

NOTE: Supporting Documents Follow Agenda

CITY OF BILLINGS

CITY OF BILLINGS VISION STATEMENT:

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

AGENDA

COUNCIL CHAMBERS

December 15, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Gaghen

ROLL CALL

MINUTES – December 8, 2008

COURTESIES

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 2

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:

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
1.	Sandy Weiss	Animal Control Board	01/01/09	12/31/12
2.	Dennis Ulvestad	Animal Control Board	01/01/09	12/31/12
3.		Animal Control Board	01/01/09	12/31/12
4.		Animal Control Board	01/01/09	12/31/12
5.	Richard Larsen	Aviation & Transit Board	01/01/09	12/31/12

6.	Mark Kennedy	Aviation & Transit Board	01/01/09	12/31/12
7.	Stanley Hill	Aviation & Transit Board	01/01/09	12/31/12
8.	*Jeff Bollman	Board of Adjustment	01/01/09	12/31/2009
9.		Board of Appeals	01/01/09	12/31/12
10.	Rebekah Wales	Board of Ethics	01/01/09	12/31/12
11.	Andrew Parker	Board of Ethics	01/01/09	12/31/12
12.	Rod Ostermiller	Board of Health	01/01/09	12/31/11
13.	Sandy Weiss	Community Development Board	01/01/09	12/31/12
14.		Community Development Board	01/01/09	12/31/12
15.	Charles Hamwey	EMS	01/01/09	12/31/12
16.	Meridith Cox	EMS	01/01/09	12/31/12
17.		EMS	01/01/09	12/31/12
18.	*	EMS	01/01/09	12/31/09
19.	Lisa Harmon	Homelessness Committee	01/01/09	12/31/12
20.	Paul Chinberg	Homelessness Committee	01/01/09	12/31/12
21.	Joseph Chalupa	Homelessness Committee	01/01/09	12/31/12
22.	Sue Runkle	Homelessness Committee	01/01/09	12/31/12
23.	Judy Steward	Homelessness Committee	01/01/09	12/31/12
24.	John Hines	Homelessness Committee	01/01/09	12/31/12
25.	Mary Lou Affleck	Homelessness Committee	01/01/09	12/31/12
26.	Ken Chase	Homelessness Committee	01/01/09	12/31/12
27.		Homelessness Committee	01/01/09	12/31/12
28.		Homelessness Committee	01/01/09	12/31/12
29.	Mary Lou Affleck	Housing Authority	01/01/09	12/31/13
30.	Lynda Moss	Housing Authority	01/01/09	12/31/13
31.		Housing Authority	01/01/09	12/31/13
32.	*Maureen Jurovich	Housing Authority	01/01/09	12/31/10
33.	Patt Leikam	Human Relations Commission	01/01/09	12/31/12
34.	*Diane Foley	Human Relations Commission	01/01/09	12/31/10
35.	*	Human Relations Commission	01/01/09	12/31/10
36.		Parking Advisory Board	01/01/09	12/31/12
37.	*	Parking Advisory Board	01/01/09	12/31/10
38.	Tom Iverson	Parks/Recreation/Cemetery	01/01/09	12/31/12
39.	Rachel Cox	Parks/Recreation/Cemetery	01/01/09	12/31/12
40.	Catherine Grott	Parks/Recreation/Cemetery	01/01/09	12/31/12
41.		Parks/Recreation/Cemetery	01/01/09	12/31/12
42.		Parks/Recreation/Cemetery	01/01/09	12/31/12

43.	Ben Surwill	Police Commission	01/01/09	12/31/11
44.	Barry Nolan	Public Utilities Board	01/01/09	12/31/12
45.	*Brent Krueger	Traffic Control Board	01/01/09	12/31/10
46.	Bill Iverson	C/C Planning Board	01/01/09	12/31/10
47.	Donna Forbes	C/C Planning Board	01/01/09	12/31/10
48.	Susan Gilbertz	C/C Planning Board	01/01/09	12/31/10
49.	Fred Rogers	C/C Planning Board	01/01/09	12/31/10

- 8. Unexpired term of Leon Pattyn
- 18. Unexpired term of Dr. John Kominsky
- 32. Unexpired term of Mike Hennessey
- 34. Unexpired term of Jean Smith
- 35. Unexpired term of Shoshana Tom
- 37. Unexpired term of Gary Temple
- 45. Unexpired term of Angela Cimmino

B. Agreement with Billings Housing Authority to fund one Police Officer from January 1, 2009, through June 30, 2009.

C. Modification #3 to Law Enforcement Officer 5-year Reimbursement Agreement with Transportation Security Administration. Annual estimated cost to City - \$169,900; Modification #3 for second year reimbursement – up to \$163,286.40.

D. Acknowledging Receipt of Petition to Annex #08-09: Lots 1-3, Block 1, Cereus Subdivision, generally located on the north side of Midland Road east of the Motor Power Equipment business. Brumar Corporation, owner and petitioner; Bruce E. Sunwall, representative; and setting a public hearing date for January 12, 2009.

E. Approval of Bicycle Pedestrian Advisory Committee's letter of support for the Safe Routes to School Grant Application for Elementary School Traffic Plan.

F. Approval of Legislative Agenda.

G. Resolution adopting the Riverfront Park Master Plan Update.

H. Resolution adopting the Howard Heights/Dickie Park Master Plan.

I. Preliminary Subsequent Minor Amended Plat of Lots 4-19, Block 2, Riverfront Pointe Subdivision, generally located east of the southeast corner of the intersection of Mullowney Lane and Frontier Drive; Frontier Apartments, LLC, owner; Blueline Engineering, LLC, representing agent; conditional approval of the plat and adoption of the Findings of Fact.

J. **Final Plat** of Amended Lot 6B, Flanagan Subdivision.

K. Payment of Claims

(1) November 21, 2008

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **W.O. 04-12 – ALKALI CREEK ROAD SLOPE IMPROVEMENTS CONSTRUCTION CONTRACT AWARD** (delayed from 11/24/08). Staff recommends rejection of all bids. (Action: approval or disapproval of staff recommendation.)
3. **PUBLIC HEARING AND RESOLUTION** vacating Boundary Waters Circle located within Riverfront Pointe Subdivision; established value of right-of-way - \$15,885. Cal Kunkel, owner and petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
4. **PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #OP-08-04:** A variance from Section 6-1203(j) of the Site Development Ordinance reducing the required number of parking stalls by five on a 7,200 square foot building proposed for Lots 18-20, Block 4, Sunset Subdivision, 1st Filing. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
5. **PUBLIC HEARING AND RESOLUTION** establishing a Master Site Plan Review Fee in the amount of \$240. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
6. **PUBLIC HEARING AND RESOLUTION OF INTENT** to adopt the 2008 Growth Policy Update. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
7. **PUBLIC HEARING AND FIRST READING ORDINANCE** correcting the legal description in Ordinance #08-5480 for Zone Change #848 previously adopted by City Council on 10/14/08. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
8. **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

Additional information on any of these items is available in the City Clerk's Office.

Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please contact Cari Martin, City Clerk, at 657-8210.



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, DECEMBER 15, 2008

SUBJECT: **Boards & Commissions –Appointments and Reappointments**
DEPARTMENT: **City Administrator's Office**
PRESENTED BY: **wynnette Maddox, Administration**

PROBLEM/ISSUE STATEMENT: Confirmation of appointments for Board and Commission positions that are either vacant or up for re-appointment. Term expiration dates on these vacancies are December 31, 2008, and the positions must be filled.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
1.	Sandy Weiss	Animal Control Board	01/01/09	12/31/12
2.	Dennis Ulvestad	Animal Control Board	01/01/09	12/31/12
3.		Animal Control Board	01/01/09	12/31/12
4.		Animal Control Board	01/01/09	12/31/12
5.	Richard Larsen	Aviation & Transit Board	01/01/09	12/31/12
6.	Mark Kennedy	Aviation & Transit Board	01/01/09	12/31/12
7.	Stanley Hill	Aviation & Transit Board	01/01/09	12/31/12
8.	*Jeff Bollman	Board of Adjustment	01/01/09	12/31/2009
9.		Board of Appeals	01/01/09	12/31/12
10.	Rebekah Wales	Board of Ethics	01/01/09	12/31/12
11.	Andrew Parker	Board of Ethics	01/01/09	12/31/12
12.	Rod Ostermiller	Board of Health	01/01/09	12/31/11
13.	Sandy Weiss	Community Development Board	01/01/09	12/31/12
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17.		EMS	01/01/09	12/31/12
18.	*	EMS	01/01/09	12/31/09
19.	Lisa Harmon	Homelessness Committee	01/01/09	12/31/12
20.	Paul Chinberg	Homelessness Committee	01/01/09	12/31/12
21.	Joseph Chalupa	Homelessness Committee	01/01/09	12/31/12
22.	Sue Runkle	Homelessness Committee	01/01/09	12/31/12
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39.	Rachel Cox	Parks/Recreation/Cemetery	01/01/09	12/31/12
40.	Catherine Grott	Parks/Recreation/Cemetery	01/01/09	12/31/12
41.		Parks/Recreation/Cemetery	01/01/09	12/31/12
42.		Parks/Recreation/Cemetery	01/01/09	12/31/12
43.	Ben Surwill	Police Commission	01/01/09	12/31/11
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48.	Susan Gilbertz	C/C Planning Board	01/01/09	12/31/10
49.	Fred Rogers	C/C Planning Board	01/01/09	12/31/10

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- 18. Unexpired term of Dr. John Kominsky
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- 35. Unexpired term of Shoshana Tom
- 37. Unexpired term of Gary Temple
- 45. Unexpired term of Angela Cimmino

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

AGENDA ITEM:**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, December 15, 2008**

TITLE: Agreement with Billings Housing Authority to Fund One Officer
From January 1, 2009, through June 30, 2009

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: Since 1991, the Billings Housing Authority has funded one police officer under an agreement with the City of Billings. The funding consists of salary, benefits, and maximum of four (4) hours of overtime per month. Due to the loss of a grant, the Housing Authority is now funding this position from their office budget for a six month period. Staff is recommending City Council approve this agreement for the funding of the officer from January 1, 2009, through June 30, 2009.

FINANCIAL IMPACT: The City provides a vehicle and necessary equipment. The Billings Housing Authority pays the salary and benefits for the officer, to a maximum amount of \$39,437.76, for the 6 month period of January 1 through June 30, 2009. This amount is budgeted in the current budget. If the Housing Authority is unable to fund the officer position after June 30, 2009, the position will be absorbed through attrition.

RECOMMENDATION

Staff recommends Council approve the agreement with Billings Housing Authority to fund one Police Officer for the period of January 1, 2009, through June 30, 2009.

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

ATTACHMENT

A-Billings Housing Authority Agreement-2 pages

**CITY OF BILLINGS POLICE DEPARTMENT
AND
HOUSING AUTHORITY OF BILLINGS**

This contract is to cover the period from January 1, 2009 to June 30, 2009 by and between the City of Billings, State of Montana, herein after referred to as "City", and the Housing Authority of Billings.

In receipt of the mutual covenants and agreements herein contained, the parties agree as follows:

1. The City shall provide its personnel and other resources in a Drug Elimination Policing role at the Housing Authority of Billings' complexes. A dedicated Community Policing Officer shall be provided 40 hours a week, 26 weeks a year to perform the above baseline services for the Housing Authority of Billings. The designated officer will not be available for dispatched calls except in cases of emergency.
2. The Housing Authority of Billings shall pay the City the officer's salary that shall include the officer's salary and fringe benefits of \$39,437.76. This payment shall be made monthly starting on or before January 1, 2009. This amount allows for an average of 4 hours of overtime monthly for a six-month period.
3. The Housing Authority of Billings shall pay for business only cellular phone costs for assigned officer on a monthly basis. No overage from the Housing Authority selected plan will be paid.
4. The City will have available the necessary equipment for the Police Officer to conduct his job.
5. The City shall keep detailed records regarding the date and time of contacts exclusive of investigating records. The Housing Authority of Billings may inspect these records at all reasonable times and those records shall be available for photocopying at no additional fee.
6. Indemnification – The City assumes full responsibility for the officer's performance. The City shall indemnify the Housing Authority of Billings against, and hold the Housing Authority harmless from any liability costs, damages, claims or causes of action which may arise as a result of

performance by the City of its responsibilities under the terms of this agreement; provided, however, that the City, its officers and employees shall not assume any liability for acts of the Housing Authority of Billings, or any of its officers, employees or agents.

7. This agreement shall cover the period from January 1, 2009 until June 30, 2009.

In Witness Whereof, the parties hereto have caused this agreement to be executed the day and year first herein above written.

CITY OF BILLINGS, MONTANA "CITY" HOUSING AUTHORITY OF BILLINGS

Mayor



Executive Director

City Clerk



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 15, 2008

TITLE: Approval of Modification #3 to Law Enforcement Officer Reimbursement Agreement with the Transportation Security Administration

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: During September 2002, the City entered into a Personnel Agreement with the Transportation Security Administration (TSA) to reimburse the Airport for the labor costs associated with providing Law Enforcement Officer (LEO) coverage at the TSA's security screening area. This Agreement expired on May 31, 2003. The TSA then requested that the City enter into a new agreement, which reimbursed the City for the security screening law enforcement costs incurred from June 1, 2003, to September 30, 2003, and permitted the City and the TSA to extend the agreement each September for an additional year for a maximum of five years. That Agreement expired on September 30, 2007. The Department of Homeland Security (DHS) renewed the reimbursement opportunity for a new five-year program period that begins October 1, 2007, through September 30, 2012. To participate in this new program, airports were required to apply via a Federal grant process. Billings Logan International Airport submitted an application for participation in the LEO reimbursement program and was granted an Assistance Award. The City Council approved the LEO Agreement on September 10, 2007. The program has now completed its first year and Congress has approved funding for the second year of the program. The Airport was recently notified that it had been funded for the second year and that Modification #P00003 granting funding for the second year of the program and changing several financial reporting requirements required approval and signature by the City.

FINANCIAL IMPACT: Under the terms of this Agreement, the City will be authorized to receive reimbursement of the Airport's law enforcement officers' actual wage and benefit costs for the time the officers spend at screening and checkpoint areas, and on other TSA mandated activities. Approximately 35% of the total Airport Police Officers' time is spent on these functions. The second year's fully burdened costs have been estimated at \$169,900. Under Modification #P00003, the Airport will be reimbursed up to \$163,286.40 for the period October 1, 2008 through September 30, 2009.

RECOMMENDATION

Staff recommends that Council approve Modification #P00003 to the Law Enforcement Officer Reimbursement Agreement with the Transportation Security Administration.

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

D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 15, 2008

TITLE: Annexation Petition #08-09: Acknowledge Receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: Owner and petitioner, Brumar Corporation, represented by Bruce E. Sunwall, is requesting annexation of a property legally described as Lots 1-3, Block 1, Cereus Subdivision into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located on the north side of Midland Road east of the Motor Power Equipment business. The petitioner is requesting annexation in order to obtain city water and sewer services for development of the property. Part of the subject property is a parking lot for Motor Power Equipment with the remaining property undeveloped. A concurrent zone change application from Entryway General Commercial (EGC) to Highway Commercial (HC) is being considered for the property. At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for January 12, 2009. The Council will take action on the annexation request at the January 12 public hearing.

ALTERNATIVES ANALYZED: Section 7-2-4600, MCA, permits owners of more than 50% of a property to petition the City for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date. The subject property is a county island within the City limits and is depicted on the adopted Limits of Annexations Map in an area proposed to be annexed within the next five (5) years.

FINANCIAL IMPACT: A service impact analysis and staff recommendation of the annexation request will be prepared and presented at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for January 12, 2009, to consider annexing this property.

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

ATTACHMENTS

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

ATTACHMENT A
Property Data

Type of annexation: Petitioned - MCA 7-2-4600

Petitioner: Brumar Corporation, represented by Bruce E. Sunwall

Purpose of annexation: To obtain City Services

Property included: Lots 1-3, Block 1, Cereus Subdivision

Location: North side of Midland Road east of Motor Power Equipment

Total area: 9.05 acres

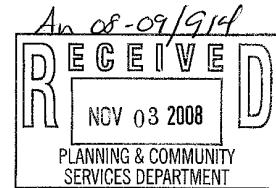
Current zoning: EGC

Current land use: Parking lot

Future zoning: Zone change application to HC in review

Future land use: Commercial

ATTACHMENT B



**PETITION
FOR ANNEXATION
TO THE CITY OF BILLINGS**

NOTICE TO PETITIONER

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

INSTRUCTIONS

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

The map must show:

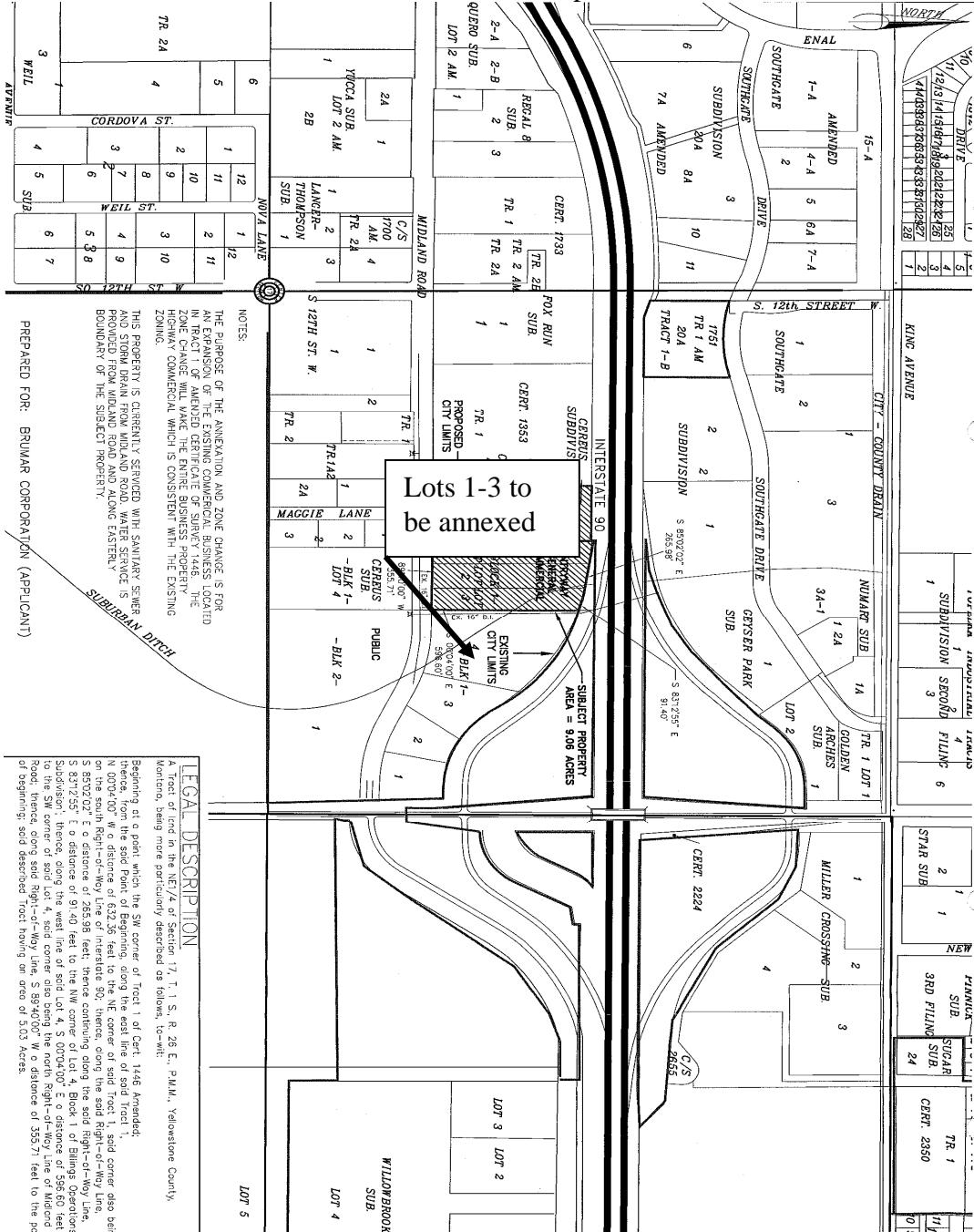
 - a. The present and proposed boundaries of the municipality;
 - b. The present streets, major trunk water mains and sewer mains;
 - c. The zoning of the property requesting annexation and the property immediately adjacent to it.
3. The Petition should be submitted to the Planning Department, Monday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

RESIDENT FREEHOLDER ELECTORS

(continued on separate page)

Revised 6/99

ATTACHMENT C



LEGAL DESCRIPTION
A tract of land in the NE 1/4 of Section 17, T. 1 S., R. 26 E., P.M.M., Yellowstone County, Montana, being more particularly described as follows, to-wit:

Beginning at a point which the SW corner of tract of land, 1440 feet long, 140 feet wide, from the said point of Beginning, going due east the said tract 140 feet, thence N. 00°40' W. due north 100 feet, thence N. 00°40' E. due east 162.26 feet to the NE corner of said tract, thence N. 00°40' E. due east 162.26 feet to the SW corner of said tract, thence N. 00°40' W. due north 100 feet, thence N. 00°40' E. due east 140 feet to the point of Beginning.

subdivision, situated along the west line of said Lot 4, 300 feet E. to a distance of 300 feet to the SW corner of said Lot 4, said corner being the north Right-of-Way line of Midland Road; thence along said Right-of-Way line, S 89°40'00" W a distance of 355.71 feet to the point of beginning, and described Tract having an area of 5.03 Acres.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, December 15, 2008**

TITLE: Letter of Support from Bicycle Pedestrian Advisory Committee for Safe Routes to School Grant Application for Elementary School Traffic Plan

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Darlene Tussing, Alternate Modes Coordinator

PROBLEM/ISSUE STATEMENT: The City of Billings is seeking a Safe Routes to School grant in the amount of \$50,000 to provide a traffic assessment of the existing conditions in the vicinity of the public elementary schools in Billings. The City Council approved application of the grant at its December 8 meeting. The Bicycle Pedestrian Advisory Committee would like to support the City Council's effort in securing this grant and would like to send a letter of support for this application. Since the Committee is advisory to the Mayor and City Council, it is seeking approval for submitting a letter of support with the grant application. The deadline for the grant application is December 31, 2008.

ALTERNATIVES ANALYZED: Safe Routes to School grants are made available through the Montana Department of Transportation to ultimately help encourage walking and biking to and from school. Applying for this grant would give the community an opportunity to assess the traffic conditions around the public elementary school sites and offer solutions to create a safer and more efficient environment for pedestrian, vehicle and bus traffic. . The BPAC is seeking Mayor and City Council approval to send a letter of support for the grant. If the Council does not approve of the BPAC support letter, it will not be included with the grant. Sending this letter may improve the likelihood of this grant being approved.

FINANCIAL IMPACT: The Safe Routes to School grant requires no local match. It is a reimbursable funding program. This request is for a letter of support from the BPAC to be submitted with the SRTS grant application.

RECOMMENDATION

Staff recommends that Council approve submittal of the letter of support from the Bicycle Pedestrian Advisory Committee for the Safe Routes to School application for the Elementary School Traffic Plan.

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

ATTACHMENT

A. Letter of Support from the Bicycle Pedestrian Advisory Committee

Bicycle Pedestrian Advisory Committee

City of Billings & Yellowstone County



December 2, 2008

Jessica Ball, Project Coordinator
Safe Routes to School Coordinator
c/o Rail, Transit & Planning Division
Montana Department of Transportation
P.O. Box 201001
Helena, MT 59620-1001

Dear Ms. Ball:

We, the members of the Billings Bicycle and Pedestrian Advisory Committee (BPAC) would like to convey our support for the Elementary School Traffic Plan assessment application to the Safe Routes to School program. Appointed in 2007, our seven-member committee is tasked with advising the Billings City Council, Mayor, and Planning Board as well as the Yellowstone County Commissioners on all city and/or county actions dealing with walking, bicycling or wheelchair access in the Billings Metropolitan Area. This effort also includes promoting non-motorized transportation and pedestrian safety in conjunction with children walking and biking to school.

This assessment project will help to identify existing conditions at the various public Elementary Schools in School District #2 and help make recommendations for safer and more efficient school related traffic plans to address pedestrians, vehicles and buses as they converge within the area of the schools. The completion of this School Traffic Plan will help assure that solutions can be identified to provide a safer environment for children around the schools and in so doing provide an atmosphere where more families will feel comfortable encouraging and allowing their children to walk or bike to school.

Providing a shift in short trips to biking and walking will help reduce traffic congestion and provide a healthy outlet for our children. Nationally, it has been shown that 30% of traffic congestion during the school year is due to parents dropping their kids off and picking them up from vicinity schools. Modest shifts in short trips to bicycling and walking can help reduce many of the issues facing our community from vehicular traffic.

Thank you for your consideration.

Committee Members: Bill Anderson, Jim Collins
Stella Fong, Dolores Terpstra
Don Vanica, Deirdre Schafnitz

Kathy Aragon, BPAC Chair

AGENDA ITEM:**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, Dec. 15, 2008****TITLE:** 2009 State Legislative Agenda**DEPARTMENT:** City Administrator's Office**PRESENTED BY:** Christina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: The City Council is being asked to adopt a 2009 legislative agenda as reviewed at the Nov. 17, 2008, work session. The agenda includes positions on finance & taxation; land use, property & environmental regulation; local government powers; public health, safety and City employee relations; community & regional coalitions & partnerships; and in support of the League of Cities and Towns legislative resolutions.

ALTERNATIVES ANALYZED:

- Amend the priorities.
- Adopt the priorities as revised at the Nov. 17, 2008, work session.
- Defer action. The agenda should be approved before the session begins in early January.

FINANCIAL IMPACT: The proposed agenda could help in obtaining local option tax authority for the City of Billings, otherwise diversify the City's tax base, and provide more options for the efficient operation of City services. The exact dollar impact of these many changes has not been calculated.

RECOMMENDATION

Staff recommends that Council adopt the 2009 State Legislative Agenda as presented.

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

A - 2009 Legislature Legislative Agenda (2 pages)

Attachment A

City of Billings 2009 Montana Legislative Priorities Draft List November 17, 2008

Prepared for discussion with City Council:

(We will prepare a brochure stating our Legislative Priorities for use and distribution during the 2009 Legislative Session.)

Finance & Taxation

- Local Option Tax Proposals (Sen. Essmann; Billings Chamber; League of Cities; support for voter approved local option tax on specific services and items directly connected to the tourist economy, with reasonable and fair sharing and property tax relief)
- Property Reappraisal (Interim Committee action; support for clarification of phase-in of values, cap issues, alternatives, and timing)
- Tax Increment Finance Districts (Interim Committee bill; HB 832 from 2007 Legislative Session; support for continued authority, control, and rules)
- Public Defender Costs (increase entitlement)
- Special District Formation (LC 9208-Uniform Act Draft)
- Impact Fees
- Law Enforcement Medical Cost Responsibility (LC 7776; oppose inclusion of cities)

Land Use, Property & Environmental Regulation

- Revenue Bonds for Transportation Projects (support amendment for “roads”)
- Roads in State Trust Land
- Street Maintenance Costs
- Subdivision Review
- Indirect Costs Allocation Plan (ICAP)

Local Government Powers

- Support for local control vs. State authority
- Support, in general, for Montana League of Cities & Towns Legislative Resolutions (see summary of League Resolutions below)
- Casinos (State control; numbers; spacing)
- Expansion of Airport Services to car rental agencies

Public Health, Safety & City Employee Relations

- Workers Compensation
- Public Employees Retirement System Changes (State “surplus” contributions)
- Wildland Urban Interface (Fire Mitigation; SB 51 from 2007 Legislative Session; Sprinklers in Residential Property)
- Safety Belt Law – primary enforcement

Community & Regional Coalitions & Partnerships

- State funding of library with MSU-B and City of Billings
- Library matters proposed by the State Library Commission
- Biofuels (mandatory use)
- Transit fueling issues
- Economic Development proposals
- Develop coalitions of mutual interest parties (City, Chamber, Hospitals, MSU-B, Big Sky EDA)

Summary of League of Cities and Towns Legislative Resolutions

- Local Option Tax: require voter approval of Local Governments; up to 4% tax; 30% dedicated to property tax relief; 20% re-distributed on a per capita basis within the regions; specific taxable list: lodging, prepared meals, alcoholic beverages sold by the drink, and car rentals
- Lodging Tax Proceeds: distribute 3% tax added in 2003 to Local Governments
- Treasure State Endowment Program: extension for grant funds
- Tax Increment Financing: oppose legislation to exempt state levies or restrict increment districts financing and operation
- Mill Levy Calculations: modify the inflation adjustment limit
- Property Reappraisal: monitor to ensure that revenues are generated
- Financing Policy for Local Governments: support bills to allow SID bonds, issue revenue bonds for capital projects, require insurance of demolition costs, share federal mineral royalties with oil and gas producing counties to offset impacts; oppose bills to require payment of medical costs for detained persons, increase assessments against cities to support Public Defender Program, unreasonably limit access to the state short Term Investment Program, transfer state costs for local governments, repeal or reduce taxes on business equipment without full reimbursement for Local Governments
- Land Use and Environmental Regulation: support or oppose certain bills as needed
- General Principles: list of 8 principles to protect rights of Local Governments

Prepared by:

Ed Bartlett, City of Billings Lobbyist
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Email: edbartlett@q.com

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 15, 2008

SUBJECT: Adoption of Riverfront Park Master Plan Update**DEPARTMENT:** Department of Parks, Recreation & Public Lands**PRESENTED BY:** Mike Whitaker, Director

PROBLEM/ISSUE STATEMENT: Riverfront Park has long been a popular gathering and recreational area for the residents of Billings. The first master plan was done in 1982. Since then this area of the city has experienced significant development bringing with it new pressures for parkland uses. Since a Master Plan for Riverfront Park was done over 25 years ago, it is appropriate to revisit the plan in context of the new issues and opportunities as a master plan update is developed. This park is located on both sides of South Billings Boulevard along the north shore of the Yellowstone River. It is a Natural Resource Area managed to balance scenic, cultural and natural resource conservation with resource based recreational opportunities. The plan was prepared by Peaks to Plains Design, a Landscape Architectural consulting firm, under the direction of PRPL staff. The plan was presented to the Billings Park, Recreation, and Cemetery Board, at their August 13, 2008 meeting, and the Board voted to recommend adoption of the Riverfront Park Master Plan Update to the City Council. See Attachment A – Riverfront Park Master Plan Update Resolution.

FINANCIAL IMPACT: Riverfront Park development and maintenance has traditionally been funded through the City's General Fund. Further development of the park will likely continue to be financed in the same manner. As opportunities arise alternative funding sources will be sought to offset the General Fund.

RECOMMENDATION

Staff recommends that City Council approve and adopt the Riverfront Park Master Plan Update as the governing plan for the development of the park.

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

ATTACHMENTS

A – Riverfront Park Master Plan Update Resolution.

INTRODUCTION

Riverfront Park has long been a popular gathering and recreational area for the residents of Billings. The first master plan was done in 1982. Since then this area of the city has experienced significant development bringing with it new pressures for parkland uses. Since a Master Plan for Riverfront Park was done over 25 years ago, it is appropriate to revisit the plan in context of the new issues and opportunities as a master plan update is developed. This park is located on both sides of South Billings Boulevard along the north shore of the Yellowstone River. It is a Natural Resource Area managed to balance scenic, cultural and natural resource conservation with resource based recreational opportunities. The plan was prepared by Peaks to Plains Design, a Landscape Architectural consulting firm, under the direction of PRPL staff. The plan was presented to the Billings Park, Recreation, and Cemetery Board, at their August 13, 2008 meeting, and the Board voted to recommend adoption of the Riverfront Park Master Plan Update to the City Council. See Attachment A – Riverfront Park Master Plan Update Resolution.

PROCEDURAL HISTORY

The need to revisit the Riverfront Park Master Plan came about because the existing plan, which is over 25 years old, does not reflect land acquisitions west of South Billings Boulevard that has occurred subsequent to the master plans' creation. Also as the population of Billings has increased, pressures to develop additional amenities and programs to meet growing recreational demands not reflected in the current plan have grown. Finally, as development in the area has proliferated, pressures to utilize parkland for infrastructural purposes have increased. Therefore funding was secured and in October of 2006 a Request for Proposal was sent out to solicit professional services to update the current Riverfront Park Master Plan. In April of 2007 a contract was signed with the Landscape Architectural firm Peaks to Plains Design for professional planning services. Peaks to Plains Design under the direction of PRPL Staff, did a thorough sight analysis of the park site, its constraints and opportunities, and city requirements for park development. After user and stake holder interviews, a statistically valid survey and public review and comment in 2 public meetings, a draft master plan was developed in July of 2008. The final plan was reviewed and the Parks, Recreation and Cemetery Board voted to recommend approval and adoption of the master plan to City Council at their August 13, 2008, meeting. The final step is presentation to the City Council for consideration and adoption.

BACKGROUND

The Billings Park Master Plan Policy was adopted by the PRPL Department in 1980. A park may not be developed until a Park Master Plan has been prepared and adopted by the Billings City Council. All development and proposals for the development of portions of parks or facilities within parks must be consistent with an approved Master Plan. It is prepared by a qualified park planning consultant, and considers surrounding zoning and land uses and local and general park and recreation needs as well as specific requests from

interested users. This is to assure the highest quality and most beneficial development of parks and recreation facilities, and to assure adequate public input into the development, sale, or use, of Billings' parklands. A proposed modification to a park that is a significant departure from the approved Master Plan requires a revision of the Master Plan following the above process, to determine if the proposed change is acceptable and appropriate for that park. The Riverfront Park Master Plan Update as presented has been reviewed and recommended to the City Council for approval and adoption by the Billings Park, Recreation, and Cemetery Board.

The master plan:

- Sets forth the guidelines for development of Riverfront Park.
- Utilized various public input methods including interviews, a survey and public meetings to identify user needs and desires as valuable information to incorporate in the plan development process.
- Identifies important community partnerships in providing programming and amenities at the park.
- Identifies the need to annex the park into the City boundaries.
- Accommodates the Heritage Trail system through the park.

ALTERNATIVE ANALYSIS

The staff considered the following:

- Do nothing, leaving the current plan in place.
- Adopt a park master plan as the guiding document for future development at Riverfront Park. This is the recommendation of staff and the Parks, Recreation and Cemetery Board.

CONSISTENT WITH ADOPTED POLICIES AND PLANS

The Riverfront Park Master Plan follows recommendations contained in the 20/20 Plan adopted in 1997 and the Billings Heritage Trail Plan, adopted by the city and the county in 2004.

RECOMMENDATION

Staff and Parks, Recreation and Cemetery Board recommend that City Council approve and adopt the Riverfront Park Master Plan Update as the governing plan for the development of the park.

ATTACHMENTS

A – Riverfront Park Master Plan Update Resolution.

(Note: Exhibit A - Master Plan is available for viewing in the City Clerk's Office)

RESOLUTION NUMBER 08-_____

**A RESOLUTION ADOPTING AN UPDATED MASTER PLAN FOR
THE DEVELOPMENT OF RIVERFRONT PARK ON THE NORTH
SHORE OF THE YELLOWSTONE RIVER**

WHEREAS, the public interest requires the creation and adoption of an updated Master Plan for Riverfront Park, a Natural Resource Area, to control and limit development in accordance with the needs of the community, the limitations and constraints of the park site, and with improvements suited to and appropriate for this Conservation and Multifunctional Area.

WHEREAS, it is in the public interest and necessary that the current and future development of the park shall conform to the adopted master plan; and

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

1. *Master Plan.* The master plan update for Riverfront Park presented for adoption and attached as *Exhibit “A”* is the official Master Plan for the park.
2. *General Character of Improvements Provided for by the Plan.* The general character of the improvements are intended to balance scenic, cultural and natural resource conservation with resource based recreational opportunities in the park which is located on both sides of South Billings Boulevard along the north shore of the Yellowstone River. The purpose of the plan is to guide development and maintenance of the park and its facilities.
3. *Changes.* Proposed improvements not part of the adopted plan shall not be installed unless a new master plan is adopted through the normal park planning process that finds that the proposed improvement is appropriate as described above and can be incorporated as part of an “amended” park master plan to be presented for adoption at that time.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Billings, Montana, this 15th day of December, 2008.

CITY OF BILLINGS

By: _____
Ron Tussing Mayor

ATTEST:
By: _____
Cari Martin City Clerk

AGENDA ITEM:**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, December 15, 2008****SUBJECT:** Adoption of Howard Heights/Dickie Park Master Plan**DEPARTMENT:** Department of Parks, Recreation & Public Lands**PRESENTED BY:** Mike Whitaker, Director

PROBLEM/ISSUE STATEMENT: Public Works Engineering Division is currently working on a Stormwater Control Project in the Howard Heights and Heights View Subdivisions in the Billings Heights area. Part of their plan is to utilize a portion of park land for a detention basin to control downstream discharge of stormwater. Since a Master Plan for Howard Heights and Dickie Park has not been developed and a Master Plan is necessary to control and guide development of the 4 acre park, a Master Plan was undertaken. The Master Plan was developed to ensure that the stormwater detention facility serves as an amenity to the park and fit into the planned uses and improvements to the park. This park will be an integral part of the subdivision and is designed to connect to the Heritage Trail System as it is developed along the BBWA Canal immediately east of the park. The park is located at the intersection of Shamrock Lane and Garnet Ave. just off of Hilltop Road. The plan was prepared by Peaks to Plains Design, a Landscape Architectural consulting firm, under the direction of PRPL and Engineering staff. The plan was presented to the Billings Park, Recreation, and Cemetery Board, at the December 12, 2006 meeting, and the Board voted to recommend adoption of the Howard Heights/Dickie Park Master Plan to the City Council. See Attachment A – Howard Heights/Dickie Park Master Plan resolution.

FINANCIAL IMPACT: As part of the Stormwater Control Project, the detention basin and associated control structures will be constructed and the land will be re-vegetated with a native grass seed mixture. Further development of the park will likely be financed by the formation of an SID. A Park Maintenance District to provide funds for current and ongoing park maintenance is currently in place. The park development will be cost neutral to the City and the General Fund.

RECOMMENDATION

Staff and the Parks recreation and Cemetery Board recommend that City Council approve and adopt the Howard Heights/Dickie Park Master Plan as the governing plan for the development of the park.

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

ATTACHMENTS

A – Howard Heights/Dickie Park Master Plan Resolution.

(Note: Master Plan is available for viewing in the City Clerk's Office.)

INTRODUCTION

Public Works Engineering Division is currently working on a Stormwater Control Project in the Howard Heights and Heights View Subdivisions in the Billings Heights area. Part of their plan is to utilize a portion of park land for a detention basin to control downstream discharge of stormwater. Since a Master Plan for Howard Heights and Dickie Park has not been developed and a Master Plan is necessary to control and guide development of the 4 acre park, a Master Plan was undertaken. The Master Plan was developed to ensure that the stormwater detention facility serves as an amenity to the park and fit into the planned uses and improvements to the park. This park will be an integral part of the subdivision and is designed to connect to the Heritage Trail System as it is developed along the BBWA Canal immediately east of the park. The park is located at the intersection of Shamrock Lane and Garnet Ave. just off of Hilltop Road. The plan was prepared by Peaks to Plains Design, a Landscape Architectural consulting firm, under the direction of PRPL and Engineering staff. The plan was presented to the Billings Park, Recreation, and Cemetery Board, at the December 12, 2006 meeting, and the Board voted to recommend adoption of the Howard Heights/Dickie Park Master Plan to the City Council. See Attachment A – Howard Heights/Dickie Park Master Plan resolution.

PROCEDURAL HISTORY

The need for a master plan arose as the surrounding neighborhood has seen tremendous growth and housing infill. As a result, the stormwater runoff along streets has increased causing localized flooding and ponding. In 2005, the City of Billings Engineering Division commissioned Interstate Engineering, Inc. to provide overall analysis and design solutions for managing stormwater runoff. As part of the design solution, the park land was identified as a site to construct a stormwater detention facility to provide stormwater holding capacity. Because no master plan was on record allowing for this use, the Engineering Division funded and secured the services of Peaks to Plains Design through their contract with Interstate Engineering, Inc. to develop a park master plan. Peaks to Plains Design worked closely with PRPL and Engineering Staff discussing the park site, its constraints and opportunities, and city requirements for park development. After public review and comment in 2 public meetings, a draft master plan was agreed on early in October of 2006. The final plan was reviewed and the Parks, Recreation and Cemetery Board voted to recommend approval and adoption of the master plan to City Council at their December 12, 2006, meeting. The final step is presentation to the City Council for consideration and adoption.

BACKGROUND

The Billings city policy for Park plan preparation is from the Neighborhood Parks Planning Process, adopted by the PRPL Department in 1980. A park may not be developed until a park Master Plan has been prepared and adopted by the Billings City Council. All development and proposals for the development of portions of parks or facilities within parks must be consistent with an approved Master Plan. It is prepared by a qualified park planning consultant, and considers surrounding zoning and land uses and local and general

park and recreation needs as well as specific requests from interested users. This is to assure the highest quality and most beneficial development of parks and recreation facilities, and to assure adequate public input into the development, sale, or use, of Billings' parklands. A proposed modification to a park that is a significant departure from the approved Master Plan requires a revision of the Master Plan following the above process, to determine if the proposed change is acceptable and appropriate for that park. The Howard Heights/Dickie Park master plan as presented has been reviewed and recommended to the City Council for approval and adoption by the Billings Park, Recreation, and Cemetery Board.

The master plan:

- Sets forth the guidelines for development of Howard Heights/Dickie Park and clears the way for the stormwater project to proceed.
- Identifies a portion of the park land to serve as a stormwater detention facility conforming to the City of Billings Subdivision Regulations; Stormwater Detention/Retention Ponds in Parks.
- Allows for dual use of park land while providing a maximum amount of open space for park recreation and multi use activities.
- Provides an appropriate neighborhood playground.
- Links the subdivision and park to the Heritage Trail system.

ALTERNATIVE ANALYSIS

The staff considered the following:

- Do nothing.
- Upsize existing stormwater sewer facilities out to the Yellowstone River to accommodate current and future expansion in the area.
- Develop a park master plan clearing the way for the Stormwater Control Project to move forward and providing guidelines for the future development of Howard Heights/Dickie Park. This is the recommendation of staff and the Parks, Recreation and Cemetery Board.

CONSISTENT WITH ADOPTED POLICIES AND PLANS

The Howard Heights/Dickie Park master plan follows recommendations contained in the Parks 20/20 Plan adopted in 1997 and the Billings Heritage Trail Plan, adopted by the city and the county in 2004.

RECOMMENDATION

Staff and the Parks, Recreation and Cemetery Board recommend that City Council approve and adopt the Howard Heights/Dickie Park Master Plan as the governing plan for the development of the park.

ATTACHMENTS

A – Howard Heights/Dickie Park Master Plan Resolution.

(Note: Master Plan is available for viewing in the City Clerk's Office.)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 15, 2008

TITLE: Preliminary Subsequent Minor Amended Plat of Lots 4-19, Block 2, Riverfront Pointe Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: On November 17, 2008, the Planning Division received an application for a subsequent minor plat approval for the Amended Plat of Lots 4-19, Block 2, Riverfront Pointe Subdivision, which contains 1 lot on approximately 214,533 square feet (4.925 acres) of land for apartment building development. The proposed subdivision is located east of the southeast corner of the intersection of Mullowney Lane and Frontier Drive. The applicant is aggregating 16 lots into 1 lot for the proposed apartment building development. The applicant is also in the process of vacating the existing platted road within the 16 lots. This road vacation process is moving through the City Engineering Division and will come to City Council for approval separately. The proposed subdivision is located east of the southeast corner of the intersection of Mullowney Lane and Frontier Drive. The subject property is zoned Highway Commercial (HC). The surrounding properties are also zoned HC. The owner is Frontier Apartments, LLC. The representing agent is Blueline Engineering, LLC.

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 January 7, 2009. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

RECOMMENDATION

Staff recommends conditional approval of the preliminary subsequent minor plat of the Amended Plat of Lots 4-19, Block 2, Riverfront Pointe Subdivision, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

ATTACHMENTS

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

INTRODUCTION

On November 17, 2008, the Planning Division received an application for a subsequent minor plat approval for the Amended Plat of Lots 4-19, Block 2, Riverfront Pointe Subdivision, which contains 1 lot on approximately 214,533 square feet (4.925 acres) of land for apartment building development. The proposed subdivision is located east of the southeast corner of the intersection of Mullowney Lane and Frontier Drive. The applicant is aggregating 16 lots into 1 lot for the proposed apartment building development. The applicant is also in the process of vacating the existing platted road within the 16 lots. This road vacation process is moving through the City Engineering Division and will come to City Council for approval separately. The proposed subdivision is located east of the southeast corner of the intersection of Mullowney Lane and Frontier Drive. The subject property is zoned Highway Commercial (HC). The surrounding properties are also zoned HC.

PROCEDURAL HISTORY

- The pre-application meeting was held on October 9, 2008.
- The preliminary plat application was submitted to the Planning Division on November 17, 2008.
- The City Council will consider the preliminary plat application on December 15, 2008.

BACKGROUND

General location:	East of the southeast corner of the intersection of Mullowney Lane and Frontier Drive
Legal Description:	Lots 4-19, Block 2, Riverfront Pointe Subdivision
Subdivider:	Frontier Apartments, LLC
Owner:	Same
Engineer and Surveyor:	Blueline Engineering, LLC/Northstar Land Services, P.C.
Existing Zoning:	HC
Existing land use:	Vacant
Proposed land use:	Apartment Buildings
Gross area:	214,533 square feet
Net area:	214,533 square feet
Proposed number of lots:	1

Lot size:	Max: 214,533 square feet (4.925 acres) Min.: 214,533 square feet (4.925 acres)
Parkland requirements:	A parkland dedication is not required, as this is a subsequent minor subdivision that is reducing the total number of lots in the original subdivision.

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potential negative effects of property being subdivided. 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 final plat. (*Recommended by the Engineering Division*)
2. To minimize effects on local services, Boundary Waters Circle shall be vacated, as depicted on the preliminary plat prior to final plat approval. (*Recommended by the City Engineering Division and City-County Planning*)
3. 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.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

None requested

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

RECOMMENDATION

Staff recommends conditional approval of the preliminary subsequent minor plat of the Amended Plat of Lots 4-19, Block 2, Riverfront Pointe Subdivision, and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

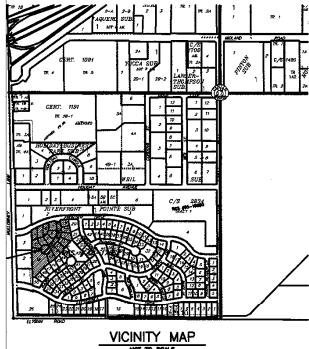
- A. Preliminary Plat
- B. Findings of Fact
- C. Mayor's Approval Letter

ATTACHMENT A

Amended Plat of Lots 4-19, Block 2, Riverfront Pointe Subdivision

AMENDED PLAT OF LOTS 4-19, BLOCK 2, RIVERFRONT POINTE SUBDIVISION

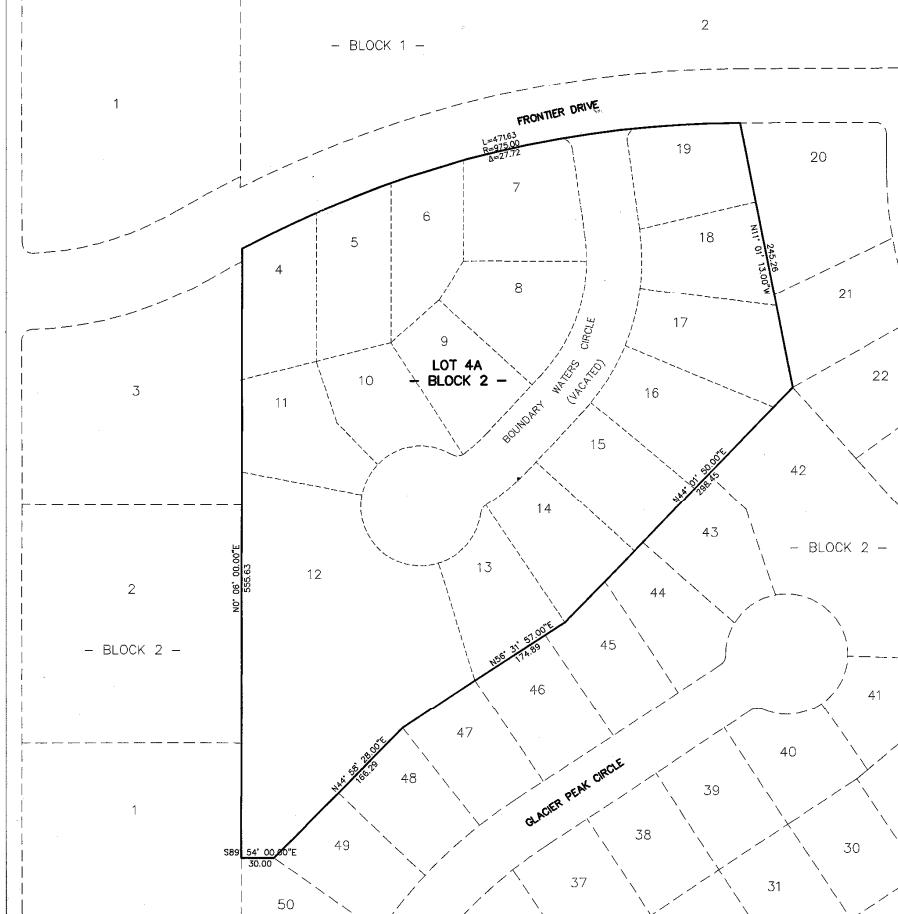
SITUATED IN THE SW 1/4, OF SECTION 17, T. 1 S., R. 26 E., P.M.M.
YELLOWSTONE COUNTY, MONTANA



PREPARED FOR: RIVER FRONT POINTE LLC
SURVEYOR: NORTH STAR LAND SERVICES, P.C.
ENGINEER: BLUELINE ENGINEERING LLC
OCTOBER 2008
BILLINGS, MONTANA

SUBDIVISION DETAILS:

A scale bar diagram consisting of a horizontal line with tick marks. The line is divided into 40 equal segments. The first segment is labeled '40' at its left end, the middle segment is labeled '0' at its center, and the last segment is labeled '40' at its right end. Below the line, the text 'Scale 1' = 40' is written.



ATTACHMENT B

Findings of Fact

Staff is forwarding the recommended Findings of Fact for the Amended Plat of Lots 4-19, Block 2, Riverfront Pointe 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 is currently vacant land in the platted Riverfront Pointe Subdivision. There are no irrigation facilities on the property. There is no anticipated effect on irrigation facilities in the area.

2. Effect on local services

- a. **Utilities** – Water and sanitary sewer for the proposed subdivision shall come from main water and sanitary sewer lines that are to be installed under private contract number 605. The lines will be installed in Frontier Drive and then connections made from there into the private lot for the apartment buildings. The property owner will be responsible for all connection fees and improvement cost as stated in the SIA.
- b. **Storm water** – All drainage improvements shall comply with the provisions of the City of Billings Stormwater Management Manual and Section 23-706, BMCC. All stormwater management plans shall be submitted and approved by the Billings Engineering Division before any stormwater systems are installed.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** - Access to the proposed subdivision shall be a shared access from Frontier Drive. The developer will have a private access road onto the site for the apartment buildings. The proposed private access road will be looped providing two exit points. This site, at the time of the submittal, has a dedicated road in it, Boundary Waters Circle. The applicants' agent has been working with City Engineering to vacate the existing road. The City Engineering Division will present the proposed roadway vacation to the City Council on December 15, 2008, the same meeting the subdivision is to be reviewed by the City Council. As required by Condition #2, Boundary Waters Circle shall be vacated prior to final plat approval.
- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The fire station that serves this area is located at 604 South 24th Street West (Station #5). Continued development will adversely affect the Billings Police and Fire Departments ability to deliver service.

- f. **Schools** –The Elysian School provided comments regarding this subdivision. Elysian staff stated that this development will negatively affect the school. If the development were to fill with families that have children, the anticipated number of students would overburden the elementary and middle school. There is currently a bus route to the area of this subdivision. The proposed apartment buildings are all one bedroom units which may somewhat limit the number of families in the new development.
- g. **Parks and Recreation** - A parkland dedication is not required, as this is a subsequent minor subdivision and is not required to dedicate more parkland.

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.

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 and 23-901, BMCC.

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 residential development has existing multi-family development to the east. The property to the north, south and west is not developed but the zoning is HC so it could develop as commercial or more multi-family.
- b. Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, Page 6)

The subject property is within the City and there are existing residential properties to the east and south of this proposed subdivision. This proposed subdivision will continue the development of housing in this part of Billings.

- c. Affordable housing for all income levels dispersed throughout the City and County. (Land Use Element Goal, Page 6)

This area of Billings is developing with some commercial properties to the west. There is also residential development to the east and south. This proposed development will fit into the existing residential developments and will fill an existing need for more rental housing in Billings.

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 portion of the subdivision. An on street portion of the trail is identified along Mullowney Lane west of this subdivision.

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

requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

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

The proposed subdivision has legal and physical access to Frontier Drive. There will only be one lot if this subdivision is approved. They are proposing to have two accesses onto Frontier Drive to accommodate the amount of traffic an apartment complex of this size will generate.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of the Amended Plat of Lots 4-19, Block 2, Riverfront Pointe 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, December 15, 2008

Ron Tussing, Mayor

ATTACHMENT C
Mayor's Approval Letter

December 16, 2008

Frontier Apartments LLC
6238 Golden Eagle Way
Billings, Montana 59106

Dear Applicant:

On December 15, 2008, the Billings City Council conditionally approved the preliminary plat of the Amended Plat of Lots 4-19, Block 2, Riverfront Pointe 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 final plat. (*Recommended by the Engineering Division*)
2. To minimize effects on local services, Boundary Waters Circle shall be vacated, as depicted on the preliminary plat prior to final plat approval. (*Recommended by the City Engineering Division and City-County Planning*)
3. 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.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

Sincerely,

Ron Tussing, Mayor

RESOLUTION NUMBER 08-_____

**A RESOLUTION ADOPTING A MASTER PLAN FOR THE
DEVELOPMENT OF HOWARD HEIGHTS/DICKIE PARK IN THE
HOWARD HEIGHTS AND HEIGHTS VIEW SUBDIVISIONS**

WHEREAS, the public interest requires the creation and adoption of a Master Plan for the Howard Heights/Dickie Park in the Howard Height and Heights View Subdivisions to control and limit development in accordance with the needs of the subdivision and the community, the limitations and constraints of the park site, and with improvements suited to and appropriate for the surrounding land uses; and

WHEREAS, it is in the public interest and necessary that the current and future development of the park shall conform to the adopted master plan; and

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

1. *Master Plan.* The master plan for Howard Heights/Dickie Park presented for adoption and attached as *Exhibit "A"* is the official Master Plan for the park;
3. *General Character of Improvements Provided for by the Plan.* The general character of the improvements are park areas and facilities to be located on the Public Park (known as Howard Heights/Dickie Park) and portions of Block 3 of the Howard Heights Subdivision and Block 4 of the Heights View Subdivision as shown on Exhibit "B" attached hereto. The purpose of the plan is to guide development of the park and a maintenance district to provide perpetual maintenance of the subject park facilities.
3. *Changes.* Proposed improvements not part of the adopted plan shall not be installed unless a new master plan is adopted through the normal park planning process that finds that the proposed improvement is appropriate as described above and can be incorporated as part of an "amended" park master plan to be presented for adoption at that time.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Billings, Montana, this 15th day of December, 2008.

CITY OF BILLINGS

By:_____

Ron Tussing Mayor

ATTEST:

By:_____

Cari Martin City Clerk

J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, December 15, 2008

TITLE: Final Plat of Amended Lot 6B, Flanagan Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Amended Lot 6B, Flanagan Subdivision is being submitted to Council for approval. On May 27, 2008, the City Council conditionally approved the plat which contains two lots on approximately 2.52 acres for commercial development. The subject property is located south of the intersection of Central Avenue and Moore Lane on the west side of Moore Lane. The subject property is zoned Controlled Industrial. The owner is Moore Lane Veterinary Hospital and Blueline Engineering is the agent.

FINANCIAL IMPACT: Should the City Council approve the final plat, the subject property will further develop, resulting in additional tax revenues for the City. The recently completed Moore Lane Veterinary Hospital is located on proposed Lot 6B-2.

RECOMMENDATION

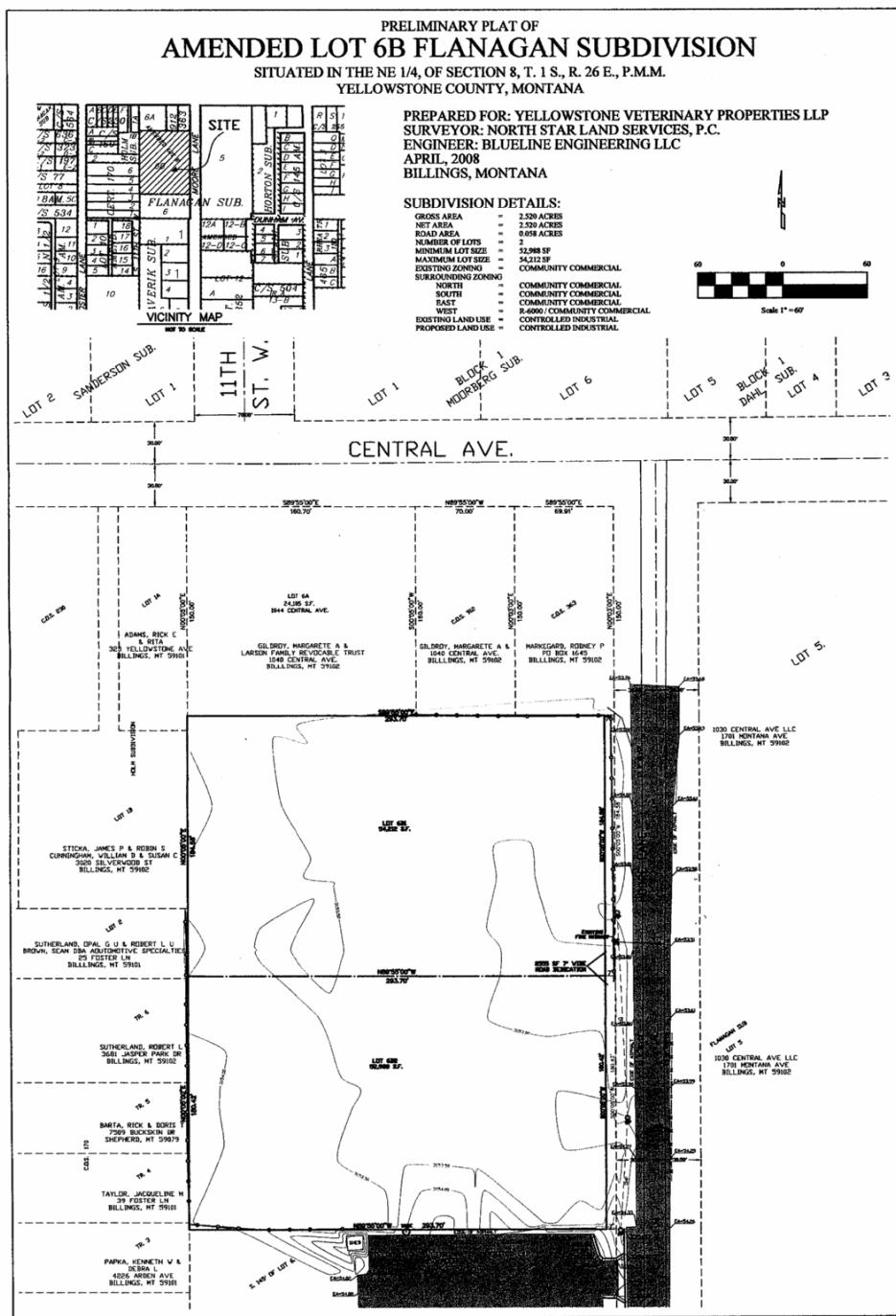
Staff recommends that the City Council approve the final plat of Amended Lot 6B, Flanagan Subdivision

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

ATTACHMENT

A: Plat

ATTACHMENT A
Subdivision Plat



K1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 15, 2008

TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$3,271,559.26 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 21, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, December 15, 2008**

TITLE: W.O. 04-12—Alkali Creek Road Slope Improvements, Const. Contract

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The original scope of work for W.O 04-12 was to improve Alkali Creek Road between Senators Blvd. and Airport Road. During a preliminary design field review in July 2007 for phase 3 (Black Pine Street to Airport Rd.), a major slope failure was discovered. A geotechnical report dated December 17, 2007, determined that 385 linear feet of actual failed slopes exist along this stretch of road, which represents over one-fourth of the total stretch (approximately 1,350 linear feet). Phase 3 then became a slope stability project.

Due to budget constraints, only those areas deemed to be the most critical were bid to be constructed in 2009. This phase of the project was designed by Kadrmas, Lee & Jackson, with whom the City has a contract for these professional services. Bids were opened October 28, 2008, and Council delayed action at the November 10 and November 24 Council meetings.

Due to all bids for Schedule I exceeding the amount of funding available and the extreme costs projected in the future for all improvements, Staff is reevaluating options for the stretch of Alkali Creek Road between Black Pine Street and Airport Road and recommends rejection of all bids.

FINANCIAL IMPACT: The project is being funded by Arterial fees and Storm Water funds. The associated FY 2009 CIP has been approved by the Mayor and City Council.

Arterial Road Improvements:	\$ 1,000,000.00
Storm Water Funds:	\$ 600,000.00
Spent (and obligated) to date:	(\$ 156,700.00)
Remaining Funding:	\$ 1,443,300.00

Bids were opened October 28, 2008, with the following results:

Firms	Coleman Const.	COP Const.	Western Municipal	Engineer's Est.
Schedule I	\$1,897,835.73	\$1,762,687.50	\$1,850,330.50	\$1,056,624.50
Schedule II	\$740,063.75	\$460,650.00	\$560,548.50	\$365,913.00

RECOMMENDATION

Staff recommends to reject all bids received for W.O. 04-12—Alkali Creek Road Slope Improvements.

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

INTRODUCTION

Phase 3 of W.O. 04-12 was to provide road improvements on Alkali Creek Road between Black Pine Street and Airport Road. However, the scope of work was changed to slope stability improvements after a major slope failure was discovered. A geotechnical report determined that failed slopes exist along over one-fourth of the total stretch of roadway.

Only the four areas deemed “most critical” were bid to be constructed in 2009. Bids were opened October 28, 2008, and Council delayed action at the November 10 and November 24 Council meetings.

Due to all bids for Schedule I greatly exceeding the amount of funding available and the extreme costs projected in the future for all improvements, Staff is reevaluating options for this stretch of Alkali Creek Road between Black Pine Street and Airport Road and recommends rejection of all bids.

BACKGROUND

The original scope of work for W.O 04-12 was to reconstruct Alkali Creek Road between Senators Blvd. and Airport Road. In addition to a reconstructed street section, the project was also to include storm drainage, water and sewer mains, a multi-use path, sidewalk and curb & gutter improvements. The first two phases of the project were started in the summer of 2005 and completed in the summer of 2006. These phases encompassed the stretch between Senators and the BBWA Canal siphon crossing near Black Pine Street. The multi-use path constructed during these phases stretches from Alkali Creek Elementary School to Black Pine Street.

During a preliminary design field review in July 2007 for phase 3 (Black Pine to Airport Rd.), a major slope failure was discovered. This failure was quickly corrected, but the failure caused Staff to re-examine the conclusion of a previous geotechnical report done for the affected area. A “second opinion” was received from a different geotechnical firm, and their geotechnical report, dated December 17, 2007, determined that 385 linear feet of actual failed slopes exist along this stretch of road, which represents over one-fourth of the total stretch (approximately 1,350 linear feet). The recommendation was to fix these failed areas as soon as possible, as they could have a very negative impact to the integrity of Alkali Creek Road.

Amendment No. 6 to the Professional Services Agreement with Kadrmas, Lee & Jackson (KLJ), approved July 28, 2008, includes the design and bidding services for the slope stability improvements. The design was completed for the entire stretch of roadway between Black Pine Street and Airport Road. Due to budget constraints, only those areas that represent the greatest and most imminent danger were bid to be constructed in 2009. All remaining portions should be constructed in the future when funding is available. The current bid package is broken into separate schedules—Schedule I, improvements to three critical areas west of Morningside Lane, and Schedule II, improvements to one area east of Morningside Lane. The work generally consists of the construction of a soldier pile

retaining wall system with lagging and grouted tiebacks, replacement of guardrail, installation of storm water piping, revegetation of affected areas, and all related work.

This phase of the project was designed by KLJ, with whom the City has a contract for these professional services. Bids were opened October 28, 2008, and Council delayed action at the November 10 and November 24 Council meetings.

Due to all bids for Schedule I greatly exceeding the amount of funding available and the extreme costs projected in the future for all improvements, Staff is reevaluating options for this stretch of Alkali Creek Road between Black Pine Street and Airport Road and recommends rejection of all bids.

RECOMMENDATION

Staff recommends to reject all bids received for W.O. 04-12—Alkali Creek Road Slope Improvements.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, December 15, 2008**

TITLE: Public Hearing to Vacate Boundary Waters Circle**DEPARTMENT:** Public Works/Engineering**PRESENTED BY:** David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Cal Kunkel, owner of the property fronting Boundary Waters Circle, has petitioned to vacate Boundary Waters Circle located within Riverfront Pointe Subdivision. All of this land and the street are undeveloped. The street was originally dedicated with Riverfront Point Subdivision but not developed as of yet. Mr. Kunkel is proposing to develop the area into a condominium complex with a private street. The total amount of right of way to be vacated is 27,697 square feet.

ALTERNATIVES ANALYZED:

1. After the public hearing, approve the vacation of the above-mentioned right-of-way.
2. Do not approve the vacation of the above-mentioned right-of-way.

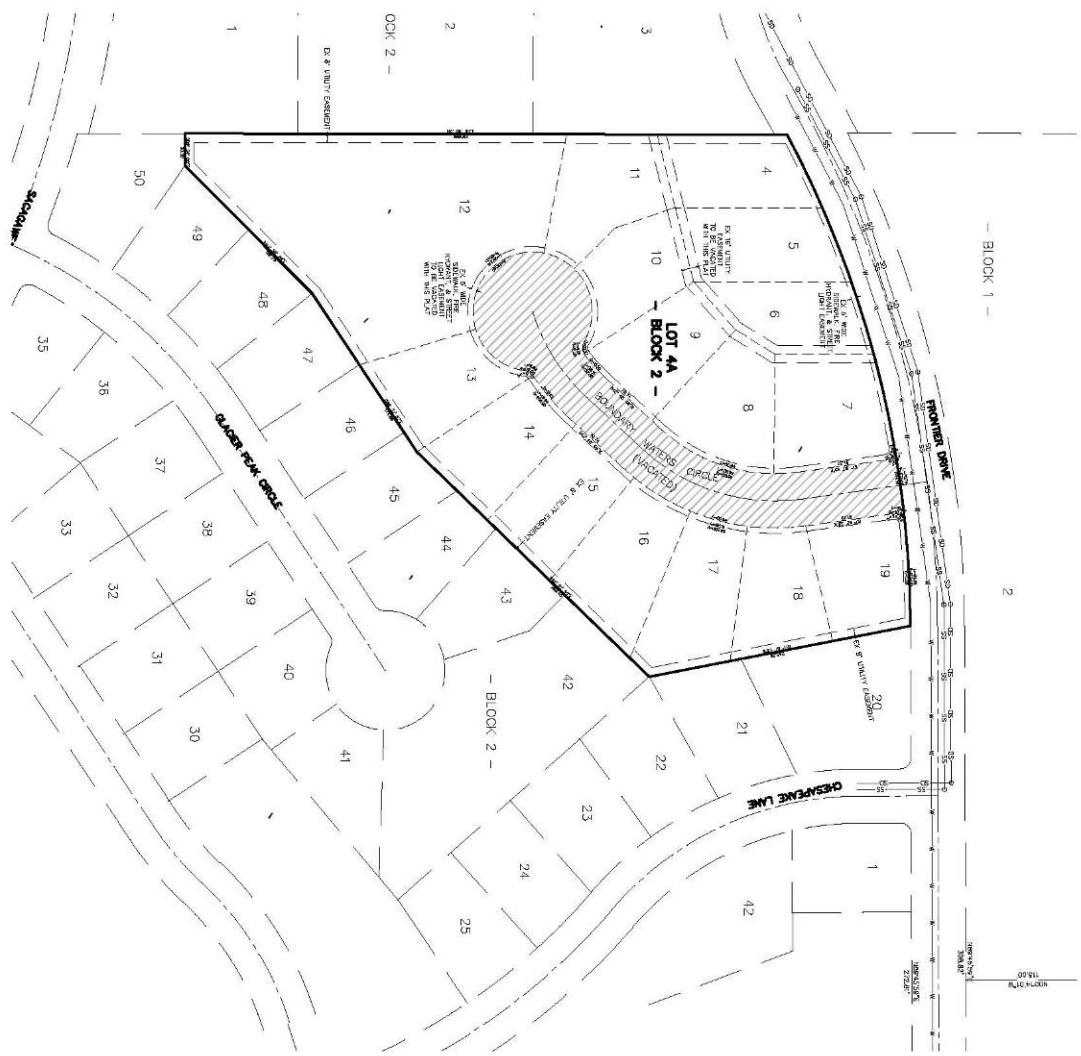
FINANCIAL IMPACT: Attached is a letter from Mr. Kunkel's agent requesting that the right of way be vacated at no charge to the developer. Also attached is a letter from Blaine Poppler establishing the value of the right of way proposed to be vacated at \$15,885.

RECOMMENDATION

After the public hearing, staff recommends that Council approve the vacation of Boundary Waters Circle within Riverfront Pointe Subdivision with payment.

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

- A. Map Depicting Areas to be Vacated
- B. Letter from Marshall Phil
- C. Letter from Blaine Poppler
- D. Resolution to Vacate





2110 Overland Avenue, Suite 119B
Billings, MT 59102
Work: 406-294-2294
Fax: 406-294-2295

October 31, 2008

Chris Hertz
City of Billings Engineering
2224 Montana Avenue
Billings, MT 59105

Re: Right-of-Way Vacation for Boundary Waters Circle

Dear Chris:

In the sale of the land, it was understood by both parties that the road would be vacated and private utilities and roadways would be built within the property. We have been informed that if the original landowner requested the vacation of the right-of-way then the cost to do so would be set at zero. This vacation was agreed to by both parties in the sale of Lots 4-19, Block 2, Riverfront Pointe Subdivision and as such is being requested by the original owner and the current owner. The applicant is therefore requesting the value of the right-of-way be placed at zero dollars.

The road to the north of this property is Frontier Drive and all of the right-of-way improvements to that street are not yet installed. The improvements to the subdivision all lie to the south of this part of the subdivision. The right-of-way and land we are discussing is essentially vacant alfalfa fields.

This project will remove several hundred feet of roads and utilities that would be maintained by the City and place the maintenance on the landowner, reducing long-term costs to the City.

We are asking that you consider the nature of the land sale and vacant land use in your consideration for the zero land value of this right-of-way.

Sincerely,

Marshall Phil



November 12, 2008

Blaine A. Poppler
1215 24th West
Billings, MT 59102
406-869-0565 Direct
406-671-0399 Cell
blaine@cbthebrokers.com

To Chris Hertz
City of Billings Engineering
RE: value of vacated street.

Dear Mr. Hertz:

This Tract of land on Mulowney Lane was purchased for \$25,000 per acre. A similar tract just south of this property (Josephine Crossing) reportedly was purchased for \$22,500 per acre. These are the best comparable values to apply to the subject vacated Boundary Waters Circle land (approx 27,679 sq ft). This property has no frontage on Mulowney Lane, therefore it is not appropriate to add any value for size. With no other usable function of this particular tract I would place the value at \$25,000 per acre or \$15,885 dollars.

Sincerely,

A handwritten signature in black ink that reads "Blaine A. Poppler".

RESOLUTION NO. 08-_____

A RESOLUTION OF THE CITY OF BILLINGS,
MONTANA, DISCONTINUING AND VACATING
**Boundary Waters Circle in Riverfront Pointe
Subdivision.**

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of **Boundary Waters Circle in Riverfront Pointe Subdivision** as described hereinafter; and

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

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

1. **DISCONTINUANCE AND VACATION.** Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., **Boundary Waters Circle in Riverfront Pointe Subdivision** more particularly described as follows:

Beginning at the northeast corner of Lot 7, Block 2, Riverfront Pointe Subdivision thence along a curve to the right with a radius of 975 feet a distance of 70.43 feet (chord bearing N 82°07'30" E, chord length 70.41 feet); thence along a curve to the left with a radius of 10 feet a distance of 16.07 feet (chord bearing S 38°09'48" W, chord length 14.40 feet); thence S 7°52'35" E a distance of 81.2 feet; thence along a curve to the right with a radius of 205 feet a distance of 181.18 feet (chord bearing S 17°26'37" W, chord length 175.35 feet); thence S 42°45'49" W a distance of 70.74 feet; thence along a curve to the right with a radius of 205 feet a distance of 49.81 feet (chord bearing S 49°43'25" W, chord length 49.68 feet); thence along a curve to the left with a radius of 10 feet a distance of 8.69 feet (chord bearing S 31°47'46" E, chord length 8.42 feet); thence along a curve to the right with a radius of 55 feet a distance of 282.19 feet (chord bearing N 26°06'24" W, chord length 59.94 feet); thence along a curve to the left with a radius of 10 feet a distance of 11.82 feet (chord bearing N 87°01'23"

E, chord length 11.14 feet); thence along a curve to the left with a radius of 155 feet a distance of 28.15 feet (chord bearing N 47°57'58" E, chord length 28.11 feet); thence N 42°45'49" E a distance of 70.74 feet; thence along a curve to the left with a radius of 155 feet a distance of 136.99 feet (chord bearing N 17°26'37" E, chord length 132.58 feet); thence N 7°52'35" W a distance of 81.2 feet; thence along a curve to the left with a radius of 10 feet a distance of 16.07 feet (chord bearing N 53°24'21" W, chord length 14.27 feet) to the point of beginning and containing 27,679 square feet.

Is hereby discontinued, abandoned and vacated.

2. **PUBLIC INTEREST.** The discontinuance, vacation and abandonment of the above described **Boundary Waters Circle in Riverfront Pointe Subdivision** is in the best interest of the public and can be done without any public detriment. Ownership of the vacated area will revert half to each parcel abutting Boundary Waters Circle Right of Way.

PASSED by the City Council and APPROVED this 15th day of December 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Cari Martin CITY CLERK

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, December 15, 2008

TITLE: Public Hearing/Site Development Ordinance Variance #OP08-04
DEPARTMENT: Public Works
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Philip Keith, owner of Lots 18, 19, and 20, Sunset Subdivision 1st Filing, is seeking a variance to provide fewer parking stalls than what City Ordinance allows. City Ordinance, Section 6-1203 (j) states that for food and beverage places with sale and consumption on the premise, the minimum parking requirements are one (1) stall per 100 square feet of gross floor area. The proposed site consists of a 7200 square foot building and 52 proposed parking stalls. A site plan showing the overall proposed project is shown in Attachment A. The building is proposed to be half restaurant and beverage sales and half retail. The parking requirements for retail is (1) stall per 200 square feet of gross floor area. The total parking required for the proposed 7200 square foot building is 54 spaces. Three spaces shown on the attached site plan may be within the arterial setback and don't count towards required parking. The proposed layout of the site plan would require a variance of 5 parking stalls. Any further development would require that Mr. Keith either build more parking or request another variance. Mr. Keith is concerned that the proposed site plan cannot be constructed due to the fact that the expansion of Grand Avenue took away four parking stalls.

ALTERNATIVES ANALYZED:

1. Approve the variance of 5 parking stalls.
2. Do not approve the variance of 5 parking stalls.

FINANCIAL IMPACT: There is no financial impact to the City of Billings.

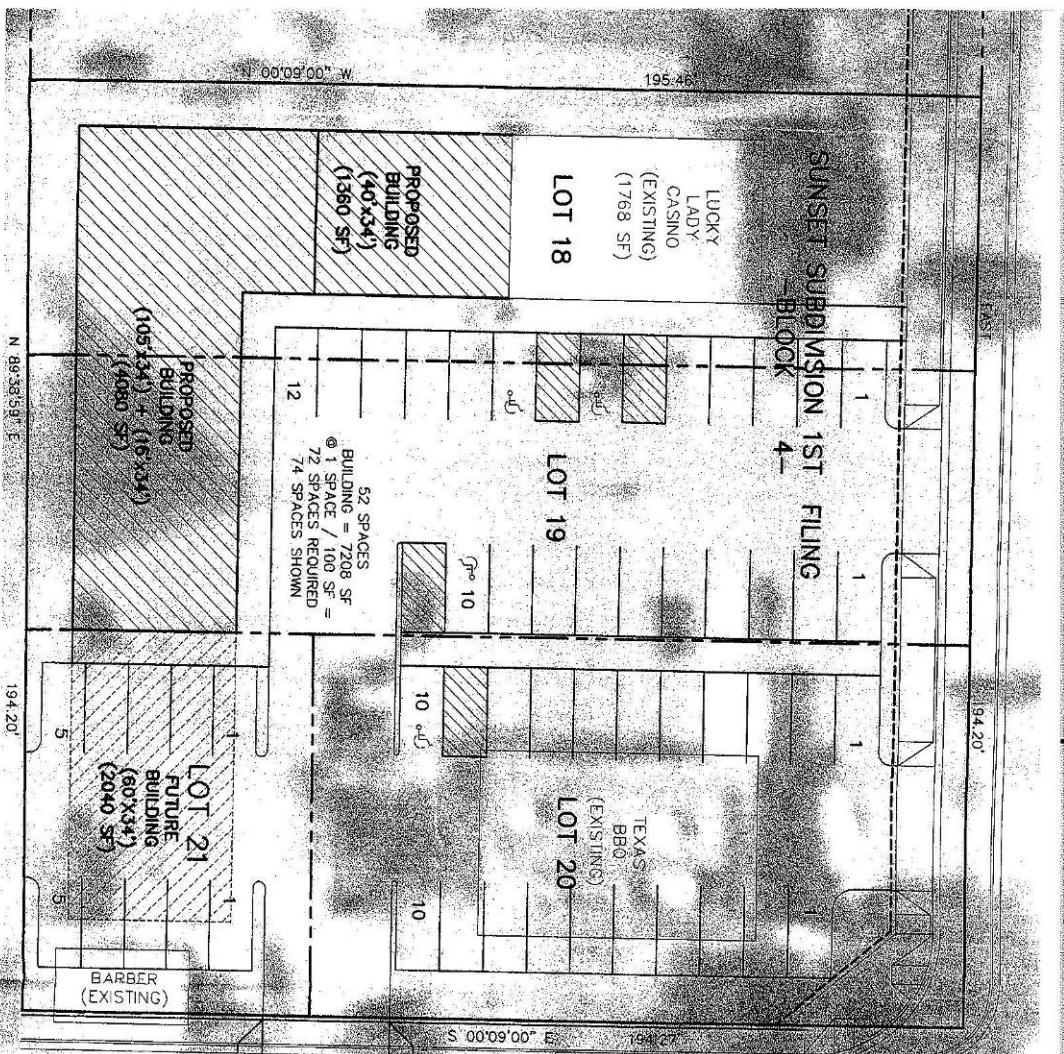
RECOMMENDATION

Staff recommends that Council approve the variance of 5 parking stalls for development of Lots 18, 19, and 20, Sunset Subdivision 1st Filing.

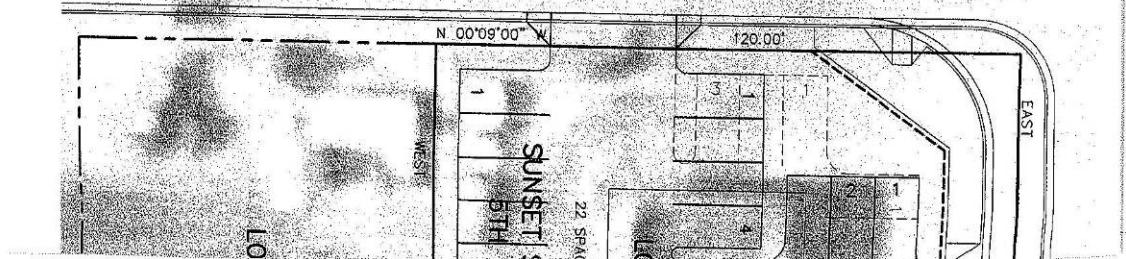
Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS:

- A. Proposed Site Plan Variance Application
- B. Variance Application



11TH STREET WEST



Application # _____

APPLICATION FOR VARIANCE

1. Legal description of property: LOT 20 BLOCK 4 SUNSET SUBDIVISION
IN GOVT LOT 2, SECTION 5, TWP&R 1 S00T, R'26E, P.M.M. CITY OF
BILLINGS, COUNTY OF YELLOWSTONE DOCUMENT 3232841.

2. Address (if unknown, contact the City Engineer's office) or
general location: 1102 GRAND AVENUE, BILLINGS, MT 59102

3. Owner(s): PHILIP D. KEITH
(Recorded Owner) 2110 OVERLAND AVENUE, SUITE 117
(Address) BILLINGS, MT 59102
(Phone Number) 406-652-1544

4. Agent(s): PHILIP D KEITH
(Name) 2110 OVERLAND AVENUE, SUITE 117
(Address) 406-672-3501
(Phone Number)

5. Section of the Site Development Ordinance that this request
for variance applies to: PARKING SPACE REQUIREMENTS

6. Reason for request: DUUE TO POTENTIAL BUILDING
PLANS AND CONDEMNATION OF PORTIONS
OF LOTS 18 AND 20, PARKING SPACE
REQUIREMENTS WILL BE SHORT AND A
VARIANCE IS NEEDED AT THIS TIME.

7. Covenants for deed restrictions on the property: Yes No
(if yes, please include a copy) UNKNOWN

I understand that the filing fee accompanying this application is
not refundable, and that the fee does not constitute a payment for
variance requested. Also, that all the information presented is
true and correct.

Signature: Philip Keith Date: 10/20/08
(Recorded Owner)

Fee: _____ Receipt #: _____

Hearing Date: _____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, December 15, 2008**

TITLE: Public Hearing and Resolution for Fee Associated with Master Site Plan Review Process provided by the Planning Division

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The Planning Division is presenting a proposed fee of \$240.00 for the new Master Site Plan Review Process to the City Council for approval. This proposed fee follows the Council's final adoption on November 10, 2008, of Zone Change #849: Master Site Plan Review Process for Condominiums and Multi-Unit Developments – Amending Section 27-201, Section 27-310 (b), and Section 27-622 BMCC. This text amendment is to coordinate City review of certain multi-unit commercial and residential projects to make the review and permitting process more efficient and ensure that the City's applicable zoning, site development, building code, and fire safety regulations are followed.

The Planning Division has estimated that it will take Planning staff an average of 5 hours to process, organize meetings, review documents, and complete a Master Site Plan Review. Staff time, supervisory time, and overhead costs for 5 hours totals \$240.00.

FINANCIAL IMPACT: Should the City Council approve the new fee for the Master Site Plan Review Process, the services rendered by the Planning Division for this process will reflect the costs to provide the service and result in additional revenues for the Planning Division. Estimated revenues from this new fee also were programmed into the Planning Division's FY 2009 Budget and this fee will help the Division balance its budget for the current fiscal year.

RECOMMENDATION

Staff recommends that the City Council approve the \$240.00 fee for the Master Site Plan Review Process provided by the Planning Division.

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

ATTACHMENTS

- A. Fee Table
- B. Resolution

INTRODUCTION

The Planning Division is presenting a proposed fee of \$240.00 for the new Master Site Plan Review Process to the City Council for approval. This proposed fee follows the Council's final adoption on November 10, 2008, of Zone Change #849: Master Site Plan Review Process for Condominiums and Multi-Unit Developments – Amending Section 27-201, Section 27-310 (b), and Section 27-622 BMCC. This text amendment is to coordinate City review of certain multi-unit commercial and residential projects to make the review and permitting process more efficient and ensure that the City's applicable zoning, site development, building code, and fire safety regulations are followed.

The Planning Division has estimated that it will take Planning staff an average of 5 hours to process, organize meetings, review documents, and complete a Master Site Plan Review. Staff time, supervisory time, and overhead costs for 5 hours totals \$240.00.

PROCEDURAL HISTORY

- The ICC Building Department Operations Appraisal completed in late 2007 had several recommendations to improve the permit review process and conduct pre-application meetings (Division Management, Section VII (3); and Development Review Process, Section IX (6). This Master Site Plan Review process is in response to these recommendations.
- The City Council on June 9, 2008, approved the Planning Division FY2009 Budget. The budget included this Master Site Plan Review process as one component.
- In the last several months, planning staff took the Master Site Plan Review process proposal to Billings Home Builders Association representatives and to the City's Development Process Review Board.
- On October 7, 2008, the City Zoning Commission conducted the public hearing.
- The City Council held a public hearing and 1st reading of the ordinance on October 27, 2008, and approved the changes to the zoning regulations.
- The ordinance was approved on second reading by the City Council on November 10, 2008.
- The new ordinance will go in to effect on December 10, 2008.
- If the City Council approves of the new fee for the Master Site Plan Review Process, the Planning Division will initiate the Master Site Plan Review requirements and fees starting on January 2, 2009.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, or delay the adoption of the new fee to implement the Master Site Plan Review process.

BACKGROUND

In conjunction with implementation recommendations of the ICC Building Department Operations Appraisal and to follow the adoption of the FY2009 Planning Division Budget approved by City Council that included a proposed Master Site Plan Review Process, the Planning Division presented amendments to the Unified Zoning Regulations to initiate a Master Site Plan Review Process for certain new condominiums and multi-unit developments. The proposed fee follows the approved zoning amendments to begin

providing the Master Site Plan Review service to developers and property owners in the community.

The Master Site Plan Review Process aims to help expedite the building and site development review for some larger projects by having City staff approve of a master plan in advance of building permit submittal and/or approval. This is expected to minimize the individual issues that arise as a developer goes from one City Department to the next trying to bring a project into compliance after building permits are submitted and under review.

This Master Site Plan Review Process is designed to provide information to large, multi-unit project developers prior to submission of a building permit for review. This process would bring the developer and City staff together to review draft site and building plans prior to building permit submittal and/or approval. Like Pre-Application Meetings for subdivisions, this process would bring all of the reviewing departments in the City together before a project has been finalized to work out issues and clarify requirements for developers. The Planning Division has worked for the last several months with the Building Division, Engineering Division, and Fire Department staff to initiate a Master Site Plan Review Process. The Planning Division proposes to manage this Master Site Plan Review that would require plan approval prior to building permit approval for certain projects.

The Planning Division has estimated that it will take Planning staff an average of 5 hours to process, organize meetings, review documents, and complete a Master Site Plan Review. Staff time, supervisory time, and overhead costs for 5 hours totals \$240.00 (See Attachment A). The Division has estimated that it may process about 30 Master Site Plans per year based on current commercial development activity and the types of projects that would be subject to this review process.

STAKEHOLDERS

The public may comment at the public hearing on this fee proposal. Staff has discussed the Master Site Plan Review process with members of the Billings Homebuilders Association and the community representatives on the City's Development Process Review Board (DPARB). The Homebuilders Association representatives and DPARB members did not have any objections to the Master Site Plan Review proposal. Several Homebuilders Association representatives said that using a master site plan as the basis for building permits was a good idea because it could expedite the building permit review process. Continued improvement in communication between the City staff and developers during the early stages of projects also could be a positive outcome, according to some DPARB members.

During the review of the Master Site Plan Review Process at the Zoning Commission meeting on October 7th, several Zoning Commission members provided comments on the fee structure for this process. Zoning Commission Member Michael Larson stated that the fee structure for this new process should be carefully thought through. He said that it is not always true that larger projects are more complicated and smaller ones are less complicated. He said that often experienced firms are involved in the large projects and sometimes less experienced developers are involved in the smaller projects. This situation can lead to more

staff work on smaller projects than larger ones, Larson stated. He suggested that it might make sense to create a fee schedule that supports this idea. Zoning Commission Member Ed Workman agreed that in formulating a fee schedule, it is important to see if there is a way to scale the fee to address size and scope of projects.

Staff has considered these comments in formulating a fee schedule. Several options were reviewed, including the proposed single fee option presented here, a sliding scale fee option based on the size of a project based on square feet or units, and an hourly rate that might address Mr. Larson's proposal that some large projects take less time and some smaller projects take more time. Basing the fee on solely on a project's size is a concern for staff for the very reasons that Mr. Larson explained. Since some large projects might be more easily reviewed and some smaller projects might take more time, it did not make sense to charge more for all larger projects and less for all smaller projects. A fixed, average fee seemed to more fairly treat all customers in this case. Alternately, charging an hourly rate is something that staff considered with this process and has also considered in the past with sign permit review. The major concern with an hourly rate charge approach is that applicants could challenge how long a particular project took and it would result in disagreements between staff and the applicants over the amount of time it took, or should have taken, to complete a review. This could result in a slower review process for the customer, more staff time justifying the hourly charges, and the possibility of not reaching a resolution without some sort of third party involvement.

Based on these concerns and challenges, staff is proposing a fee based on an average review time for all projects. The staff's time has been outlined in Attachment A.

RECOMMENDATION

Staff recommends that the City Council approve the \$240.00 fee for the Master Site Plan Review Process provided by the Planning Division.

ATTACHMENTS:

- A. Fee Table
- B. Resolution

ATTACHMENT A

Planning Cost Analysis for Master Site Plan Review Fees

RESIDENTIAL/COMMERCIAL	Salary and Benefits/Hourly
Planner I	\$28.00
Planner II	\$38.00
<hr/>	
TOTAL Hourly	\$66.00
Average hourly	\$33.00
<hr/>	
5 hours/review	\$165.00
<hr/>	
Supervisory Average hourly	
Supervisor	\$40.00
10% of 5 hours/review	\$20.00
	\$185.00
<hr/>	
Overhead Cost 30%	\$56.00
<hr/>	
Total	\$240.00
<hr/>	
RESIDENTIAL PERMITS	
Total Planning Fee	\$240
<hr/>	
ANTICIPATED ANNUAL REVENUES	
30 Master Site Plan Reviews	\$7,200

**ATTACHMENT B
RESOLUTION**

RESOLUTION NO. 08-_____

**A RESOLUTION OF THE CITY OF BILLINGS, MONTANA PURSUANT TO
ORDINANCE NO. 4314, AMENDED BY ORDINANCE NO. 4494 FOR FEES
ASSOCIATED WITH VARIOUS APPLICATIONS AND SERVICES PROVIDED
BY THE CITY/COUNTY PLANNING DEPARTMENT.**

WHEREAS, Ordinance No. 4314, amended by Ordinance No. 4494 provides that application fees shall be established by Resolution;

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

1. FEES. The following fee is hereby established for the Planning Division and is payable upon application:

Master Site Plan Review	\$240.00
-------------------------	----------

2. EFFECTIVE DATE. The fee established herein shall become effective upon passage of this resolution and remain in effect thereafter until changed by resolution.

PASSED AND ADOPTED this _____ day of _____, 2008

THE CITY OF BILLINGS

BY:_____
Ron Tussing, Mayor

ATTEST:

Cari Martin, City Clerk



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
December 15, 2008

TITLE: 2008 Growth Policy Update – Public Hearing and Resolution of Intent to Adopt

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The 2003 Yellowstone County and City of Billings Growth Policy has been in place as a guiding document for growth-related issues in this County for five years. Under Section 76-1-601, Montana Code Annotated (MCA), communities are required to review and revise their growth policies every five years. The review is to determine what updates need to be made to the document to keep it current and to ensure that the goals and objectives outlined in the Policy are still in alignment with the community's desires. Over the past six months, Planning staff has been preparing an update to the 2003 Growth Policy by incorporating up-to-date community background data, holding public meetings, collecting public opinion and preferences, and drafting a new 2008 Growth Policy document. Additionally, the Planning Board held a public hearing to take public testimony on the proposed draft on October 28th, and afterward continued to review and refine the document at subsequent special meetings. On November 25th, the Planning Board voted 8-0 to recommend adoption of the 2008 Growth Policy Update to the City Council. It is recommended that City Council hold a final public hearing and adopt a resolution of intent to adopt the 2008 Yellowstone County and City of Billings Growth Policy Update at this meeting. The resolution to adopt the Growth Policy Update will be presented at the January 12, 2009 City Council meeting.

ALTERNATIVES ANALYZED:

As outlined in 76-1-604, MCA, the governing body may revise its growth policy by adopting a resolution of intent to adopt, adopt with revisions, or reject the proposed amended growth policy. Depending on the Council action at this meeting, a resolution adopting the amended growth policy may be considered at the January 12, 2009 Council meeting.

FINANCIAL IMPACT: Adoption of the 2008 Growth Policy Update should not have a direct financial impact on the City.

RECOMMENDATION

The Yellowstone County Board of Planning recommends that the City Council hold the public hearing and adopt the resolution of intent to adopt the 2008 Growth Policy Update.

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

ATTACHMENT

A. Resolution of Intent to Adopt the 2008 Growth Policy Update

INTRODUCTION

The 2003 Yellowstone County and City of Billings Growth Policy has been in place as a guiding document for growth-related issues in this County for five years. Under Section 76-1-601, Montana Code Annotated (MCA), communities are required to review and revise their growth policies every five years. The review is to determine what updates need to be made to the document to keep it current and to ensure that the goals and objectives outlined in the Policy are still in alignment with the community's desires. Over the past six months, Planning staff has been preparing an update to the 2003 Growth Policy by incorporating up-to-date community background data, holding public meetings, collecting public opinion and preferences, and drafting a new 2008 Growth Policy document. Additionally, the Planning Board held a public hearing to take public testimony on the proposed draft on October 28th, and afterward continued to review and refine the document at subsequent special meetings. On November 25th, the Planning Board voted 8-0 to recommend adoption of the 2008 Growth Policy Update to the City Council. It is recommended that City Council hold a final public hearing and adopt a resolution of intent to adopt the 2008 Yellowstone County and City of Billings Growth Policy Update at this meeting. The resolution to adopt the Growth Policy Update will be presented at the January 12, 2009 City Council meeting.

BACKGROUND

In early 2008, City-County Planning staff acknowledged that by the end of the year, the 2003 Growth Policy would need to be evaluated and updated to meet State statute requirements (76-1-601(2)(f.)(iii.), MCA). Chapter 5.3 of the Growth Policy describes how the policy is to be reviewed and revised and specifies criteria to use when evaluating the need and scope of Growth Policy revisions.

Upon reviewing the need for and scope of Growth Policy revisions, staff found that there have been a number of new policy shifts and certainly strong and steady growth since 2003. For these reasons, a basic evaluation of and revision to the document was deemed necessary. In June of 2008, Planning Division staff established a proposed review schedule to accomplish these revisions (see Procedural History).

Also in June, staff began compiling updated background information found in Chapter 4 of the Growth Policy, including changes in population, land use, housing conditions, economic conditions, public facilities and services, the natural environment, transportation issues, open space and recreation, and cultural and historic resources. Staff from RiverStone Health (City-County Health Department) also began drafting a new chapter on community health. All of this information was drawn from many sources, and in collaboration with many other local agencies and officials. These amendments also became the baseline data that guided review and updates to the community goals and objectives (Chapter 3) and implementation strategies (Chapter 5).

Proposed amendments to the community goals and objectives, and implementation strategies were then proposed based on public input at three public meetings, email and on-line input, and other correspondence received by the Planning staff. In addition, a public opinion poll was prepared and compiled on the new proposed implementation strategies,

with the goal of providing decision makers with a tool for gauging public opinion on the proposed amendments.

Staff is pleased with the community interest and input that there has been throughout the Growth Policy amendment process. Public participation has been strong, which is reflective in the wide array of new issues and goals proposed in the 2008 document.

The community has spoken and staff, Planning Board members, and governing body officials have helped to draft a new growth policy based on these conversations. It is now time for the decision makers to validate the proposal and adopt a 2008 Growth Policy that represents the best overall community vision.

PROCEDURAL HISTORY

- June 2008, Planning staff began compiling amendments to the background information found within Chapter 4.
- June, 2008, Yellowstone County Board of Planning began review of the abundant growth management policies and documents in effect for the growth policy jurisdictional area. Based on these documents, the Board developed a 20-year ‘growth projections map’ found in Chapter 4.1.
- July 7, 2008, presentation of schedule and scope to Board of County Commissioners.
- August 4, 2008, presentation of schedule and scope to City Council.
- August 7, 2008, Public Meeting #1 “Where We Are, Where We Are Going” was held at the Billings Community Center.
- August 21, 2008, Public Meeting #2 “Review Implementation Strategies, Define New Ones” was held.
- September 9, 2008, status report to Planning Board.
- August 21 – September 18, 2008, staff prepared draft of Updated Community Goals and Implementation Strategies; prepared public opinion poll.
- September 17, 2008, Discussion with Board of County Commissioners on status.
- September 18, 2008, Public Meeting #3 “Draft 2008 Growth Policy Review” was held; draft updated Community Goals and Implementation Strategies presented; public opinion poll open.
- October 3, 2008, public opinion poll closed.
- October 12, 2008, Public Hearing advertized in the Billings Gazette.
- October 28, 2008, Public Hearing held by Planning Board.
- October 29, 2008, Public Forum/Discussion with Board of County Commissioners.
- November 3, 2008, Work Session, Billings City Council.
- November 5, 2008, Special Review meeting with City-County Planning Board.
- November 11, 2008, Work Session, Broadview Town Council.
- November 19, 2008, Special Review meeting with City-County Planning Board.
- November 26, 2008, Public Forum/Discussion with Board of County Commissioners.
- December 1, 2008, Work Session, Billings City Council.
- December 2, 2008, Public Forum/Discussion with Board of County Commissioners.

- December 9, 2008, Public Hearing and adoption by Broadview Town Council.
- December 15, 2008, Public Hearing, consideration of Resolution of Intent to Adopt by Billings City Council.
- December 16, 2008, Public Hearing, consideration of Resolution of Intent to Adopt by Board of County Commissioners.
- December 30, 2008, possible adoption by Board of County Commissioners.
- January 12, 2008, possible adoption by Billings City Council.

RECOMMENDATION

The Yellowstone County Board of Planning recommends that the City Council hold the public hearing and adopt the resolution of intent to adopt the 2008 Growth Policy Update.

ATTACHMENT

A. Resolution of Intent to Adopt the 2008 Growth Policy Update

ATTACHMENT A

RESOLUTION. 08-_____

RESOLUTION OF INTENT TO ADOPT THE YELLOWSTONE COUNTY - CITY OF BILLINGS 2008 GROWTH POLICY UPDATE.

WHEREAS, pursuant to Title 76, Chapter 1, Part 6, Montana Code Annotated (MCA), the Billings City Council, Yellowstone County, Montana, desires to adopt a Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction;

WHEREAS, the Growth Policy contains those elements listed in subsection (3) §76-1-601, MCA;

WHEREAS, on the 28th day of October, 2008, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Growth Policy, and on the 15th day of December, 2008, the Billings City Council held a public hearing for the same purpose;

WHEREAS, The Yellowstone County Board of Planning by Resolution 08-01, recommends the adoption of the proposed Growth Policy 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 Yellowstone County – City of Billings 2008 Growth Policy Update.

APPROVED AND PASSED by the City Council of the City of Billings this 15th day of December, 2008.

THE CITY OF BILLINGS:

BY:_____
Ron Tussing, MAYOR

ATTEST:

BY:_____
Cari Martin, CITY CLERK

AGENDA ITEM:**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, December 15, 2008**

TITLE: Public Hearing and 1st reading, CORRECTING Ordinance #08-5480 for Zone Change #848, East 80 Cardwell Ranch property

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: On October 14, 2008, the City Council passed Ordinance #08-5480 on 2nd reading for the Planned Development zone change for the East 80 Cardwell Ranch development at 3144 Grand Avenue. After the ordinance was approved, the legal description within the heading of the ordinance was discovered to be incorrect. This ordinance has corrected the error in the legal description. The correction does not materially change the approved Planned Development or zone change.

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

1. Approve the CORRECTED ordinance
2. Deny the CORRECTED ordinance
3. Delay action for up to thirty (30) days

FINANCIAL IMPACT: There should be no financial impact from the corrected ordinance.

RECOMMENDATION

Approve the CORRECTED Ordinance #08-5480.

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

ATTACHMENTS:

A: Ordinance

ATTACHMENT A
Zone Change #848

ORDINANCE NO. 08-5480

AN ORDINANCE AMENDING THE ZONE
CLASSIFICATION FOR Tract 6-A-1 of Amended
Tract 6-A, Certificate of Survey No. 2314
Amended; Tract 7-A, Certificate of Survey No.
2314, Amended; and Tract 1-A-1 of Amended
Tracts 1-A and 2, Certificate of Survey No. 2702,
less deeded ROW along Zimmerman Trail an
approximately 46.099 acre parcel of land.

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

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

2. DESCRIPTION. A tract of land known as Tract 6-A-1 of Amended
Tract 6-A, Certificate of Survey No. 2314 Amended; Tract 7-A, Certificate of Survey
No. 2314, Amended; and Tract 1-A-1 of Amended Tracts 1-A and 2, Certificate of
Survey No. 2702, less deeded ROW along Zimmerman containing approximately
46.099 acres of land and is presently zoned Agriculture Open-Space 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
Agriculture Open-Space to Planned Development as described in Exhibit A
attached here to and from the effective date of this ordinance, shall be subject to
all the rules and regulations pertaining to **Planned Development** as set out in the
Billings, Montana City Code.

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 September 22, 2008.

PASSED, ADOPTED AND APPROVED on second reading October 14, 2008.
PASSED AS CORRECTED on first reading December 15, 2008
PASSED, AND ADOPTED AS CORRECTED on second reading January 12,
2009

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
Cari Martin, City Clerk
ZC #848 – CORRECTED LEGAL DESCRIPTION for East 80 at Cardwell Ranch
Planned Development 3144 Grand Avenue

**PLANNED DEVELOPMENT AGREEMENT FOR
THE EAST 80 AT CARDWELL RANCH**

BY AND BETWEEN:

YEGEN GRAND AVENUE FARM, INC.

AND

THE CITY OF BILLINGS, MONTANA

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PLANNED DEVELOPMENT AGREEMENT FOR
THE EAST 80 AT CARDWELL RANCH

This PLANNED DEVELOPMENT AGREEMENT (“Agreement” or “PDA”) is made and entered into this _____ day of _____, 2008, by and between Yegen Grand Avenue Farm, Inc. (“YGAF, Inc.”), a Montana limited liability company, of P. O. Box 959, Billings, MT 59103 and the CITY OF BILLINGS, a Montana municipality (“the City”), of 210 North 27th Street, Billings, MT 59101.

RECITALS

NOW WHEREAS:

A. YGAF, Inc. owns approximately 47 acres of real property in Billings, Montana, more particularly described as:

Tract 6-A-1 of Amended Tract 6-A, Certificate of Survey No. 2314 Amended; Tract 7-A, Certificate of Survey No. 2314, Amended; and Tract 1-A-1 of Amended Tracts 1-A and 2, Certificate of Survey No. 2702

The foregoing property shall be known as “The East 80 at Cardwell Ranch,” or a related name that may be assigned at a later date.

B. The East 80 at Cardwell Ranch may consist of a mixture of commercial, retail, office, professional, medical and related uses, and multi-family residential housing.

C. YGAF, Inc. desires to place certain building and use restrictions on the property, specify certain land use and design regulations, and create a pattern of development that promotes economy, convenience, and amenity in The East 80 at Cardwell Ranch.

D. YGAF, Inc. enters into this Agreement with the City to ensure that The East 80 at Cardwell Ranch will be developed and maintained as a first-class development consistent with the standards described in this Agreement.

NOW THEREFORE, the undersigned hereby establish and declare the following plan for The East 80 at Cardwell Ranch as set forth herein, which shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners to such real estate, and shall run with the land.

AGREEMENT

ARTICLE I – PURPOSES

A. This planned development is intended to create a multi-use, interactive neighborhood with its own recognizable identity that integrates well with the surrounding community. Circulation patterns will encourage easy pedestrian access and limit vehicular congestion and pedestrian/vehicular conflicts. The development will encourage smart building development in terms of orientation, access, energy consumption and efficiency and create great places to live and work with many necessary services and businesses that are well-integrated and within easy walking distance of each other and adjacent residential areas.

B. This Agreement shall permit flexibility sufficient to meet the demands of commercial, professional and residential markets as they change over time. In accordance with that goal, this Agreement is intended to afford the future owner of each Lot within The East 80 at Cardwell Ranch latitude to design and construct in a way that meets the needs and desires of the time while still ensuring responsible and enduring development for the benefit of the remaining Lots, The East 80 at Cardwell Ranch, and Cardwell Ranch generally.

C. The parties understand, acknowledge and agree that the plan for The East 80 at Cardwell Ranch includes and promotes the following:

1. Creates a planned development zone that permits commercial, retail, office, professional, medical and related uses, and multi-family residential housing in proximity to one another, while protecting and respecting the character and quality of adjacent uses.
2. Encourages flexibility in design and use of commercial and residential zones to allow for economy, convenience, variety and amenity.
3. Enhances the aesthetics of the west Grand Avenue area.
4. Ensures adequate provision of public services such as water, sewer, public safety, open space, storm water control, and vehicular and pedestrian/bicycle circulation consistent with the 2004 Heritage Trail Plan, as updated.
5. Promotes traffic movement and circulation and as many pedestrian connections as possible.

D. Many of the requirements described in this Agreement are the same, similar to, or stricter than requirements found in the Unified Zoning Regulations. However, to the extent that this Agreement creates greater or lesser standards for density, use, bulk, height, parking, signage, traffic circulation, landscaping, or other land use conditions, the City has determined, in accordance with Sec. 27-1303 of the Unified Zoning Regulations, these

unique standards are appropriately balanced by the inclusion of mitigating features or special amenities not otherwise required by law or regulation. Some of these that shall be incorporated into The East 80 at Cardwell Ranch and/or Cardwell Ranch include:

1. Construction and landscaping of a functional and attractive pedestrian and bicycle underpass under Shiloh Road to be located south of Grand Avenue and north of Broadwater Avenue that will promote the safe and convenient transportation of children and adults in west Billings while interfacing with the Heritage Trail and other bicycle and pedestrian pathways.
2. Construction and maintenance of trails, landscaping, benches, lighting, signage and other pedestrian and bike pathways, including along the Heritage Park Trail System, at the expense of YGAF, Inc. or subsequent developers and without cost to local taxpayers; and
3. Developed Park Land and Open Space in excess of required minimums, constructed and maintained at the expense of YGAF, Inc. or subsequent developers in conjunction with the City of Billings.

ARTICLE II – DEFINITIONS

All terms used herein shall have the same definition and meaning as specified in the Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein. The following definitions shall apply to this Agreement:

A. Association: “Association” means the association established to own, operate, and/or maintain the various Heritage Park Trail System segments, Park Land and Open Space, and other improvements.

B. Cardwell Ranch: “Cardwell Ranch” refers to a group of parcels located generally contiguous to The East 80 at Cardwell Ranch and including The East 80 at Cardwell Ranch that YGAF, Inc. believes will eventually be developed to create a single development area featuring the same or complementary zoning requirements, private covenants, and consistent design themes as well as substantial vehicular and pedestrian interconnectivity between the various parcels.

C. Design Review Committee: “Design Review Committee” means the person, entity, or committee appointed by the Association to exercise the rights, duties and responsibilities assigned to it by the Association.

D. Lot. “Lot” means a portion of The East 80 at Cardwell Ranch depicted as a separately identified parcel of land on a recorded subdivision plat or survey that may be independently owned and conveyed. The term refers to the land, as opposed to any structures or other improvements on the Lot. Multiple Dwelling Units may be located on

one Lot. The term does not include Park Land and Open Space, as defined below, or property dedicated to the public.

E. Manufacturing. “Manufacturing” means to produce something industrially or to make something into a finished product using raw materials, especially on a large industrial scale.

F. Master Plan: “Master Plan” means a concept plan and drawing showing existing Lots and zones as well as proposed streets, access points, and Park Land and Open Space and other site improvements intended for The East 80 at Cardwell Ranch. The current Master Plan of The East 80 at Cardwell Ranch is attached to this Agreement and marked “Exhibit A.”

G. Park Land and Open Space: “Park Land and Open Space” means any property or facility that the Association owns or in which it holds possessory, use, or maintenance rights for the common use or benefit of property owners in The East 80 at Cardwell Ranch. Park Land and Open Spaces may include but are not limited to park areas, open spaces, common areas, water amenities, community gardens, athletic fields, bike trails, sidewalks, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, community sign areas, and community centers.

H. Special Review approval: “Special Review approval” means approval by the City of Billings pursuant to the Special Review approval process established in the Unified Zoning Regulations and as modified by this Agreement, including the requirement that applicants for special review first obtain approval from YGAF, Inc., which YGAF, Inc. may grant or deny in its discretion, before submitting an application for Special Review Approval to the City.

ARTICLE III – PERSONS BOUND BY THIS AGREEMENT

The City of Billings and all individuals, corporations, or other entities who presently have or shall hereafter acquire any interest in and to any of the real property within The East 80 at Cardwell Ranch shall be held to agree to all of the terms of this Agreement, and all such individuals, corporations, and other entities, as well as their heirs, devisees, successors, assigns, tenants, trustees, mortgagees and other persons claiming under them shall be bound by this Agreement, the terms of which shall run with the land.

ARTICLE IV – REGULATION OF USES ACCORDING TO PLANNING AREA

A. Land Use Classifications. Lots located within The East 80 at Cardwell Ranch shall be classified according to use. Uses shall be limited to the locations shown on the Master Plan. No use shall be permitted on any Lot outside the areas indicated on the Master Plan and as permitted by this Agreement. If the actual boundaries of any proposed

Lot referenced in the Master Plan or in this Agreement changes upon final platting or thereafter for any reason, including, but not limited to, as a result of re-platting, road dedication, or boundary line adjustment, the zoning classification and other Lot-specific restrictions described in this Agreement that were applicable to the area where the change occurred shall also be deemed to have changed so that the area where the change occurred has the same zoning classification and restrictions as the successor Lot or Lots of which the area becomes a part. Nothing in this paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with this Agreement to specifically address any issue created as a result of a change in the external boundaries of any Lot.

B. Permitted Uses in Planning Area 1 and Planning Area 2 (Community Commercial). The uses listed below are permitted in Planning Area 1 of The East 80 at Cardwell Ranch. Planning Area 1 shall consist of proposed Lots 1 and 2 of Block 1, and proposed Lots 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of Block 2. These uses, which are generally commercial in nature, are also permitted in Planning Area 2. Planning Area 2 shall consist of proposed Lot 4 of Block 2. Multi-family uses are only allowed in Planning Area 2, and then only upon Special Review approval. No uses are permitted other than those specifically listed below or that are determined to be analogous in accordance with Article IV.F. Uses followed by “SR” (Special Review) may only be permitted with consent of YGAF, Inc. and after Special Review approval as described in Article IV.D. Some uses may also be subject to a special level of review by YGAF, Inc. or the Association under private covenants or other agreements, including in particular, but not limited to, those designated with an asterisk (*).

- Accessory detached structures associated with a permitted principal structure *
- Adult foster family care homes (up to four aged or disabled adults) *
- Animal boarding facilities (SR) *
- Administrative and research facilities *
- Animal groomers
- Art galleries
- Assisted living facilities (SR) *
- Auto parts supply (SR) *
- Bakeries
- Banks, credit unions, and savings and loan facilities
- Barber and beauty shops
- Bicycle sales, rental, and repair shops
- Boarding, lodging and bed and breakfast houses
- Bookstores
- Breweries associated with eating establishments (SR) *
- Broadcast station offices (but all antennae and satellite dishes must comply with other provisions of this Agreement) *
- Building supply stores and hardware stores (but no lumber yards) (SR)
- Bus stops

- Camera, hobby, toy, and gift stores
- Car wash, only if incidental to fuel sales (SR) *
- Casinos and gambling activity, as defined in M.C.A. § 23-5-112, if incidental to another permitted use and with written consent of YGAF, Inc. *
- Ceramics and pottery shops
- Charitable, educational or nonprofit institutions
- Child day care centers (up to 13 children)
- Churches, synagogues, and places of worship (SR) *
- Clinics, medical, dental, and surgical for the care of human patients
- Clothing and apparel stores
- Community centers
- Convalescent, nursing, and retirement homes
- Convenience and specialty food stores (but no fuel sales except upon Special Review)
- Cultural, educational, and instructional facilities
- Denturists
- Department stores *
- Drive-through facility (SR) *
- Drug stores (SR) *
- Eating establishments (alcohol served) (SR) *
- Eating establishments (no alcohol served) (SR) *
- Educational and instructional facilities including public and private elementary and secondary schools, colleges, universities, professional schools, and junior colleges (but not trade schools) (SR) *
- Finance and loan companies
- Fire stations (SR) *
- Florists
- Flower shops and nurseries (provided that there is no outside storage)
- Food and grocery stores
- Fuel stations – gas or diesel (but not to include truck stops as defined by Section 27-201 of the Unified Zoning Regulations and prohibited below) (SR) *
- Furniture – retail only
- Greenhouses for on-site, retail sales if incidental to another permitted use
- Hardware and appliance – retail only
- Health clubs and fitness related businesses
- Hospitals *
- Hotels and motels
- Jewelry stores
- Laundry and/or dry cleaning drop-off and pickup store without drive-through facility
- Laundry and/or dry cleaning drop-off and pickup store with drive-through facility (SR) *

- Libraries, museums, and art galleries
- Liquor stores
- Medical clinics
- Membership organization offices
- Minor component assembly incidental to another permitted use
- Multi-family residential (Planning Area 2 only) (SR)
- Offices – all, including business professional, medical, and dental
- Office equipment stores – retail only
- Office supply and equipment, copying and mail services stores – retail only
- Open spaces, park areas, water amenities, community gardens, athletic fields, bike trails, playgrounds, and walking paths
- Park Land and Open Space
- Parking facilities, including above or below ground parking garages *
- Pet stores
- Pharmacies
- Photo studios, shops, and processing – retail only
- Physical therapy facilities
- Police stations (SR) *
- Postal service facilities without truck terminal facilities
- Public administration facilities, including government facilities, except correctional institutions
- Rehabilitation centers
- Rental car dealerships (SR) *
- Retail stores
- Retirement homes *
- Same-day medical care centers
- Sports medicine and rehabilitation facilities
- Surgery centers *
- Theaters
- Veterinary clinics and hospitals *
- Wine stores
- Any additional use permitted in a Community Commercial zoning district upon prior written consent of YGAF, Inc. if consistent with the Unified Zoning Regulations and after Special Review approval, provided that such use is not otherwise limited or prohibited herein. *

C. Permitted Uses in Planning Area 3 (Residential Multi-family). Residential multi-family use is permitted in Planning Area 3 of The East 80 at Cardwell Ranch. Planning Area 3 shall consist of proposed Lots 5 and 6 of Block 2. This area is intended primarily to accommodate apartments, townhomes, condominiums, multi-plexes, and other multi-family complexes (but not detached single family homes) and uses permitted in the Residential Multi-Family district as defined in the Unified Zoning Regulations. Multi-family residential use may also be permitted in Planning Area 2 (proposed Lot 4 of Block 2) upon Special Review approval. No uses are permitted in these areas other than those

specifically listed below or that are determined to be analogous in accordance with Article IV.F.

- Accessory detached structures associated with a permitted principal structure
- Bus stops
- Community centers
- Home occupations
- Multi-family residential buildings
- Park Land and Open Space
- Any additional use permitted in a Residential Multi-Family district upon prior written consent of YGAF, Inc. if consistent with the Unified Zoning Regulations and after Special Review approval, provided that such use is not limited or prohibited herein.

D. Special Review Procedure and Criteria.

1. Procedure. The City of Billings may authorize the uses described in Article IV by granting Special Review approval if the proposed use conforms to the following standards and criteria. All applications for special review shall include the information required by the Unified Zoning Regulations. The procedure for reviewing the request shall conform to the Unified Zoning Regulations.

2. Criteria to be Considered. In considering a special review request, in addition to the review criteria in the Unified Zoning Regulations, the City shall consider the following criteria:

a. YGAF, Inc. has given its written consent to the special review request.

b. The proposed use is consistent with the terms, intent and objectives of this Agreement.

c. The proposed use is compatible with surrounding uses or is otherwise sufficiently screened and separated from adjacent land in such a way that any adverse effects are adequately mitigated.

d. The proposed use will not attract large volumes of vehicular traffic that will create traffic congestion that cannot be safely and effectively managed and regulated with proper design and traffic control equipment.

e. The proposed use meets architectural design guidelines or will use an existing building for its purposes.

f. Minimum visual and functional conflict will be created

between the proposed use and nearby uses.

g. Anticipated noise and congestion created by the use will be comparable to the levels created by other uses in the vicinity.

h. The use shall not require servicing or deliveries of materials, stocks, or supplies by trucks having more than three (3) axles.

i. The proposed use will not be materially detrimental to other properties.

E. Prohibited Uses in All Areas. The following operations and uses shall not be permitted on any property in The East 80 at Cardwell Ranch, regardless of where the property is located:

- Amusement park services or facilities
- Apparel fabrication and fabrication of products made from fabrics and similar materials
- Arcades, including but not limited to video arcades
- Auction houses or auction yards
- Auto body and collision repair
- Automotive sales, leasing, repair, service, salvage, or storage
- Beverage bottling plant or wholesaling operations
- Billboard signs
- Body alteration salons – any establishment engaged in body painting, body piercing, or tattooing
- Building fabrication except construction of buildings for use on-site
- Building subcontractor operations other than offices only
- Bus terminal and maintenance facilities
- Campground
- Casinos and gambling or gambling activity, as defined in M.C.A. § 23-5-112, unless incidental to another permitted use with written consent of YGAF, Inc.
- Cellular towers not included in building structures
- Crematoriums
- Dry cleaning or laundry plant or public Laundromat, (not applicable to facilities for pickup and delivery by the ultimate consumer)
- Drug paraphernalia – any business engaging in the sale of so-called drug paraphernalia
- Dumping of concrete, cement residue, refuse, dirt, garbage or fill materials without authority of property owner
- Electronic component manufacturing, unless light manufacturing and incidental to a permitted use
- Equipment rental shop
- Excavation – businesses engaged in commercial excavation, providing

that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction

- Exotic dancing – any establishment permitting exotic dancing, including semi-nude and nude clubs
- Fire sale or bankruptcy sale
- Fireworks – fireworks manufacture and/or sales
- Flea markets
- Food processing or wholesaling, except ancillary services associated with retail, restaurant, and grocery operations
- Foundries and plant operations
- Furniture fabrication
- Garbage – any dumping, disposing, incineration or reduction of garbage provided, however this prohibition shall not be applicable to garbage compactors located near the rear of any building
- Go-cart tracks
- Greenhouses for wholesale purposes
- Gun and archery range
- Guns and ammunition – the sale of firearms and ammunition, unless ancillary to a general retail store or sporting goods store
- Heavy equipment sales, service, and storage
- Ice manufacturing for resale of ice if not intended for use on-site
- Illegal drugs – the sale, manufacture, or possession of illegal drugs
- Industrial production or manufacturing facilities
- Jails, prisons, half-way houses for pre-release inmates, and/or detention facilities
- Junk shops
- Labor or migrant worker camps
- Lumber yards
- Machine and welding shops
- Manufactured housing – the sale, maintenance, and repair and/or storage of manufactured housing, mobile homes, boats, trailers, or recreational vehicles
- Manufacturing
- Massage parlors (excluding therapeutic massage)
- Metal fabrication and manufacturing
- Mill work and cabinet shops
- Mineral extraction – any non-office sale, extraction, or storage of sand, gravel, or minerals
- Mini storage facilities
- Motorized sports vehicle repair, storage, and/or sales (including parts sales)
- Mining and related activities – mining, drilling for, or removing oil, gas, or other hydrocarbon substances
- Motocross tracks

- Motorcycle racing
- Obnoxious odors, etc. – any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building in The East 80 at Cardwell Ranch
- Paper warehouses
- Pawn shops
- Power poles and overhead power lines – installing new power poles and overhead power and above-ground utility lines as well as upgrading any existing poles to larger structures; provided, however, this shall not prohibit any existing power poles and above-ground lines, and shall not prohibit adding new lines to any existing poles
- Propane sales unless incidental to a fueling station as permitted by special review, or as incidental to hardware sales
- Race tracks
- Recreational vehicles – the commercial sale, maintenance, rental or repair or storage of boats, trailers, motorcycles, ATVs, or other recreational vehicles. The private repair or storage of such vehicles must comply with other provisions of this Agreement.
- Recycling centers
- Repair shops, if the shop facilities include open or visible storage
- Roller skating rinks
- Roping and rodeo arenas
- Sanitary dumps
- Scrap or waste material processing
- Septic systems
- Sexually oriented businesses – sexually oriented businesses as defined by Section 27-611 of the Unified Zoning Regulations
- Stables – not to be construed to exclude existing farming operations or a continuation of existing farming operations
- Storage facilities other than garages associated with residential structures
- Super Stores – defined as any structure over 40,000 square feet in total useable area
- Surplus store
- Taxidermists
- Tire sales, except as incidental to the operation of a general retail store
- Title loan businesses
- Towers and dishes – freestanding communication towers and satellite dishes greater than 98 inches in diameter
- Trailer parks and campgrounds – mobile home parks, trailer parks, or recreational vehicle campgrounds or any commercial establishment that permits overnight parking of recreational vehicles
- Truck stop as defined by Section 27-201 of the Unified Zoning Regulations
- Truck terminals cartage operations, and similar uses
- Truck wash as defined by Section 27-201 of the Unified Zoning

Regulations

- Trucks – sale, leasing, manufacture, and repair of trucks
- Trucking operation warehouses
- Utility sub-stations, utility maintenance facilities or buildings, and other utility installations other than utility lines, utility boxes, and other facilities used to serve an individual Lot
- Warehouses
- Wholesale lumber and building materials
- Wholesale distribution and sales

F. Analogous Uses. If a use is not specifically permitted, specifically prohibited, or specifically subject to special review, the zoning coordinator shall determine whether the use is permitted or prohibited or subject to special review by determining whether it is most closely analogous to a use that is specifically permitted, prohibited, or subject to special review. The decision of the zoning coordinator shall not become effective until it has been reviewed and approved by YGAF, Inc.

G. Procedure for Obtaining YGAF, Inc. Approval. Any developer of property in The East 80 at Cardwell Ranch shall obtain the written approval of YGAF, Inc. prior to submitting any application for subdivision, zone change, building permit, or design approval of any kind to the City or any other government authority. The City shall not accept any such application unless the developer first presents written evidence of YGAF, Inc.'s approval. Neither YGAF, Inc. nor the City shall approve the developer's application unless the proposed development complies with the requirements of this Agreement.

ARTICLE V – OTHER REGULATIONS GOVERNING USE

A. Continued Farming Operations. YGAF, Inc. may, in its sole and unreviewable discretion, permit farming operations and livestock grazing on undeveloped parcels. Permission shall be granted exclusively for the continuation of prior and existing livestock and farming operations, whether on ground leased or owned, and shall allow the use of stables, machinery, storage, and any other uses, infrastructure or equipment incidental to or necessary for operations associated with approved or existing farming operations.

B. Parking Limitations. No parking shall be permitted on any street or any place other than in paved and designated parking spots. Each owner of property within The East 80 at Cardwell Ranch shall be responsible for compliance with the foregoing by all tenants, customers, visitors and employees. Adequate parking sufficient to meet City requirements shall be provided by each owner and tenant of property within The East 80 at Cardwell Ranch for customers, visitors, and employees. All off-street parking, access drives, and loading areas shall be paved and properly graded to ensure adequate drainage. All parking lots must be developed with proper integration of landscaping and screening elements as provided in this Agreement.

C. Storage of Inoperable, Junk and Recreational Vehicles. Owners and residents of The East 80 at Cardwell Ranch shall comply with Section 27-601 of the Unified Zoning Regulations and all other laws or regulations governing vehicle storage. In addition, no inoperable or junk vehicle shall be permitted to park on any property within The East 80 at Cardwell Ranch outside an enclosed structure for a period of more than two days, and after this period it shall be deemed abandoned. No snowmobiles, all-terrain vehicles, off-road motorcycles, trailers (utility, horse, boat, snowmobile, etc.), boats, campers, motorhomes, recreational vehicles, or other equipment generally associated with recreation and leisure time activity shall be permitted to operate within the confines of The East 80 at Cardwell Ranch, except while being transported into and out of The East 80 at Cardwell Ranch, and all such vehicles shall only be stored within an enclosed structure and shall not be parked on the street or in any driveway, parking lot, or other area visible to neighboring properties for a period of more than two days.

D. Outside Storage. Outside storage of junk shall not be permitted on any Lot in The East 80 at Cardwell Ranch for any period of time. Outside storage of merchandise on any non-residential property shall comply with Section 27-601(b) of the Unified Zoning Regulations governing storage and display of merchandise in certain commercial districts.

E. Maintenance of Lots.

1. Maintenance of Property Generally. The owner of any property within The East 80 at Cardwell Ranch shall at all times keep and maintain the owner's property and buildings, improvements, and appurtenances thereon in a good, safe, clean, and attractive condition and comply in all respects, at the property owners' sole expense, with this Agreement, and all applicable governmental, health, fire, and safety laws, ordinances, regulations, requirements, and directives. The property owner shall at regular and frequent intervals remove, at the property owner's sole expense, any garbage or rubbish that may accumulate upon such property.

2. Maintenance of Buildings. It shall be the sole responsibility of the owner of any property within The East 80 at Cardwell Ranch to maintain all buildings and structures, improvements, and appurtenances located thereon in a good and clean state of repair and condition and in accordance with this Agreement, and all applicable laws, ordinances, regulations, requirements and directives applicable to the property.

3. Maintenance of Unimproved Sites. Property that is not improved or built upon shall be maintained in a good, safe, clean, and attractive condition by the property owner. Weeds, brush, trash, and rubbish must be removed at least every three months. Nothing in this paragraph shall prevent YGAF, Inc. or its agents from carrying on existing or approved agricultural activities consistent with this Agreement.

F. Utilities to be Buried. All utilities, including but not limited to electrical

distribution and transmission lines, shall be buried. Any above-ground junction boxes or other surface elements that cannot be buried shall be screened by structural or landscaping elements. Any existing overhead power lines shall be permitted to remain in their present location. Additional lines may be added to any existing power poles so long as the poles remain in substantially the same location. However, if such power poles or power lines are ever moved or their size is changed, or if substantial repairs or replacement is undertaken, the owners of the property and the owner(s) of the power lines shall bury all lines, including the lines being moved, repaired or replaced.

G. Home Occupations. Unless otherwise specified in this Agreement or unless more restrictive limitations are adopted by subsequent developers or covenants, every Home Occupation shall be subject to the same restrictions described in the Unified Zoning Regulations. A Home Occupation is subject to the same restrictions described in the Unified Zoning Regulations except as follows:

1. The Home Occupation should not generate, on average, more than one (1) vehicle trip during any hour measured between 7:30 A.M. and 6:00 P.M.;
2. The activity must constitute use permitted outright in Planning Area 1 or Planning Area 2 established in this Agreement; and
3. Residents and property owners are advised that carrying on certain Home Occupations may require compliance with special code requirements applicable to commercial establishments. All residents and property owners are advised to consult with local building officials before establishing a Home Occupation. Residents and property owners shall comply with all applicable codes and other government regulations in accordance with this Agreement.

ARTICLE VI - SITE DEVELOPMENT, BUILDING & LANDSCAPE STANDARDS

A. Development Standards Generally. These standards are provided to establish minimum guidelines for the development of facilities in The East 80 at Cardwell Ranch, including site work, buildings and accessory structures, landscaping, and signage. These guidelines will not define specific styles of architectural character for the various uses possible in The East 80 at Cardwell Ranch. They are intended to establish a minimum level of quality for the physical settings within The East 80 at Cardwell Ranch and for the basic architectural design of the structures while allowing flexibility to adjust and evolve with changes in technology and architectural standards. These guidelines will specifically control the treatment of the public areas, streetscape, pedestrian areas, landscaping and signage to create a setting in which a wide variety of individual buildings of high quality can exist in harmony. They will provide developers with a guide that will define the aesthetic quality of The East 80 at Cardwell Ranch's architecture yet allow latitude for unique, individual expressions of the architectural requirements and image of each building development. Subsequent developers and property owners are advised that covenants and other private agreements may also control development in The East 80 at Cardwell Ranch and that it may be necessary to obtain written consent from YGAF, Inc. and/or the

Association prior to application for land use approvals and construction.

B. Site Development Standards.

1. Street Types and Standards. In the absence of a contrary agreement with the City of Billings, all streets shall be developed to the standards of the City of Billings for width, curb, gutter, sidewalk, cross-section, and surface treatment. All streets shall be developed as required to accommodate the traffic loads contributed by development within The East 80 at Cardwell Ranch and adjacent properties.

2. Access. Shared driveway accesses between adjacent non-residential Lots are encouraged. If a traffic accessibility study is required for a proposed use on a Lot, the study shall include traffic from an adjacent Lot if the driveway is proposed to be shared.

3. Lot Coverage. The total combined lot coverage for all structures on any non-residential Lot shall not exceed fifty (50) percent of the total square footage of the Lot. The total combined lot coverage for all structures on any residential multi-family Lot shall not exceed fifty-five (55) percent of the total square footage of the Lot.

4. Setbacks.

a. Community Commercial area. The minimum building “front yard” setback from the property line for all non-residential development shall be 25 feet, providing, however, that the clear vision triangle is maintained as required by the Unified Zoning Regulations. The “front yard” shall be determined by the Association’s Design Review Committee based on the specific use and site plan for each Lot. Side and rear yard setbacks shall be at least 20 feet from the property line where a residential use abuts a commercial use. There shall be a minimum 10 feet wide side and rear yard setback for all other non-residential Lots. All arterial setbacks as outlined in the Unified Zoning Regulations must also be maintained, but the minimum front setback along Grand Avenue and Zimmerman Trail shall be at least 80 feet (measured from center-line).

b. Residential Multi-family area. Setbacks for multi-family residential Lots must comply with the Unified Zoning Regulations. Setback areas must be landscaped except for driveways and parking areas, which may not exceed 20% of any setback area. All developments are required to landscape adjacent to and along the length of all public rights-of-way, excluding driveways. A lot owner may request a variance from these setback requirements after obtaining the written consent of YGAF, Inc. by following the variance procedures established by the Unified Zoning Regulations.

5. Zone Boundaries. It is recommended that the transitional areas between different use classifications be designed to complement the adjacent land uses. Use of buffering landscaping elements and building mass that approximates that of the adjacent zone in these areas is encouraged to help achieve a harmonious change between properties and promote the sense of a single, unified neighborhood.

6. Parking. Adequate parking shall be provided by each owner and tenant of property within The East 80 at Cardwell Ranch for customers, visitors, employees and residents. All parking, access drives, and loading areas shall be paved and properly graded to ensure adequate drainage. All parking lots must be developed with proper integration of landscape and screening elements as provided herein. Minimum parking requirements shall meet the standards of the City of Billings for each use proposed for a Lot but shall not exceed 110% of the City's minimums. Joint parking and reciprocal access agreements are encouraged.

7. Loading, Storage and Service Areas. No loading, storage or service area shall be permitted in the front portion of any Lot within The East 80 at Cardwell Ranch. All loading and service areas shall be screened from the ground-level view of adjacent properties and streets. Screening elements shall be of landscape materials or materials similar to those used to construct the primary structure. Storage areas shall comply with all applicable building setbacks.

8. Garbage Collection. Lots used for commercial purposes and multi-family housing that includes more than two (2) dwelling units shall store garbage only in an approved garbage collection area. Lots used for other residential purposes may place a garbage container on the sidewalk or driveway on the designated pickup day. At all other times, all residential garbage containers shall be stored in an enclosed garage or in an approved garbage collection area. Garbage collection areas shall adhere to the following standards:

a. All outdoor garbage containers and collection areas shall be screened visually with at least a six foot (6') enclosure so that they are not visible from adjacent properties, streets, or Park Land or Open Space.

b. No garbage containers or collection areas shall be located between a street and the front of a building.

c. Deposited garbage shall not be visible from outside the garbage container or collection area.

d. Garbage containers and collection areas shall be designed with durable structural materials, finishes and colors that coordinate with the overall architectural scheme of the adjacent buildings.

e. Garbage collection areas and containers shall regularly be cleaned, repaired and painted to prevent the accumulation of garbage, grime, grease, and other unsightly or unpleasant conditions.

9. Pedestrian Walkways and Bikeways. All property development shall provide for pedestrian access along or through each Lot to create a system of pedestrian paths and walkways. Pedestrian paths shall be a minimum of five feet (5') wide, constructed of hard surface materials such as concrete or asphalt meeting the requirements of the City of Billings. The location, layout and construction features of bike paths shall conform to the Heritage Trail Plan of the City of Billings and may be extended through The East 80 at Cardwell Ranch to connect to other development at the perimeter of The East 80 at Cardwell Ranch. Bike paths shall be constructed according to the design standards established by The Heritage Trail Plan and shall be located as determined by the developer with the consent of YGAF, Inc. All pedestrian and bikeway access along roads shall be separated from the paved road surface by a landscaped boulevard at least five (5) feet wide.

10. Bicycle Parking. Each non-residential and multi-family residential Lot accommodating more than three (3) Dwelling Units shall provide at least one bike parking space equipped with bicycle racks permanently anchored in marked areas.

11. Accessory Structures, Fences, and Walls. Construction of accessory structures, fences, and walls shall follow these standards:

a. All fences shall comply with the City of Billings, Montana clear vision standards.

b. No chain link fencing shall be installed without the express written approval of YGAF, Inc.

c. No fence or wall shall exceed a height of six feet (6'), except in garbage collection areas.

d. Accessory structures, fences, and walls shall be of a character, color, and material to match the adjacent buildings, shall coordinate with the overall architectural scheme of the adjacent buildings, and shall be integrated into the landscaping of the Lot.

12. Snow Storage. Parking lots or areas adjacent to parking lots shall provide for on-site snow storage. Snow storage areas shall not be adjacent to streets. Common storage areas between adjacent Lots are encouraged. Landscaping shall be maintained if the storage is not done in a paved parking area. Parking spaces needed to satisfy minimum parking requirements shall not be used for snow storage.

13. Site Lighting Standards.

a. All outdoor pole lighting shall be fully shielded (no light

emitted by the fixture is projected above the horizontal plane of the fixture) and mounted at heights no greater than eighteen (18) feet above grade.

b. All outdoor lighting, except street lights, shall be located and aimed or shielded so as to minimize stray light trespassing across property boundaries.

14. Exterior Mechanical and Electrical Equipment and Transformers.

All exterior mechanical and electrical equipment and transformers used to service a building or group of buildings shall be screened or enclosed within the structure of a building or otherwise screened from view. Screening may consist of year-round plantings, shrubbery, or durable enclosures of such height and density as may be deemed sufficient by the zoning coordinator and YGAF, Inc.

C. Building Design. The following standards shall govern building design for all property within The East 80 at Cardwell Ranch.

1. Temporary Structures. Temporary structures are not allowed, except temporary structures may be used for construction only during the period of construction and shall be removed from The East 80 at Cardwell Ranch immediately following substantial completion of the permanent structure in accordance with the CCRs.

2. Impact on Other Structures. No building shall be built in a manner that will adversely affect the structural integrity of another building.

3. Building Height Limits. Structures in The East 80 at Cardwell Ranch shall not exceed a height limit of forty-five (45) feet from ground level. This height limitation applies to the uppermost, enclosed portion of the structure. Antennae, satellite receivers, mechanical equipment and other non-enclosed portions of a structure that otherwise comply with this Agreement shall be appropriately screened and may extend no more than ten (10) feet above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

4. Building Size Limits. The enclosed portion of any structure in The East 80 at Cardwell Ranch shall not exceed 40,000 square feet (footprint). Buildings over 40,000 square feet (footprint) may be permitted upon Special Review approval.

The enclosed portion of a structure is the portion that is contained on all sides and overhead and does not include decks, patios, walkways, driveways, etc.

5. Roof-mounted Mechanical Equipment. Mechanical equipment placed on a roof shall be screened to a height at least the height of the mechanical equipment. All roof-mounted equipment, including, but not limited to, HVAC

units, exhaust vents, exhaust vent stacks, and miscellaneous penetrations must be integrated into the overall roof design. Equipment shall be enclosed or screened from view with materials and forms designed into the shape and character of the building's design.

6. Communication Towers, Antennae, and Satellite Receivers. No free-standing communication towers, antennae, or satellite receivers are allowed. No structure-mounted antennae with visible components greater than 60 inches in height or satellite receivers greater than 24 inches in diameter are allowed unless they are screened from the view of adjacent streets and properties by structural components or year-round landscaping elements. No satellite receivers more than 96 inches in diameter are allowed. Satellite receivers more than 24 inches but less than 96 inches are subject to special review under Article IV.B.

7. Metal Buildings. Pre-engineered metal buildings or prefabricated metal buildings are not permitted on any property within The East 80 at Cardwell Ranch.

8. Sloped Roof Elements. Any building with sloped roof elements shall provide protection to pedestrians and other properties from the effects of sliding snow.

D. Landscape Design Standards. The following standards shall govern landscaping for all property within The East 80 at Cardwell Ranch.

1. Minimum Requirements. All landscaping shall, at a minimum, comply with the requirements of the City of Billings and be completed within thirty (30) days after the substantial completion of the building(s) constructed on the property; provided, however, that if weather conditions do not permit such landscaping to be completed within thirty (30) days then such landscaping shall be completed as soon thereafter as weather conditions permit. Bonds shall be required if landscape completion is delayed.

2. Right-of-Way and Setback Areas. The area between any street to the property line and from the property line to the minimum setback line shall be landscaped with a combination of trees, shrubbery, foliage, and grass or ground cover. These areas shall be maintained by the adjacent property owner unless responsibility for maintaining the same has been assumed by the Association.

3. Irrigation. All landscaping must be irrigated with an underground sprinkler system, which must be maintained so as to provide sufficient water for landscaping growth, or by use of a joint or community irrigation plan.

4. Parking Lot Landscaping – Perimeter. The perimeter of all parking areas shall be landscaped with plants that provide intermittent screening but allow some visual penetration into these areas when viewed from adjacent streets, service

areas, major building entrances, and significant outdoor spaces. Such screens shall consist of deciduous and evergreen plant material at least two feet (2') in height.

5. Parking Lot Landscaping – Interior. A minimum of twenty (20) square feet of internal landscaping shall be provided for each parking space. Two (2) canopy or evergreen trees and five (5) shrubs shall be required for every eight (8) parking spaces. All landscaped areas shall contain ground cover such as sod, shrubs, flower beds, or living plant material. No more than twenty-five (25) percent of the total landscaped area measured by square footage shall consist of fountains, rock, bark chips, stepping stones, or similar non-living material. Each parking lot landscaped area shall include at least one dimension (width or length) that is at least eight (8) feet. Internal parking lot landscaping shall be proportionately disbursed at the developer's discretion in order to define aisles and limit the length of unbroken rows of parking. The maximum width or length of any unbroken length of paved parking area shall be one hundred (100) feet. Landscaped areas shall be on a scale proportionate to the parking lot. The parking lot landscaping shall, at a minimum, meet all landscaping requirements of the City of Billings. All landscaped areas shall be irrigated, maintained, and kept free of weeds, debris, and litter. Dead or dying materials shall be replaced immediately. Landscaped areas within parking lots or along the perimeter of the property must be protected from vehicular traffic through the use of continuous concrete curbs, extruded asphalt, or other approved, permanent barriers. Evergreen trees are discouraged for internal parking areas if they will limit sight lines at full maturity.

6. Non-Parking Lot Landscaping. All areas not covered by structures, parking, circulation surfaces, pedestrian or bicycle paths shall be landscaped. At least seventy-five percent (75%) of this landscaped area should be living plant material. The remaining portion may include: stone, rock, bark ground cover; decorative structures; water features; benches and other landscape features appropriately dispersed and coordinated throughout the live vegetation. The use of native, drought-tolerant plant materials is strongly encouraged and may be required under applicable covenants, conditions, or restrictions. The planting of trees should be done in such a manner as to provide maximum solar efficiency throughout the site.

7. Landscaping Loading and Service Areas. Loading and service areas shall be enclosed either with solid screen walls not to exceed six feet (6'), or landscaping elements planted in such a manner to create a visually opaque screen when mature. The plant material screen must develop its maturity within three (3) years from the time of planting.

- Canopy Tree. A canopy tree is a species of tree that normally bears crown foliage no lower than six feet (6') above ground level upon maturity. The minimum size of canopy trees shall be two and one-half inches (2 1/2") in caliper at the time of installation. Caliper shall be defined by the American Nurseryman Standard Definition.

- Evergreen. An evergreen tree or shrub is a species that normally retains leaves/needles throughout the year. Minimum size of evergreen trees shall be six feet (6') in height at the time of installation.
- Shrubs. The minimum size of a shrub shall be at least 2 gallons but preferably 5 gallons.

ARTICLE VII – PARK LAND AND OPEN SPACES

A. Park Land and Open Spaces Generally. The statutory park dedication requirement for The East 80 at Cardwell Ranch shall be satisfied either by making a donation of cash in lieu of land or the City will waive the park dedication requirement for this planned development if the land permanently set aside for park and recreational use by the residents meets the requirements of M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009. The Park Land and Open Spaces available to residents and users of The East 80 at Cardwell Ranch shall include privately or publicly owned or accessible open space, potentially including parks, plazas, gardens, trails, and/or bikeways. Such Park Land and Open Spaces may be located within The East 80 at Cardwell Ranch or outside The East 80 at Cardwell Ranch in accordance with M.C.A. § 76-3-621(6)(d)(i). All Park Land and Open Spaces shall be maintained to meet or exceed any then-existing City maintenance standards. All Park Land and Open Spaces shall be built and maintained in order to fulfill the purposes set forth in Article I of this Agreement. Park Land and Open Spaces will be developed and constructed at the cost and expense of the property owners.

B. Park Land and Open Space Maintenance. The maintenance of Park Land and Open Spaces will be funded by the Association with possible participation by individual property owners or the City through a park maintenance district for any park land dedicated to the public.

ARTICLE VIII – SIGNS

A. Signage. The following standards shall govern signage for all property within The East 80 at Cardwell Ranch and shall apply to all ground-mounted, pole-mounted, and building-mounted signs.

B. Purpose, Intent and Scope. The purpose and intent of this section is to promote commerce, traffic safety, and community identity while improving the visual environment of residential, commercial, and industrial areas.

C. Exempt Signs. This section of the Agreement shall not regulate traffic and directional signs installed by a governmental entity or in a private parking lot; merchandise displays; national flags; legal notices required by law; or historic site monuments/plaques.

D. Definitions. The definitions used in this Agreement may be found below or in the Unified Zoning Regulations.

Individual Business. One business on one parcel, provided that the parcel is not part of a multiple business complex; and also provided the parcel is not part of a group of multiple contiguous parcels under the same ownership.

Monument Sign. A sign and supporting structure constructed as a solid structure, or one that gives the appearance of a continuous, non-hollow, unbroken mass.

Multiple Businesses. Multiple businesses include businesses that may be located in a single building or in multiple buildings on a single site.

Support Structure(s). Posts or columns and their anchors and bolts that structurally support the sign attached to it.

E. General Provisions.

1. City Ordinances. All signage shall comply with the Unified Zoning Regulations unless further limited herein, or as addressed in the CCRs.

2.

3. Types of Signs. The following standards shall govern the types of signs permitted within The East 80 at Cardwell Ranch:

a. Collective Signage. Adjacent property owners in The East 80 at Cardwell Ranch are encouraged, when appropriate, to utilize collective signage which contains the names of more than a single owner, business, tenant, or store;

b. Wall Signage. Wall signs are limited to no more than one (1) per façade facing a street and two (2) signs per building. All wall signs shall be placed parallel and attached firmly to the building's façade.

F. Exempt Activities. The following shall not require approval, provided that these exemptions shall not be construed as relieving the owner from the responsibility to comply with the provisions of this Agreement or any other law or ordinance, including the Uniform Zoning Regulations.

1. The changing of the advertising copy or message on a lawfully erected sign that is currently in compliance with this Agreement, reader board, or similar sign specifically designed for replaceable copy;

2. Painting, repainting, or normal maintenance, unless a structural, electrical, aesthetic, or color change is made;

G. Prohibited Signs. The following signs are prohibited in all zones unless otherwise specifically permitted:

1. Flashing, blinking, moving, exposed light, iridescent colors, outdoor signs with visible neon or gas tubing, fluorescent materials, animated or audible signs, streamers, balloons and searchlights;
2. Bench signs;
3. Signs which by coloring, shape, working resemble or conflict with traffic control signs or devices;
4. Signs that create a safety hazard for pedestrian or vehicular traffic;
5. All electronic signs, video boards;
6. Portable signs, trailer signs and signs attached to structures with one or more wheels;
7. Rooftop signs;
8. Billboard or off-premises signs;
9. Pole signs;
10. Banner signs unless specifically permitted as addressed in the CCRs.

H. Temporary Signs:

- a. Temporary signs can be used for development, construction, design team, sale or leasing information on a temporary basis. Typically such signs are freestanding, ground-mounted signs though banner signs may be approved as specified in the CCRs. Such signs will be unlit and limited in size to 32 square feet and 8 feet in height above grade for commercial uses and five square feet and five feet above grade for residential and agricultural uses.

I. Sign Location and Setback.

- b. Freestanding identity signs shall be setback a minimum of 8 feet from the face of curb or edge of pavement of a public street, and shall not be placed within the right-of-way.

J. Sign Area and Calculation.

1. Sign area for wall signs is equal to the message area of a sign, including graphics, letters, figures, symbols, trademarks or written copy per the standards established by the City of Billings for sign area calculation;

2. The sign area of a monument sign consisting of one sign shall be calculated the same as for wall signs;

3. The sign area of a freestanding sign consisting of more than one sign shall be computed by adding together the total area(s) of all signs. Any portion of the sign not necessary for structural support of the sign or any structural support greater than two (2) feet in width shall be considered in the determination of the square footage of the sign. Area calculation does not include decorative rocks or landscaping adjacent to a monument sign;

4. The sign area for multiple-sided signs shall be calculated as follows:

a. The total sign area for a two-sided sign shall be calculated using one face, therefore allowing both faces to be of equal size (for example a two-sided sign has two faces with 18 square feet per side, therefore the sign area is 18 square feet);

b. The sign area for a three-sided sign shall be equal to the total amount of sign area a one-sided or two-sided sign is allowed. (For example, in item 4A above, a two-sided sign is allowed 18 square feet of sign area per side, which equals 36 total square feet. If a three-sided sign is used instead of a one-sided or two-sided sign, the three-sided sign may allocate the 36 square feet among three sides, therefore allowing three sides with 12 square feet per face for a total of 36 square feet of sign area.);

K. Maintenance of Signs.

1. Any sign that has been approved or that has been issued a permit shall be maintained by the owner or person in possession of the property on which the sign is located. Maintenance shall be such that the signage continues to conform to the conditions imposed by the sign permit and this Agreement;

2. Any damaged sign, including signs with burned out lights, shall be repaired or replaced within ten (10) business days;

3. Any signage which has been damaged to such extent that it may pose a hazard to passersby shall be repaired or removed immediately;

L. Nonconforming Signs. Nonconforming signs are not permitted. If any sign is erected or installed without proper permits or approvals, it shall be considered nonconforming and shall be removed. All signs which do not conform to the sign standards in this Agreement are nonconforming and shall be removed or changed to conform to these

standards. Any sign not removed within ten (10) business days of notice of nonconformance will be removed by the YGAF, Inc. or its assigns, and the costs for removal plus a handling fee to be assessed by the YGAF, Inc. or its assigns shall be the responsibility of the owner of the sign.

M. Landscaping for Monument Signs. All monument signs shall be located in a landscaped area. Landscaping should be appropriately sited to ensure that signs are not blocked or obscured by trees or bushes.

N. Sign Illumination. Externally illuminated signs shall have low intensity lighting, confined to the sign, and positioned and shielded to minimize impacts to the surrounding area(s). Internally illuminated signs shall have low intensity lighting.

O. Sign Approval. All signage in The East 80 at Cardwell Ranch shall first be approved by YGAF, Inc. as a condition of any zoning approval issued by the City of Billings.

ARTICLE IX - CROSS EASEMENTS FOR VEHICLES AND PEDESTRIANS

At the time each Lot is developed, or at such earlier time as may be determined by YGAF, Inc. or the developer of the Lot, YGAF, Inc. or the developer shall grant a non-exclusive easement for pedestrian and bicycle ingress and egress for the benefit of all property owners in The East 80 at Cardwell Ranch and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the part of any Park Land, Open Space, or Lot devoted to pedestrian walkways, bike paths, and private roadways intended for common use. At the time each Lot is developed, or at such earlier time as may be determined by YGAF, Inc. or the developer of the Lot, YGAF, Inc. or the developer shall also grant a non-exclusive easement for vehicular ingress and egress for the benefit of all developers and property owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the private roadways of The East 80 at Cardwell Ranch intended for common use.

ARTICLE X – ENFORCEMENT

A. Statement of Purpose. The parties acknowledge that from time to time disputes may arise involving the City, YGAF, Inc., property owners, the Association, or other persons bound by this Agreement. In order to minimize the financial and emotional costs that such disputes may exact from the participants, the parties to this Agreement, on behalf of themselves and their successors and assigns hereby commit themselves to work together in a spirit of cooperation to facilitate the prompt resolution of such disputes in a manner that respects and promotes relationships between the parties and without resort to litigation as much as possible.

B. Right to Enforce by City. The terms of this Agreement may be enforced by the City as provided for in the Unified Zoning Regulations.

C. Right to Enforce by Property Owners and the Association. The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and the owners of property within The East 80 at Cardwell Ranch and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto as well as future property owners within The East 80 at Cardwell Ranch. The parties further agree that the Association shall have standing to enforce the terms of this Agreement relative to the City or any property owner or other property owners' association regardless of whether the Association owns property in The East 80 at Cardwell Ranch. In addition to all rights inuring to them under this Agreement, the parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

D. Right of Abatement and Suit. If at any time YGAF, Inc., the City, or the Association objects ("the objecting party") to any property owner's or other party's breach of its obligations under this Agreement ("the defaulting party"), the objecting party shall have, in addition to any other rights and remedies arising at law or in equity, the right to abate the effects of the defaulting party's breach. To exercise the right of abatement the objecting party shall provide the defaulting party with written notice of its objection, specifying the particulars of its objection. If within thirty (30) days of receipt of such notice the defaulting party fails or refuses to commence to remedy its breach under this Agreement, or if after commencing action the defaulting party fails to cure its default within a reasonable period, the objecting party may perform whatever reasonable maintenance, repair, operation, or other curative action is needed to remedy the default. The defaulting party shall pay upon demand to the objecting party the costs of such maintenance, repair, operation, or other curative action, together with interest allowed by law from the date of disbursement of such costs until paid in full. The objecting party shall not be responsible for the continued maintenance or repair of any structure or Lot or the performance of the defaulting party's obligations under this Agreement. The objecting party may also prosecute a proceeding at law or in equity against the defaulting party to enjoin a violation of the terms of this Agreement, to cause said violation to be remedied, or to recover damages for said violation.

ARTICLE XI – AMENDMENTS AND VARIANCES

A. Amendments or Changes. This Agreement may not be amended, modified, or terminated, in whole or in part, except with the unanimous written consent of YGAF, Inc. (or its assignee) and the City. The consent of landowners who purchase property within The East 80 at Cardwell Ranch shall not be required to amend, modify, or terminate this Agreement. Any modifications requested by YGAF, Inc. shall be processed using the same procedures as for a new application in accordance with the Unified Zoning Regulations; however, minor modifications may be approved by the zoning coordinator if he/she finds that the change would not:

1. Change the overall character of the development;
2. Increase the number of residential units greater than two (2) percent;
3. Change additional allowed uses;
4. Reduce open space greater than two (2) percent; and
5. Change the approved minimum setbacks, maximum lot coverage, or maximum allowed structure height.

B. Variance Procedures. Variance procedures shall comply with the Unified Zoning Regulations as established by the City of Billings. In no case shall a variance be granted for a use not consistent with those listed within this Agreement or for uses prohibited within the Unified Zoning Regulations. Upon receiving written consent of YGAF, Inc., property owners may apply for a variance from the following required special building features:

1. Increase in the maximum allowed height under Article VI.C.3 of any structure in any planning area from 34 feet to 45 feet.
2. In accordance with Article VI.C.6, increase in the maximum diameter of satellite dishes from 24 inches up to 96 inches.

Covenants or private agreements may also require that an applicant obtain the written consent of YGAF, Inc. for other variances.

C. Zone Change Procedures. Zone change procedures shall comply with the Unified Zoning Regulations as established by the City of Billings.

ARTICLE XII - ARBITRATION

A. Agreement to Arbitrate. Except as otherwise provided in this Agreement and subject to the provisions of the next paragraph below, all property owners and the City agree, upon receipt of written request by any party to the dispute, to submit to binding arbitration any and all claims, disputes, and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents) whether in tort, contract, or otherwise arising out of or relating to in any way this Agreement. YGAF, Inc. may, in its sole and exclusive discretion, elect not to participate in arbitration requested by another party, in which case the dispute shall be resolved by means not involving arbitration.

B. Other Remedies. Nothing in the preceding paragraph, nor the exercise of any right to arbitrate thereunder, shall limit the right of any party hereto to: (1) exercise

abatement or other self-help remedies, (2) obtain provisional or ancillary judicial remedies such as injunctive relief, or (3) impose fines as permitted by law before, during, or after the pendency of any arbitration proceeding. The authority of the City to levy and impose fines shall not be limited by this arbitration agreement. The institution and maintenance of any action for such judicial relief, the pursuit of provisional or ancillary remedies, or the exercise of self-help remedies shall not constitute a waiver of the right or obligation of any party to submit any claim or dispute to arbitration, including those claims or disputes arising from or related to those addressed as part of the exercise of any such judicial relief, pursuit of provisional or ancillary remedies, or exercise of self-help remedies.

C. Arbitration Procedure. Any arbitration proceeding shall proceed in Billings, Montana, and shall be governed by the Montana Uniform Arbitration Act and all applicable Montana statutes of limitation, and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Any arbitration proceeding shall be before a single arbitrator selected according to the Commercial Arbitration Rules of the AAA. The arbitrator shall decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions that are substantially similar to pre-hearing motions to dismiss for failure to state a claim or motions for summary adjudication. Discovery shall be permitted, but shall be subject to scheduling by the arbitrator, and any discovery disputes shall be subject to final determination by the arbitrator. The arbitrator shall award costs and expenses of the arbitration proceeding in accordance with this Agreement. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction.

ARTICLE XIII - GENERAL PROVISIONS

A. Appointment of Agent. YGAF, Inc. may, in its sole and exclusive discretion, hire, appoint, or designate an individual or entity to act as its agent to fulfill the duties and obligations of YGAF, Inc. hereunder. Although not required to be effective, notice of such appointment may be made in writing and recorded in the real estate records of Yellowstone County, Montana, and shall contain the legal description for The East 80 at Cardwell Ranch, or any portion thereof, affected by the appointment. Notice of appointment shall also be provided to the City at the address specified herein. YGAF, Inc. may, in its sole and exclusive discretion, revoke an agent's appointment or make an additional appointment at any time.

B. Assignment by YGAF, Inc. YGAF, Inc. may, in its sole and exclusive discretion, assign its rights and delegate its duties arising under this Agreement in whole or in part to any other person or entity. Notice of such assignment shall be made in writing and recorded in the real estate records of Yellowstone County, Montana, and shall contain the legal description for The East 80 at Cardwell Ranch, or any portion thereof, affected by the assignment. Notice of assignment and delegation shall also be provided to the City at the address specified herein. Once any notice of delegation has been recorded in the real estate records of Yellowstone County, Montana, YGAF, Inc. shall have no further responsibility or liability for the future performance or non-performance of this Agreement,

and the City and all property owners shall look exclusively to the appointed person or entity.

C. Neutral Interpretation. YGAF, Inc. and the City hereby stipulate and agree that this Agreement has been prepared and negotiated by both parties and shall be construed using neutral interpretation, and that this Agreement shall not be construed in favor of any party or against any party based on authorship.

D. Coordination with Other Regulations. In the event that there is any conflict between this Agreement and other zoning regulations or ordinances, including the Unified Zoning Regulations, the terms and conditions of this Agreement shall govern. If this Agreement does not prescribe rules for a particular aspect of the development or use of The East 80 at Cardwell Ranch either by its express terms or by implication, then the terms of any other applicable City zoning regulations or development ordinances, including the Unified Zoning Regulations, shall govern. If other zoning regulations or ordinances applicable to the property are subsequently amended, the amended version of such regulations or ordinances shall likewise continue to be applicable to the property to the extent that they are not inconsistent with this Agreement.

E. Notices. All notices or demands required to be given hereunder shall be in writing and shall be served upon the other party either personally or by registered or certified mail. Service by registered or certified mail shall be conclusively deemed made three (3) days after deposit thereof in the United States Mail, postage prepaid, addressed to the party to whom service is to be given, as hereinafter provided, and the issuance of the registry or certification receipt therefore. All notices or demands to YGAF, Inc. or the City shall be given at the following addresses or such other addresses as YGAF, Inc. or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to YGAF, Inc.:

Peter Yegen III
P. O. Box 959
Billings, MT 59101

With copies to:

William A. Cole
Cole Law Firm, PLLC
3860 Avenue B, Suite C West
Billings, MT 59102-7550

If to the City:

City of Billings
Attn: City Clerk
P.O. Box 1178
Billings, Montana 59103

With Copies to:

City-County Planning Department
510 N. Broadway, 4th Floor Parmly Library
Billings, MT 59101

City Attorney's Office
P.O. Box 1178
Billings, MT 59103-1178

F. Waiver. Unless expressly so provided in this Agreement, failure of one party to notify the other party of a default in the manner provided in this Agreement shall not be deemed a waiver of any rights that the non-defaulting party may otherwise have at law or in equity as a result of the default.

G. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

H. Limitation on Enforcement. This Agreement is for the benefit of YGAF, Inc., the City, the property owners within The East 80 at Cardwell Ranch, the Association, and their heirs, devisees, assigns, and trustees, and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of this Agreement or to enforce restrictions contained herein, judicially or otherwise.

I. Force Majeure. Any prevention, delay or stoppage due to strikes, lock outs, labor disputes, Acts of God, inability to obtain labor or materials or reasonable substitute therefore, governmental restrictions, terrorist acts, governmental regulations, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. All parties shall use reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

J. Attorneys' Fees and Costs. In the event either party shall file any proceeding, whether at law or in equity or in arbitration, the prevailing party shall be entitled to receive reimbursement of reasonable outside attorney's fees and court or arbitration costs, if any, from the other party.

K. Severability. Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Agreement, and the remaining provisions shall remain in force and be binding upon the parties hereto as though such invalid, void, illegal or unenforceable provision had not been included.

L. No Partnership. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

M. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and

not strictly for or against any party.

N. Construction. In construing the provisions of this Agreement, whenever the context has required, the use of a gender shall include all other genders, and the use of the singular shall include the plural, and the use of the plural shall include the singular.

O. Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

P. Recordation. This Agreement and any amendments or modifications shall be recorded in the office of the clerk and recorder of the County of Yellowstone, State of Montana.

NOTICE

THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY WITHIN THE EAST 80 AT CARDWELL RANCH, OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY WITHIN THE EAST 80 AT CARDWELL RANCH, AND SHALL FURTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS AGREEMENT BE VIOLATED, THE PARTIES TO THIS AGREEMENT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.

Q. Run with the Land. The duties created by this Agreement shall run with the land and shall be binding upon YGAF, Inc., the City, the property owners, and their heirs, successors, and assigns.

R. Contact Person. YGAF, Inc. hereby designates a contact person whom may be contacted with respect to any questions, comments, or concerns. The contact person shall be Charles Yegen, P. O. Box 959, Billings, Montana 59101.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year indicated by the notarial certifications indicated below.

YEGEN GRAND AVENUE FARM, INC.:

YEGEN GRAND AVENUE FARM, INC.

By: _____

Its: _____

CITY:

CITY OF BILLINGS

By: Ron Tussing
Its: Mayor

By: _____
Cari Martin
Its: City Clerk

STATE OF _____)
)ss.
County of _____)

This instrument was acknowledged before me on the ____ day of _____, 2008,
by _____ known to me to be _____
of YGAF, Inc.

[signature]

[typed/printed name]
Notary Public for the State of _____
Residing at: _____, _____
My Commission Expires: _____, 20____

STATE OF MONTANA)
County of Yellowstone)
ss.

This instrument was acknowledged before me on the ____ day of _____, 2008,
by Ron Tussing, known by me to be the Mayor of the City of Billings.

[signature]

[typed/printed name]
Notary Public for the State of Montana
Residing at: _____, Montana
My Commission Expires: _____, 20____

STATE OF MONTANA)
)ss.
County of Yellowstone)

This instrument was acknowledged before me on the ____ day of _____, 2008,
by Cari Martin, known by me to be the City Clerk of the City of Billings.

[signature]

[typed/printed name]

Notary Public for the State of Montana

Residing at: _____, Montana

My Commission Expires: _____, 20____

EXHIBIT A

MASTER PLAN OF THE EAST 80 AT CARDWELL RANCH

