment and vehicles will be done over a catch basin installed in the floor of the building. He said the liquid collected in the basin is reused to spray lawns since it has some chemical residue, so there is no discharge of the liquid out of the holding basin.

The Zoning Commission concluded the public hearing and voted 4-0 to recommend conditional approval of Special Review #837. Zoning Commission Chair Angela Cimmino abstained from participating in the discussion and the vote since she is a customer of Scotts Lawn Service.

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

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the following goal of the 2003 City of Billings/Yellowstone County Growth Policy:

- More housing and business choices within each neighborhood
- Predictable land use decisions that are consistent with the neighborhood character and land use patterns

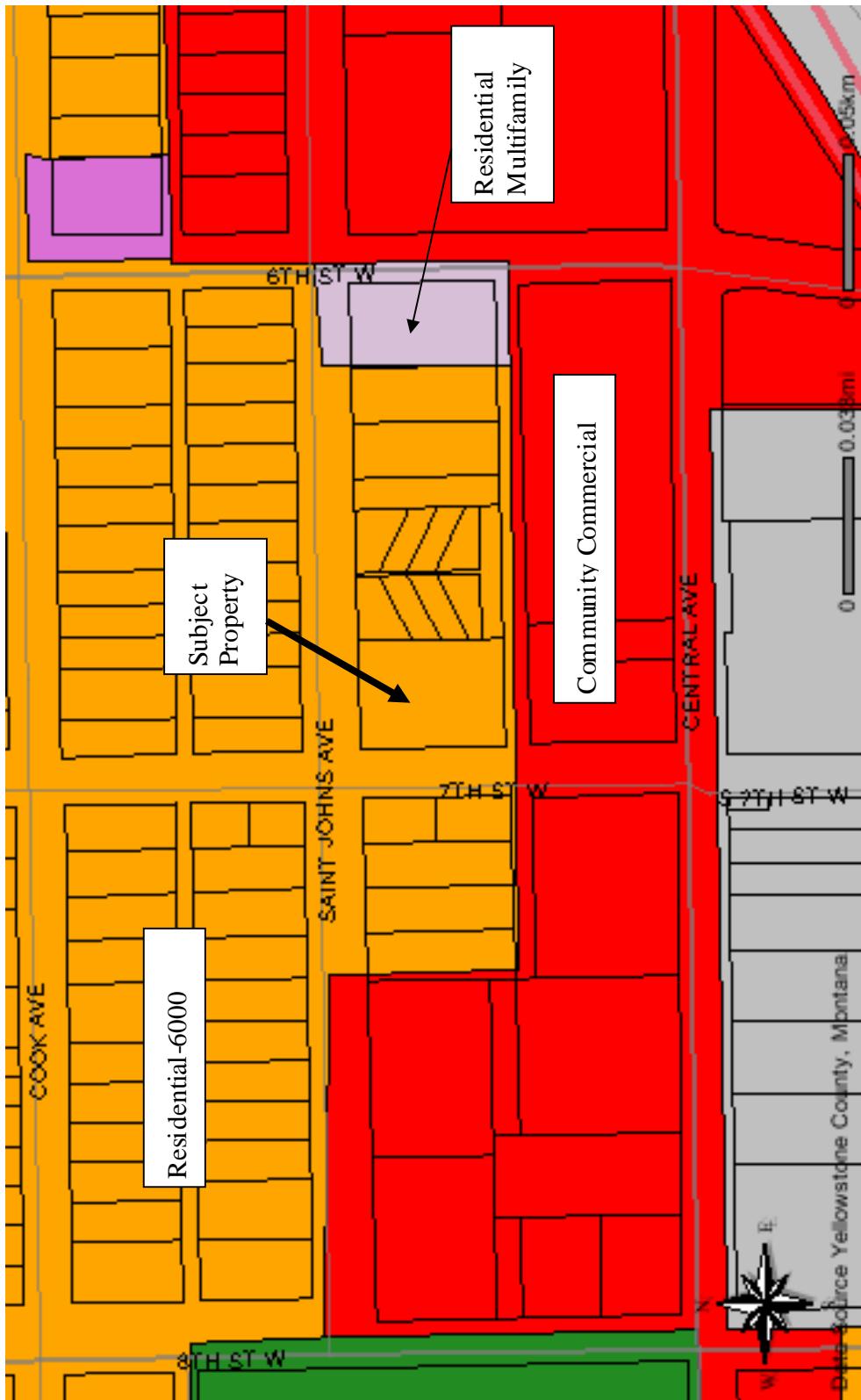
#### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #837 on a 4-0 vote with one abstention.

#### **ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan
- D. Applicant Letter

**ATTACHMENT A**  
Zoning Map – Special Review #837



**ATTACHMENT B**  
**Site photographs –Special Review #837**



**Figure 1.** Looking east at the subject property from across 7<sup>th</sup> Street West. The property is vacant at this time.

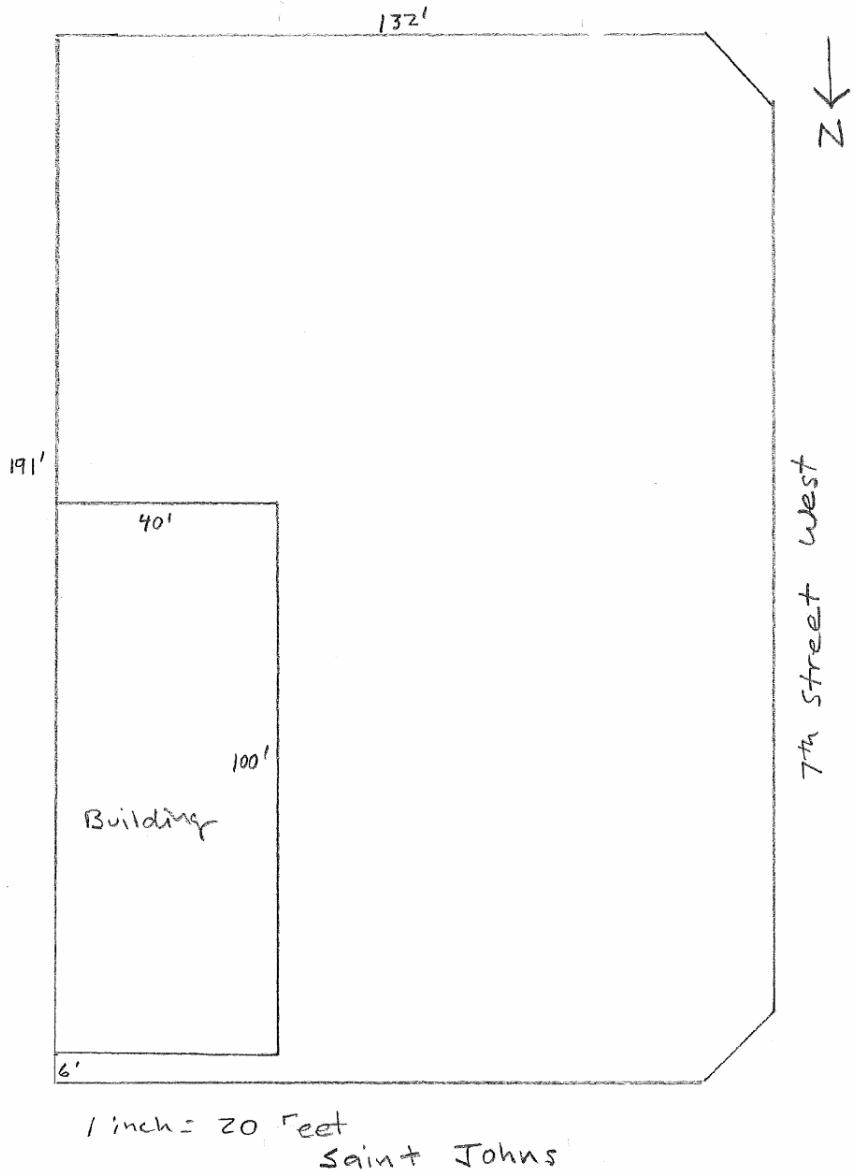


**Figure 2.** Looking south down 7<sup>th</sup> Street West toward Central Avenue. The subject property is on the left of the photo behind the fence.



**Figure 3.** Looking west across 7<sup>th</sup> Street West from the alley at the south side of the property. Single and multi-family homes are located west of the subject property.

**ATTACHMENT C**  
Site Plan –Special Review #837



Special Review Application

City of Billings

Planning & Community Services Department  
4<sup>th</sup> Floor, Parmly Library  
510 North Broadway  
Billings, MT 59101

RE: Special Review for 640 St. Johns Ave.

A.) In what ways is your proposal consistent with the goals and policies of the adopted Growth Policy?

Scotts Lawn Service is a new and growing business that is expanding and in need of more room. This expansion will provide for new job opportunities of \$30,000 plus. Alan Greene (the new building owner) has plans to clean up the appearance of the existing building in the near future. He will remove the sign from the roof top and replace it with an attractive sign on the side of the building. The lot will be cleaned up and maintained. The business will provide needed services to the neighborhood and also job openings in the neighborhood.

B.) Why is there a need for the intended use of the property at this location?

The proposed use is a light commercial use with minimal traffic that would be compatible with the adjacent residential properties. Scotts Lawn Service is growing beyond its home based business. The building and fenced yard is the perfect set-up as it exists.

C.) How will the public interest be served if this application is approved?

This business provides a needed service and creates jobs in the community. The new owner intends to improve the property.

D.) Prepare a written statement addressing what is intended to be done with the property, including new construction or change in the use of the property, and why the special review is being sought.

The property will be used to house Scotts Lawn Service. Allen has plans to repair the exterior & roof of the building, including new signage. He will clean up the existing weeds on the property and keep it maintained. Allen is asking for the special review so the property will retain the current automotive zoning and add lawn maintenance.

**ATTACHMENT D**  
**Applicant Letter**

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## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 26, 2007**

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**TITLE:** Zone Change #797 Public Hearing and 1<sup>st</sup> Reading of Ordinance  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Nicole Cromwell, AICP, Zoning Coordinator, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a zone change request from Residential-6,000 to Community Commercial on Lots 26 & 27, Block 5 of Central Heights Subdivision, 4<sup>th</sup> Filing located at 2156 Central Avenue. The property is owned by Michael Stock. The Zoning Commission conducted a public hearing on February 6, 2007, 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 re-developed.

**RECOMMENDATION**

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #797 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**

This is a zone change request from Residential-6,000 (R-60) to Community Commercial (CC) 14,383 square foot parcel of land owned by Michael Stock. The applicant is not proposing to re-develop the property at this time but may in the future. The building on Lots 26 and 27 was built in 1964 and the building on Lot 25, zoned Community Commercial, was built in 1955. The subject properties are located just east of the intersection of Central Avenue and South Sante Fe Drive. The property has been used for commercial purposes since 1964. The original zoning of the property in 1972 was Residential-6,000. In late 1980 and early 1981, a zone change was proposed for these two lots in order to allow a gas service station. Protest petitions were filed and the City Council subsequently denied the applications. The Planning Department and the City Zoning Commission both recommended approval on the application in 1980 and 1981.

## **PROCEDURAL HISTORY**

- A zone change request was received on January 2, 2007, for the subject properties.
- The Zoning Commission conducted a public hearing on February 6, 2007, 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 26, 2007, 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 12, 2007.

## **BACKGROUND**

The subject properties are located near the south east corner of the intersection of Sante Fe Drive and Central Avenue. The property owner plans to redevelop the property at some time in the future and the current zoning prevents redevelopment on these two lots.

The lots to the north and east are zoned Residential-6,000 (R-60). The lots east of the subject property on the south side of Central Avenue have been developed as two-family homes and are not owner occupied. The property on the north side of Central is also zoned R-60 and was developed as a skilled nursing facility in 1964. Two lots at 2032 Central Avenue were re-zoned from R-60 to Residential Professional in 1978 and the Unitarian Universalist Church is located here. Lots south of the subject property are zoned Residential-7,000 and have been developed for single family homes. The lot to the west, Lot 25 also owned by Michael Stock, is zoned Community Commercial and is the location of the Budget Framer. Central Avenue is an arterial street and currently handles a large volume of traffic – approximately 15,300 vehicle trips per day. The 2003 Growth Policy encourages land use decisions that are compatible with the existing neighborhoods and uses within the immediate area. From South Sante Fe Drive west to 24<sup>th</sup> Street West, Central Avenue has developed as a mixture of commercial uses from hardware stores to fast food restaurants. East of South Sante Fe Drive to 15th Street West, Central Avenue has a mixture of commercial, multi-family residential, public uses, and smaller multi-tenant commercial properties. The proposed Community Commercial zone appears to be in compatibility with the surrounding neighborhood and land uses. The proposed zoning would allow this property as developed be in conformance with the zoning regulations. Under the R-60 zoning district, if the property were to be damaged by 50% or more of its replacement value, subsequent use of the property would have to be residential. Any re-development of the property

would require conformance with current landscaping regulations, site development standards and screening from adjacent residential uses.

The Planning Department reviewed this application and recommended approval based on the attached twelve (12) criteria for zone changes. The new zoning will not increase urban sprawl by utilizing existing city services. Any redevelopment will have to comply with all applicable zoning requirements including screening and buffering from adjacent residential land uses. The new zoning gives reasonable consideration to the character of the district. The Zoning Commission conducted a public hearing on February 6, 2007, 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 new zoning will not increase urban sprawl by utilizing existing city services. The 2003 Growth Policy supports contiguous development in and around existing population centers. The proposed zoning will allow neighborhood services to be developed near existing residential areas along an arterial street
2. *Is the new zoning designed to lessen congestion in the streets?*  
The new zoning will not increase street congestion. The existing traffic of 15,300 vehicle trips per day will not be increased. The property is fully developed at this time and no redevelopment is anticipated in the near future.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
This lot has public street frontage on Central Avenue. The property is served by the City Fire Department and Police Departments. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*  
The new zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks, landscaping and screening requirements for any new developments.
5. *Will the new zoning provide adequate light and air?*  
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*  
The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. The Community Commercial zone allows 50% lot coverage. This limitation should prevent overcrowding of the land.

7. *Will the new zoning avoid undue concentration of population?*  
The new zoning of Community Commercial allows the development of residential dwelling units. If the entire parcel were developed at the maximum density, there could be six (6) dwellings in a single structure. Restrictions on lot coverage (50%), building height (50 feet), setbacks (80 feet from centerline of Central Avenue) and required off-street parking (1.5 spaces per 2 bedroom dwelling unit) would restrain the development of this number of dwelling units. The new zoning will avoid undue concentration of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*  
*Transportation:* The new zoning should have no effect on the adjacent streets or traffic patterns.  
*Water and Sewerage:* The City provides water and sewer service to the property and has adequate facilities to serve this property.  
*Schools and Parks:* There should be no immediate effect on parks or schools from this rezoning.  
*Fire and Police:* The property is served by existing services and there should be no effect on these services from the new zoning.

9. *Does the new zoning give reasonable consideration to the character of the district?*  
The zoning in this area is a mixture of commercial and residential districts with various densities. The area is primarily commercial to the west and north. Residential uses are developed to the east and south. The new zoning gives reasonable consideration to the character of the district.

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 is not expected to appreciably alter the value of buildings on the property or within the area.

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

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

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

## **STAKEHOLDERS**

The Zoning Commission conducted a public hearing on February 6, 2007, and forwarded a positive recommendation to the City Council by a 5-0 vote. Mr. Michael Stock attended the public hearing and explained the proposed zone change to the Zoning Commission. Mr. Stock explained that insurance and financing for the property is difficult to maintain. If anything were to damage to building, it could not be rebuilt and building single or two family dwellings on the lots would not be appropriate for this arterial street. No other property owners attended the public hearing or registered concerns about the zone change with the Zoning Commission or Planning Department.

## **RECOMMENDATION**

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #797 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 #797**

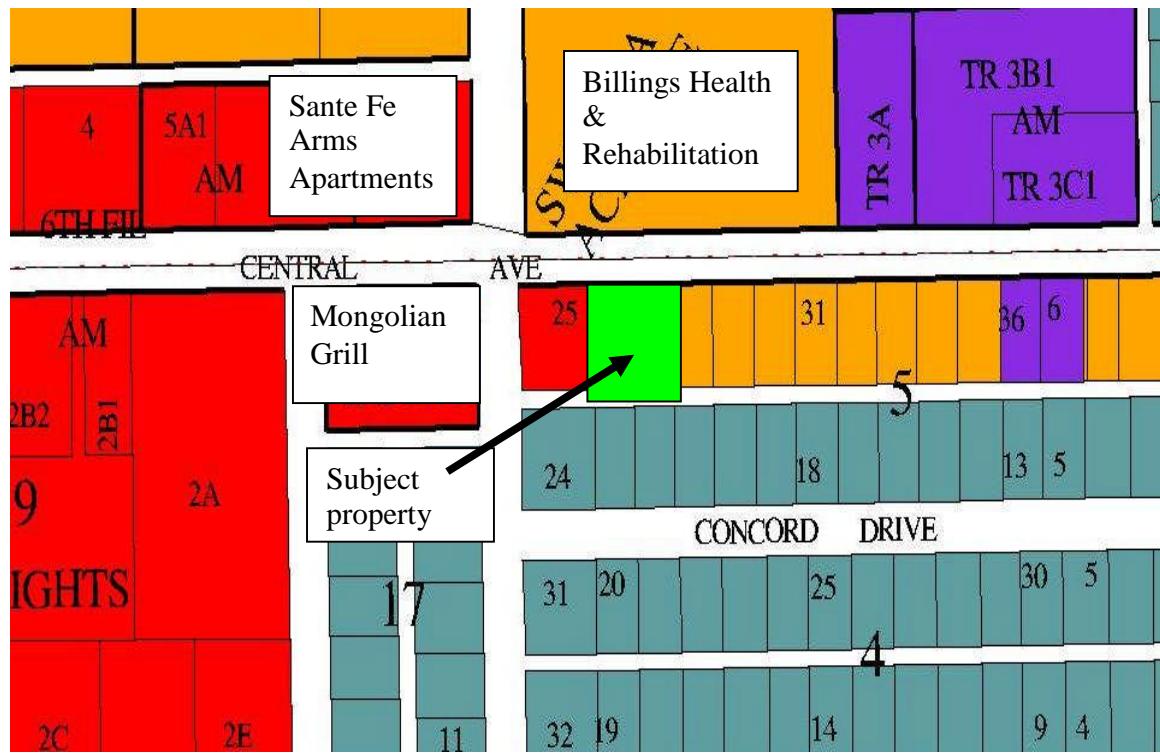


Subject Property view south to alley



View north across Central Avenue – Billings Health and Rehabilitation

**ATTACHMENT B**  
**Surrounding Zoning – Zone Change #797**



**ATTACHMENT C**

Zone Change #797

**ORDINANCE NO. 07-\_\_\_\_\_**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Lots 26 and 27, Block 5 of Central Heights Subdivision,  
4<sup>th</sup> Filing, containing approximately 14,838 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 Lots 26 and 27, Block 5 of Central Heights Subdivision, 4<sup>th</sup> Filing, containing approximately 14,838 square feet of land and is presently zoned Residential-6,000 and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning **for Lots 26 and 27, Block 5 of Central Heights Subdivision, 4<sup>th</sup> Filing** is hereby changed from **Residential-6,000** to **Community Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Community Commercial** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading February 26, 2007.

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

CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, MMC      City Clerk

ZC#797 – Central Heights 4<sup>th</sup> Filing, Lots 26 and 27, Block 5

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 26, 2007**

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**TITLE:** Highland Neighborhood Plan - Public Hearing and Resolution of Intent to Adopt

**DEPARTMENT:** Planning & Community Services

**PRESENTED BY:** Lora Mattox, Neighborhood Planner, Planner II

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**PROBLEM/ISSUE STATEMENT:** The Highland Neighborhood Plan is a guide for land use and community development and will serve as a guiding document for making decisions that will affect the future of the Highland Neighborhood. Extensive research, public input and local government review ensures that this Neighborhood Plan sets forth attainable goals based on current public values. The strategies to achieve these goals rely on commonly-accepted planning, engineering and organizational practices, as well as, state-of-the-art approaches to contemporary issues.

At the February 12, 2007 City Council meeting, staff requested that the public hearing be continued until February 26, 2007 to allow additional input from the North Elevation Task Force on issues impacting this area. Issues include the preservation of McKinley Elementary School as a neighborhood school and traffic concerns directly impacting the area around the school.

**FINANCIAL IMPACT:** A primary objective of community planning is to reduce the cost of services by assessing future public needs and establishing cost-effective methods to address those needs. This Neighborhood Plan sets out a rational course for managing City resources wisely. Examples of cost-effective policies and strategies include:

- Promote infill through development incentives
- Foster partnerships to leverage public funds

**RECOMMENDATION**

The Yellowstone County Board of Planning recommends that City Council approve the Resolution of Intent to Adopt the Highland Neighborhood Plan as part of the Yellowstone

County and City of Billings 2003 Growth Policy. A copy of the plan is on file in the City Clerk's Office.

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

**ATTACHMENTS**

- A. Yellowstone County Board of Planning Resolution 07-01
- B. Resolution of Intent to Adopt the Highland Neighborhood Plan

## **INTRODUCTION**

The 2003 Growth Policy states as a land use issue that the existing neighborhood plans lack sufficient detail to address neighborhood character and preferred land use patterns. To address this need, the City Council instructed the Planning and Community Services Department to initiate the neighborhood planning process for neighborhoods located within the city.

The neighborhood planning process involved local residents to identify issues impacting the area and works towards goals, objectives and actions to address these issues. Also, as part of the Highland Neighborhood Plan, residents identified preferred land use patterns and created a map to help guide this future land use. The goals and objectives, which describe desired future conditions, are implemented through policies and future capital improvement planning. Policies are commitments to the residents that the elected officials shall acknowledge and attempt to achieve those goals and objectives.

## **PROCEDURAL HISTORY**

- 2/15/2005 Planning Division hosts a neighborhood planning kickoff meeting in the Highland Neighborhood. Residents identify issues affecting neighborhood and discuss neighborhood planning boundaries.
- 3/8/2005 Planning Division began researching, assembling and compiling background data and begins public involvement process.
- 5/23/2005 The Planning Division sends 2,730 individual household letters informing residents of the planning process and information regarding meetings.
- 6/2005 Began draft neighborhood plan.
- 10/04/2006 Volunteer steering committee draft plan review begins.
- 11/01/2006 First neighborhood wide meeting to review draft plan with residents.
- 11/04/2006 Second neighborhood wide meeting to review draft plan with residents.
- 1/09/2007 The Yellowstone County Planning Board adopts resolution 07-01 recommending adoption of the Highland Neighborhood Plan as part of the 2003 Growth Policy to the City Council and the Board of County Commissioners.

## **BACKGROUND**

In 2003, the Yellowstone County and City of Billings Growth Policy was adopted by the Billings City Council. As part of the Growth Policy, the governing body may include one or more neighborhood plans (76-1-601(2)(4)(a), MCA). A neighborhood plan must be consistent with the growth policy. The Highland Neighborhood Plan contains the following elements:

1. Neighborhood goals, objectives and actions
2. Information describing an inventory of the existing characteristics and features of the neighborhood, including land uses, population, housing needs, economic conditions, local services, public facilities, natural resources, other characteristics and features proposed by the neighborhood residents, planning board and adopted by the governing bodies

3. Projected trends for the life of the growth policy for each of the following elements: land use; population; housing needs; economic conditions; local services; natural resources; and other elements proposed by the neighborhood residents, planning board and adopted by the governing bodies
4. A description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives above
5. A strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges
6. An implementation strategy that includes:
  - a) a timetable for implementing the neighborhood plan;
  - b) a timetable for reviewing the neighborhood plan at least once every 5 years and revising the policy if necessary

In developing the Highland Neighborhood Plan, the Planning Department relied heavily on public input to establish the issues, goals, objectives and policies set forth in the document. To identify neighborhood issues, the Planning Department held a series of meetings with area residents.

The Department also worked with the Highland Neighborhood Steering Committee to develop a timeline of neighborhood meetings dedicated to the Highland Neighborhood Planning effort. A letter outlining the meeting dates, times and locations with identified neighborhood issues and focus areas was mailed to every household within the neighborhood. The six focus areas of discussion include:

- Transportation
- Institutional Facilities
- Land Use
- Housing
- Parks & Recreation
- Schools & Education

Neighborhood wide meetings were held on November 1, 2006 and November 4, 2006 to review the draft neighborhood plan with residents. The meeting contained a PowerPoint® presentation on the issues, objectives, goals and actions identified in the neighborhood. Residents also participated in review and creation of a preferred future land use map. Over 40 people attended these two meetings.

The Planning Board held a formal public hearing on the Neighborhood Plan on January 9, 2007. Taking into consideration the comments received at the public hearing, the Planning Board is forwarding a recommendation of approval to the Yellowstone County Commissioners and the City Council of Billings (Planning Board Resolution No. 07-01).

## **STAKEHOLDERS**

All Highland residents, landowners and business owners have a stake in the adoption and implementation of the Billings Heights Neighborhood Plan. The Planning & Community Services Department received written comments from individuals. The comments have been taken into consideration and the document was modified as appropriate.

## **RECOMMENDATION**

The Yellowstone County Board of Planning recommends that City Council approve the Resolution of Intent to Adopt the Highland Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy.

## **ATTACHMENTS**

- A. Yellowstone County Board of Planning Resolution 07-01
- B. Resolution of Intent to Adopt the Highland Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy.

## ATTACHMENT A

### RESOLUTION NO. 07-C1

#### **RESOLUTION TO RECOMMEND ADOPTION OF THE HIGHLAND NEIGHBORHOOD PLAN**

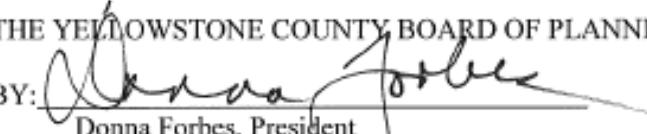
WHEREAS, pursuant to Title 76, Chapter 1, PART 601, Montana Codes Annotated, the Yellowstone County Board of Planning, desires to adopt a Neighborhood Plan consistent with the 2003 Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction:

WHEREAS, on the 9<sup>th</sup> day of January, 2007, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Highland Neighborhood:

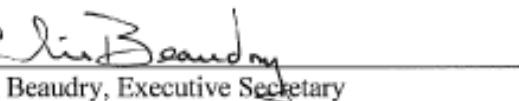
NOW, THEREFORE, BE IT HEREBY RESOLVED that the Yellowstone County Board of Planning recommends adoption of the Highland Neighborhood Plan.

APPROVED AND PASSED by the Yellowstone County Board of Planning this 9<sup>th</sup> day of January, 2007.

THE YELLOWSTONE COUNTY BOARD OF PLANNING:

BY:   
Donna Forbes, President

ATTEST:

BY:   
Candi Beaudry, Executive Secretary

**ATTACHMENT B**

**RESOLUTION NO. 07-\_\_\_\_\_**

**RESOLUTION OF INTENT TO ADOPT THE HIGHLAND NEIGHBORHOOD PLAN  
AS PART OF THE YELLOWSTONE COUNTY - CITY OF BILLINGS 2003 GROWTH  
POLICY.**

WHEREAS, pursuant to Title 76, Chapter 1, PART 601, Montana Codes Annotated, the Billings City Council, desires to adopt a Neighborhood Plan consistent with the 2003 Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction:

WHEREAS, on the 9th day of January, 2007, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Neighborhood Plan and on the 12<sup>th</sup> day of February, 2007, the Billings City Council held a public hearing for the same purpose:

WHEREAS, The Yellowstone County Board of Planning by Resolution 07-01, recommends the Billings City Council adopt the proposed Neighborhood Plan and any ordinances and resolution for its implementation:

NOW, THEREFORE, BE IT HEREBY RESOLVED that it is the intent of the Billings City Council to adopt the Highland Neighborhood Plan as part of the Yellowstone County – City of Billings 2003 Growth Policy.

APPROVED AND PASSED by the City Council of the City of Billings this 26th day of February, 2007.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, MMC  
CITY CLERK

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, February 26, 2007**

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**TITLE:** 2005 Transportation Plan Amendment  
**DEPARTMENT:** Planning and Community Services Department  
**PRESENTED BY:** Scott Walker, Transportation Planner

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**PROBLEM/ISSUE STATEMENT:** Periodically, it becomes necessary to amend the Transportation Plan. In this instance, the Planning Department is amending the Plan in order to achieve financial constraint of the Plan. The 2005 Transportation Plan originally adopted in May 2005 has seen large cost increases in current projects. In addition, although transportation funding for Montana has remained fairly flat, state and federal funding for Billings area projects is greater than the 2005 Transportation Plan originally anticipated. This is primarily due to receipt of several congressional earmarks within the federal transportation bill (SAFETEA LU) and prioritization of additional funding for Billings projects through MDT's core federal funding programs such as Interstate Maintenance, Bridge, and Safety.

**ALTERNATIVES ANALYZED:** The Council may elect to recommend approval of the 2005 Transportation Plan Amendment in order to continue the implementation of federally funded transportation projects as presented. If Council chooses to recommend modifications to the proposed update, the Mayor will present these recommendations to the PCC for further consideration.

**FINANCIAL IMPACT:** Federal requirements mandate that any project receiving Federal highway funding must be listed in a local as well as State and federally approved Transportation Plan. Projects which are listed in the plan are eligible for federal funding pending approval of this document.

**RECOMMENDATION**

Staff recommends that Council approve the Transportation Plan Amendment.

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

**ATTACHMENTS**

- A. 2005 Transportation Plan Amendment

## **INTRODUCTION**

Because of federally mandated requirements, staff has prepared the Amendment now referred to as the 2005 Transportation Plan Amendment. This Amendment will allow transportation projects in the Billings Urban Area to continue to move through the funding and construction phases without delay. This Amendment affirms the project mix in the Plan and costs associated with those projects.

It should be noted that the project mix has not changed and therefore this amendment is consistent with the goals of the original 2005 Transportation Plan. Staff has updated the project list on Table 12, Long Range Project List and Table 13, Short Range Project List to reflect new cost estimates and project completeness only. Table 18 reflects the current and projected revenue streams from the original 2005 Transportation Plan and for this current 2005 Transportation Plan Amendment.

## **PROCEDURAL HISTORY**

Federal transportation law requires that transportation plans meet financial constraints. The 2005 Transportation Plan Amendment reflects assumptions about changes in some funding sources based on actual funding availability between FFY 2005 and FFY 2007. The revenue projections used for developing the financial plan are based on historical trends and some basic assumptions about future funding remaining consistent with historical trends and current funding levels. Expenditure projections were determined on the basis of actual costs for completed projects and updated estimates for future project costs. The revenue forecasts and sources are listed in Table 18 above and updated project costs are estimated in Tables 12 and 13.

Total projected funding opportunities of \$331,736,686 over the 20-year planning horizon are adequate to fund projects contained in the fiscally constrained long-range (\$274,034,000) and short-range (\$16,517,800) project lists with a balance remaining for operational and maintenance activities. Therefore, the amended plan is fiscally constrained and the air quality conformity determination from the 2005 Transportation Plan is still valid since the planning horizon, travel demand forecasting, project mix, and project scopes have not changed. Air quality conformity consultation for this amendment is being conducted in accordance with the State of Montana Air Quality Rules on Conformity (ARM Chapter 17.8 Subchapter 13) which incorporate by reference Federal regulations contained in 40 CFR Part 93, Subpart A.

The Technical Advisory Committee has recommended approval of this document. The Mayor will forward the Council's recommendation to the Policy Coordinating Committee (PCC) for final action. Staff will also present this Amendment to the Yellowstone County Board of Planning and Yellowstone County Commissioners for their review and approval prior to the PCC's action.

## **BACKGROUND**

The Transportation Plan Amendment is being completed to demonstrate fiscal constraint of the 2005 Transportation Plan. The 2005 Transportation Plan is still valid since the planning horizon, travel demand forecasting, project mix, and project scopes have not changed. Air quality

conformity consultation for this amendment is being conducted in accordance with the State of Montana Air Quality Rules on Conformity (ARM Chapter 17.8 Subchapter 13) which incorporate by reference Federal regulations contained in 40 CFR Part 93, Subpart A.

### **ALTERNATIVES ANALYSIS**

The development of the 2005 Transportation Plan Amendment is a joint effort between the local jurisdictions within the Urban Planning Area and the Montana Department of Transportation. Each entity has a responsibility to review the information within the amendment and confirm that the information meets with the goals and objectives in the Plan. If Council prefers to modify the amendment, their recommendations shall be considered by the PCC along with the other interest of the other entities.

Long term and short term projects are ranked according to priority. The ranking is based on four characteristics of the project: Level of Service, Accident Rating, Average Daily Traffic volume, and System Warrant. The most current data available was used for ranking. Where no score for the category is listed, the project did not rate high enough in that category to rank and was assigned no value.

### **RECOMMENDATION**

Staff recommends that Council approve the 2005 Transportation Plan Amendment.

### **ATTACHMENTS**

- A. 2005 Transportation Plan Amendment

## **ATTACHMENT A**

### **Introduction**

This report constitutes an Amendment to the Billings Urban Area 2005 Transportation Plan (2005 Transportation Plan) for the Billings Area Metropolitan Planning Organization (20 year horizon). Based on analysis herein, the 2005 Transportation Plan remains consistent with the Montana Department of Transportation (MDT) State Transportation Improvement Program (STIP). The local Fiscal Year 2007-2011 Transportation Improvement Program (TIP) is a subset of the 2005 Transportation Plan and is being updated simultaneously with the 2005 Transportation Plan Amendment.

Periodically, it becomes necessary to amend the Plan. In this instance, the Planning Department is amending the Plan in order to achieve financial constraint of the Plan. The 2005 Transportation Plan originally adopted in May 2005 has seen large cost increases in current projects. In addition, although transportation funding for Montana has remained fairly flat, state and federal funding for Billings area projects is greater than the 2005 Transportation Plan originally anticipated. This is primarily due to receipt of several congressional earmarks within the federal transportation bill (SAFETEA LU) and prioritization of additional funding for Billings projects through MDT's core federal funding programs such as Interstate Maintenance, Bridge, and Safety.

It should be noted that the project mix has not changed and therefore this amendment is consistent with the goals of the original 2005 Transportation Plan. Staff has updated the project list on Table 12, Long Range Project List and Table 13, Short Range Project List to reflect new cost estimates and project completeness only. Table 18 reflects the current and projected revenue streams from the original 2005 Transportation Plan and for this current 2005 Transportation Plan Amendment.

**Table 12 – Long Range Plan Projects**

**LONG RANGE PROJECTS - Fiscally Constrained**

NON-INTERSECTION										
Priority Rank	PROJECT	DESCRIPTION	Project Type	UPDATED EST. COST	Potential Funding Sources	LOS Score	Accident Score	ADT Score	System Warrant	Total Score
NR	Airport Rd., Alkali Creek R. to Mt 3 <b>(PROJECT DEVELOPMENT UNDERWAY)</b>	Reconstruct to 4-In.	Reconstruction	\$ 19,330,000	1, 8, 15, 17					
NR	Airport Rd., N 27th St./Mt 3 <b>(PROJECT DEVELOPMENT UNDERWAY)</b>	Reconstruct to provide grade separation of mvts.	Reconstruction	\$ 10,405,000	1, 2, 9, 15, 17					
NR	Alkali Creek Rd., Aronson Ave. to Airport Rd. <b>(PROJECT DEVELOPMENT UNDERWAY)</b>	Reconstruct intersection w/underpass at Airport Rd., connect to 6th Ave. N	Reconstruction	\$ 1,400,000	15, 17					
NR	Alkali Creek Rd., Airport Rd. to Senators Blvd. <b>(PROJECT COMPLETE to BLACKPINE)</b>	Shoulders, geometrics	Reconstruction	\$ 3,200,000	8, 15, 17					
NR	Grand Ave. Division to 8 <sup>th</sup> & 12 <sup>th</sup> to 16th, <b>(PROJECTS COMPLETE)</b>	Widen/Reconstruct & Intersection Improvements	Reconstruction	\$ 5,000,000	1, 8, 15, 17					
NR	Grand Ave., 8 <sup>th</sup> St. to 12th St. & 17 <sup>th</sup> St. to 24th St. <b>(PROJECT DEVELOPMENT UNDERWAY)</b>	Selected Intersection Reconstruction & Widen	Reconstruction	\$ 6,600,000	1, 8, 15, 17					
NR	Rimrock Rd., Shiloh Rd. to 54th St. W <b>(PROJECT DEVELOPMENT UNDERWAY)</b>	Widen to 3-In. for auxiliary (left-turn) In.	Reconstruction	\$ 4,425,000	6, 8, 15, 16, 17					
NR	S Billings Blvd., Laurel Rd. to I-90 Interchange <b>(PROJECT COMPLETE)</b>	Reconstruct to 4-In. principal arterial	Reconstruction	\$ 1,300,000	1, 15, 17					
NR	Shiloh Rd., I-90 to Poly Dr. <b>(ENVIRONMENTAL STUDY PROJECT UNDERWAY)</b>	Reconstruct to 4-In. divided w/aux lanes at interchange, new signal @ Rimrock	Reconstruction	\$ 36,450,000	1, 15, 17					

Table 12 Continued on next page.

Table 12 continued.

NON-INTERSECTION										
Priority Rank	PROJECT	DESCRIPTION	Project Type	UPDATED EST. COST	Potential Funding Sources	LOS Score	Accident Score	ADT Score	System Warrant	Total Score
NR	Shiloh Rd., Poly Dr to Rimrock Rd. (PROJECT COMPLETE)	Reconstruct to 4-ln. divided w/aux lanes at interchange, new signals	Reconstruction	\$ 3,700,000	1, 15, 16, 17					
NR	6th Ave. N./Bench Blvd. Connection (PROJECT DEVELOPMENT UNDERWAY)	Reconstruction/Bridge	Reconstruction	\$ 27,230,000	2					
1	King Ave. R.R. Bridge, 20th St. W. to Laurel Rd. Ramps (UNDER CONSTRUCTION)	Structure improvements	Reconstruction	\$ 15,790,000	12, 15, 17	7	10	9		26
2	King Ave. W, 31st St. W. to Shiloh Rd.	Widen to 5-ln. section (principal arterial)	Reconstruction	\$ 5,200,000	1, 15, 17	3	10	2		15
5	Lake Elmo Dr., Hansen to Wicks Ln.	Widen to 3-ln., sidewalk, (primary school route)	Reconstruction	\$ 3,800,000	15	5		2		7
6	32nd St. W	Widen from King Ave. W to Gable Rd.	Reconstruction	\$ 4,000,000	15, 16, 17	3		3		6
6	Rimrock Rd., 17th St. W to Shiloh Rd.	Widening Project	Reconstruction	\$ 6,500,000	1, 8, 15	5		2		7
7	1st Ave. S, 21st St. to N 13th St.	Widen to 4-ln. no curb & gutter	Reconstruction	\$ 750,000	1, 15	3		3		6
8	Bench Blvd. North	Widen to 3 lane section from intersection of Lake Elmo North to Highway 312	Reconstruction	\$ 19,250,000	MDT, 8, 15	3		3		6

Table 12 continued on next page.

Table 12 continued.

NON-INTERSECTION										
PRIORITY RANK	PROJECT	DESCRIPTION	Project Type	UPDATED EST. COST	POTENTIAL FUNDING SOURCES	LOS SCORE	ACCIDENT SCORE	ADT SCORE	SYSTEM WARRANT	TOTAL SCORE
9	Central Ave. BBWA Canal to 48th St. W	Widen to 5-In. section	Reconstruction	\$ 7,300,000	1, 8, 15, 16, 17	3		3		6
10	Grand Ave., Rehberg Ln. to Shiloh Rd.	Reconstruct to 4-In. section	Reconstruction	\$ 3,600,000	1, 15, 16, 17	3		3		6
11	Broadwater Ave., 28th St. W to Shiloh Rd.	Reconstruct to 5-In. section	Reconstruction	\$ 4,000,000	15, 16, 17	3		2		5
12	Pemberton Rd., BBWA to Main St.	Widening	Reconstruction	\$ 2,600,000	15	3		1		4
13	Wicks Ln., Governors Blvd. To High Sierra (part of Inner Belt Loop)	Reconstruct to 4-In. divided highway section	Reconstruction	\$ 1,500,000	15, 17	3		1		4
Co	Old Hardin Rd., Lockwood Interchange to Johnson Ln.	Widen to 3-In. section	Reconstruction	\$ 5,100,000	1, 15					
MDT	Pinehills Interchange	Overlay, 6.3 Miles	Reconstruction	\$ 1,000,000	7					
MDT	Pinehills Interchange S.E.	Overlay	Reconstruction	\$ 4,254,000	7					
*	Zimmerman Trail	Widening	Reconstruction	\$ 10,000,000						
INTERSECTION										
3	N 27th St./Rimrock Rd.	Grade separation (interchange)	Reconstruction	\$ 4,200,000	1, 15, 17	5	5	5		15
NEW LINKS										
NR	32nd St. W (PROJECT COMPLETE)	Extension from Broadwater to Poly Dr.	New Construction	\$ 5,100,000	15, 17					
	North Bypass (ENVIRONMENTAL STUDY PROJECT UNDERWAY)	4-In. divided section from I-90/94 Interchange to Highway 3	Location, Environmental & Project Development	\$ 22,000,000	8, 9, 15				10	10
3	36th St. W, MT. Rushmore to Central Ave.	New construction of non-existent segment	New Construction	\$ 750,000	15, 16				10	10
3	Aronson Ave.	Extension to Alkali Creek Rd.	New Construction	\$ 4,000,000	8, 15, 16, 17				10	10

\* This project is contingent on receipt of Congressionally allocated funds.

Table 12 continued on next page.

Table 12 continued.

Priority Rank	PROJECT	DESCRIPTION	Project Type	UPDATED EST. COST	Potential Funding Sources	LOS Score	Acc. Score	ADT Score	System Warrant	Total Score
~	Inner Loop	Widening at High Priority to Zimmerman Trail	New Construction	\$ 11,000,000	3, 10, 17				10	10
3	Monad Rd., Moore Ln. to 8th St. W	New connector along R.R. tracks	New Construction	\$ 2,000,000	8, 15, 17				10	10
3	Montana Ave., N 18th St. to Main St., 1st N. Couplet	Recon. To 3-In., 1-way w/connection to 1st Ave. N., new bridge at N. 13th, convert 1st Ave. N. to 1-way, Main St. to N. 18th St.	New Construction	\$ 5,500,000	9, 10, 15, 17				10	10
Co	Old Hardin Rd., Johnson Ln. to Befcraft	New connection south of existing to eliminate "double intersection"	New Construction	\$ 2,500,000	15					
**	Railroad Feasibility	Relocate the main line railroad out of Downtown Billings	Feasibility Study	\$ 300,000						
		<b>TOTAL COST YEARS 2005 -2025</b>		<u>\$274,034,000</u>						
***	North Bypass	4-In. div. section from I-90/94 Int. to Highway 3	New Construction	\$ 128,000,000	Illustrative				10	10

NR = Not rated because project is underway

Co = County projects

\*\* This project is contingent on receipt of Congressionally allocated funds. If Congressionally directed funds are not available, the project will not be undertaken. If any project is recommended by the railroad feasibility study, the Billings Long Range Transportation Plan will require an update.

\*\*\*Illustrative Project-Funds pending.

#### Potential Funding Sources:

1. STPU - Surface Transportation Program - Urban Funds
2. MACI - Montana Air & Congestion Initiative Guaranteed Program
3. MDT Discretionary - Air & Congestion Program
4. CTEP - Community Transportation Enhancement Program
5. STPP - Surface Transportation Program - Primary Funds
6. STPS - Surface Transportation Program - Secondary Funds
7. IM - Interstate Maintenance Funds
8. STPHS - Surface Transportation Program - Hazard Elimination Funds
9. NHS - National Highway System Funds
10. STPRP - Rail/Highway Crossing Protective Devices Program
11. STPRR - Rail/Highway Crossing Elimination of Hazard Program
12. HBRRP - Highway Bridge Replacement and Rehabilitation Program
13. SFC - State Funded Construction (State)
14. FTA - Federal Transit Administration - Section 5307, 5309 & 5310
15. State Fuel Tax Funds - City and County
16. Developer Construction
17. Arterial Fee
18. STPX - STP Flexible

**Table 13 - Short Range & TSM Plan Project Elements**

**SHORT RANGE PROJECTS - Fiscally Constrained**

INTERSECTION PROJECTS										
Priority Rank	PROJECT	DESCRIPTION	Project Type	UPDATED EST. COST	Potential Funding Sources	LOS Score	Accident Score	ADT Score	Total Score	
1	King Avenue West, 32nd St. W. to I-90	Provide coordinated signal system for corridor	Signal System	\$430,000	1,2,8,14, 16	7	10	10	27	
1	Main Street / 6th Avenue North	Striping on SB approach to improve right-turn capacity and geometry	Recon., Striping	\$50,000	1,2,3,9,14, 16	7	10	10	27	
1	Main Street / Lake Elmo Drive	Improve SB Lake Elmo right turn capacity through geometry	Reconstruction	\$375,000	2,3,9,14, 16	7	10	10	27	
2	Main Street / Hilltop Road	Provide double left-turn lanes for NB Main Street	Reconstruction	\$500,000	1,2,3,9,14, 16	7	10	9	26	
3	24th Street West, King Avenue West to Grand Avenue	Signal Coordination., access mgt. plan	Signal System	\$400,000	1,2,14, 16	7	10	8	25	
4	Division Street - Grand Avenue to Montana Avenue	Signal Coordination, access management	Signal System	\$300,000	1,2,8,14, 16	7	10	6	23	
4	Grand Ave, Division St to 24th St W	Provide Traffic Signal Coordination	Signal System	\$634,000	1,2,8,14, 16	7	10	6	23	
5	Broadwater Ave., Division to 24th Street West	Signal Coordination., access mgt. plan	Signal System	\$200,000	1,2,14, 16	5	10	6	21	
6	Central Avenue, 6th St. West to Stewart Park Rd.	Signal Coordination., access mgt. plan	Signal System	\$350,000	1,2,14, 16	5	10	5	20	

Table 13 continued on next page.

Table 13 continued.

INTERSECTION PROJECTS									
Priority Rank	PROJECT	DESCRIPTION	Project Type	UPDATED EST. COST	Potential Funding Sources	LOS Score	Accident Score	ADT Score	Total Score
7	Moore Lane / Laurel Road <i>(Project Complete)</i>	Study for geometric and safety improvements (inc. Grade Crossing)	Study	\$8,000	8,10,11,14, 16		10	6	16
8	15th Street West, Central Avenue to Grand Avenue	Signal Coordination	Signal System	\$200,000	2,14, 16		10	5	15
14	27th St./Railroad Grade Crossing	Grade crossing and signal improvements	Multiple projects	\$202,000	9,10,15	5		3	8
14	Hilltop Road / Nutter Boulevard	Reconstruction, Signs, Markings	Recon., Signs	\$13,500	1,14, 16	5		3	8
14	Rimrock Road / Rehberg Lane	Signal, auxiliary lanes	Signal	\$200,000	1,8,14, 16	5		3	8
15	1st Avenue South, State Ave. to Minnesota Ave.	Signal Coordination	Signal System	\$200,000	1,2,14, 16			5	5
16	13th Street West / Parkhill Drive	Reconstruct to eliminate "jog"	Reconstruction	\$568,000	8,14			4	4
16	N. 18th Street / 1st Ave. North	Improve turn radius for NB to EB turns	Reconstruction	\$50,000	1,8,14, 16			4	4
16	S. 27th Street / I-90 EB Ramps	Reconstruction, Signs, Markings	Recon., Signs	\$166,400	7,9,14, 16			4	4
17	Lewis Avenue / 8th Street West	Study alternatives to signalization	Study	\$12,000	8,14			3	3
18	1st Avenue South / S 31st Street	Study	Study	\$6,400	1,14, 16			2	2
NR	City-wide Signal Priority Program*	Annual Signal installation program	Signals	\$225,000	2,14, 16 (mixed)				
Co	Blue Creek Road, South of Jellison	Intersection auxiliary lanes	Reconstruction	\$200,000	1,14, 16				

Table 13 continued next page.

Table 13 continued.

INTERSECTION PROJECTS									
Priority Rank	PROJECT	DESCRIPTION	Project Type	UPDATED EST. COST	Potential Funding Sources	LOS Score	Accident Score	ADT Score	Total Score
Co	Highway 312 / Dover-Bitterroot Drive	Reconstruction, Signs, Markings	Recon., Signs	\$18,000	1,14				
Co	Highway 87E / N. Frontage Road	Reconstruction, Signs, Markings	Recon., Signs	\$177,500	9,14				
MDT	I-90 (Project Complete)	Lockwood to Johnson Lane	Mill & Overlay - Seal & Cover	\$490,000	18				
MDT	Pinehills Interchange West	Overlay		\$1,310,000	7				
MDT	Shiloh/Monad	2002 - Turn Bay		\$246,000	8				
MDT	Electrical - Various Locations	2002 - Signing/Flashers		\$181,000	8				
MDT	Various Safety Improvements: 1) 24th St W. & Phyllis 2) State Avenue	2002 - Turn Bays		\$550,000	8				
		Right in/out Island							
		1st Ave. S. to 27th Street	Re-Stripe to 3 Lanes						
		4-Way Stop Islands							
		Lockwood Interchange	Ramp Modifications						
MDT	Johnson Lane (Project Complete)	Electrical	Signal Phasing	\$11,000	8				
MDT	Moore Lane	R.R. Crossing		\$2,500,000	10, 11				
MDT	Gabel Road	R.R. Crossing	Signal	\$165,000	10				
MDT	Johnson Lane	R.R. Crossing	Signal	\$134,000	10				
MDT	1st Avenue S.	R.R. Crossing	Circuitry Upgrade	\$95,000	10				

Table 13 continued next page.

Table 13 continued.

NON-INTERSECTION PROJECTS									
Priority Rank	PROJECT	DESCRIPTION	Project Type	UPDATED EST. COST	Potential Funding Sources	LOS Score	Accident Score	ADT Score	Total Score
9	19th Street West, Central Avenue to Grand Avenue	Remove parking, restripe, add bike lanes	TSM	\$100,000	2,4,14		10	2	12
9	Lewis Avenue, Division Street to 8th Street West	3-lane plus bike lanes, remove pkg.	Reconfigure	\$100,000	2,4,14		10	2	12
10	Lake Elmo Drive, Robertson to Rolling Hills	Widen to 3-lanes with sidewalk	Widen/Reconstruction.	\$750,000	2,4,14		10	1	11
18	N. 13th Street, 1st Avenue North to 4th Avenue North	Reconfigure to 3-ln, remove parking, Signs, Signals	Recon., Signal	\$50,000	1,14, 16			2	2
NEW LINKS									
Priority Rank	PROJECT	DESCRIPTION	Project Type	UPDATED EST. COST	Potential Funding Sources	LOS Score	Accident Score	ADT Score	Total Score
NR	City-wide Sidewalk installation**	Annual construction program	New Const.	\$300,000	2,4,14				
<b>PROJECT COST TOTAL</b>				<b>\$12,467,800</b>					
Additional 9 years of sidewalk program					\$2,700,000				
Additional 9 years of signal program						\$1,350,000			
							<b>TOTAL COST YEARS 2005-2015: \$16,517,800</b>		

NR = Not rated because project is ongoing

Co = County Projects

\* Ranking of signal projects is covered under a separate program

\*\* Ranking of sidewalk projects is covered under a separate program

#### Potential Funding Sources:

1. STPU - Surface Transportation Program - Urban Funds
2. MACI - Montana Air & Congestion Initiative Guaranteed Program
3. MDT Discretionary - Air & Congestion Program
4. CTEP - Community Transportation Enhancement Program
5. STPP - Surface Transportation Program - Primary Funds
10. STPRP - Rail/Highway Crossing Protective Devices Program
11. STPRR - Rail/Highway Crossing Elimination of Hazard Program
12. HBRRP - Highway Bridge Replacement and Rehabilitation Program
13. FTA - Federal Transit Administration - Section 5307, 5309 & 5310
14. State Fuel Tax Funds - City and County

- 6. STPS - Surface Transportation Program - Secondary Funds
- 7. IM - Interstate Maintenance Funds
- 8. STPHS - Surface Transportation Program - Hazard Elimination Funds
- 9. NHS - National Highway System Funds
- 15. Developer Construction
- 16. Arterial Fee
- 17. SFC - State Funded Construction
- 18. STPX - Flexible

**TABLE 18 - REVENUE**

Estimated 20-year		
	<b>Original (2005 Plan)</b>	<b>AMENDMENT</b>
<b>NATIONAL HIGHWAY SYSTEM</b>	\$ 1,580,000	\$ 1,580,000
<b>INTERSTATE MAINTENANCE</b>	\$ 304,000	\$ 6,564,000
<b>SURFACE TRANSPORTATION PROGRAM(URBAN)</b>	\$ 51,740,720	\$ 59,240,720
<b>HAZARD ELIMINATION/RAIL CROSSINGS</b>	\$ 2,247,000	\$ 2,894,000
<b>STP ENHANCEMENTS</b>	\$ 11,240,000	\$ 11,240,000
<b>HIGHWAY BRIDGE REPLACEMENT/REHAB</b>	\$ -	\$ 15,790,000
<b>CONGESTION MITIGATION &amp; AIR QUALITY</b>	\$ 23,100,000	\$ 33,266,939
<b>HIGHWAY SAFETY PROGRAMS</b> (Includes Safety, RR hazard elimination & protective devices)	\$ -	\$ 996,000
<b>OTHER PROGRAMS</b> EARMARKS (ALL CATEGORIES)	\$ 32,000,000	\$ 87,675,027
<b>STPX</b>	\$ 490,000	
<b>TOTAL HIGHWAY FUNDING</b>	\$ 122,211,720	\$ 219,736,686
<b>LOCAL (Section 7-Page 2)</b>	<u>\$ 110,000,000</u>	<u>\$ 112,000,000</u>
	\$ 232,211,720	\$ 331,736,686
		LOCAL TOTAL REVENUE

*Transit funding is the same as estimated in the original 2005 Plan (\$17,626,700 – Section 7, Page 6)*

#### **Fiscal Constraint and Air Quality Conformity Determination**

The 2005 Transportation Plan Amendment reflects assumptions about changes in some funding sources based on actual funding availability between FFY 2005 and FFY 2007. The revenue projections used for developing the financial plan are based on historical trends and some basic assumptions about future funding remaining consistent with historical trends and current funding levels. Expenditure projections were determined on the basis of actual costs for completed projects and updated estimates for future project costs. The revenue forecasts and sources are listed in Table 18 above and updated project costs are estimated in Tables 12 and 13 above.

Total projected funding opportunities of \$331,736,686 over the 20-year planning horizon are adequate to fund projects contained in the fiscally constrained long-range (\$274,034,000) and short-range (\$16,517,800) project lists with a balance remaining for operational and maintenance activities. Therefore, the amended plan is fiscally constrained and the air quality conformity determination from the 2005 Transportation Plan is still valid since the planning horizon, travel demand forecasting, project mix, and project scopes have not changed. Air quality conformity consultation for this amendment is being conducted in accordance with the State of Montana Air Quality Rules on Conformity (ARM Chapter 17.8 Subchapter 13) which incorporate by reference Federal regulations contained in 40 CFR Part 93, Subpart A.

### **Public Involvement**

The 2005 Transportation Plan and current Amendment were developed with significant attention to public involvement. Provisions for public comment on this amendment will be provided through a 30-day public comment period beginning on February 1, 2007 and concluding on March 2, 2007. In addition a public hearing will be held on February 13, 2007 as part of the Yellowstone County Board of Planning regular meeting, 6:00 P.M. 4<sup>th</sup> Floor Large Conference Room, Billings Parmly Library, 510 N. Broadway, Billings, Montana 59101.

(Back to Regular Agenda)

