

# CITY OF BILLINGS

## CITY OF BILLINGS' VISION STATEMENT:

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

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## AGENDA

COUNCIL CHAMBERS

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Ulledalen

ROLL CALL

MINUTES – January 14, 2008

COURTESIES

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 4b, and 7 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 Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
1.	Steven Tostenrud	Aviation & Transit	01/28/08	12/31/11
2.	Shawn Nelson	Board of Appeals	01/28/08	12/31/11
3.	No Applications	Board of Appeals	01/28/08	12/31/11
4.	*Robert Merchant	Energy & Conservation Commission	01/28/08	12/31/10
5.	*No Applications	Human Relations Commission	01/28/08	12/31/10
6.	*No Applications	Human Relations Commission	01/28/08	12/31/10
7.	Steve Bruggeman	Parking Advisory Board	01/28/08	12/31/11
8.	Don Olson	Parking Advisory Board	01/28/08	12/31/11
9.	*Nick Blake	Parking Advisory Board	01/28/08	12/31/09
10.	No Applications	Public Utilities Board	01/28/08	12/31/11

4. Unexpired term of Joseph Keel
5. Unexpired term of Jean Smith
6. Unexpired term of Shoshana Tom
9. Unexpired term of Pamela Godfrey

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

**B. Bid Awards:**

**(1) Airport Operations Center Overhead Door Replacement.** (Opened 1/15/08) Recommend Alpha Overhead Doors, \$36,399.00.

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

**(2) Replacement of Airport Terminal Concourse Fan Coil Units.** (Opened 1/15/08) Recommend Accent Air, \$57,835.00.

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

**C. Contract** with Maximus for Cost of Services Study, Phase I, not to exceed \$21,500.00.

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

**D. Contract Amendment #2, W.O. 05-20 Aronson Avenue.** HKM Engineering, Inc., \$215,987.00.

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

**E. Amendment #2, Scheduled Airline Operating Agreement** with Horizon Air, Northwest Airlines, SkyWest Airlines, and United Airlines through 6/30/09.

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

**F. Acknowledge Receipt of Petition to Annex #08-05:** Lot 1, Sylvia Subdivision, 1094 Lincoln Lane, generally located on the west side of Lincoln Lane, north of the Target Shopping Center in Billings Heights, First Citizens Bank, owner and petitioner; and set a public hearing date for 2/11/08.

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

**G. Acknowledge Receipt of Petition to Vacate** portions of S. 24<sup>th</sup> Street, 4<sup>th</sup> Avenue S., 5<sup>th</sup> Avenue S., 6<sup>th</sup> Avenue S., and the alleys within Blocks 173 and 179, Billings Old Town, for \$95,000.00; ConocoPhillips, petitioner; and set a public hearing date for 2/25/08.

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

**H. Right-of-Way Easement** with Northwestern Energy for a 10-foot area of Lot 6 and a 10-foot area of Lot 7, Block 110, Billings Original Town, generally located just south of the Crowne Plaza Hotel and the downtown post office, \$1,980.00.

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

**I. W.O. 04-33: Lake Elmo Drive (Hilltop Road to Wicks Lane) Right-of-Way Acquisition:**

(1) Portion of Lot 14, Josephine Subdivision, Larry C. Hoban and Donna Hoban, at no cost to the City.

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

(2) Parcel 34: Portion of Tract 1, C/S 979, Michael S. Eastwood Trust, \$23,950.00.

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

**J. Acceptance of Donation** from High Plains Psychiatric Associates, PC - Dr. Liz Walter and Dr. Ann Rathe, to the Animal Shelter Building Improvements Fund, \$500.00. [\(Corresponding Staff Memo J\)](#)

**K. Acceptance of Donation** from Montana Dakota Utilities of four complete workstations to the Police Substation located at Fire Station #7.

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

**L. Resolution of Intent** to create SID 1383, Cherry Hills Road Improvements (water, sanitary sewer, storm drain, curb/gutter, street), and set a public hearing date for 2/25/08.

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

**M. Resolution** amending Resolution #07-18655 for Annexation #07-25, correcting an error in the legal description.

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

**N. Second/Final Reading Ordinance for Zone Change #828:** A zone change from Residential 9600 to Residential Professional on Lot 3, Block 1, Rocky Village Subdivision, generally located on the northwest corner of Poly Drive and 17<sup>th</sup> Street West. Ric Heldt, A & E Architects, representative.

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

**O. Preliminary Plat** of Lot 1, Block 1, Billings Clinic Subdivision, generally located between North 28<sup>th</sup> and 29<sup>th</sup> Streets and 7<sup>th</sup> and 9<sup>th</sup> Avenues North; conditional approval of the preliminary plat and adoption of the Findings of Fact.

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

**P. Final Plat** of Amended Lot 4, Block 2, Goodman Subdivision.

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

**Q. Bills and Payroll**

(1) December 21 and 27, 2007

[\(Corresponding Staff Memo Q1\)](#)

(2) January 4, 2008

[\(Corresponding Staff Memo Q2\)](#)

## **REGULAR AGENDA:**

2. **PUBLIC HEARING AND RESOLUTION** approving and adopting second quarter budget amendments for Fiscal Year 2007/2008. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

3. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #08-02:** 54 acres legally described as Tract 2-B-1, Certificate of Survey 1121, generally located west of Washington Street, south of Interstate 90, and north of the Yellowstone River, King Business Park LLC; Richard Dorn, Samuel Rankin, and Hannah Elletson, owners and petitioners. Staff recommends conditional approval. **(Action:** approval or disapproval of Staff recommendation.)

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

4. (a) **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #827:** (Postponed from 1/14/08) A zone change from Residential 9600 to Residential 7000 on a 44,644 square-foot property located north of Saturn Place in the Billings Heights. Dorn Property LLC, owner; Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

(b) **PRELIMINARY PLAT** of Eagle View Subdivision, approximately 1.02 acres of land located north of Saturn Drive in the Billings Heights. Dorn Property LLC, owner; Engineering, Inc., representative. Staff recommends conditional approval of the preliminary plat and adoption of the Findings of Fact. **(Action:** approval or disapproval of Staff recommendation.)

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

5. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #830:** A zone change from Residential 7,000 to Residential 6,000 on a 15,000 square foot vacant parcel legally described as the North Fraction 100 feet by 150 feet in Block 305 Billings, 1<sup>st</sup> Addition, and Sunnyside Subdivision, 3<sup>rd</sup> Filing, generally located on the southwest corner of the intersection of North 22<sup>nd</sup> Street and 10<sup>th</sup> Avenue North. Steve Kerns, owner/applicant. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

6. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #831:** A zone change from Controlled Industrial to Central Business District in an area with general boundaries from the east side of North 25<sup>th</sup> Street to North 20<sup>th</sup> Street, and the south side of 6<sup>th</sup> Avenue North generally south to the railroad right-of-way. Zoning Commission recommends denial based on the

determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

(Corresponding Staff Memo 6)

7. **MEMORANDUM OF UNDERSTANDING** with Beartooth RC&D Economic Development District, \$8,380 annual.

(Corresponding Staff Memo 7)

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**

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

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

A



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, JANUARY 28, 2008

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**SUBJECT:** Boards & Commissions –Appointments and Reappointments

**DEPARTMENT:** City Administrator's Office

**PRESENTED BY:** wynnette Maddox, Administration

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**PROBLEM/ISSUE STATEMENT:** Confirmation of appointments for Board and Commission positions that are vacant. Term expiration dates on these vacancies are December 31, 2007 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.	Steven Tostenrud	Aviation & Transit	01/28/08	12/31/11
2.	Shawn Nelson	Board of Appeals	01/28/08	12/31/11
3.	No Applications	Board of Appeals	01/28/08	12/31/11
4.	*Robert Merchant	Energy & Conservation Commission	01/28/08	12/31/10
5.	*No Applications	Human Relations Commission	01/28/08	12/31/10
6.	*No Applications	Human Relations Commission	01/28/08	12/31/10
7.	Steve Bruggeman	Parking Advisory Board	01/28/08	12/31/11
8.	Don Olson	Parking Advisory Board	01/28/08	12/31/11
9.	*Nick Blake	Parking Advisory Board	01/28/08	12/31/09
10.	No Applications	Public Utilities Board	01/28/08	12/31/11

7. Unexpired term of Joseph Keel
8. Unexpired term of Jean Smith
9. Unexpired term of Shoshana Tom
9. Unexpired term of Pamela Godfrey

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

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# B1

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 28, 2008

**TITLE:** Approval of Award of the Overhead Door Replacement Project

**DEPARTMENT:** Aviation and Transit

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

**PROBLEM/ISSUE STATEMENT:** Included in the City's Capital Improvement Program is the Replacement of the Overhead Doors at the Airport Operations Center. The two 25' 6" x 18' 1" overhead doors in the equipment bay were originally installed in 1992, and are used constantly. These doors are basically worn out, have become unreliable, and have required extensive repair and maintenance to keep them operating. This project will completely remove the existing doors, roller tracks, springs, etc., and will replace them with new heavy duty insulated overhead doors. This project has been advertised in the *Billings Times*, on the City's Web site, and plans and specifications were supplied to the Billings Builders Exchange. On January 15, we received one bid for this project:

**CONTRACTOR**

Alpha Overhead Doors  
ESTIMATE

**BID**

\$36,399  
\$60,000

**FINANCIAL IMPACT:** The total cost of this project is \$36,399. Sufficient funds were budgeted in the Airport's approved Capital budget.

**RECOMMENDATION**

Staff recommends that the City Council award the Overhead Door Replacement to the sole bidder Alpha Overhead Doors, for the amount of \$36,399.

**Approved By:** City Administrator City Attorney

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# B2

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

**CITY OF BILLINGS, MONTANA**

**Monday, January 28, 2008**

**TITLE:** Approval of Award of the Replacement of the Airport Terminal Concourse Fan Coil Units

**DEPARTMENT:** Aviation and Transit

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

**PROBLEM/ISSUE STATEMENT:** Included in the City's Capital Improvement Program is the Replacement of the Airport Terminal's Concourse Fan Coil Units. The existing fan coil units were originally installed in 1972, and are no longer able to supply efficient and reliable heating to these high use passenger concourse areas. This project will replace eight (8) fan coil units in Concourses A and B, and seven (7) units in the stairways leading from the concourses to the aircraft parking apron, with new energy efficient models. This project has been advertised in the *Billings Times*, on the City's Web site, and plans and specifications were supplied to the Billings Builders Exchange. On January 15, we received one bid for this project:

**CONTRACTOR**

Accent Air

ESTIMATE

**BID**

\$57,835

\$60,000

**FINANCIAL IMPACT:** The total cost of this project is \$57,835. Sufficient funds are budgeted in the Airport's Capital Improvement Program to cover the cost of this project.

**RECOMMENDATION**

Staff recommends that the City Council award the Replacement of the Airport Terminal Concourse Fan Coil Units to the sole bidder Accent Air, for the amount of \$57,835.

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

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# C

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 28, 2008

**TITLE:** Award Cost of Services Study Contract

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Asst. City Administrator

**PROBLEM/ISSUE STATEMENT:** One of the City Council's goals for FY 2008 is to complete a cost of services study. The City has a structural budget imbalance and is consistently and increasingly challenged to find funding to produce public services for a growing community. The study results will be used to assess the costs of growth and as a foundation for dialogue with citizens about the value of city services. A request for proposals (RFP) was prepared last fall, and it asked consultants to conduct a two-part study; Phase 1 to identify the scope of material that is immediately available versus what must be developed and Phase 2 to assemble cost information, make recommendations for overcoming the budget imbalance through expense reductions and/or revenue increases and to prepare a public communication plan. Study proposals were solicited in November, and the City received two responses. A committee of senior city staff and Councilmembers Ulledalen and Stevens reviewed and rated the proposals. The committee is ready to make its recommendation to the Council.

**ALTERNATIVES ANALYZED:** The City Council may:

- Approve the proposed contract with the selected consultant as-is or with changes
- Disapprove the proposed contract and abandon the project
- Disapprove the proposed contract and direct staff to solicit new proposals

**FINANCIAL IMPACT:** The City budgeted \$110,000 in FY 2008 for this study. Only the Phase 1 cost is known at this time, and its cost will not exceed \$21,500, including estimated expenses. Phase 2 cost will be developed by the selected consultant within about 45 days, and that cost will be reported to Council prior to proceeding with Phase 2.

### **RECOMMENDATION**

Staff recommends that the City Council approve a contract with Maximus, Inc. for \$21,500 for Phase 1 and an undetermined amount for Phase 2. The cost for Phase 2 will be determined in about 45 days and will be presented to Council before authorizing any work on that study phase.

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

**ATTACHMENT**

A:      Contract form

**CITY OF BILLINGS, MONTANA**  
**COST OF SERVICES CONSULTING CONTRACT**

**THIS AGREEMENT**, made and entered into on January \_\_, 2008 by and between the **CITY OF BILLINGS**, a Montana Municipal Corporation, Billings, Montana 59103, hereinafter designated the **CITY** and **MAXIMUS, INC.**, 10200 E. Girard Avenue, Building B, Suite 223, Denver, Colorado 80231, hereinafter designated the **CONSULTANT**

**WHEREAS**, the **CITY** proposes to conduct a Cost of Services Study and desires that the **CONSULTANT** furnish the **CITY** certain services as described herein;

**WHEREAS**, the **CITY** has authority to contract for such services, and;

**WHEREAS**, the **CONSULTANT** represents that he is fully qualified to perform such services;

**NOW THEREFORE**, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated herein, the Parties hereto agree as follows:

1. **SCOPE OF CONSULTANT'S SERVICES:** The scope of the work (Attachment A) shall include Phase 1, during which the **CONSULTANT** will organize and analyze existing data and prepare a detailed scope of work and costs for Phase 2, a comprehensive Cost of Services Study.
2. **CONTRACT TIME:** This Agreement shall be for a period of one (1) year from the execution of this agreement or until completion of the contract obligations as determined by the **CITY** or until terminated early, pursuant to Section 14.
3. **PAYMENT:** In consideration of the services provided by the **CONSULTANT** under this Agreement, the **CITY** agrees to pay **CONSULTANT** a price not to exceed \$21,500 for Phase 1 and a price for Phase 2 to be negotiated and agreed upon in writing prior to the **CONSULTANT** performing any work on that phase.

It is understood that the **CONSULTANT** will not perform any work that the **CONSULTANT** deems outside the scope prior to receiving written approval from the **CITY**. Any such work performed, even if requested by the **CITY**, shall not be paid by the **CITY** and any claims for such work shall be denied. In the event scope of work issues arise, the **CONSULTANT** shall immediately discuss them with the Project Manager for the **CITY**.

**4. INSURANCE**

- A. The **CONSULTANT** shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the **CONSULTANT** shall furnish the **CITY** with proof of insurance in accordance with Subsection B of this Section.

- B. The CONSULTANT shall provide the following insurance:
  - (1) Workers' compensation and employer's liability coverage as required by Montana law.
  - (2) Commercial general liability, including contractual and personal injury coverages -- \$1,500,000 per occurrence.
  - (3) Commercial automobile liability -- \$500,000 per accident.
  - (4) Professional liability in the amount of \$1,500,000 per claim.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the CITY prior to cancellation.
- D. The CITY SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

5. **AGREEMENTS OF CONSULTANT:** As an inducement to the execution of this Agreement by the CITY and in consideration of the agreements to be performed by the CITY, the CONSULTANT agrees that:

- A. Qualifications

The CONSULTANT is qualified to perform the services to be furnished under this Agreement and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.
- B. Solicitation of Agreement

The CONSULTANT has not employed any person to solicit this Agreement and has not made, and will not make, any payment or any Agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this Agreement.
- C. Facilities and Personnel

The CONSULTANT has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.
- D. Subcontracting

None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the CITY.
- E. Affidavits of Compliance

The CONSULTANT will, if requested by the CITY, furnish the CITY affidavits certifying compliance with the provisions of this Section.

## **6. AGREEMENTS OF CITY:**

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the CITY'S portion of the project as designated in the scope of work.
- B. Name a Project Manager, who shall be the liaison between the CITY and the CONSULTANT. For this project, the designated Project Manager shall be Bruce McCandless, Assistant City Administrator.

## **7. NON-DISCRIMINATION:**

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

## **8. PERMITS, LAWS, AND TAXES:** The CONSULTANT shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. All actions taken by the CONSULTANT under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The CONSULTANT shall pay all taxes pertaining to its performance under this Agreement.

- 9. NONWAIVER:** The failure of either party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.
- 10. DECLARATION OF NO FINANCIAL INTEREST:** The CONSULTANT hereby declares that he does not have any personal, professional or property interest, direct or indirect, present or prospective, which would conflict in any manner or degree with the performance of the services and the submission of impartial reports, and has not employed and will not employ, in connection with the services to be furnished under this Agreement, any person having any such interest. Until this Agreement terminates, the CONSULTANT and any employees of the CONSULTANT, so long as they are employed by the CONSULTANT, will not acquire any such interests.
- 11. SUCCESSORS AND ASSIGNS:** This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the CITY and the CONSULTANT respectively and any partners, successors, assigns, and legal representatives. Neither the CITY nor the CONSULTANT shall have the right to assign, transfer, or sublet any interest or obligations hereunder without written consent of the other party.
- 12. CHANGES IN WORK:** Any change in the scope of CONSULTANT'S services as stated in this Agreement for whatever reason, will be negotiated between the CITY and the CONSULTANT and an amendment to the Agreement will be issued with the appropriate change of services and Agreement fee noted.
- 13. LEGAL RELATIONS:** The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.
- 14. TERMINATION OF AGREEMENT:** The right is reserved by the CITY to terminate this Agreement at any time upon not less than ten (10) days written notice to the CONSULTANT.

In the event the CITY terminates this Agreement, the CONSULTANT shall be paid for the amount of work performed or services rendered to date of termination per the Agreement fee.
- 15. ENDORSEMENTS:** The CONSULTANT shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.
- 16. OWNERSHIP OF DOCUMENTS:** All information relating to the project and prepared under the terms of the Agreement, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed the property of the CITY. Reproducible originals of all notes, reports, and plans shall be made available at the CITY'S request.
- 17. PUBLIC INFORMATION:** The CONSULTANT shall not issue any statements, releases, or information for public dissemination without prior written approval of the CITY.
- 18. PROPRIETARY RIGHTS:** If patentable discoveries or inventions should result from work required herein, all rights accruing from such discoveries or inventions shall be the property of the CITY.

**19. RECORDS:** The CONSULTANT shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the Agreement term and for three (3) years from the date of final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by the CITY and copies thereof shall be furnished if requested.

**20. ATTORNEY'S FEES AND COSTS:** In the event it becomes necessary for either Party to this Agreement to retain an attorney to enforce any of the terms or conditions of the Agreement or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs.

**21. LITIGATION LOCATION:** The parties agree that this Agreement shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the contract or the performance of its terms.

**22. MODIFICATION AND AMENDMENTS:** That any amendment or modification of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

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

A. The CONSULTANT shall not indemnify, defend, save and hold CITY harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of CITY occurring during the course of or as a result of the performance of the Agreement.

B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both CITY and CONSULTANT, the CONSULTANT shall indemnify, defend, save, and hold CITY harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the CONSULTANT'S or any subcontractor's wrongful or negligent acts occurring as a result from the CONSULTANT'S performance pursuant to this Agreement.

**24. LIMITATION OF LIABILITY:** In no event shall CONSULTANT be liable for special, indirect, incidental, economic, consequential or punitive damages, regardless of the legal theory under which such damages are sought, and even if CONSULTANT has been advised of the likelihood of such damages. CITY agrees that CONSULTANT total liability to CITY for any and all damages arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or CONSULTANT negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed the fees paid to CONSULTANT hereunder.

CONSULTANT

CITY OF BILLINGS, MONTANA

NAME: Maximus, Inc.

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

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST:\_\_\_\_\_

Cari Martin, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Brent Brooks, City Attorney

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

# D

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 28, 2008**

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**TITLE:** WO 05-20 Aronson Avenue Professional Services Contract Amendment #2

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** This contract amendment for HKM Engineering, Inc. is to provide construction administration services for the bridge inspection and construction staking for Aronson Avenue. City Council awarded the bid to Cop Construction in the amount of \$5,634,212.70 at the January 14, 2008, council meeting.

**FINANCIAL IMPACT:** This contract amendment is for \$215,987.00 and brings the total professional services contract with HKM Engineering, Inc. to \$ 710,784.00.

The available funding for this project is as follows:

Available Funding	\$699,037.30
<u>Construction Administration (This memo)</u>	\$215,987.00
Remaining Funds (After this memo)	\$483,050.30

The remaining funds will be used for potential change orders, rights-of-way costs, and public works engineering fees.

**RECOMMENDATION**

Staff recommends that Council approve the professional services contract amendment for WO 05-20 Aronson Avenue with HKM Engineering, Inc. in the amount of \$ 215,987.00.

**Approved By:** City Administrator City Attorney

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 28, 2008**

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**TITLE:** Amendment 2 to the Scheduled Airline Operating Agreement and Terminal Building Lease

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** On June 30, 2006, the two-year Scheduled Airline Operating Agreement and Terminal Building Lease (the Agreement) with the signatory airlines expired. Due to the bankruptcies and other financial difficulties that the airline industry has suffered, the airlines would only look at short-term agreements, so staff subsequently negotiated an Agreement Amendment extension through June 30, 2007. Big Sky Airlines, Horizon Air, Northwest Airlines, SkyWest Airlines and United Airlines signed Amendment 1 to the Agreement. Frontier Airlines and Allegiant Air opted not to sign the Agreement and operate under City Ordinance, which requires a higher landing fee. Since the Airport is undergoing a Master Plan process, which is anticipated to take approximately two years to complete, staff approached the airlines with a two-year extension to the Agreement. The signatory landing fee is \$.66 per 1,000 pounds of landed weight, whereas the non-signatory landing fee calculated by Ordinance is \$0.94 per 1,000 pounds of landed weight. Staff has again worked with the five (5) signatory airlines to negotiate another extension to the Agreement. With approval of Amendment 2, the new expiration date will be June 30, 2009. Horizon Air, Northwest Airlines, SkyWest Airlines and United Airlines signed Amendment 2. Due to the recent announcement of Big Sky Airlines, a separate agreement will be negotiated with Big Sky's successor.

**FINANCIAL IMPACT:** This Amendment extends the term and helps to ensure the Airport's fiscal viability through June 30, 2009. The total budgeted airline revenue for the City is approximately \$2,845,000 for FY08.

**RECOMMENDATION**

Staff recommends that Council approve Amendment 2 to the Scheduled Airline Operating Agreement with Horizon Air, Northwest Airlines, SkyWest Airlines, and United Airlines; extending the Agreement expiration date to June 30, 2009.

Approved By:      City Administrator             City Attorney       

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

F

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, January 28, 2008**

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**TITLE:** Annexation Petition #08-05: Acknowledge Receipt of Petition and Set a Public Hearing Date

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** Owner and petitioner, First Citizens Bank of Billings, is requesting annexation of a property legally described as Lot 1, Sylvia Subdivision, located in Section 27, Township 1N, Range 26E into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located at 1094 Lincoln Lane, on the west side of Lincoln Lane, north of the Target Shopping Center in the Heights. The petitioner is requesting annexation in order to obtain city water and sewer services for redevelopment of the property for commercial uses. The subject property is currently vacant with Highway Commercial zoning. At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for February 11, 2008; the Council will vote on the petition at that public hearing.

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

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

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for February 11, 2008, 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: First Citizens Bank of Billings

Purpose of annexation: To obtain City Services

Property included: Lot 1, Sylvia Subdivision

Location: 1094 Lincoln Lane

Total area: 1.047 acres

Current zoning: Highway Commercial

Current land use: vacant

Future zoning: Same

Future land use: Commercial uses

**ATTACHMENT B**  
Annexation Petition

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

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF 07-1104

Date Submitted: \_\_\_\_\_

Received By: Jeff Spillane

Petition Number: 08-05

Fee Paid: \_\_\_\_\_

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.

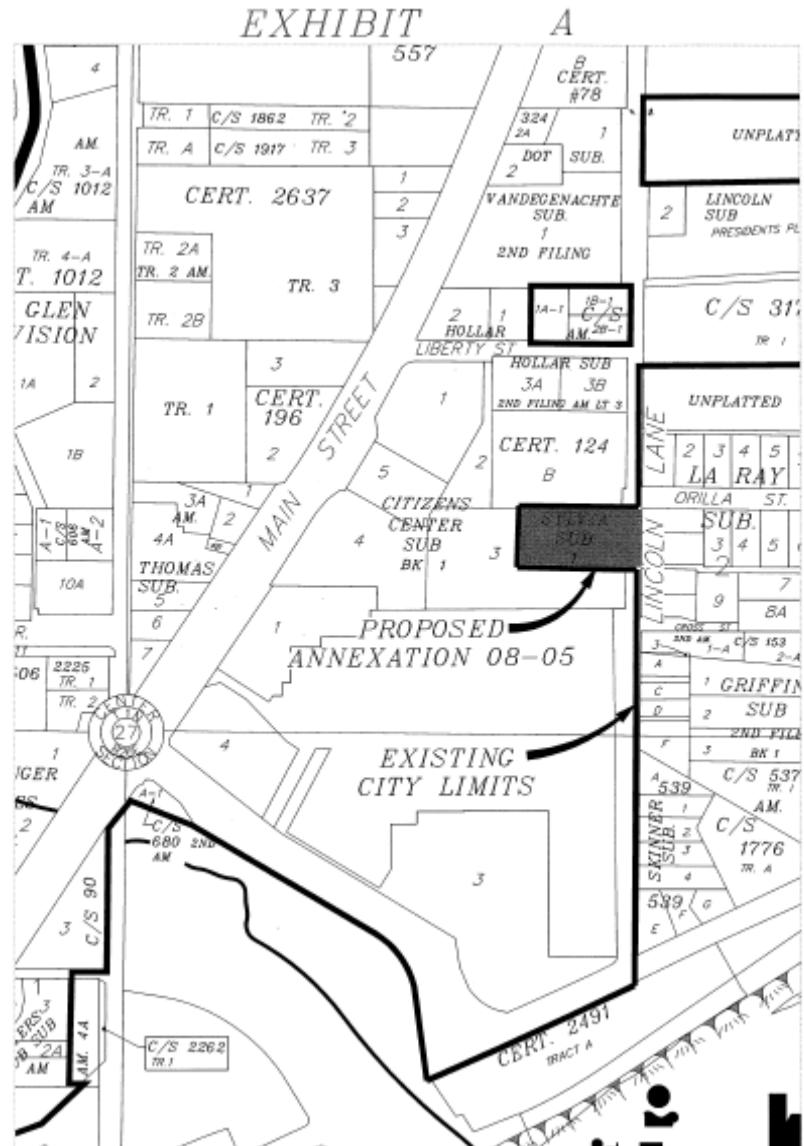
3. The Petition should be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4<sup>th</sup> Floor of Parmly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. 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, Parks and Recreation Department, and the Finance Department. If the departments find no problems with the Petition, the City Clerk will schedule the Petition for City Council action.
4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

**RESIDENT FREEHOLDER ELECTORS**

Date	Print Name	Name Signature	Address
12-12-2007	Mary Jo Devenier	Mary Jo Devenier	2812 1st Ave North
			Billings, MT 59102

(continued on separate page)

**ATTACHMENT C**  
Annexation Map



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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, January 28, 2008**

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**TITLE:** Acknowledge Receipt of Petition to Vacate portions of S. 24<sup>th</sup> Street, 4<sup>th</sup> Ave. S., 5<sup>th</sup> Ave. S., 6<sup>th</sup> Ave. S., alleys within Blocks 173 and 179 of Billings Old Town and Set a Public Hearing

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** ConocoPhillips has petitioned to vacate S. 24<sup>th</sup> Street south of 5<sup>th</sup> Ave. S., 5<sup>th</sup> Ave. S. east of S. 24<sup>th</sup> Street, a portion of 6<sup>th</sup> Ave. S. east of S. 25<sup>th</sup> Street, a small portion of 4<sup>th</sup> Ave. S. at ConocoPhillips' front entrance, and the alleys within blocks 173 and 179 of Billings Old Town totaling 40,292 square feet. ConocoPhillips owns all of the property abutting the proposed right-of-way and is proposing to develop the property in the future. Currently, there is a water and sanitary sewer line running through the proposed vacated area. ConocoPhillips will enter into an easement agreement that will allow full access to these lines and will require ConocoPhillips to relocate the water and sanitary sewer lines if they ever propose to construct a structure over the lines.

**ALTERNATIVES ANALYZED:**

1. Approve acknowledgement of petition to vacate the above-mentioned right-of-way and set a public hearing for February 25, 2008.
2. Do not approve acknowledgement of petition.

**FINANCIAL IMPACT:** A comparison land sales report was done by Charles H. Hamwey, which valued the right-of-way at \$2.25 to \$2.50 per square foot. ConocoPhillips is offering the city \$2.35 per square foot. In the past, the city has accepted \$2.00 per square foot from ConocoPhillips for right-of-way. The total amount offered from ConocoPhillips is \$95,000.00.

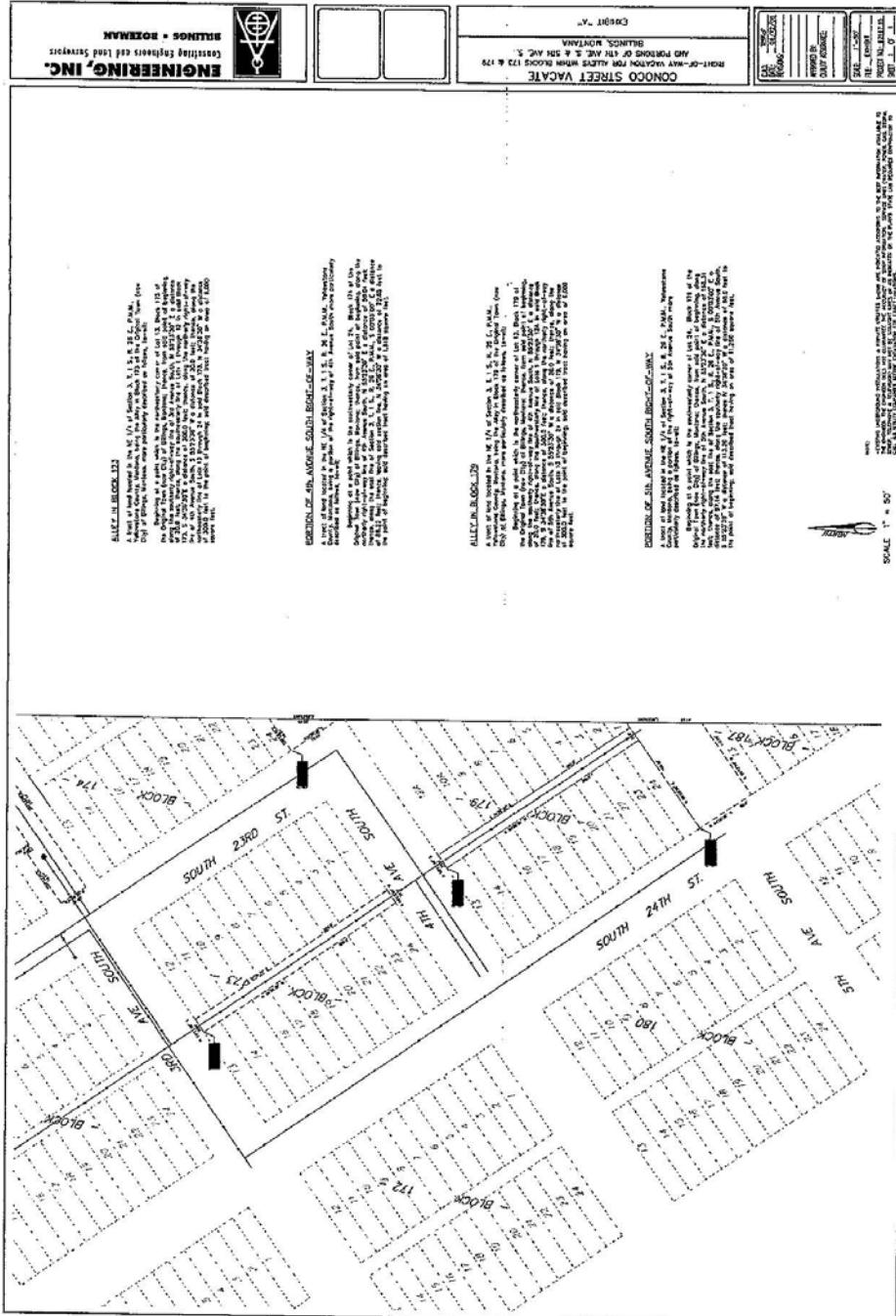
**RECOMMENDATION**

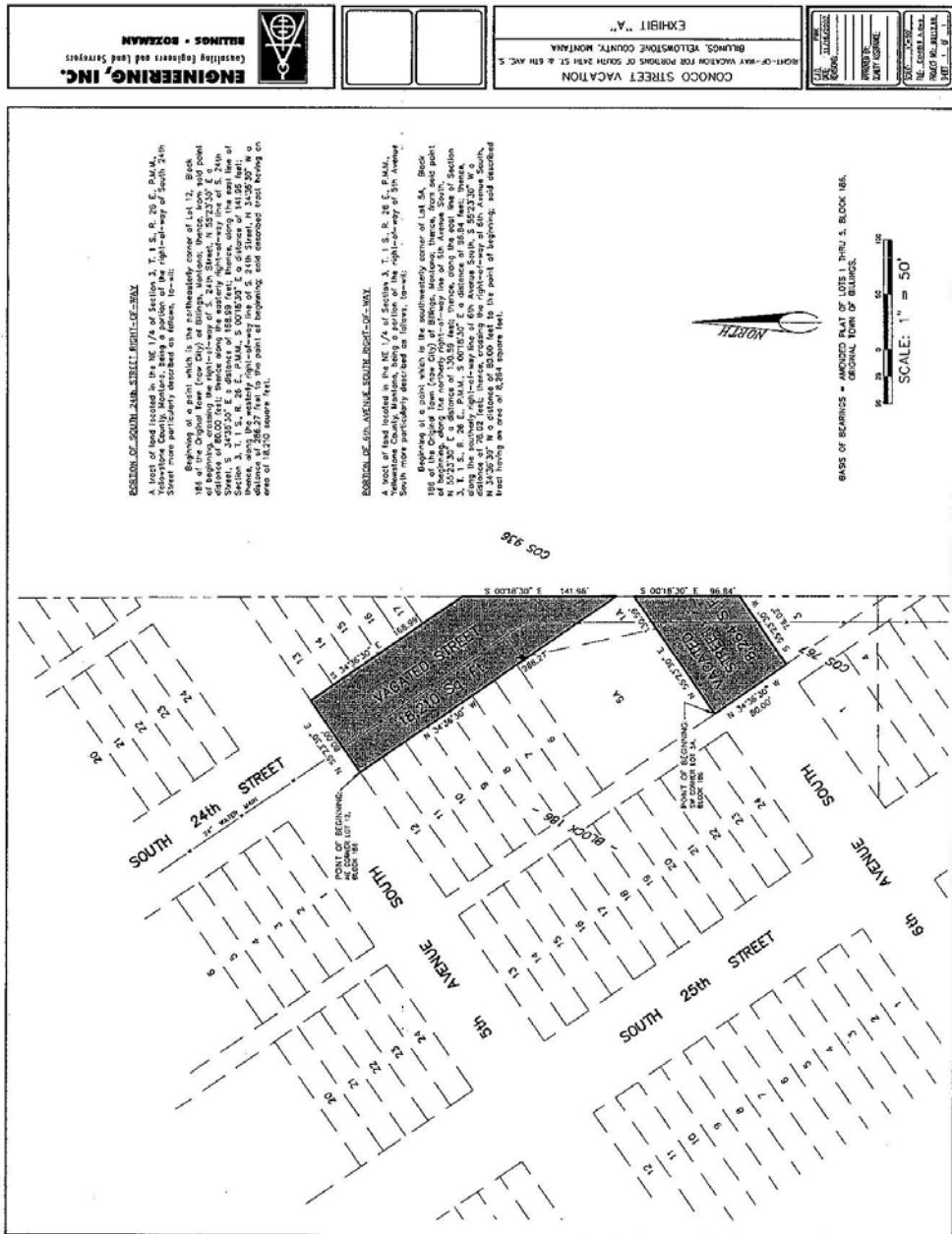
Staff recommends that Council acknowledge the receipt of petition to vacate portions of S. 24<sup>th</sup> Street, 4<sup>th</sup> Ave. S., 5<sup>th</sup> Ave. S., 6<sup>th</sup> Ave. S., alleys within Blocks 173 and 179 of Billings Old Town and set a public hearing for February 25, 2008.

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

**ATTACHMENTS**

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







1010 Grand Ave.  
Billings, Montana 59102  
(406) 248-2020  
FAX (406) 248-3949  
[www.hamwey.com](http://www.hamwey.com)

September 27, 2007

J.D. Adkins  
ConocoPhillips Co.  
338 Hwy 87 East  
Billings, MT 59101

Re: Vacating streets and alleys in  
Section 3, T1S, R26East

Dear J.D.:

Upon your request I have reviewed the above subject property on September 26, 2007 to determine the Estimated Fair Market Value as of this date.

This property is west of the ConocoPhillips refinery. In reviewing comparable sales in the area and taking in consideration of the location of the proposed taking, range in value is between \$2.25 per sq. ft. to \$2.50 per sq. ft.

It is apparent that the total taking consists of 41,102 sq. ft. and based on the range in values in this area, it is my opinion that the Estimated Fair Market Value for the taking is

**\$97,000**

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

Sincerely,

A handwritten signature in black ink, appearing to read "Charles H. Hamwey".  
Charles H. Hamwey





1010 Grand Ave.  
Billings, Montana 59102  
(406) 248-2020  
FAX (406) 248-3949  
[www.hamwey.com](http://www.hamwey.com)

**PROFESSIONAL QUALIFICATIONS**  
**CHARLES H. HAMWEY**  
**CERTIFIED REAL ESTATE APPRAISER**

**APPRaised FOR:**

US Bank, Yellowstone Bank, Valley Federal Credit Union, M.G.I.C., Billings Clinic, Billings School District #2, Burlington Northern, Kodak, Plus Relocation, Conoco, Small Business Administration, Various Attorneys in the Billings area including: Crowley Law Firm, Brown Law Firm and Dorsey & Whitney Law Firm, Western Security Bank, Served on Condemnation Commission for the State of Montana, Qualified in District Court as an expert in Real Estate and Real Estate Values

**EDUCATION:**

Graduate of Oneonta High School, Oneonta NY, in 1960 with Academic Degree  
Graduate of Rocky Mountain College, Billings MT, in 1964 with BA Degree  
Advance courses in Real Estate, including commercial courses at the University of Washington and commercial courses sponsored by the National Association of Realtors  
Graduate Real Estate Institute, GRI  
Certified Residential Specialist, CRI  
Certified Residential Broker, CRB  
Certified Real Estate Appraiser - Senior Designation

**BUSINESS AFFILIATIONS:**

Texaco, Inc., Real Estate Dept., 3 ½ years  
Husky Oil Co., Real Estate Dept., Assistant Division Mgr., 7 years  
Broker/Manager and Vice President of Floberg Realtors Inc., supervising 18 full time salespeople, 5 years  
Broker/Owner and President of Real Estate by Hamwey Inc., since 1980, 15 full time Sales  
Associates/Brokers  
Commercial Broker since 1975  
Appraising Real Estate since 1974

**MEMBERSHIP IN PROFESSIONAL SOCIETIES:**

National Association of Real Estate Appraisers  
National Association of Realtors  
Montana Association of Realtors  
Billings Board of Realtors  
Realtors National Marketing Institute

**REAL ESTATE RECOGNITION:**

Realtor of the Year, Billings Board of Realtors, 1981  
Salesman of the Year, Billings Board of Realtors, 1975  
Member of the Million-Dollar Club since 1975  
Real Estate Broker since 1973  
President of Billings Board of Realtors, 1981  
President Billings Multiple Listing Service, 1987, 1999, 2000, 2003  
State Director for the Billings Board of Realtors, 1980-1984, 1990-1994  
Chairman of Billings Legislative Committee, 1984-1990  
Member of the Yellowstone County Board of Planning, 1994 - 2004  
Chairman of the Yellowstone County Board of Planning 1999, 2000



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

# H

AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 28, 2008

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**TITLE:** Easement Approval to Northwestern Energy for a New Pole in Block 110, Billings Original Townsite.

**DEPARTMENT:** Public Works Department – Engineering Division

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

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**PROBLEM/ISSUE STATEMENT:** Northwestern Energy proposes to construct a new pole four feet south of an existing "H" frame pole structure for an overhead electric power line. This new pole is located just south of the Crowne Plaza Hotel and the downtown post office.

**ALTERNATIVES ANALYZED:**

- Approve easement access to set new Power Pole.
- Do not approve easement access to set new Power Pole.

**FINANCIAL IMPACT:** The cost for this easement is \$1980.00 based on recent appraised values in the area of \$10/sq ft and a total area of 198 sq ft.

**RECOMMENDATION**

Staff recommends that Council approve this easement to Northwestern Energy for the construction of a new pole for an overhead electric power line.

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

**ATTACHMENT**

- A. Utility Right-of-Way Easement

RETURN TO:  
NORTHWESTERN ENERGY  
LANDS and PERMITTING DEPARTMENT  
40 East Broadway  
Butte, MT 59701-9394

\*\*\* UTILITY RIGHT-OF-WAY EASEMENT \*\*\*

For valuable consideration, The CITY OF BILLINGS, ("Grantor") a political subdivision of the State of Montana, whose address is Post Office Box 1178, Billings Montana 59103, through its City Council, does hereby GRANT, SELL and CONVEY to the NORTHWESTERN CORPORATION d/b/a NORTHWESTERN ENERGY, a Delaware Corporation, of 40 East Broadway, Butte Montana 59701-9394, ("Grantee") and their successors, assigns and apportionees an easement upon which to construct, operate, maintain, replace, upgrade and remove a power pole structure and necessary appurtenances which may extend beyond the easement in a northeasterly and southwesterly direction, over, under, along and across that certain real property situated in Section 3, Township 1 South, Range 26 East, P.M.M., City of Billings, Yellowstone County, Montana, being more particularly described as follows:

DESCRIPTION OF EASEMENT  
SEE ATTACHED EXHIBIT "A"

Being the north 10.0 feet of the West 9.79 feet of Lot 6 Block 110 and the north 10.0 feet of the east 10.0 feet of Lot 7, Block 110 of the plat of Billings Original Town, Recorded September 1, 1884, under Document No. 16312.

The above described parcel contains 198 square feet, more or less.

Together with reasonable right of access to and from the easement area over lands of the Grantor using existing roads where practicable, the right to use and keep the easement area free and clear of any and all obstructions or structures, except fences, and the right to clear and remove all timber, brush or vegetation outside the easement area that may endanger the power line, communications system or necessary appurtenances.

In addition, the Grantee, its successors, agents, contractors, and employees agree to the following conditions of entry:

1. DAMAGE TO PROPERTY: Grantee shall exercise care to avoid damaging the property in any manner not consistent with the uses for which this agreement is made. If additional damage does occur it shall be the responsibility of the Grantee, its successors, agents, contractors, and employees to remove, replace and/or restore any concrete or asphalt to its original state.
2. COOPERATION WITH GRANTOR: Grantee shall at all times cooperate with Grantor and comply with reasonable requests not inconsistent with the purpose for which this agreement is issued.
3. CLEANUP: Shall upon completion of the work, clean all ground occupied of all rubbish, excess material, temporary structures and equipment.
4. ACCEPTANCE: All parts of the site shall be left in acceptable condition.

The rights, conditions and provisions of this easement shall inure to the benefit of and be binding upon, the successors and assigns of the parties hereto.

Grantor covenants and agrees with Grantee that Grantor is lawfully seized and possessed of the above-described real estate and Grantor has a good and lawful right to convey it, or any part thereof.

C:\Documents and Settings\00032358\Local Settings\Temporary Internet Files\OLK2\08 01 09 Utility Easement NWE at  
Downtown Post Office site.doc

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on this  
\_\_\_\_ day of January, 2008.

CITY:

CITY OF BILLINGS, a Montana  
Municipal Corporation

By: \_\_\_\_\_  
RON TUSSING, Mayor

ATTEST:

By: \_\_\_\_\_  
CARI MARTIN, City Clerk

STATE OF MONTANA)  
: ss.  
County of Yellowstone )

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

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

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

NORTHWESTERN CORPORATION d/b/a NORTHWESTERN ENERGY,  
a Delaware Corporation:

By: Nicole McCann Benge  
Printed Name: Nicole McCann Benge  
Its: Sr Mgr Operations & Substations

STATE OF MONTANA)  
: ss.  
County of Yellowstone )

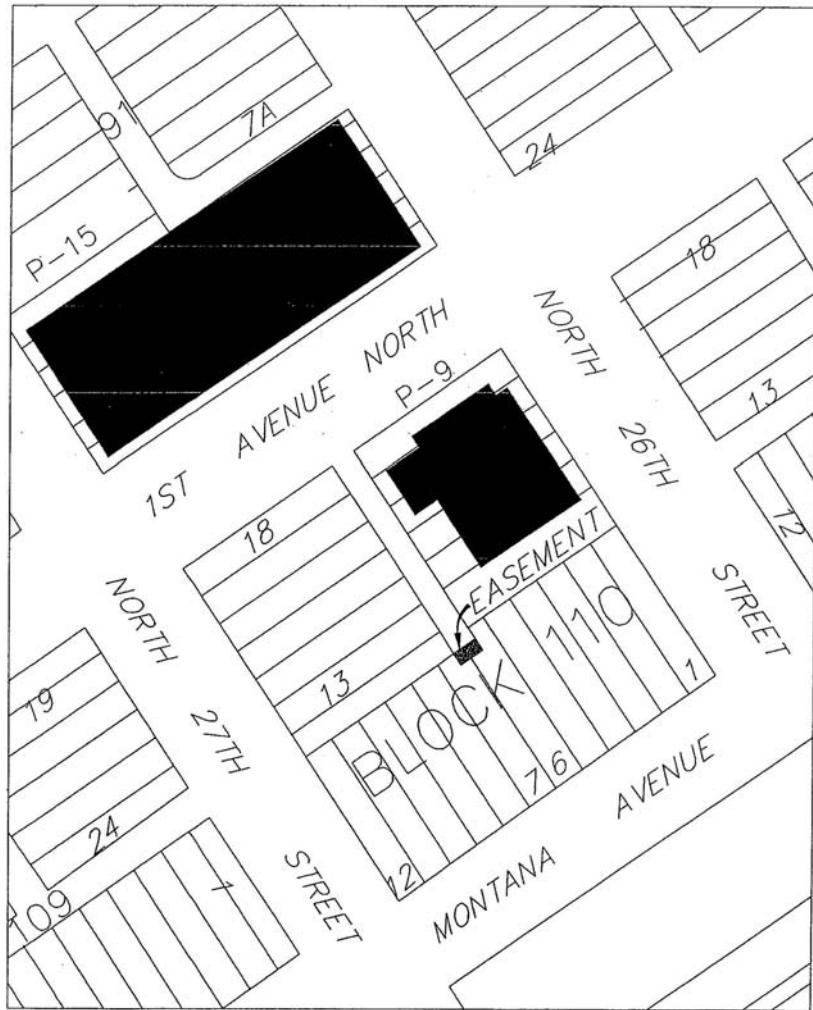
On this 10th day of January, 2008 before me, a Notary Public for the State of Montana, personally appeared Nicole McCann Benge, known to me to be the Sr Mgr Operations & Substations of NORTHWESTERN CORPORATION d/b/a NORTHWESTERN ENERGY, a Delaware Corporation, and acknowledged to me that (s)he executed the foregoing instrument as the authorized representative of NORTHWESTERN CORPORATION d/b/a NORTHWESTERN ENERGY, a Delaware Corporation.

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

Steve McFarland (Signature)  
(NOTARIAL SEAL) \_\_\_\_\_ (Printed Name)  
Steve McFarland \_\_\_\_\_ (Printed Name)  
Notary Public for the State of Montana  
Residing in Billings, Montana  
My Commission Expires: June 13th, 2011

ATTACHED TO AND MADE A PART OF THAT UTILITY RIGHT-OF-WAY EASEMENT  
DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008,  
BETWEEN THE CITY OF BILLINGS AND NORTHWESTERN CORPORATION d/b/a NORTHWESTERN  
ENERGY, a Delaware Corporation, of 40 East Broadway, Butte Montana 59701-9394,

EXHIBIT "A"



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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, January 28, 2008**

**TITLE:** W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Resolution and Acceptance of Quit Claim Deed From Larry C. Hoban & Donna Hoban For a Portion of Lot 14 of Josephine Subdivision

**DEPARTMENT:** Public Works

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

**PROBLEM/ISSUE STATEMENT:** Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. When the right-of-way was delineated along this portion of Lake Elmo Road, a discrepancy in ownership was found at the northeast corner of Lake Elmo Road and Lola Lane. Lola Lane was built sometime in the 1960's and has functioned continuously since that time as a public road. A title search determined that the north 20 feet of Lola Lane was, in fact, still owned by Larry & Donna Hoban. The Hobans were unaware of their ownership of this land and are willing to quit claim this land to the City in exchange for written assurance that they will not be charged back taxes on the land. Staff has prepared a quit claim deed acceptable to the Hobans, and requests Council approval of the resolution and acceptance of the deed. This quit claim deed will resolve a right-of-way discrepancy that has existed since Lola Lane was built.

**FINANCIAL IMPACT:** Acceptance of the quit claim deed has zero cost.

**RECOMMENDATION**

Staff recommends that Council approve the resolution accepting the Quit Claim Deed from Larry C. Hoban and Donna Hoban for a Portion of Lot 14 of Josephine Subdivision, at zero cost, and authorize the Mayor to execute the deed and resolution.

**ATTACHMENTS:**

- A. Quit Claim Deed (3 pages)
- B. Resolution Accepting Quit Claim Deed (2 pages)

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

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

## QUITCLAIM DEED

For valuable consideration as set forth below, **LARRY C. HOBAN** and **DONNA HOBAN**, as **GRANTORS**, do hereby release and forever quitclaim unto the **CITY OF BILLINGS, MONTANA**, a Municipal Corporation, of P.O. Box 1178, Billings, Montana 59103, as **GRANTEE**, their interest in the following described real property situated in the City of Billings, Yellowstone County, Montana:

Being the South 20 feet of the West 259.9 feet of Lot 14, of Josephine Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #428862.

Said Tract containing 5,198 square feet, more or less.

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

**THIS DEED IS GIVEN** and the conveyance is made on the express condition that any and all back taxes, if any, on the property shall be forgiven will not be assessed by the City of Billings against **GRANTORS** and that this conveyance will be accepted by action of the City Council of the City of Billings, and if either of these conditions fail, then this Deed is null and void and all title to the above-described property shall revert to the **GRANTORS**.

Dated this 27 day of Dec, 2007.

  
LARRY C. HOBAN  
  
DONNA HOBAN

STATE OF MONTANA)  
: ss.  
County of Yellowstone )

On this 27 day of Dec, 2007, before me, a Notary Public for the State of Montana, personally appeared **LARRY C. HOBAN AND DONNA HOBAN**, known to me to be the persons who signed the foregoing instrument and who acknowledged to me that they executed the same.

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

  
(Signature)

Rebecca L. Klein (Printed Name)  
Notary Public for the State of Montana  
Residing in Billings, Montana  
My Commission Expires: March 26, 2011



## **ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE**

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

RON TUSSING, Mayor  
CITY OF BILLINGS

ATTEST:

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

CARI MARTIN, City Clerk

STATE OF MONTANA)

: ss.

County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me, a Notary Public for the State of Montana, personally appeared **RON TUSSING** and **CARI MARTIN**, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

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

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

(NOTARIAL SEAL)

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

RESOLUTION NO. 08-\_\_\_\_\_

A RESOLUTION OF THE CITY OF BILLINGS,  
MONTANA, ACCEPTING A QUIT CLAIM DEED FOR A  
PORTION OF LOT 14 OF JOSEPHINE SUBDIVISION  
AND FORGIVING BACK TAXES, IF ANY, ON THESE  
LANDS

**WHEREAS**, a portion of the existing street commonly known as Lola Lane in the City of Billings appears to be vested in private ownership of Larry C. Hoban & Donna Hoban; and

**WHEREAS**, Lola Lane has been a public thoroughfare since the early 1960's; and

**WHEREAS**, the subject portion of said Lot 14 of Josephine Subdivision is not found as a separate parcel for tax assessment purposes; and

**WHEREAS**, the current vested owners, Larry C. Hoban & Donna Hoban, desire that the street continue its use as a public thoroughfare in exchange for the consideration of forgiveness of back taxes, if any; on these lands, and

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

1. **ACCEPTANCE OF PROPERTY INTEREST IN CONSIDERATION OF FORGIVENESS OF CITY TAXES.** In consideration of the forgiveness of any City taxes on the subject property, the City Council of the City of Billings accepts the quit claim deed for the following real property situated in the City of Billings, Yellowstone County, Montana, more particularly described as follows:

Being the South 20 feet of the West 259.9 feet of Lot 14, of Josephine Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #428862.

Said Tract containing 5,198 square feet, more or less.

2. **PUBLIC INTEREST.** The acceptance of this quit claim deed, and the forgiveness of back taxes, if any, on these lands, are deemed to be in the best interest of the public and can be done without any public detriment.

PASSED by the City Council and APPROVED this 28<sup>th</sup> day of January 2008.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Cari Martin CITY CLERK

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 28, 2008**

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**TITLE:** W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #34, a Portion of Tract 1 of Certificate of Survey No. 979 With Michael S. Eastwood Trust

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #34 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$23,950.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

**FINANCIAL IMPACT:** The total payment for this acquisition is \$23,950.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

**RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #34, a Portion of Tract 1 of Certificate of Survey No. 979 with Michael S. Eastwood Trust in the amount of \$23,950.00, and authorize the Mayor to execute these documents.

**ATTACHMENT**

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

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

## **INTRODUCTION**

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

## **PROCEDURAL HISTORY**

### Completed Items

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

### Future Items

- February 2008 – Estimated completion of right-of-way acquisition
- 2008-2009 – Design and construction of street improvements (in approved CIP)

## **BACKGROUND**

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

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

Current traffic counts along the section of Lake Elmo Drive between Hilltop and Wicks show

approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

## **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #34, a Portion of Tract 1 of Certificate of Survey No. 979 with Michael S. Eastwood Trust in the amount of \$23,950.00, and authorize the Mayor to execute these documents.

## **ATTACHMENT**

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

## CITY OF BILLINGS

(hereinafter referred to as City)

### RIGHT-OF-WAY AGREEMENT

<u>Lake Elmo Road</u>	<u>Hilltop Road to Wicks Lane</u>	Work Order: 04-33	<u>Yellowstone</u>		
DESIGNATION		Project No. 05153	<u>COUNTY</u>		
Parcel No.	Parcel Description	Section	Township		
34	Tract 1, Certificate of Survey No. 979	22	1N	Range	26E

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

MICHAEL S. EASTWOOD TRUST,  
MICHAEL S. EASTWOOD, TRUSTEE AND HELEN R. EASTWOOD, TRUSTEE  
5525 WALTER HAGEN DRIVE  
BILLINGS, MT 59106  
252-4161

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

2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)

15,897 square feet by deed		
(9,084 square feet existing easement)		\$ 1,136.00
(6,813 square feet new acquisition)		\$17,033.00.
Improvements (Asphalt, lawn, trees)		\$ 5,100.00

3. OTHER COMPENSATION:

2,557 square feet Temporary Construction Permit	\$639.00
---	----------

4. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$23,950.00.

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

A warrant in the amount of \$23,950.00, less any amount required by the Mortgagee, to be made payable to MICHAEL S. EASTWOOD TRUST, MICHAEL S. EASTWOOD, TRUSTEE AND HELEN R. EASTWOOD, TRUSTEE and mailed to 5525 WALTER HAGEN DRIVE BILLINGS, MT 59106

6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.

7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.

8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors

9. At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

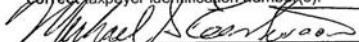
Reconfigure and repair sprinkler system, if any, affected by project. Relocate mail box if applicable.

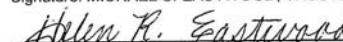
Grantors understand and agree that upon completion of the construction of this item located upon the Grantors' land, they shall be considered the sole property of the Grantors, and the maintenance and repair of said property shall be the responsibility of the Grantors.

(Continued from Previous Page)

## THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN:

We understand that we are required by law to provide our correct taxpayer identification number(s) to the City of Billings and that failing to comply may subject us to civil and criminal penalties. We certify our correct taxpayer identification number(s).

 12/11/07  
Signature: MICHAEL S. EASTWOOD, TRUSTEE (Date)

 12/11/07  
Signature: HELEN R. EASTWOOD, TRUSTEE (Date)

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

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

## RECOMMENDED FOR APPROVAL:

 12/11/07  
Ronald E. Olson, Olson Land Services (Date) \_\_\_\_\_ Mayor, City of Billings (Date)

## APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

## ATTEST:

\_\_\_\_\_  
City of Billings, Public Works Department (Date) \_\_\_\_\_ City Clerk (Date)

LER-034.200 Eastwood

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

Project No. W.O. 04-33 Parcel No. 34 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### **WARRANTY DEED**

THIS INDENTURE, made this 24 day of DECEMBER, 2007.

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

MICHAEL S. EASTWOOD TRUST,  
MICHAEL S. EASTWOOD, TRUSTEE AND HELEN R. EASTWOOD, TRUSTEE  
5525 WALTER HAGEN DRIVE  
BILLINGS, MT 59106

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

Parcel No. 34 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Tract 1 of Certificate of Survey No. 979, on file under Document No. 743949, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 15,897 sq. ft., including 9,084 sq. ft., which constitutes a part of an existing road easement.

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 2,557 sq. ft.

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

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

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

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

Project No. : W.O. 04-33

Parcel No. 34

Designation : LAKE ELMO ROAD – HILLTOP ROAD TO WICKS LANE

  
MICHAEL S. EASTWOOD, TRUSTEE

x Helen R. Eastwood  
HELEN R. EASTWOOD, TRUSTEE

State of Montana )  
County of Yellowstone )

This instrument was acknowledged before me on 12/21/2007  
(date)  
by MICHAEL S. EASTWOOD AND HELEN R. EASTWOOD, TRUSTEES OF THE MICHAEL S.  
EASTWOOD TRUST

Ronald C. Ells  
Notary Signature Line

Ronald C. Ellis  
Notary Printed Name

Notary Public for State of Montana  
Residing at: Billings  
My Commission Expires: 3-21-11

**ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE**

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

Mayor, City of Billings Date

ATTEST: \_\_\_\_\_

**City Clerk**

STATE OF MONTANA

255

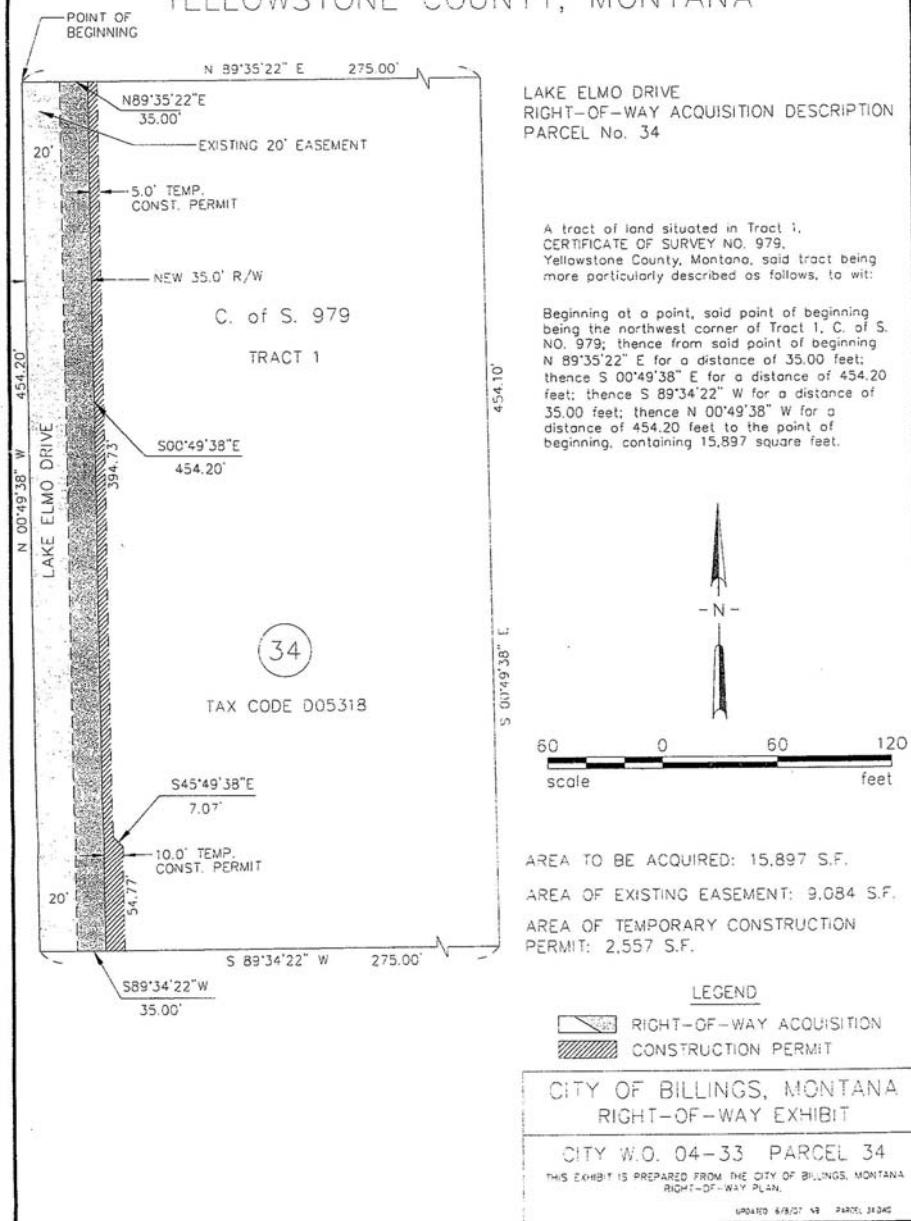
## County of Yellowstone

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

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

EXHIBIT A  
RIGHT-OF-WAY ACQUISITION  
AND TEMPORARY CONSTRUCTION PERMIT  
SITUATED IN TRACT 1,  
CERTIFICATE OF SURVEY NO. 979,  
YELLOWSTONE COUNTY, MONTANA



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

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 28, 2008**

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

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**PROBLEM/ISSUE STATEMENT:** On December 12, 2007, the Billings Animal Shelter received a \$500.00 donation from High Plains Psychiatric Associates, PC – Dr. Liz Walter, & Dr. Ann Rathe. The donation has been placed in the Animal Shelter Building Improvements Fund as requested by the donors on the City of Billings Donor Verification form received January 2, 2008. City Council is now asked to accept and deposit this donation into the City of Billings Animal Shelter Building Fund.

**ALTERNATIVES ANALYZED:**

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

**FINANCIAL IMPACT:** This donation to the Building Fund will be used for building improvements to benefit the community's animals.

**RECOMMENDATION**

Staff recommends City Council's approval and acceptance of this generous donation to the Billings Animal Shelter Building Fund.

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

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 28, 2008**

---

**TITLE:** Acceptance and Recognition of Donation to the Police substation at the new Fire Station

**DEPARTMENT:** Police Department, Animal Shelter Division

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

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**PROBLEM/ISSUE STATEMENT:** Since MDU was moving out of their building at 14 North 29<sup>th</sup> Street, they were going to dispose of their office furniture. Contact was made with Lt. Mark Cady to see if the Police Department could use the workstations. Lt. Cady went over to look at the workstations and decided that they could be used at the Police substation at the new Fire Station. The workstations have already been moved, but a donation form has not yet been received. City Council is being asked to accept and recognize the donation of 4 workstations to the Police substation at the new Fire Station.

**ALTERNATIVES ANALYZED:**

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

**FINANCIAL IMPACT:** Since office furniture was not budgeted for the Police substation at the new Fire Station, this donation will help furnish the area at no cost to the City.

**RECOMMENDATION**

Staff recommends City Council's approval and acceptance of the MDU donation of 4 complete workstations for the Police substation at the new Fire Station.

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

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, January 28, 2008**

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**TITLE:** SID 1383 Cherry Hills Road Resolution of Intent to Create District and Set a Public Hearing

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** Ron Hill, owner of 16 of the 28 lots proposed in the SID district boundary, has the desire to construct public improvements on Cherry Hills Road between Annandale Road and just east of Clubhouse Way. These improvements generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements to Cherry Hills Road. The storm drain improvements include construction of a pond and channel on Lake Hills Golf Course per the Lake Hills Storm Drain Feasibility Study. This portion of the storm drain will be paid out of storm funds.

**ALTERNATIVES ANALYZED:**

1. Approve the Resolution of Intent to Create SID 1383 and set a public hearing for February 25, 2008, City Council Meeting; or
2. Do not approve the Resolution of Intent to Create SID 1383.

**FINANCIAL IMPACT:** The total estimated costs of the Improvements are \$884,893.10. The costs of the Improvements are to be paid from the following sources: (1) \$333,000.00 of Special Improvement District bonds hereinafter described; (2) \$180,000.00 cash contribution from the City of Billings utilizing storm funds; and (3) \$371,893.10 of cash contribution by Ron Hill, owner of 16 of the 28 lots in the District.

**RECOMMENDATION**

Staff recommends that Council approve the Resolution of Intent to Create SID 1383 and set a public hearing date for February 25, 2008.

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

## **ATTACHMENTS**

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1383 Cherry Hills Road Resolution of Intent

## **INTRODUCTION**

Ron Hill, owner of 16 of the 28 lots within the proposed boundary of the SID, has a desire to develop lots on Cherry Hills Road. In order to develop these lots, all the necessary street improvements need to be constructed on Cherry Hills Road. These improvements generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements. To complete the project, it is necessary to create a Special Improvement District.

## **PROCEDURAL HISTORY**

- January 28, 2008 – Resolution of Intent to Create SID 1383.
- February 25, 2008 – Public Hearing and Resolution Creating SID 1383 and Professional Services Contract Award.
- Spring 2008 – Resolution Authorizing for Construction Bids and Construction Contract Award. (Proposed Schedule)

## **BACKGROUND**

The boundary of this proposed special improvement district is as indicated on the attached map. The public improvements contemplated under the terms of this project include water, sanitary sewer, storm drain, curb and gutter, street improvements to Cherry Hills Road. Also, included is the construction of another storm drain pond and channel within Lake Hills Golf Course utilizing city storm funds (\$180,000.00). Ron Hill, owner of 16 of the 28 lots in the District will pay a cash contribution to the project. The total cash contribution is equal to \$551,893.10 and represents 62 percent of the construction and administrative costs of the Improvements. This condition is necessary to satisfy the City's Special Improvement District Policy regarding raw land subdivision.

The public hearing will be held at the February 25, 2008, Council Meeting. If approved, it is anticipated that construction of SID 1383 will begin in the spring of 2008 and be completed by the summer of 2008.

## **RECOMMENDATION**

Staff recommends that Council approve the Resolution of Intent to Create SID 1383 and set a public hearing date for February 25, 2008.

## **ATTACHMENTS**

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1383 Cherry Hills Road Resolution of Intent

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the City), hereby certify that the attached resolution is a true copy of Resolution No. \_\_\_\_\_, entitled: **RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1383; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND** (the Resolution" was duly adopted by the City Council of the City at a meeting on January 28, 2008 that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.)

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: \_\_\_\_\_;

\_\_\_\_\_;  
voted against the same: \_\_\_\_\_;

\_\_\_\_\_;  
or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Cari Martin

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

RESOLUTION NO. 08-\_\_\_\_\_

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1383; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

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

**Section 1. Proposed Improvements; Intention To Create District.** The City proposes to undertake certain local Improvements (the "Improvements") to benefit certain property located in the City. The Improvements consist of the construction of Cherry Hills Road, as more particularly described in Section 5. The total estimated costs of the Improvements are \$884,893.10. The costs of the Improvements are to be paid from the following sources: (1) \$333,000.00 of Special Improvement District bonds hereinafter described; (3) \$180,000 cash contribution from the City of Billings; and (2) \$371,893.10 of cash contribution by Ron Hill, the owner of 16 of the 28 lots in the District, as more particularly described in Sections 6 and 9(f). It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a Special Improvement District (the "District") for the purpose of financing costs of the Improvements and paying costs incidental thereto, including costs associated with the sale and the security of Special Improvement District bonds drawn on the District (the "Bonds"), the creation and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Bonds are \$333,000.00. The Bonds are to be payable primarily from special assessments to be levied against property in the District, which property will be specially benefited by the Improvements.

**Section 2. Number of District.** The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1383 of the City of Billings, Montana.

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

**Section 4. Benefited Property.** The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits A, B, and F are hereby declared to be the Special Improvement District and the territory which will benefit and be benefited by the Improvements and will be assessed for the costs of the Improvements as described in Section 7.

**Section 5. General Character of the Improvements.** The general character of the Improvements, as shown in Exhibit E, is the construction of curb and gutter, sanitary sewer mains, sanitary sewer services, water mains, water services, and necessary street improvements fronting Lots on Cherry Hills Road between Annandale Road and just east of Clubhouse Way within Lake Hills Subdivision.

**Section 6. Engineer and Estimated Cost.** The Engineer will be chosen through a proposal process. The City Engineer's Office has estimated that the costs of the Improvements, including all incidental costs, are \$884,893.10.

**Section 7. Assessment Methods.**

**7.1. Property to be Assessed.** All properties within the district are to be assessed for the costs of the Improvements, as specified herein. The costs of the Improvements shall be assessed against the property in the District benefiting from the Improvements based on the equal amount methods described in Section 7-12-4162, M.C.A., as particularly applied and set forth in this Section 7.

**7.1.1 Equal Amount Method.**

Assessment #1 will include of curb and gutter, sanitary sewer mains, sanitary sewer services, water mains, water services, and street improvements to be constructed on Cherry Hills Road. The properties to be assessed for these improvements include Lake Hills Subdivision 13<sup>th</sup> Filing, Block 45, Lots 12, 13, 14, and 16; Lake Hills Subdivision 14<sup>th</sup> Filing, Block 45, Lots 18, 19, 20, 22, and 24; Lake Hills Subdivision 14<sup>th</sup> Filing, Block 46, Lots 1, 3, and 6. For the purposes of equitably apportioning special benefit to each lot, tract or parcel of land in the District, as above-mentioned, the Engineer has determined that each lot, tract, or parcel of land, receiving street improvements, shall equally bear the costs of the street improvements as set forth in Part III hereto to arrive at an equal cost for the street improvements. The total estimated cost of Assessment #1 is \$333,000.00 and shall be assessed against each lot, tract, or parcel of land within the District, as above-mentioned, receiving street improvements, on an equal amount basis based on the bid price to be received. The equal amount assessment is estimated to be \$27,750.00. The remaining parcels within Assessment #1 are owned by Ron Hill, which will be making a cash contribution for their assessment.

**7.2. Assessment Methodologies Equitable and Consistent With Benefit.** This Council hereby determines that the methods of assessment and the assessment of costs of the specific improvements against the properties benefited thereby as prescribed in this Section 7 are equitable in proportion to and not exceeding the special benefits derived from the respective improvements by the lots, tracts, and parcels to be assessed therefore within the District.

**Section 8. Payment of Assessments.** The special assessments for the costs of the Improvements shall be payable over a term not exceeding 15 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds. Property Owners have the right to prepay assessments as provided by law. Further, all owners shall have the opportunity to prepay their assessments prior to sale of the SID bonds.

**Section 9. Method of Financing; Pledge of Revolving Fund; Findings and Determinations.** The City will issue the Bonds in an aggregate principal amount not to exceed \$333,000.00 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the properties in the District. This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the city to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

(a) **Estimated Market Value of Parcels.** The estimated market value of the lots, parcels, or tracts in the District as of the date of adoption of this resolution, as estimated, by the County Assessor for property tax purposes ranges from \$2,844 to \$4,052, and is set forth in Exhibit F. The average market value is \$3,455.39 with the median being \$3,460. The special assessments to be levied under Section 7 against each lot, parcel, or tract in the District is less than the increase in estimated value of the lot, parcel, or tract as a result of the construction of the Improvements.

(b) **Diversity of Property Ownership.** There are a total of 28 parcels within the district boundaries. No improvements, public or private, are located on any of the parcels within the District. Sixteen (16) of these parcels are owned by Ron Hill. The remaining 12 parcels are owned by separate owners.

(c) **Comparison of Special Assessments and Property Taxes and Market Value.** Based on an analysis of the aggregate amount of the proposed, any outstanding special assessments (whether or not delinquent), and any delinquent property taxes (as well as any known industrial development bonds theretofore issued and secured by a mortgage against a parcel in the District) against each lot, parcel, or tract in the District in comparison to the estimated market value of such lot, parcel, or tract after the Improvements, the City concludes that, overall, the estimated market value of the lots, tracts, or parcels of land in the District exceeds the sum of special assessments, delinquent property taxes, and current assessments and is set forth in Exhibit F.

(d) **Delinquencies.** An analysis of the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against the properties in the District shows that of 28 properties, zero (0) properties were delinquent, and is set forth in Exhibit F.

(e) **The Public Benefit of the Improvements.** The total estimated costs of the Improvements are \$884,893.10. The costs of the Improvements are to be paid from the following sources: (1) \$333,000.00 of Special Improvement District bonds hereinafter described; (3) \$180,000.00 cash contribution from the City of Billings; and (2) \$371,893.10 of cash contribution by Ron Hill, the owner of 16 of the 28 lots in the District. All of the properties within the District are zoned Residential 9600. The public

improvements contemplated under the terms of this proposed District are required by the City Subdivision, Site Development and Zoning Ordinances in order for the parcels to develop.

(f) **Other Factors.** As previously noted, Ron Hill., owner of 16 of the 28 lots in the District will pay a cash contribution of \$371,893.10 to the project. Also, the City of Billings is making a cash contribution of \$180,000.00. The total cash contribution is equal to \$551,893.10 and represents 62 percent of the construction and administrative costs of the Improvements. This condition is necessary to satisfy the City's Special Improvement District Policy regarding raw land subdivision.

As shown on Exhibit F, six properties are being assessed for SID 1368 which will be paid off in the year 2021. SID 1368 constructed storm drain improvements serving these properties.

#### **Section 10. Reimbursement Expenditures.**

**10.01. Regulations.** The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

**10.02. Prior Expenditures.** Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

**10.03. Declaration of Intent.** The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$333,000.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

**10.04. Budgetary Matters.** As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

**10.05. Reimbursement Allocations.** The City's financial officer shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidence by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

**Section 11. Public Hearing Protests.** At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the City Clerk until 5:00 p.m., M.T., on the expiration date of said 15-day period (February 22, 2008), written protest against the proposed Improvements, or against the extension or creation of the District or both, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said, regular meeting will be held on Monday the 25<sup>th</sup> day of February 2008, at 6:30 p.m., in the Council Chambers, at 220 North 27<sup>th</sup> Street, in Billings, Montana.

**Section 12. Notice of Passage of Resolution of Intention.** The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the Billings Times, a newspaper of general circulation in the county on February 7 and February 14, 2008, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 28<sup>th</sup> day of January 2008.

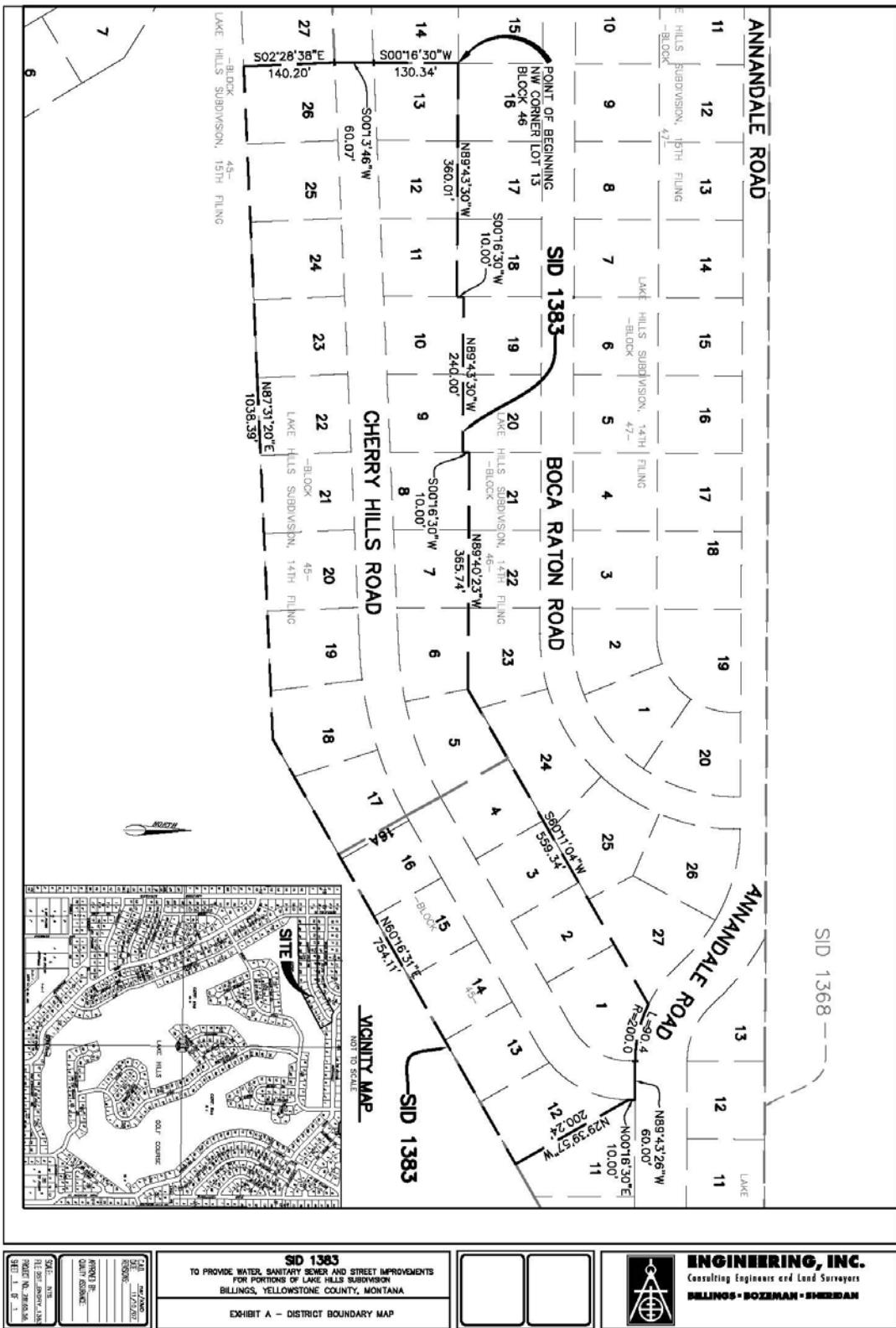
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Mayor

Attest:

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City Clerk



**EXHIBIT "B"**

**BOUNDARY DESCRIPTION  
SPECIAL IMPROVEMENT DISTRICT NO. 1383**

***Metes and Bounds Description:***

Beginning at a point that is the northwest corner of Lot 13, Block 46, Lake Hills Subdivision, Fourteenth Filing;

Thence, from said point of beginning, N 89°43'30" W a distance of 360.01 feet;

thence, S 00°16'30" W a distance of 10.00 feet;

thence, N 89°43'30" W a distance of 240.00 feet;

thence, S 00°16'30" W a distance of 10.00 feet;

thence, N 89°43'30" W a distance of 365.74 feet;

thence, S 60°11'04" W a distance of 559.34 feet;

thence, on a non-tangent curve to the left with a radius of 200.00 feet a distance of 90.4 feet;

thence, N 89°43'26" W a distance of 60.00 feet;

thence, N 00°16'30" E a distance of 10.00 feet;

thence, N 29°39'57" W a distance of 200.24 feet;

thence, N 60°16'31" E a distance of 754.11 feet;

thence, N 87°31'20" E a distance of 1038.39 feet;

thence, S 02°28'38" E a distance of 140.20 feet;

thence, S 00°13'46" W a distance of 60.07 feet;

thence, S 00°16'30" W a distance of 130.34 feet to the point of beginning; said described tract containing an area of approximately 12.07 acres.

<b>TOTAL ADMINISTRATIVE COSTS</b>	=	<b>\$119,562.41</b>
<b>CONSTRUCTION &amp; ADMINISTRATION SUBTOTAL</b>	=	<b>\$650,812.92</b>
Assessment Analysis		
Number of Parcels within District	28	
Construction and Engineering Costs		\$650,812.92
Construction and Engineering Costs per Lot		\$23,243.32

## EXHIBIT D

## SID 1383 - CHERRY HILLS ROAD

## TABLE OF ESTIMATED ASSESSMENTS PER ITEM

CODE #	ASSESSMENT ITEM	RAW		SID	TOTAL	TOTAL UNITS	CASH CONTRIBUTION	TOTAL UNITS TO BE APPLIED	% APPLIED TO			TOTAL THRU	UNIT COST PER	
		PLUS	% OF						CONTINGENCY	ADMINISTRATION	CONSTRUCTION	CONTINGENCY		
		CONTINGENCY	CONSTRUCTION	CONTINGENCY	CONTINGENCY									
1	Assessment #1	\$466,591.37	100.00%	\$64,659.14	\$531,250.51	\$119,562.41	\$650,812.92	28.00	EA	\$23,243.32	12.00	\$278,919.82	100.00%	
	<b>TOTALS</b>	<b>\$466,591.37</b>	<b>100.00%</b>	<b>\$64,659.14</b>	<b>\$531,250.51</b>	<b>\$119,562.41</b>	<b>\$650,812.92</b>			<b>\$278,919.82</b>	<b>100.00%</b>	<b>\$</b>	<b>\$54,080.18</b>	<b>\$333,000.00</b>

## **EXHIBIT E**

### **SID 1383 - CHERRY HILLS ROAD**

#### **PROJECT DESCRIPTION**

Special Improvement District No. 1383 shall construct the following improvements to Cherry Hills

#### **Cherry Hills Road - Annandale Road to Just East of Clubhouse Way**

- 1) Construction of street, curb, gutter, sanitary sewer, and water improvements.
- 2) Construction of storm drain improvements including the construction of a storm drain collection pond on Lake Hills Golf Course.

**EXHIBIT F**  
**SID 1383 - CHERRY HILLS ROAD**

**Water, Sanitary Sewer, Storm Drain, and Street Improvements**

TAX ID.	PREVIOUS NUMBER 6-13	PREVIOUS SID #	PAY-OFF	SID	CASH	SID 1383 ASSESSMENT	SID PAY-OFF + DELINQUENT +	ESTIMATED SID 1383 ASSESSMENT	ESTIMATED MARKET VALUE AFTER IMPROVEMENTS
A22568	1368	\$2,123.85		\$27,750.00	\$0.00	\$27,750.00	\$29,873.85	\$3,715.00	\$31,465.00
A22569	1368	\$2,123.85		\$27,750.00	\$0.00	\$27,750.00	\$29,873.85	\$3,085.00	\$30,835.00
A22570	1368	\$2,123.85		\$27,750.00	\$0.00	\$27,750.00	\$29,873.85	\$3,332.00	\$31,082.00
A22571				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,053.00	\$26,877.40
A22572	1368	\$2,123.85		\$27,750.00	\$0.00	\$27,750.00	\$29,873.85	\$2,844.00	\$30,594.00
A22574				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,531.00	\$27,355.40
A22575				\$27,750.00	\$0.00	\$27,750.00	\$27,750.00	\$4,052.00	\$31,802.00
A22576				\$27,750.00	\$0.00	\$27,750.00	\$27,750.00	\$3,713.00	\$31,463.00
A22577				\$27,750.00	\$0.00	\$27,750.00	\$27,750.00	\$3,797.00	\$31,547.00
A22578				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$2,797.00	\$27,621.40
A22579				\$27,750.00	\$0.00	\$27,750.00	\$27,750.00	\$3,797.00	\$31,547.00
A22580				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,797.00	\$27,621.40
A22581				\$27,750.00	\$0.00	\$27,750.00	\$27,750.00	\$3,797.00	\$31,547.00
A22582				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,796.00	\$27,620.40
A22583				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,796.00	\$27,620.40
A22585	1368	\$2,123.85		\$27,750.00	\$0.00	\$27,750.00	\$29,873.85	\$3,791.00	\$31,541.00
A22586				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,053.00	\$26,877.40
A22587	1368	\$2,123.85		\$27,750.00	\$0.00	\$27,750.00	\$29,873.85	\$3,053.00	\$30,803.00
A22588				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,053.00	\$26,877.40
A22589				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,573.00	\$27,397.40
A22590				\$27,750.00	\$0.00	\$27,750.00	\$27,750.00	\$3,438.00	\$31,188.00
A22591				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,121.00	\$26,945.40
A22592				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,263.00	\$27,087.40
A22593				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,168.00	\$26,992.40
A22594				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,307.00	\$27,131.40
A22595				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,207.00	\$27,031.40
A22596				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,340.00	\$27,164.40
A22597				\$0.00	\$23,824.40	\$23,824.40	\$23,824.40	\$3,482.00	\$27,306.40
AVERAGE		\$2,123.85	#DIV/0!			\$25,506.80	\$25,961.91	\$3,455.39	\$28,962.19
MEDIAN		\$2,123.85	#NUM!			\$23,824.40	\$23,824.40	\$3,460.00	\$27,620.90
LOW		\$2,123.85	\$0.00			\$23,824.40	\$23,824.40	\$2,844.00	\$26,877.40
HIGH		\$2,123.85	\$0.00			\$27,750.00	\$29,873.85	\$4,052.00	\$31,802.00

Note: Delinquent taxes are reported as of 12/18/07  
 Areas that are shaded represent cash contributions.

**CITY OF BILLINGS, MONTANA**  
**SPECIAL IMPROVEMENT DISTRICT ASSESSMENT DATA**  
**PART TWO**

<p>DATE: <u>January 2, 2008</u></p> <p>S.I.D. NUMBER: <u>1383</u></p> <p>S.I.D. DESCRIPTION: <u>Water, Sanitary Sewer, Storm Drain, and Street Improvements for the Extension of Cherry Hills Road</u></p> <p>YEARS TO BE ASSESSED: <u>15</u></p> <p>TOTAL S.I.D. AREA: <u>N/A</u></p> <p>MEASUREMENT: <u>X</u> EA <u>      </u> SF <u>      </u> LF</p> <p>S.I.D. COSTS: <u>X</u> ESTIMATED PER CONCEPT PLANS  <u>                  </u> ESTIMATED PER BID PRICE  <u>                  </u> FINAL PER ACTUAL CONSTRUCTION</p> <p>S.I.D. MAIN IMPROVEMENT COST: <u>\$333,000.00</u></p> <p>SPECIAL ADDITIONS:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">CODE</td> <td style="width: 20%;">Quantity</td> <td style="width: 20%;">Unit Cost</td> <td style="width: 20%;">Total</td> <td style="width: 20%;"></td> </tr> <tr> <td>1 Assessment #1</td> <td><u>12.00</u></td> <td><u>\$ 27,750.0000</u></td> <td><u>\$ 333,000.00</u></td> <td></td> </tr> <tr> <td colspan="3" style="text-align: center;">TOTAL PROJECT COST</td> <td>= <u>\$</u> <u>333,000.00</u></td> <td></td> </tr> </table> <p>(ALL COSTS TO INCLUDE PRORATA SHARE OF ADMINISTRATIVE COSTS)</p> <p>CITY CENTRAL SUPPORT SERVICES TO COMPLETE</p> <p>FIRST YEAR TO BE ASSESSED: _____</p> <p>TYPE ASSESSMENT: _____ PENDING _____ FINAL</p> <p>INTEREST RATE: _____</p> <p>BOND ISSUE DATE: _____</p>	CODE	Quantity	Unit Cost	Total		1 Assessment #1	<u>12.00</u>	<u>\$ 27,750.0000</u>	<u>\$ 333,000.00</u>		TOTAL PROJECT COST			= <u>\$</u> <u>333,000.00</u>		<p>DATA PROCESSING CARDS COLS</p> <p>A&amp;B 2 - 5</p> <p>A 6 - 39</p> <p>A 59 - 60</p> <p>A 61 - 71</p> <p>A 89 - 96</p> <p>A 40 - 41</p> <p>A 42</p> <p>A 53 - 58</p> <p>A 73 - 78</p>
CODE	Quantity	Unit Cost	Total													
1 Assessment #1	<u>12.00</u>	<u>\$ 27,750.0000</u>	<u>\$ 333,000.00</u>													
TOTAL PROJECT COST			= <u>\$</u> <u>333,000.00</u>													

**PART III****SID 1383 - CHERRY HILLS ROAD****TABLE OF ESTIMATED ASSESSMENTS PER PROPERTY****SID COSTS:**

ESTIMATE PER CONCEPT PLANS  
 ESTIMATE PER BID PRICES  
 FINAL PER ACTUAL CONSTRUCTION

PARCEL	OWNER	SUBDIVISION	BLK	LOT/TRACT	TAX I.D.	Assessment #1			TOTAL COST
						CODE	1 UNIT RATE	EA \$27,750.0000	
						CODE	ASSESSED QUANTITY	ASSESSED VALUE	
1	QUADE & FASBENDE	LAKE HILLS SUBD 13TH FILI	45	12	A22568	1	1.00	\$27,750.00	\$27,750.00
2	MCKITTRICK, LEON	LAKE HILLS SUBD 13TH FILI	45	13	A22569	1	1.00	\$27,750.00	\$27,750.00
3	KAERCHER, JAMES L	LAKE HILLS SUBD 13TH FILI	45	14	A22570	1	1.00	\$27,750.00	\$27,750.00
4	RON S HILL LIVING TRUST	LAKE HILLS SUBD 13TH FILI	45	15	A22571		0.00	\$0.00	\$0.00
5	QUADE, GARTH	LAKE HILLS SUBD 13TH FILI	45	16	A22572	1	1.00	\$27,750.00	\$27,750.00
6	HILL, RON S TRUSTEE OF THE	LAKE HILLS SUBD 14TH FILI	45	17	A22574		0.00	\$0.00	\$0.00
7	KEELING, JIM	LAKE HILLS SUBD 14TH FILI	45	18	A22575	1	1.00	\$27,750.00	\$27,750.00
8	KAERCHER, JAMES L	LAKE HILLS SUBD 14TH FILI	45	19	A22576	1	1.00	\$27,750.00	\$27,750.00
9	SCHWEYEN, BRIAN & SHANON	LAKE HILLS SUBD 14TH FILI	45	20	A22577	1	1.00	\$27,750.00	\$27,750.00
10	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILI	45	21	A22578		0.00	\$0.00	\$0.00
11	KAERCHER, JAMES L	LAKE HILLS SUBD 14TH FILI	45	22	A22579	1	1.00	\$27,750.00	\$27,750.00
12	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILI	45	23	A22580		0.00	\$0.00	\$0.00
13	SCHNEITER ENTERPRISES	LAKE HILLS SUBD 14TH FILI	45	24	A22581	1	1.00	\$27,750.00	\$27,750.00
14	RON S HILL LIVING TRUST	LAKE HILLS SUBD 15TH FILI	45	25	A22582		0.00	\$0.00	\$0.00
15	RON S HILL LIVING TRUST	LAKE HILLS SUBD 15TH FILI	45	26	A22583		0.00	\$0.00	\$0.00
16	MURRAY, HARRY J & PATRICIA	LAKE HILLS SUBD 14TH FILI	46	1	A22585	1	1.00	\$27,750.00	\$27,750.00
17	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILI	46	2	A22586		0.00	\$0.00	\$0.00
18	MARGARETTA W KINMAN TRUS	LAKE HILLS SUBD 14TH FILI	46	3	A22587	1	1.00	\$27,750.00	\$27,750.00
19	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILI	46	4	A22588		0.00	\$0.00	\$0.00
20	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILI	46	5	A22589		0.00	\$0.00	\$0.00
21	JONES, MARY LOUISE	LAKE HILLS SUBD 14TH FILI	46	6	A22590	1	1.00	\$27,750.00	\$27,750.00
22	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILI	46	7	A22591		0.00	\$0.00	\$0.00
23	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILI	46	8	A22592		0.00	\$0.00	\$0.00
24	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILI	46	9	A22593		0.00	\$0.00	\$0.00
25	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILI	46	10	A22594		0.00	\$0.00	\$0.00
26	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILI	46	11	A22595		0.00	\$0.00	\$0.00

## SID COSTS:

ESTIMATE PER CONCEPT PLANS  
 ESTIMATE PER BID PRICES  
 FINAL PER ACTUAL CONSTRUCTION

PARCEL	OWNER	SUBDIVISION	BLK	LOT/TRACT	TAX I.D. NUMBER 6-13	Assessment #1			TOTAL COST
						CODE	1 UNIT RATE	EA \$27,750.0000	
						CODE	ASSESSED QUANTITY	ASSESSED VALUE	
27	RON S HILL LIVING TRUST	LAKE HILLS SUBD 15TH FILL	46	12	A22596		0.00	\$0.00	\$0.00
28	HILL, RON S TRUSTEE OF THE	LAKE HILLS SUBD 15TH FILI	46	13	A22597		0.00	\$0.00	\$0.00
	TOTALS	Totals			28	12	12.00	\$333,000.00	\$333,000.00

**PART III**  
**SID 1383 - CHERRY HILLS ROAD**

**TABLE OF ESTIMATED ASSESSMENTS PER PROPERTY FOR CASH CONTRIBUTION**

**SID COSTS:**

ESTIMATE PER CONCEPT PLANS  
 ESTIMATE PER BID PRICES  
 FINAL PER ACTUAL CONSTRUCTION

				Assessment #1										
				CODE	1		UNIT	EA		2.5%				
				RATE	\$23,243.3185						PRIVATE			
PARCEL	OWNER	SUBDIVISION	BLK	LOT / TRACT	TAX ID.	NUMBER	6-13	CODE	ASSESSED QUANTITY	ASSESSED VALUE	TOTAL COST	CONTRACT FEE	TOTAL CONTRIBUTION	
1	QUADE & FASBENDE	LAKE HILLS SUBD 13TH FILE	45	12	A22568				0.00	\$0.00	\$0.00	\$0.00	\$0.00	
2	MCKITTRICK, LEON	LAKE HILLS SUBD 13TH FILE	45	13	A22569				0.00	\$0.00	\$0.00	\$0.00	\$0.00	
3	KAERCHER, JAMES L	LAKE HILLS SUBD 13TH FILE	45	14	A22570				0.00	\$0.00	\$0.00	\$0.00	\$0.00	
4	RON S HILL LIVING TRUST	LAKE HILLS SUBD 13TH FILE	45	15	A22571	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
5	QUADE, GARTH	LAKE HILLS SUBD 13TH FILE	45	16	A22572				0.00	\$0.00	\$0.00	\$0.00	\$0.00	
6	HILL, RON S TRUSTEE OF THE	LAKE HILLS SUBD 14TH FILE	45	17	A22574	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
7	KEELING, JIM	LAKE HILLS SUBD 14TH FILE	45	18	A22575				0.00	\$0.00	\$0.00	\$0.00	\$0.00	
8	KAERCHER, JAMES L	LAKE HILLS SUBD 14TH FILE	45	19	A22576				0.00	\$0.00	\$0.00	\$0.00	\$0.00	
9	SCHWEYEN, BRIAN & SHANON	LAKE HILLS SUBD 14TH FILE	45	20	A22577				0.00	\$0.00	\$0.00	\$0.00	\$0.00	
10	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILE	45	21	A22578	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
11	KAERCHER, JAMES L	LAKE HILLS SUBD 14TH FILE	45	22	A22579				0.00	\$0.00	\$0.00	\$0.00	\$0.00	
12	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILE	45	23	A22580	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
13	SCHNEITER ENTERPRISES	LAKE HILLS SUBD 14TH FILE	45	24	A22581				0.00	\$0.00	\$0.00	\$0.00	\$0.00	
14	RON S HILL LIVING TRUST	LAKE HILLS SUBD 15TH FILE	45	25	A22582	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
15	RON S HILL LIVING TRUST	LAKE HILLS SUBD 15TH FILE	45	26	A22583	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
16	MURRAY, HARRY J & PATRICIA A	LAKE HILLS SUBD 14TH FILE	46	1	A22585				0.00	\$0.00	\$0.00	\$0.00	\$0.00	
17	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILE	46	2	A22586	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
18	MARGARETTA W KINMAN TRUST 1999	LAKE HILLS SUBD 14TH FILE	46	3	A22587				0.00	\$0.00	\$0.00	\$0.00	\$0.00	
19	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILE	46	4	A22588	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
20	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILE	46	5	A22589	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
21	JONES, MARY LOUISE	LAKE HILLS SUBD 14TH FILE	46	6	A22590				0.00	\$0.00	\$0.00	\$0.00	\$0.00	
22	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILE	46	7	A22591	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
23	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILE	46	8	A22592	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
24	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILE	46	9	A22593	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
25	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILE	46	10	A22594	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
26	RON S HILL LIVING TRUST	LAKE HILLS SUBD 14TH FILE	46	11	A22595	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
27	RON S HILL LIVING TRUST	LAKE HILLS SUBD 15TH FILE	46	12	A22596	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
28	HILL, RON S TRUSTEE OF THE	LAKE HILLS SUBD 15TH FILE	46	13	A22597	1	1.00	\$23,243.32	\$23,243.32	\$581.08	\$23,243.32	\$581.08	\$23,824.40	
<b>TOTALS</b>				<b>Totals</b>		<b>28</b>	<b>16</b>	<b>16.00</b>	<b>\$37,189.10</b>	<b>\$37,189.10</b>	<b>\$29,73</b>	<b>\$381,190.42</b>		

## RECOMMENDED BONDING COST ANALYSIS

### SID 1383 - CHERRY HILLS ROAD

#### Water, Sanitary Sewer, Storm Drain, and Street Improvements

SID CONSTRUCTION COSTS	<u>\$711,250.51</u>
ADMINISTRATION COSTS	
Precreation Documents	\$2,500.00
Sewer & Water Extension Application Fees	\$58.24
DEQ Sewer & Water Checklist Review Fees	\$200.00
Printing and Production of Plans and Specifications	\$2,500.00
Preliminary Engineering & Design	\$30,000.00
Final Design	\$24,000.00
Construction Management	\$28,716.27
Construction Staking	\$22,973.02
Quality Control Testing	\$8,614.88
SUBTOTAL ADMINISTRATION COSTS	<u>\$ 119,562.41</u>
SUBTOTAL PROJECT COSTS	<u>\$ 830,812.92</u>
LESS CONTRIBUTIONS	
Ron Hill	(\$371,893.10)
City of Billings Contribution	<u>(\$180,000.00)</u>
PROJECT COSTS TO BE APPLIED TO SID	<u>\$ 278,919.82</u>
SID COSTS	
ADMINISTRATION / FINANCE FEES (2.5%)	\$ 8,325.00
ENGINEERING FEE (3.5%)	\$ 11,655.00
SID REVOLVING FUND (5%)	\$ 16,650.00
BOND DISCOUNT FEE (2%)	\$ 6,660.00
ISSUANCE COSTS (3.0%)	\$ 9,990.00
BANK FEES	\$ 1,000.00
ROUNDOFF	\$ (199.82)
TOTAL BONDING COST	<u>\$ 333,000.00</u>

#### BONDS AWARDED TO:

INTEREST RATE \_\_\_\_\_ % DATE BONDS ISSUED: \_\_\_\_\_  
 \_\_\_\_\_ BONDS @ \$ \_\_\_\_\_ TOTAL ISSUE \$ \_\_\_\_\_  
 PREMIUM \$ \_\_\_\_\_ . BONDS TO BE PAID ANNUALLY COMMENCING JANUARY 1,  
 AND SHALL MATURE JANUARY 1, \_\_\_\_\_.  
 APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_\_.  
 \_\_\_\_\_

DISTRICT

DIRECTOR OF FINANCE

CITY ENGINEER

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# M

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 28, 2008

**TITLE:** Resolution Amending Resolution 07-18655 – Annexing Territory in the City (Annexation #07-25)

**DEPARTMENT:** Planning and Community Services

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

**PROBLEM/ISSUE STATEMENT:** On December 10, 2007, the City Council conducted a public hearing and passed a Resolution annexing a 40-foot wide county road tract legally described as a portion of Lot 1, Block 5, Long Subdivision (44<sup>th</sup> Street West), containing approximately 2.457 acres. Upon receipt of the resolution, an error was found in the legal description for the property. A new resolution has been prepared amending the previous resolution.

#### ALTERNATIVES ANALYZED:

- Approve the amended resolution annexing the property legally described as a portion Lot 1, Block 5, Long Subdivision
- Deny the amended resolution annexing the property legally described as a portion of Lot 1, Block 5, Long Subdivision

**FINANCIAL IMPACT:** None

#### RECOMMENDATION

Staff recommends that the City Council approve the amended resolution annexing a property legally described as a portion of Lot 1, Block 5, Long Subdivision.

**Approved By:** City Administrator        City Attorney       

#### **ATTACHMENT**

A. Amended Resolution

**ATTACHMENT A**  
**RESOLUTION NO. 08-**

**A RESOLUTION OF THE CITY OF BILLINGS TO CONSIDER ANNEXING TERRITORY UNDER TITLE 7, CHAPTER 2, PART 44 OF THE MONTANA CODE ANNOTATED**

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

WHEREAS, Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city "shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed;" and

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

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

A portion of Lot 5, Block 1, Long Subdivision, Recorded August 30, 1994, Under Document No. 1755400, Records of Yellowstone County, Montana, more particularly described as:

The west 40.0 feet of said Lot 5, Block 1, Long Subdivision, adjacent to Western Sky Subdivision, Recorded April 19, 2006, Under Document No. 3374355, Records of Yellowstone County, Montana, including all adjacent right-of-way of King Avenue West.

Said Tract containing 2.457 gross and net acres.

(# 07-25) See Exhibit "B" Attached

2. **PROCEDURE.** To comply with all procedures as required under M.C.A., Title 7, Chapter 2, Part 44, this resolution shall become effective 30 days after its passage and approval, and thereafter the boundary of the City of Billings shall be as set forth in this resolution.

PASSED by the City Council and APPROVED this 28<sup>th</sup> day of January, 2008.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

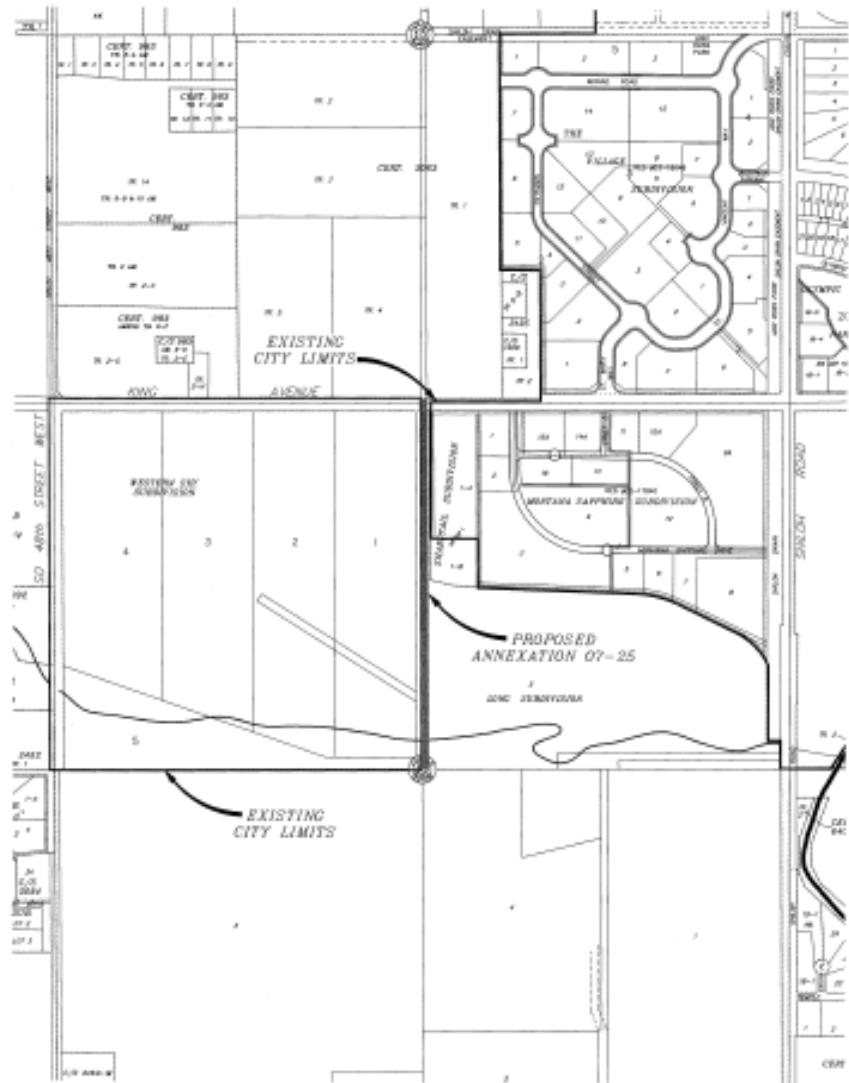
ATTEST:

BY: \_\_\_\_\_

CITY CLERK

(AN #07-25)

*EXHIBIT B*



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N

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 28, 2008**

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**TITLE:** Zone Change #828, 2<sup>nd</sup> Reading of Ordinance

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** The applicant is requesting to rezone Lot 3, Block 1, Rocky Village Subdivision, from Residential 9600 (R-96) to Residential Professional (RP). The subject property is generally located on the northwest corner of Poly Drive and 17<sup>th</sup> Street West and is currently a Conoco Service Station. The City Council held a public hearing and approved the first reading of the zone change on January 14, 2008.

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

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

**FINANCIAL IMPACT:** The proposed zone change could have an effect on the City's tax base once the property is developed.

**RECOMMENDATION**

The Zoning Commission forwards a recommendation of approval to the City Council for Zone Change #828.

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

**ATTACHMENTS:**

A: Ordinance

## **ATTACHMENT A**

### **ORDINANCE NO. 08-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Lot 3, Block 1, Rocky Village Subdivision, Section 36,  
T.1N, R.25E, containing approximately .583 acres

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

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

2. **DESCRIPTION.** A tract of land known as Lot 3, Block 1, Rocky Village Subdivision, Section 36, T.1N, R.25E, containing approximately .583 acres and is presently zoned Residential 9600 and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9600 to Residential Professional** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential Professional** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading January 14, 2008.

PASSED, ADOPTED AND APPROVED on second reading January 28, 2008.

CITY OF BILLINGS:

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

ATTEST:

BY: Cari Martin, City Clerk

ZC #828

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



AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 28, 2008**

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**TITLE:** Preliminary Plat Lot 1, Block 1, Billings Clinic Subdivision

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On December 17, 2007, the Planning Division received an application for a subsequent minor plat approval for Lot 1, Block 1, Billings Clinic Subdivision, on approximately 191,560 square feet (4.4 acres) of land in the medical corridor. The proposed subdivision is an aggregation of lots that currently exist. It is located between North 28<sup>th</sup> and 29<sup>th</sup> Street and 7<sup>th</sup> Avenue North and 9<sup>th</sup> Avenue North. The owners are Billings Clinic, the representing agent is Engineering Incorporated.

**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 July 20, 2007. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

**RECOMMENDATION**

Staff recommends conditional approval of the Preliminary Plat of Lot 1, Block 1, Billings Clinic 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. Site Photographs
- C. Findings of Fact
- D. Mayor's Approval Letter

## **INTRODUCTION**

On December 17, 2007, the subdivider applied for preliminary plat approval for a subsequent minor subdivision Preliminary Plat Lot 1, Block 1, Billings Clinic Subdivision. The subject property is approximately 191,560 square feet (4.4 acres) of land for medical related development. The surrounding property zoning is Medical Corridor Permit Zoning District to the north, east and west and Community Commercial to the south.

## **PROCEDURAL HISTORY**

- The preliminary plat application was submitted to the Planning Division on December 17, 2007.
- The City Council will consider the preliminary plat application on January 28, 2008.

## **BACKGROUND**

General location: Between North 28<sup>th</sup> and 29<sup>th</sup> Street and 7<sup>th</sup> Avenue North and 9<sup>th</sup> Avenue North.

Legal Description: Being all of Block 26, and Lots 1 through 21, of Block 36, in Fosters Addition, plus vacated portions of 8<sup>th</sup> Avenue North and vacated alley.

Subdivider: Billings Clinic

Owner: Same

Engineer and Surveyor: Engineering Incorporated

Existing Zoning: Medical Corridor Permit Zoning District

Existing land use: Medical facilities

Proposed land use: Medical facilities

Gross area: 191,560 square feet

Net area: 191,560 square feet

Proposed number of lots: 1

Lot size: Max: 191,560 square feet (4.4 acres)  
Min.: 191,560 square feet (4.4 acres)

Parkland requirements:

A parkland dedication is not required, as this is a subsequent minor subdivision.

### **ALTERNATIVES ANALYSIS**

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

### **RECOMMENDED CONDITIONS OF APPROVAL**

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. (*Recommended by the Engineering Division*)
2. 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.
3. 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 Department has received no public comments or questions regarding the proposed subdivision.

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

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

### **RECOMMENDATION**

Staff recommends conditional approval of the Preliminary Plat of Lot 1, Block 1, Billings Clinic Subdivision, and adoption of the Findings of Fact as presented in the staff report to the City Council.

### **ATTACHMENTS**

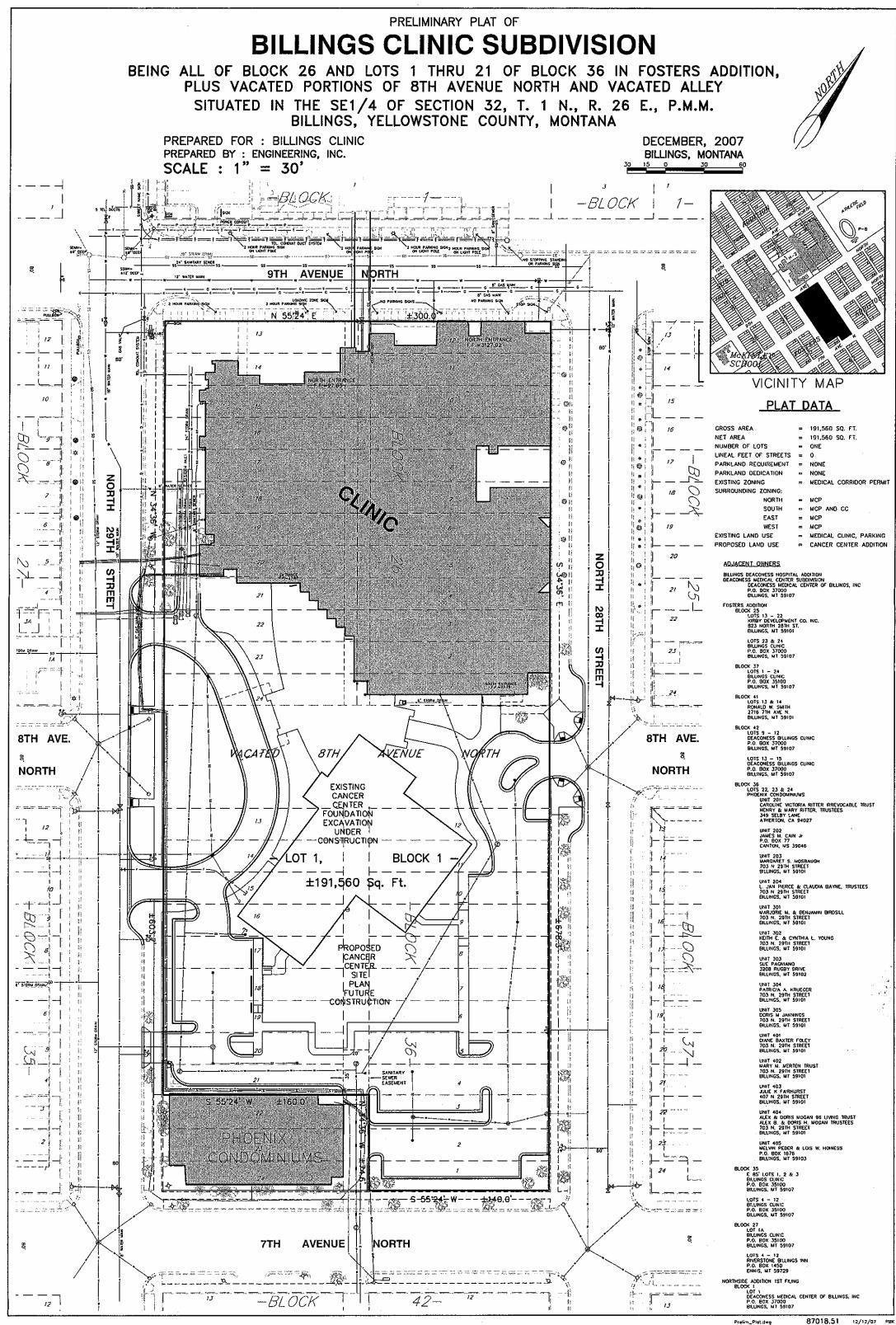
- A. Preliminary Plat
- B. Site Photographs

C. Findings of Fact

D. Mayor's Approval Letter

## ATTACHMENT A

### Preliminary Plat of Lot 1, Block 1, Billings Clinic Subdivision



**ATTACHMENT B**  
Site Photographs  
(not available)

## **ATTACHMENT C**

### Findings of Fact

Staff is forwarding the recommended Findings of Fact for Lot 1, Block 1, Billings Clinic Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Sections 23-304(c), BMCC).

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

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

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

##### **2. Effect on local services**

- a. **Utilities** – There are water lines and sanitary sewer lines available to the site from the surrounding streets. The property owner will be responsible for all connection fees and improvement cost as stated in the SIA.
- b. **Storm water** – As specified in the submitted SIA, there is currently a storm water stub connection to the lot. The development of the lot will be subject to all construction and connection fees to the existing storm water system.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** - Access to proposed Lot 1 will be from either North 29<sup>th</sup> Street or North 28<sup>th</sup> Street or 7<sup>th</sup> Avenue North.
- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 2305 8<sup>th</sup> Avenue North (Station #1). The subdivision is located within the ambulance service area of American Medical Response.
- f. **Schools** –This subdivision will have no effect on Schools.
- g. **Parks and Recreation** - A parkland dedication is not required, as this is a subsequent minor subdivision.

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

The proposed subdivision should have only minor effects on the natural environment, as there will be short term air and noise pollution associated with construction on the property.

##### **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 medical facility and the addition on the site in this area is consistent with the surrounding medical uses in neighborhood.*
- b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element Goal, Page 6)  
*The subject property is zoned Medical Corridor Permit Zoning District. The properties to the north, east and west are zoned the same as this parcel; the proposed subdivision is consistent with the neighborhood for medical development.*
- c. Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, Page 6)  
*The subject property is within the City and there are existing medical properties to the north and east; this could be considered infill development.*

#### **2. Urban Area 2005 Transportation Plan Update**

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

### **3. Heritage Trail Plan**

The Heritage Trail Master Plan has no trail corridor shown through 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 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 Medical Corridor Permit Zoning District and complies with the standards set forth in Section 27-308, BMCC.

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

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

Access to North 29<sup>th</sup> Street or North 28<sup>th</sup> Street or 7<sup>th</sup> Avenue North will provide legal and physical access to the lots.

## **CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Preliminary Plat Lot 1, Block 1, Billings Clinic 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, January 28, 2008

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Ron Tussing, Mayor

**ATTACHMENT E**  
Mayor's Approval Letter

January 28, 2008

Billings Clinic  
c/o Mitch Goplen  
Facilities Services  
2800 10<sup>th</sup> Avenue North  
Billings, Montana 59102

Dear Applicant:

On January 28, 2008, the Billings City Council conditionally approved the preliminary plat of Lot 1, Block 1, of Billings Clinic Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. (*Recommended by the Engineering Division*)
2. 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.
3. 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](mailto:greend@ci.billings.mt.us).

Sincerely,

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Ron Tussing, Mayor

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, January 28, 2008**

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**TITLE:** Final Plat of Amended Lot 4, Block 2, Goodman Subdivision

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** The final plat of Amended Lot 4, Block 2, Goodman Subdivision is being presented to the City Council for approval. The subject property is zoned Residential Multi Family-Restricted (RMF-R) and Residential Professional (RP) and is located on 41<sup>st</sup> Street West between Avenue B and Avenue C. On July 9, 2007, the City Council conditionally approved the 2-lot subsequent minor plat on 103,673 square feet (2.38 acres) of land for commercial and professional development. The owners are Jeff Muri, Randy Swenson, and Steve Repac. The representing agent is Stephen Zabriskie with Engineering Incorporated.

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

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

**RECOMMENDATION**

Staff recommends that the City Council approve the final plat of Amended Lot 4, Block 2, Goodman Subdivision.

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

**ATTACHMENT**

A:      Final Plat

**ATTACHMENT A**

Final Plat

PREPARED FOR STEVE REPAC, RANDY SWENSON, & JEFF MURI  
PREPARED BY : ENGINEERING, INC.

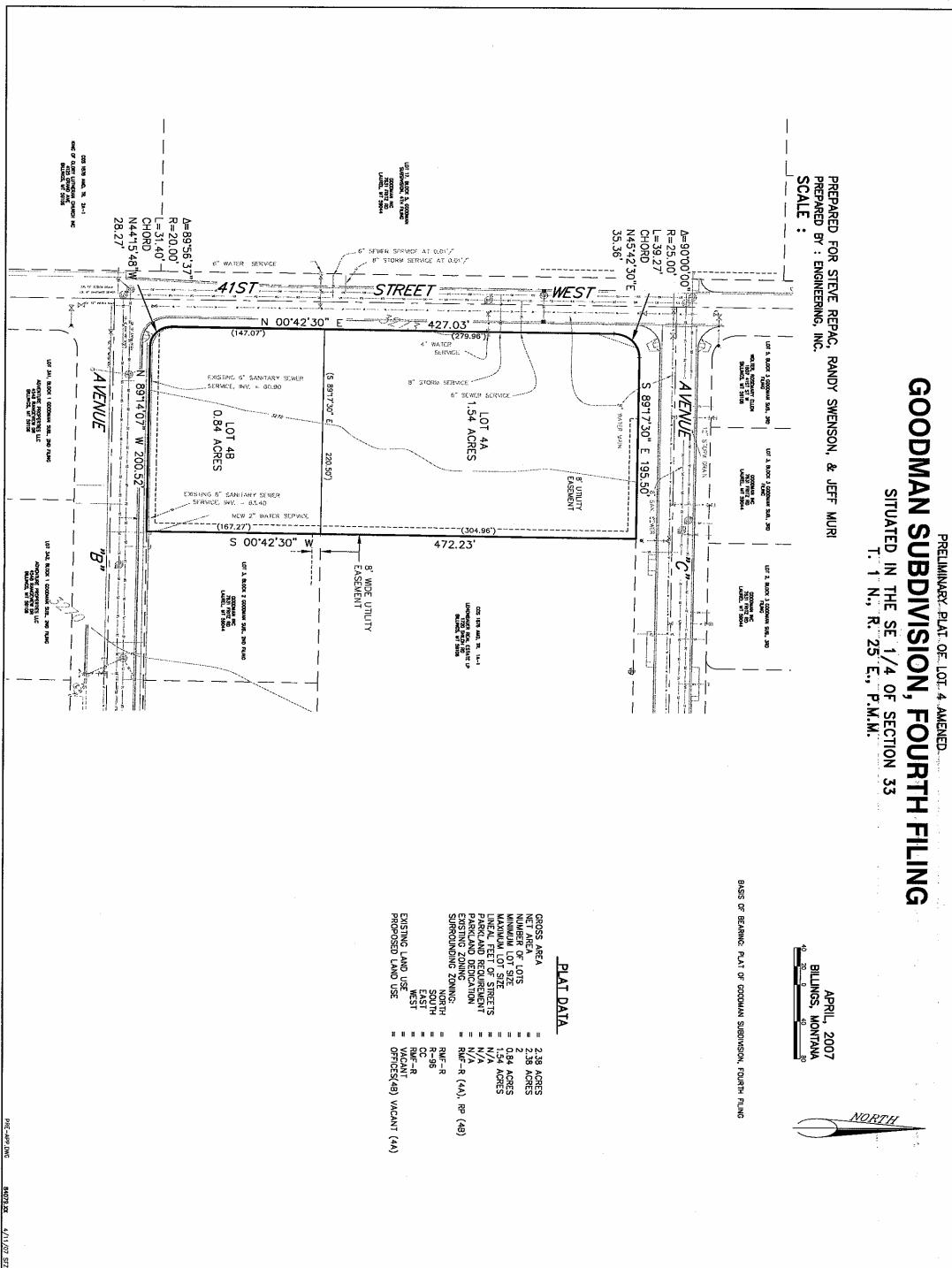
# GOODMAN SUBDIVISION, FOURTH FILING

STATED IN THE SE 1/4 OF SECTION 33  
T. 1 N., R. 25 E., P.M.M.

APRIL, 2007  
BILLINGS, MONTANA

**BASIS OF BEARING: PLAT OF GOODMAN SUBDIVISION, FOURTH FILING**

(Back to Consent Agenda)



# Q1

## AGENDA ITEM:

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### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, January 28, 2008

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**TITLE:** Payment of Claims

**DEPARTMENT:** Administration – Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,197,791.86 have been audited and are presented for your approval for payment. A complete listing of the claims dated December 21 and 27, 2007, are on file in the Finance Department.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

**Approved By:** City Administrator  City Attorney

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

# Q2

**AGENDA ITEM:**

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## **CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, January 28, 2008**

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**TITLE:** Payment of Claims

**DEPARTMENT:** Administration – Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,862,144.01 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 4, 2008, are on file in the Finance Department.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JANUARY 28, 2008**

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**SUBJECT:** Public Hearing and Approval of Resolution Approving and Adopting Second Quarter Budget Amendments for Fiscal Year 2007/2008

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** Budget amendments are requested for the Public Safety Fund – Fire Division, the General Fund, Fire Station #7 Construction Fund, HazMat Training Fund, Arterial Street Fund, Transportation Enhancement Fund, Gas Tax Fund, Parks and Recreation Construction Fund, Special Improvement Districts Funds, and Animal Shelter Spay/Neuter Fund. The amendment to the Public Safety Fund is to reduce salaries and benefits budgets for five unfilled fire suppression positions, one vacant deputy fire chief position and 3 months vacancy in the fire chief position. The General Fund is requesting budget authority to transfer funds to the Fire Station #7 Construction Fund which will have additional construction and landscaping expenses. The amendment to the HazMat Training Fund is needed to provide budget authority for monies provided by the State for HazMat Response Team training. The remaining budget requests are for streets, street improvements, special improvement district improvements, and recreation trails for Aronson Avenue, Alkali Creek Road, Jackson Street Sidewalks, Highland School Route Improvements, Clevenger SID, Interlachen SID, Cherry Hills SID, Drying Bed Expansion, and Banister Trail. The CTEP project budget increases are fully funded by federal grants and the Banister Trail project is partially funded with federal grant monies. The amendment to the Animal Shelter Spay/Neuter Fund is to assist pet owners with the cost of spaying and neutering their pets.

**RECOMMENDATION**

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the budget amendments for Fiscal Year 2007/2008 per attached.

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

**ATTACHMENT**

A-Resolution to Make Fiscal Year 2007/2008 Adjustment Appropriations (with Exhibit A)

*Attachment A*

RESOLUTION 08-

A RESOLUTION TO MAKE **FISCAL YEAR 2008** ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND REVISIONS WITHIN THE GENERAL CLASS OF SALARIES AND WAGES, MAINTENANCE AND SUPPORT AND CAPITAL OUTLAY.

WHEREAS, M.C.A. 7-6-4006 provides that the City Council, upon proper resolution, adopted by said Council at a regular meeting and entered into its Minutes, may transfer or revise appropriations within the general class of salaries and wages, maintenance and support, and capital outlay, and

WHEREAS, based upon a **Quarterly Budget Review (FY 2007/2008)**, it is necessary to alter and change said appropriations.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT A)

PASSED AND APPROVED by the City Council, this 28th day of January, 2008.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Cari Martin, CITY CLERK

**Exhibit A****BUDGET ADJUSTMENTS**RevenueExpenditure

150-2229-422 1610	(459,150) Vacancy savings
-------------------	---------------------------

To reduce the salaries budgets for six suppression positions, one deputy fire chief position and three months of the fire chief position by increasing vacancy savings.

495-2241-383 7515	60,000	Transfer from General Fund
010-1412-414 8253		60,000 Transfer to Fire Station #7 Construction Fund
495-2241-422 9355		15,000 Fire Station #7 Landscaping
495-2241-422 9290		19,000 Fire Station #7 Building Construction

To make an additional transfer from the General Fund to the Fire Station #7 Construction Fund and to provide budget authority for landscaping and additional construction expenditures.

220-2233-335 2045	44,167	Intergovernmental Revenues
220-2233-422 3590		20,000 Technical Advisory Group/Planning & Exercises
220-2233-422 3870		4,167 Outreach Training
220-2233-422 3822		20,000 Training & Exercises

To budget intergovernmental revenue from the State of Montana and to provide budget authority for planning and training expenditures for the State HazMat Response Team.

845-3186-431 9310		220,000 Road improvements - Aronson Avenue
845-3186-431 9310		180,000 Road improvements - Alkali Creek Road
210-3110-431 9311		119,000 Sidewalk, curb, and gutter – CTEP projects Jackson Street Sidewalks and Highland School Route Improvements
210-3110-331 1941	119,000	Federal grant – transportation enhancement program

205-3131-433	9310		55,000 Jackson Street Sidewalks, Phase I
205-3131-433	9310		28,000 Highland School Route Improvements
205-3131-433	9310		104,000 Road improvements – Aronson Avenue
205-3131-433	9310		350,000 Drying Bed Expansion
490-5161-331	1954	173,160	Federal grant – CTEP/BIKENET/ Recreational Tails Program Assistance
490-5161-452	9370		200,000 Banister Trail
456-3161-381	6810	235,000	SID 1378 Clevenger
456-3161-431	9310		235,000 Road improvements – SID 1378 Clevenger
452-3161-431	9310		84,000 Road improvements – SID 1370 Interlachen
450-3161-381	6810	333,000	SID 1383 Cherry Hills
450-3161-431	9310		333,000 Road improvements – SID 1383 Cherry Hills

To provide budget authority for the construction of streets, street improvements, special improvement district improvements, and recreation trails for Aronson Avenue , Alkali Creek Road, Jackson Street Sidewalks, Highland School Route Improvements, Clevenger SID, Interlachen SID, Cherry Hills SID, Drying Bed Expansion, and Banister trail. The CTEP project budget increases are fully funded by federal grants and the Banister Trail project is partially funded with federal grant monies.

713-2176-441	7935	2,500 Animal Shelter Spay/Neuter Relief Fund
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To provide budget authority to assist pet owners with the cost of having their animals spayed or neutered on February 28, 2008 – National Spay Day, USA.

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, January 28, 2008**

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**TITLE:** Public Hearing and Resolution for Annexation #08-02**DEPARTMENT:** Planning and Community Services Department**PRESENTED BY:** Aura Lindstrand, Planner II

**PROBLEM/ISSUE STATEMENT:** Owners and petitioners, King Business Park, LLC, Richard Dorn, Samuel Rankin, and Hannah Elletson, are requesting annexation of a property legally described as Tract 2-B-1 Certificate of Survey 1121, located in Section 16, Township 1S, Range 26E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located west of Washington Street, south of Interstate 90 and north of the Yellowstone River. The petitioner is requesting annexation in order to obtain city water and sewer services for completion of a minor commercial subdivision. The subject property is currently a historical homestead that was recently rezoned from Agricultural Open Space to Controlled Industrial in the county. A concurrent application for a 5-lot minor subdivision has been submitted for the subject property.

**ALTERNATIVES ANALYZED:** The City Council may approve or deny a petition submitted by owners of 50% of the real property in the area to be annexed (7-2-4601 (3)(b), MCA).

**FINANCIAL IMPACT:** The City can provide municipal services to the subject property. If the proposed zone change is approved, the property could further develop as commercial and residential, thereby increasing the tax revenue for the city.

**RECOMMENDATION**

Staff recommends that the City Council conduct the public hearing approve the Resolution Annexing Tract 2-B-1, Certificate of Survey 1121, subject to the following conditions of approval:

- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or

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

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

**ATTACHMENT**

A. Resolution

## **INTRODUCTION**

Owners and petitioners, King Business Park, LLC, Richard Dorn, Samuel Rankin, and Hannah Elletson, are requesting annexation of a property legally described as Tract 2-B-1, Certificate of Survey 1121, located in Section 16, Township 1S, Range 26E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located west of Washington Street, south of Interstate 90 and north of the Yellowstone River. The petitioner is requesting annexation in order to obtain city water and sewer services for completion of a minor commercial subdivision. The subject property is currently a historical homestead that was recently rezoned from Agricultural Open Space to Controlled Industrial in the county. A 5-lot minor subdivision has been submitted for the subject property.

The subject property is located in the area identified by the Limits of Annexation map to be annexed in the next four years and is located within the current Urban Planning Study.

## **PROCEDURAL HISTORY**

- On October 29, 2007, the Annexation Petition was submitted to the Planning Department.
- On November 29, 2007, a pre-application meeting was conducted for a proposed minor plat on the subject property.
- On January 1, 2008, the preliminary minor plat application was submitted to the planning department.
- On January 14, 2008, the City Council acknowledged the annexation petition and set a public hearing date for January 28, 2008.
- On January 28, 2008, the City Council will conduct the public hearing for the annexation.
- On February 11, 2008, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary I will be conducted; the proposed minor plat of Riverfront Business Park will be on the consent agenda for Council approval.
- On February 25, 2008, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading for ward boundary expansion.

## **BACKGROUND**

The subject property is bordered on the east side by a property located within the City Limits and is within the limits of annexation as specified by the updated Annexation Map adopted by the City Council on February 26, 2007.

## **ALTERNATIVES ANALYSIS**

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

1. The area is located within the Limits of Annexation and within an area identified to be included in the Urban Planning Area.

2. The City is able to provide adequate services.
3. The proposed improvements for the subdivision, including streets, satisfy City standards.
4. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the creation of any Special Improvement Districts.

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan including a 5-year (minimum) plan that outlines how and when services and infrastructure will be extended to the annexed area and how they will be financed. This report follows that general format.

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

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

- **Water:** Water to the subject property is available on the north side of the interstate. The Public Works Department has stated that the preferred point of extension is northeast of this tract at the intersection of Washington Street and McDougall Drive. A 12-inch main would be extended south across the interstate and then west along the frontage road and property frontage into the property.
- **Sewer:** Sewer to the subject property will be extended from the 48-inch main line in the frontage road along the northern boundary of the property. The Public Works review specified that a smaller parallel main will need to be constructed along the frontage road across the property frontage and into the property.
- **Stormwater:** Storm drainage does not exist in this area. However, the property is bordered on the east by the City-County drain and a limited amount of discharge may be allowed into the drain, provided it has adequate capacity. An onsite stormwater detention pond will be required with development on the property. All stormwater improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- **Transportation:** Access to the property will be via an internal public road from the frontage road to the north. All accesses on the South Frontage Road will require Montana Department of Transportation approval, as this road is under its jurisdiction. The South Frontage Road at this location is already within the city limit; therefore annexation of this right-of-way is not required. Annexation of all of the Fenton Street

right-of-way located adjacent to the west of this subdivision will be required. Additional traffic impacts for the site will be reviewed during the subdivision process, as a Traffic Accessibility Study was submitted with the proposed minor subdivision.

The Street and Traffic Division did express concerns over the ability to adequately service this property due to a reduction in staff.

- **Fire Station:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. The nearest fire station is located at 501 South 28<sup>th</sup> Street South (Station #2).
- **Parks:** A parkland dedication is not required, as this is a commercial subdivision. However, a portion of Riverfront Park and a trail system are located adjacent to the south of this property.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. No trail connections are proposed to the trails located to the south of the property.

**General City Services:** These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded did not object to the annexation of this property.

- **Transit:** The MET transit system had no objection with the annexation request and specified that they do have a bus stop within 1/8 mile of this property.
- **Fire:** The Fire Department had no objection with this annexation request.
- **Police:** The police department did state that continued annexations without an increase in assets will affect their ability to respond to calls in a timely manner.
- **Public Utilities Department:** The Public Utilities Department has no objection with the annexation request.
- **Public Works Department-Street and Traffic Division:** The Street and Traffic Division did express concerns over the ability to adequately service this property due to a reduction in staff.
- **Ambulance Service:** The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City

Ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.

- **Legal and Finance:** General Fund services, such as Legal and Finance have indicated that they will not be negatively impacted.
- **Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

## **STAKEHOLDERS**

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct a public hearing. Notice of the public hearing was posted on the property on January 11, 2008, and published in the Billings Times on January 10, 2008. The Planning Division has received no public comments regarding the proposed annexation.

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

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

- More housing and business choices within each neighborhood. (Land Use Element Goal, page 6)
- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10).

## **RECOMMENDATION**

Staff recommends that the City Council conduct the public hearing approve the Resolution Annexing Tract 2-B-1, Certificate of Survey 1121, subject to the following conditions of approval:

- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

## **ATTACHMENT**

- A. Resolution

**RESOLUTION NO. 08-**

**A RESOLUTION OF THE CITY OF BILLINGS  
APPROVING PETITIONS FOR ANNEXATION  
AND ANNEXING TERRITORY TO THE CITY.**

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law, and

WHEREAS, annexation of said territory would be in the best interest of the City.

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

1. **TERRITORY ANNEXED.** Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

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

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

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

Said Tract containing 54.691 gross acres and 53.624 net acres.

(# 08-02) See Exhibit "A" Attached

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

- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or

- b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.
- 3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 28th day of January, 2008.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

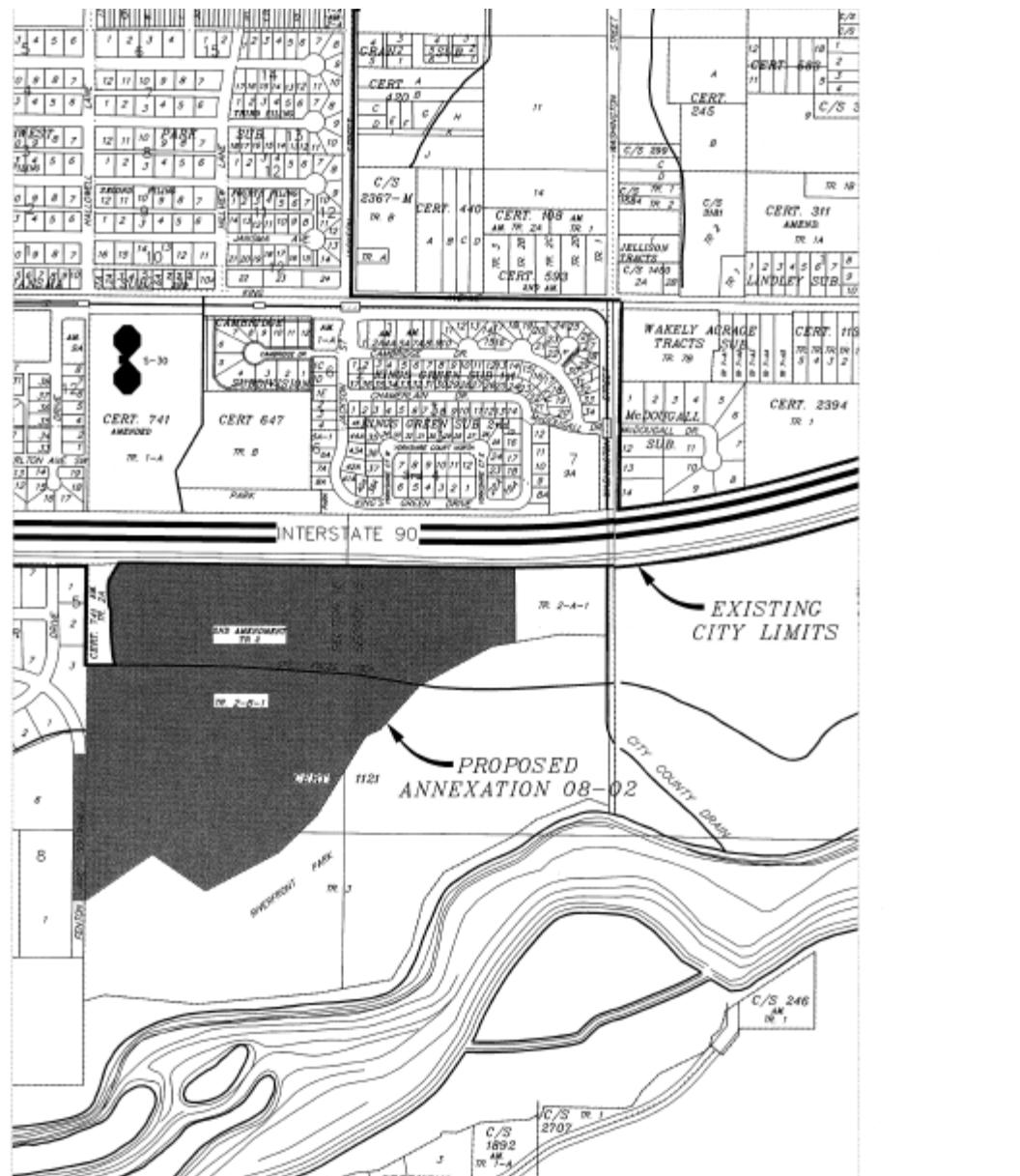
ATTEST:

BY: \_\_\_\_\_

CITY CLERK

(AN 08-02)

## EXHIBIT A



# 4a

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, January 28, 2008

**TITLE:** Zone Change #827 - Postponed from January 14, 2008

**DEPARTMENT:** Planning and Community Services

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

**PROBLEM/ISSUE STATEMENT:** This is a zone change request from Residential-9600 (R-96) to Residential-7000 (R-70) on a 44,644 square foot property located in the Billings Heights north of Saturn Place. The property is proposed as the Eagle View Subdivision. Dorn Property LLC, owner and Engineering, Inc., agent. The Zoning Commission conducted a public hearing on December 4, 2007. It is forwarding a recommendation of approval on a 3-0 vote.

The City Council conducted a public hearing on this application on January 14, 2008. There was no testimony during the public hearing. Councilwoman Stevens motioned to postpone this application for 2-weeks (January 28, 2008), to allow the applicant to conduct another neighborhood meeting on the proposal within the Heights neighborhood. There was concern that since the initial neighborhood meeting was held outside the neighborhood, residents within the 300-foot radius did not have an opportunity to comment. The motion to postpone was passed on a 10-0 vote.

The agent for the applicant was contacted the day after the council meeting to inform him of the council's action. The applicant and agent are in the process of setting a date and time for an additional neighborhood meeting in the Heights and will notify the Planning Division when this meeting is scheduled. Additional information regarding the neighborhood meeting will be provided to the Council at the January 28<sup>th</sup> meeting.

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

1. Approve the zone change as requested
2. Deny the zone change as requested
3. Approve the zone change as recommended by the Zoning Commission

4. Allow withdrawal of the application
5. Delay action for up to thirty (30) days

**FINANCIAL IMPACT:** The proposed zone change would facilitate the development of the property which would increase the City's tax revenue on the parcel.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of approval of Zone Change #827 to the City Council and adoption of the 12 Zoning Commission Determinations on a 3-0 vote.

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

**ATTACHMENTS:**

- A: Site Photographs
- B: Zoning Map
- C: Proposed Site Plan
- D: Applicant Letter
- E: Ordinance

## **INTRODUCTION**

This is a zone change request from R-96 to R-70 on a 44,644 square foot property on the north side of Saturn Place and west of Lake Hills Subdivision, 6<sup>th</sup> Filing. The property was annexed into the City limits on November 4, 1984, and is proposed to be subdivided as Eagle View Subdivision.

## **PROCEDURAL HISTORY**

- On November 5, 2007, the application for zone change was submitted for review.
- On December 5, 2007, the City Zoning Commission opened a public hearing for the proposed zone change and voted 3-0 to forward a recommendation of approval of the City Council.
- On January 14, 2008, the City Council conducted a public hearing and moved to postpone action on the zone change until January 28, 2008.
- On January 28, 2008, the City Council will approve, deny or delay action on the proposed zone change.
- On February 11, 2008, if approved on the 1<sup>st</sup> reading, the City Council will conduct the 2<sup>nd</sup> reading of the proposed zone change.

## **BACKGROUND**

The proposed zone change is located in an area that supports single-family and two-family residential units. The new zoning will allow a single-family dwelling unit per 7,000 square feet or a duplex unit per 9,600 square feet.

The agent for the proposed zone change held a neighborhood meeting on October 10, 2007 to discuss the proposal with surrounding property owners. No surrounding property owners attended this meeting.

Many of the details of the subdivision will be reviewed at the platting stage. At this point, staff must rely on the 12 zoning criteria when reviewing the proposal's potential zoning implications. After review of the proposal based on the 12 criteria listed below, staff recommended approval of the zone change to the Zoning Commission.

The Zoning Commission is forwarding a recommendation of approval on a 3-0 vote.

## **ALTERNATIVES ANALYSIS**

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

### *1. Is the new zoning designed in accordance with the Growth Policy?*

The proposed development is consistent with the following goals and objectives of the 2003 Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element #1, pg. 5)*

The proposed land use is consistent with the existing land uses adjacent to the proposed zone change property.

- *New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element #2, pg. 6)*

The proposed zone change would allow a single-family or two-family subdivision with similar lot sizes and residential densities to those existing developments to the south and east.

- *More housing and business choices within each neighborhood. (Land Use Element #6, pg. 6)*

The developer proposes to offer an affordable housing supply similar to what is currently developed adjacent to this property.

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

The development should not negatively impact the local streets in the area.

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

The nearest fire station is located nearby at 1601 St. Andrew's Drive. The property will also be served by City water and sewer services when development occurs. No public health or safety issues have been raised with this application.

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

The new zoning would allow single-family or two-family residences to be built with City services. No public health or safety issues have been raised with this application.

5. *Will the new zoning provide adequate light and air?*

The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The new zoning would allow the development of single-family homes on lots that are a minimum of 7,000 square feet or two-family homes on lots that are a minimum of 9,600 square feet. The proposed site plan indicates that the lots will range in size from 7,147 square feet to 9,778 square feet. It also indicates that 5 lots are proposed for the property. At the time of development, setbacks, lot coverage, height, and other requirements will help to prevent overcrowding of the land.

7. *Will the new zoning avoid undue concentration of population?*

The new zoning would allow the development of single family homes on lots that are a minimum of 7,000 square feet or two-family homes on lots that are a minimum of 9,600 square feet. The R-70 zoning would allow for approximately 6 single family homes or approximately 4 two-family homes. The R-70 zoning is set up to avoid undue concentrations of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

*Transportation:* The development should not negatively impact the local streets in the area.

*Water and Sewerage:* The City will provide water and sewer service to the property and has adequate facilities to serve this property.

*Schools and Parks:* There should be no negative effect on parks or schools from this rezoning.

*Fire and Police:* The property is served by existing services and there should be no effect on these services from the new zoning.

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

Staff is comfortable that the new zoning does give reasonable consideration to the character of the surrounding community in that it would allow development of similarly-sized single and two-family lots. The developer did host a neighborhood meeting and invited surrounding property owners. No property owners attended this meeting.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is located in an area of R-96 and R-70 zoning districts. The proposal is suitable for the requested zoning district.

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

As noted in #9 above, the new zoning would seem to conserve the value of the similarly priced residences to the south and east of the subject property.

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

Yes, the new zoning will encourage the most appropriate use of this land in the area.

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

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report. The zone change is also consistent with the adopted Billings Heights Neighborhood Plan in the following way:

Land Use: Residential Development

Goal: To provide safe, good quality and affordable housing in the Heights. Develop housing patterns that are compatible with existing neighborhoods. Maintain similar housing in established neighborhoods.

### **STAKEHOLDERS**

The Zoning Commission conducted a public hearing on December 4, 2007. The applicants' agent, Will Ralph from Engineering Inc., provided a brief overview of the intent of the zone change, which is to subdivide the property into 5 single family lots.

No members of the audience spoke in opposition to the proposal.

### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of approval of Zone Change #827 to the City Council and adoption of the 12 Zoning Commission Determinations on a 3-0 vote.

### **ATTACHMENTS:**

- A: Site Photographs
- B: Zoning Map
- C: Draft Master Plan
- D: Applicant Letter
- E: Ordinance

**Attachment A**



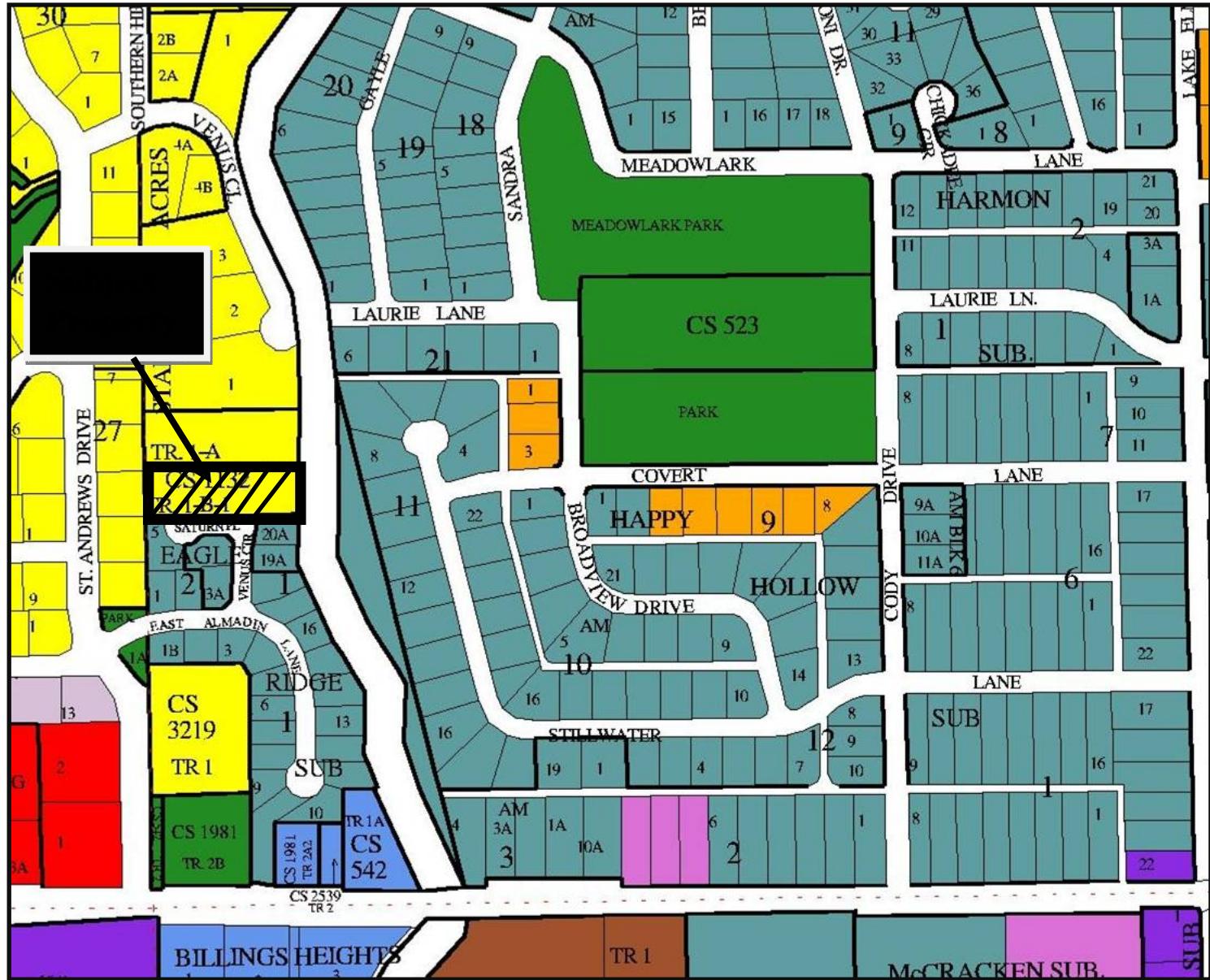
Subject Property



Looking South from Subject Property

## Attachment B

### Zoning Map



## **Attachment C**

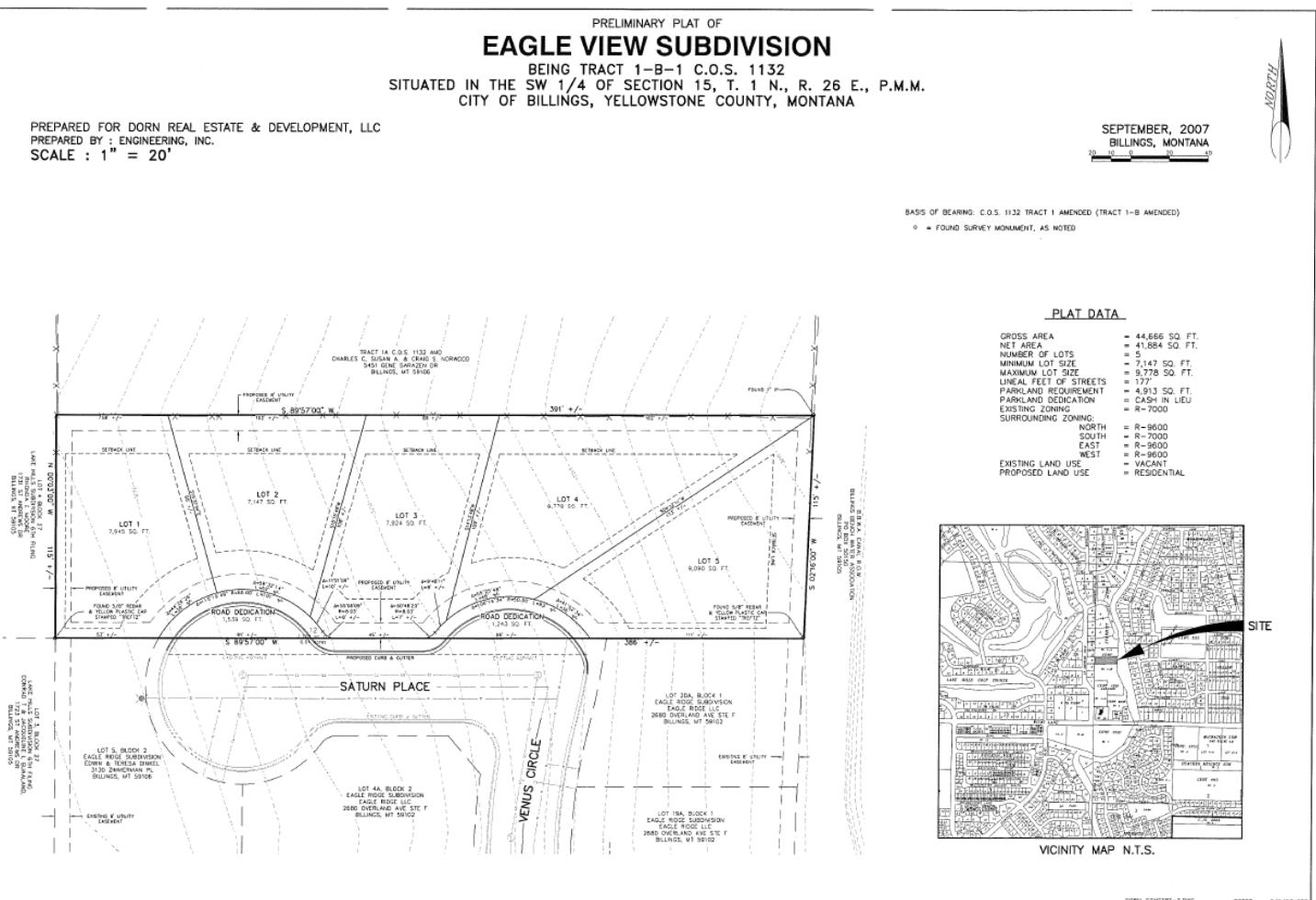
PRELIMINARY PLAT OF  
**EAGLE VIEW SUBDIVISION**

BEING TRACT 1-B-1 C.O.S. 1132  
SITUATED IN THE SW 1/4 OF SECTION 15, T. 1 N., R. 26 E., P.M.M.  
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR DORN REAL ESTATE & DEVELOPMENT, LLC  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1" = 20'

SEPTEMBER, 2007  
BILLINGS, MONTANA

BASIS OF BEARING: C.O.S. 1132 TRACT 1 AMENDED (TRACT 1-B AMENDED)  
0 = FOUND SURVEY MONUMENT, AS NOTED



**Attachment D**  
Applicant Letter



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

November 15, 2007

Ms. Nicole Cromwell  
City of Billings Zoning Coordinator  
510 N. Broadway, 4th Floor  
Billings, MT 59101

Reference: Proposed Eagle View Subdivision  
E.I. No. 06099

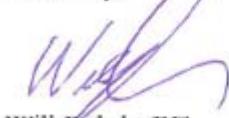
Dear Nicole:

As part of the zone change requirements for the City of Billings, I am writing this letter to describe the zone change plan for Tract 1-B-1 of Certificate of Survey No. 1132 in the Billings Heights. The property is approximately 44,666 square feet and is currently zoned Residential-9600. This zone change submittal proposes to change the zoning of this property to Residential-7000.

On October 10, 2007, a pre-application neighborhood meeting was held at the office of Engineering, Inc. No surrounding property owners came to the meeting. Because no surrounding property owners attended the meeting, meeting minutes were not kept. I have attached the invitation letter to the surrounding property owners for your reference.

If you have any questions, feel free to contact me anytime at 406/656-5255.

Sincerely,



Will Ralph, PE  
Associate/Project Manager

WR/skw

Enc.

P:06099\_Cromwell\_Ltr\_111507

## ORDINANCE NO. 08-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Tract 1-B-1 of Certificate of Survey 1132, containing  
approximately 44,644 square feet or 1.02 acres.

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

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

2. DESCRIPTION. A tract of land known as Tract 1-B-1 of Certificate of Survey 1132, containing approximately 44,644 square feet or 1.02 acres and is presently zoned Residential 9,600 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9,600** to **Residential 7,000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 7,000** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading January 28, 2008.

PASSED, ADOPTED AND APPROVED on second reading February 11, 2008.

CITY OF BILLINGS:

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

ATTEST:

BY:

City Clerk

ZC #827

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 28, 2008**

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**TITLE:** Preliminary Plat Eagle View Subdivision

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On November 15, 2007, the Planning Division received an application for a minor plat approval for Eagle View Subdivision, which contains five lots on approximately 44,666 square feet (1.02 acres) of land for residential development. The proposed subdivision is located in the Billings Heights on the north side of Saturn Drive. The owner is Dorn Property, LLC and the representing agent is Engineering Incorporated.

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

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

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

**RECOMMENDATION**

Staff recommends conditional approval of the preliminary plat of Eagle View 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**

- E. Preliminary Plat
- F. Site Photographs
- G. Findings of Fact
- H. Mayor's Approval Letter

## **INTRODUCTION**

On November 15, 2007, the subdivider applied for preliminary plat approval for a minor subdivision of Eagle View Subdivision. The subject property contains 44,666 square feet (1.02 acres) of land for residential development. The surrounding property zoning is Residential 9600, (R-96) to the west and north and Residential 7000 (R-70) on the south and east.

## **PROCEDURAL HISTORY**

- The preliminary plat application was submitted to the Planning Department on November 15, 2007.
- Applicant requested an extension of the 35 working days, to have a zone change application approved at the January 14, 2008 council meeting before the subdivision application is presented.
- The City Council will consider the preliminary plat application on January 28, 2008.

## **BACKGROUND**

General location:	North of Saturn Drive
Legal Description:	Tract 1-B-1, Certificate of Survey (COS) 1132
Subdivider:	Dorn Property, LLC
Owner:	Same
Engineer and Surveyor:	Engineering Incorporated
Existing Zoning:	Residential-9600 (R-96)
Existing land use:	Vacant
Proposed land use:	Residential
Gross area:	44,666 square feet
Net area:	41,884 square feet
Proposed number of lots:	5
Lot size:	Max: 9,778 square feet (.22 acres) Min.: 7,147 square feet (0.16 acres)
Parkland requirements:	A parkland dedication is not required, as this is a minor subdivision.

## **ALTERNATIVES ANALYSIS**

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

## **RECOMMENDED CONDITIONS OF APPROVAL**

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. (*Recommended by the Engineering Division*)
2. To ensure compliance with subdivision regulations, Section VII of the SIA shall be changed to read 'No parkland dedication is required because this is a minor subdivision' Section 23-1008 (A) of the City of Billings Subdivision Regulations.
3. To bring the subdivision into conformance with the City/County Unified Zoning Regulations, the subdivider shall obtain approval for a zone change to ensure the subdivided lots comply with the minimum lot size requirements of the zoning district in which the property is located.
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

## **VARIANCES REQUESTED**

None

## **STAKEHOLDERS**

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

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

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

## **RECOMMENDATION**

Staff recommends conditional approval of the preliminary plat of Eagle View Subdivision and adoption of the Findings of Fact as presented in the staff report to the City Council.

## **ATTACHMENTS**

1. Preliminary Plat
2. Site Photographs
3. Findings of Fact
4. Mayor's Approval Letter

PREPARED FOR DORN REAL ESTATE & DEVELOPMENT, LLC  
PREPARED BY: ENGINEERING, INC.  
SCALE : 1" = 20'

SEPTEMBER, 2007  
BILLINGS, MONTANA

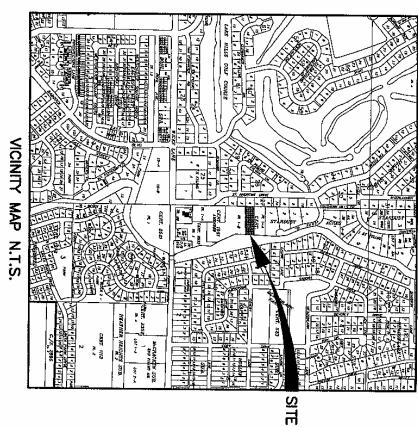


t Eagle View

BASIS OF BEARING: CO.S. 112 TRACT 1 AMENDED (TRACT 1-B AMENDED)  
○ = FOUND SURVEY MONUMENT, AS NOTED

PLAT DATA

GROSS AREA = 44,666 SQ. FT.  
NET AREA = 41,884 SQ. FT.  
NUMBER OF COTS = 5  
MINIMUM COT SIZE = 4,141 SQ. FT.  
MAXIMUM COT SIZE = 9,776 SQ. FT.  
LINEAL FEET OF STREETS = 1777  
PARKLAND REQUIREMENT = 4,919 SQ. FT.  
PARKLAND PROVIDED = 0 SQ. FT.  
SURROUNDING ZONING:   
NORTH = R-9000  
SOUTH = R-7000  
EAST = R-9000  
WEST = R-9000  
EXISTING LAND USE  
PROPOSED LAND USE  
= VACANT  
= RESIDENTIAL



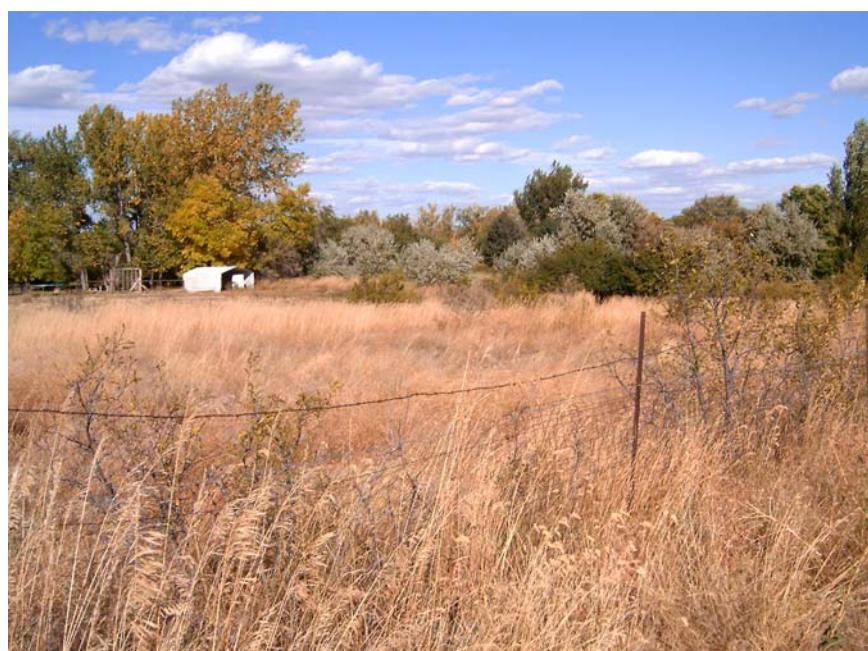
VICINITY MAP N.T.S.

Subdivision

**ATTACHMENT B**  
Site Photographs



Looking northwest across subject property from Saturn Drive.



Looking northeast across subject property from Saturn Drive.



Looking west from along the frontage of the subject property on Saturn Drive.



Looking south from subject property.

## **ATTACHMENT C**

### **Findings of Fact**

Staff is forwarding the recommended Findings of Fact for Eagle View 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 a residential area; there is no anticipated effect on agricultural lands or irrigation facilities.

##### **2. Effect on local services**

- e. **Utilities** – There are water lines and sanitary sewer lines in Saturn Place. The property owner will be responsible for all connection fees and improvement cost as stated in the SIA.
- f. **Storm water** – As specified in the submitted SIA, the storm water shall be provided by a combination of surface drainage and curbs and gutters and drained to underground storm drains in Eagle View Subdivision.
- g. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- h. **Streets** - Access to the proposed subdivision will be from Saturn Place. The subdivider is responsible to construct the remaining portion of Saturn Place. The city and subdivider agree that the finished street will be 37 feet wide, measured from back of curb to back of curb. The cul-de-sac will be built with a 43.5 foot radius.
- h. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews Drive (Station #6). The subdivision is located within the ambulance service area of American Medical Response.
- i. **Schools** –Schools for this subdivision are: Skyview High School, Castle Rock Middle School, and Bench Elementary School. The schools were sent applications but there were no comments received back from them.
- j. **Parks and Recreation** - A parkland dedication is not required, as this is a minor subdivision.

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

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

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

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

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

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

## **B. Was an Environmental Assessment required? (76-3-210, MCA) (23-901, BMCC)**

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-210, MCA.

## **C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? (23-301, BMCC)**

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

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

- d. Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, Page 5)

*The proposed subdivision is consistent with the surrounding residential neighborhood.*

- e. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element Goal, Page 6)

*The subject property is zoned R-70, there is R-70 to the south and R-96 to the north; the proposed development is consistent with the neighborhood as single-family residential.*

- f. Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, Page 6)

*The subject property is within a portion of the City is surrounded by existing residential properties; this would be considered infill development.*

## **2. Urban Area 2005 Transportation Plan Update**

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

## **3. Heritage Trail Plan**

The Heritage Trail Master Plan has no trail corridor identified through this subdivision.

## **4. Billings Heights Plan**

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

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

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

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

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

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

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

The subdivision is proceeding with a concurrent rezoning application that will bring the proposed subdivision into compliance with the Unified Zoning Regulations Section 27-308, BMCC, as required by Condition # 3.

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

The City Engineering Department will work with the utility companies to provide easements in acceptable locations on the plat. The City maintains that utility easements provided on front lot lines creates conflicts with sanitary water and sewer lines and have requested that they be located

on the rear and sides of lots for public health and safety. Condition #2 requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

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

Accesses from Saturn Place will provide legal and physical access to the lots.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat Eagle View 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, January 28, 2008

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Ron Tussing, Mayor

**ATTACHMENT E**  
Mayor's Approval Letter

January 28, 2008

Dorn Property, LLC  
1215, 24<sup>th</sup> Street West  
Billings, MT 59102

Dear Applicant:

On January 28, 2008, the Billings City Council conditionally approved the preliminary plat of Eagle View Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. (*Recommended by the Engineering Division*)
2. To ensure compliance with subdivision regulations Section VII of the SIA shall be changed to read 'No parkland dedication is required because this is a minor subdivision' Section 23-1008 (A) of the City of Billings Subdivision Regulations.
3. To bring the subdivision into conformance with the City/County Unified Zoning Regulations, the subdivider shall obtain approval for a zone change to ensure the subdivided lots comply with the minimum lot size requirements of the zoning district in which the property is located.
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

Sincerely,

---

Ron Tussing, Mayor

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 28, 2008**

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**TITLE:** Zone Change #830 Public Hearing and 1<sup>st</sup> Reading of Ordinance  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** The applicant is requesting a zone change from Residential 7,000 (R-70) to Residential 6,000 (R-60) on a 15,000 square foot vacant parcel of land. The subject property is legally described as the North Fraction 100 ft by 150 ft in Block 305 Billings, 1<sup>st</sup> Addition, and Sunnyside Subdivision, 3<sup>rd</sup> Filing, and is located on the southwest corner of the intersection of North 22<sup>nd</sup> Street and 10<sup>th</sup> Avenue North. The applicant is proposing to construct two duplexes on the subject property. The owner and applicant is Steve Kerns. The Zoning Commission conducted a public hearing on January 2, 2008, and forwarded a recommendation of approval on 5-0 vote.

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

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

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

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #830 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

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

**ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning
- C: Letter of Support
- D: Ordinance

## **INTRODUCTION**

The applicant is requesting a zone change from Residential 7,000 (R-70) to Residential 6,000 (R-60) on a 15,000 square foot vacant parcel of land. The subject property is legally described as the North Fraction 100 ft by 150 ft in Block 305 Billings, 1<sup>st</sup> Addition, and Sunnyside Subdivision, 3<sup>rd</sup> Filing, and is located on the southwest corner of the intersection of North 22<sup>nd</sup> Street and 10<sup>th</sup> Avenue North. The applicant is proposing to construct two duplexes on the subject property.

## **PROCEDURAL HISTORY**

- On November 7, 2007, the neighborhood meeting for the proposed zoning application was conducted at North Park Center.
- On December 3, 2007, rezone application were submitted to the Planning Department.
- On January 2, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and forwarded a recommendation of approval to the City Council on a 5-0 vote.
- On January 28, 2008, the City Council will conduct the public hearing for the the zone change.
- On February 11, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

## **BACKGROUND**

The applicant is requesting to rezone a 15,000 square foot property from R-70 to R-60. The subject property is located on the southwest corner of the intersection of North 22<sup>nd</sup> Street and 10<sup>th</sup> Avenue North. It is the property owner's intent to construct two duplexes on the property; anything greater than duplexes on the subject property would require special review approval. The construction of duplexes on this property is in compliance with the preferred medium density residential uses identified in the North Park Neighborhood for this area. A large scale site plan and building elevations was provided at the Zoning Commission public hearing.

While this zone change was submitted in 2004 and recommended for denial by staff, there has been a change in ownership of the property and the new owner has expressed his intent to construct two duplexes on the property. The previous application included the construction multi-family residential units on this property upon obtaining a special review, which was not in conformance with the North Park Neighborhood Plan. The proposed use of duplexes is in conformance with the North Park Neighborhood Plan and is compatible with the surrounding single-family residences and duplexes. Planning staff is forwarding a recommendation of approval for this application. Staff has based this recommendation on the 12 criteria for zone changes discussed below.

## **ALTERNATIVES ANALYSIS**

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

1. *Is the new zoning designed in accordance with the Growth Policy?*

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

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 5)*

The proposed duplexes for this property would be consistent with the surrounding residential properties. The proposed use will also be in conformance with the North Park Neighborhood Plan.

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

The proposed zoning will be compatible with the surrounding single-family residential uses and duplexes.

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

The proposed zoning will allow for more housing choices in this area.

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

The proposed zoning is expected to generate more traffic than the current vacant use. Developing the site under R-60 zoning district with two duplexes would generate approximately twice the traffic generated by developing the parcel for two single family units or a two-family unit as allowed by the R-70 zone. Both North 22<sup>nd</sup> Street and 10 Avenue North have been constructed to city standards and can handle additional traffic created by this development.

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

The lot has public street frontage and is served by the City Fire Department. The front setback requirement for the R-60 zone is 15 feet and the R-70 front setback is 20 feet. The allowable height and lot coverage in the R-60 are 34 feet and 40% respectively. In the R-70 zone, the height and lot coverage are 30 feet and 30%. The increased bulk and height in the R-60 should not effect the provision of emergency services to the lot.

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

The proposed zoning would allow for two duplexes on the lot and should not have an effect on the general health and welfare of surrounding properties.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land.

7. *Will the new zoning avoid undue concentration of population?*

The proposed uses should not cause an undue concentration of population, as there is surrounding residentially developed properties.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

*Transportation:* The new zoning will increase the traffic generated from this site but the adjacent streets are designed to handle the volume of traffic this use may generate.

*Water and Sewer:* The City has adequate facilities to serve this property.

*Schools and Parks:* This proposed re-zone should have no substantial effect on schools or parks.

*Fire and Police:* The subject property is currently served by the City of Billings fire and police departments.

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

The proposed zoning will be similar in character with the adjacent residential uses.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district.

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

The new zoning should not have significant effect on the value of residential buildings in the area.

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

The proposed zoning will permit single-family residences and duplexes as an outright use. Any building containing three (triplexes) or more units will require a special review.

**CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

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

**STAKEHOLDERS**

A neighborhood meeting was conducted on November 17, 2007, at North Park Center by the applicant. A member of Planning staff and the applicant were the only people present at the meeting. Staff has received one phone call regarding concerns over the proposed duplexes. However, the caller stated they will either attend the City Council meeting or provide written comment. No additional written comments were received up until the time this memo was prepared.

One letter of support has been received and is included in Attachment C of this report.

The Zoning Commission conducted a public hearing on January 2, 2008, and forwarded a recommendation of approval to the City Council on a 5-0. The applicant was present at the Zoning Commission meeting. There was no public comment at the meeting and no discussion by the Zoning Commission.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #830 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

**ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning
- C: Zoning Exhibit
- D: Letters of Opposition
- E: Ordinance

**Attachment A**  
Site Photos – Zone Change #830



Figure 1: view northwest across the subject property from North 22<sup>nd</sup> Street.



Figure 2: View north along the eastern boundary of the property toward the intersection of North 22<sup>nd</sup> Street and 10<sup>th</sup> Avenue North.

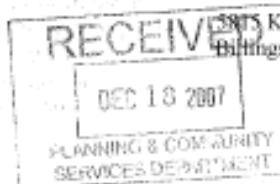
**Attachment B**  
Surrounding Zoning



**Attachment C**  
Letter of Support

**JOHN G. GOUNTANIS**

December 17, 2007



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

Re: CITY ZC # 830  
Project Number 07-1012

Dear Friends:

I am sorry that I am unable to attend either the Zoning Commission meeting or the City Council meeting. However, this is some information relative to the property:

1. I was born at home on 22<sup>nd</sup> Street several years ago.
2. I built two duplexes one long block away from this site.
3. Until recently, I lived for thirteen years on North 19<sup>th</sup> nearby.
4. My uncle, Tom Sturios, owned this property as part of his 160 acres and donated about half of Cobb field to the City of Billings.
5. By building two duplexes on this property, it would increase the tax base and deliver additional taxes to the City and County.
6. Vacant lots are normally unsightly and create a place for violators to park junk cars, throw garbage, light fire-crackers and such.
7. By building two duplexes, it would create affordable housing for some Billings residents.
8. With hospitals nearby, occupants would have short response time if they worked at the hospitals.
9. The City of Billings must go forward and approve this zone change.

I wholeheartedly support this zone change.

Sincerely,

  
John G. Gountanis

• 13676 S. Onammi Ave.  
Yuma, AZ 85367  
Yuma Phone (928) 305-0825

• Billings Phone (406) 248-6162  
Billings Fax (406) 252-3280

Zone Change #830

**ORDINANCE NO. 08-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR  
The North Fraction 100 ft by 150 ft in Block 305 Billings, 1<sup>st</sup> Addition, and Sunnyside  
Subdivision, 3<sup>rd</sup> Filing, containing approximately 15,000 square feet

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

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

2. DESCRIPTION. A tract of land known as The North Fraction 100 ft by 150 ft in Block 305 Billings, 1<sup>st</sup> Addition, and Sunnyside Subdivision, 3<sup>rd</sup> Filing, containing approximately 15,000 square feet and is presently zoned Residential 7000 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 7000** to **Residential 6000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 6000** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading January 28, 2008.

PASSED, ADOPTED AND APPROVED on second reading February 11, 2008.

CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, Mayor

ATTEST:

BY:

City Clerk

ZC #830

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 28, 2008**

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**SUBJECT:** Zone Change #831, Expansion of Central Business District Zoning Public Hearing and First Reading of the Ordinance.

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On July 23, 2007, the City Council approved an initiative directing staff to extend the Central Business District Zoning (CBD). This would change the zoning from Controlled Industrial to CBD in an area with general boundaries from the east side of North 25<sup>th</sup> Street to North 20<sup>th</sup> Street, on the south side of 6<sup>th</sup> Avenue North, generally south to the Railroad right-of-way (**See Attachment B**). The Zoning Commission conducted a public hearing on January 2, 2008, and is forwarding a recommendation for denial with a vote of 5-0.

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

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

**FINANCIAL IMPACT:** If the zone change is approved, future redevelopment of the property should increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission recommends by a 5-0 vote that the City Council deny Zone Change #831 based on the determinations of the 12 criteria, as discussed within this report.

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

**ATTACHMENTS**

- A: Surrounding zoning map
- B: Proposed CBD Expansion
- C: Site Photographs
- D: Ordinance

## **INTRODUCTION**

On July 23, 2007, the City Council approved an initiative to extend the CBD. The initiative stated that “the Salvation Army would like to build a youth center, and being part of the Central Business District would help resolve most of the problems they have with parking and building placement” (From City Council meeting minutes of July 23, 2007).

The properties currently in the proposed expansion of the CBD are zoned CI. With CI zoning there are requirements for building setbacks from property lines and a maximum lot coverage of 75% of the lot. There are minimum parking requirements based on the proposed use of the building, and minimum landscaping which is 10% of the land not covered by the structure, unless the lot is over 130,000 square feet and then the requirements consider surrounding bufferyards. Parking lot landscaping is required in all circumstances.

Many of the properties in this area are older buildings and uses that were built before zoning was established here in Billings. Many of the existing properties have structures on them that do not meet several of the current CI zoning requirements. This causes them to be classified as legal non-conforming. They are not able to expand or do major modifications without bringing the entire site into compliance. In some cases it is not possible because the existing structure does not meet required setbacks or they are currently over maximum lot coverage. With this zone change staff determined that these properties would become legal conforming properties. CBD zoning allows buildings to be built right on the property lines, the entire lot can be covered with the structure, and there is no required parking or landscaping.

The Planning Division did a visual survey of the area proposed for the expansion and has determined that all current uses in the area will conform to CBD zoning, or will become conforming, with CBD zoning with the exception of one lot. The one lot that will not be in conformance with the CBD zoning currently has open, outdoor storage which is not allowed in CBD zoning.

The Planning Division held a public meeting on November 15, 2007, inviting members of the neighborhood and surrounding neighborhood to discuss their concerns and the possible effect of extending the CBD. Two members of the community attended the meeting on November 15<sup>th</sup>.

Staff has notified the property owners within 300 feet of the proposed CBD expansion of the public hearing with the Zoning Commission and of the City Council meeting.

The Zoning Commission conducted a public hearing on January 3, 2008, and is forwarding a recommendation for denial with a vote of 5-0.

## **PROCEDURAL HISTORY**

- A council initiative for a zone change was made on July 23, 2007, for the subject properties.

- The Planning Division held a public meeting on November 15, 2007.
- The Zoning Commission conducted a public hearing on January 2, 2008, and recommended denial to the City Council by a 5-0 vote.
- The City Council will conduct a public hearing and first reading on January 28, 2008, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on February 11, 2008.

## **BACKGROUND**

On July 23, 2007 the City Council approved an initiative to extend the CBD. The Planning Division did a visual survey of the area proposed for the expansion and has determined that all current uses in the area will conform to CBD zoning, or will become conforming, with CBD zoning with the exception of one lot. The one lot that will not be in conformance with the CBD zoning currently has open outdoor storage which is not allowed in CBD zoning.

The Planning Division held a public meeting on November 15, 2007, inviting members of the neighborhood and surrounding neighborhood to discuss their concerns and the possible effect of extending the CBD. Two members of the community attended the meeting on November 15<sup>th</sup>.

## **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The Zoning Commission is recommending denial of the proposed zone change. The Zoning Commission's determinations are outlined below:

Prior to any recommendation to the City Council, the Zoning Commission shall consider the following:

1. *Is the new zoning designed in accordance with the Growth Policy?*

The proposed zone change is generally consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 5)*

The properties in the proposed expansion of the CBD are in an area of Billings that has experienced decline over the past years. The proposed zone change will remove some restrictions to help encourage redevelopment that should promote more growth in the area to revitalize the neighborhood.

- *Coordinated economic development efforts that target business recruitment, retention, and expansion. (Economic Development Goal, page 6)*

With the proposed zone change it will encourage more business recruitment in the area and encourage expansion of existing businesses within the existing neighborhood.

- *An economically and culturally vibrant Downtown Billings. (Economic Development Goal, page 7)*

The proposed zoning accommodates more flexible development and will promote economic development of this portion of Downtown Billings.

The proposed zone change is generally inconsistent with the following goals of the Growth Policy:

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

The proposed zoning will focus development in and around existing population centers but CBD zoning does not require landscaping or building setbacks from property lines so it does not encourage open space.

- *Attractive and accessible communities. (Economic Development Goal, page 7)*

While the proposed zoning does “Encourage new businesses to locate in Billings” and “Convey a business-friendly attitude”, there are no requirements for building setbacks or landscaping which may not increase the visual appeal of the neighborhood.

- *Visually appealing communities (Aesthetics Goal, page 7)*

The proposed zoning may limit the visual appeal of the neighborhood because there are no requirements for building setbacks from property lines or landscaping to soften the edges of the lot or the hard surfaces of a building façade. On a principle arterial street with a speed limit of 35 it may be less appealing to walk on a sidewalk between a building front and higher speed traffic. With no landscape to soften building lots or street frontage it is not visually appealing or inviting.

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

The new zoning will have no effect on the current traffic on the streets. With future changes and development in the proposed CBD zoning, parking may become an issue.

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

Because the area is already developed, the safety issues of the existing neighborhood will not change with the proposed zone change. Future redevelopment of the area will address these issues with applicable zoning codes.

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

Because the area is already developed, the health and general welfare of the area will not change with this zone change. Future redevelopment of the area will address these issues.

5. *Will the new zoning provide adequate light and air?*

Because the area is already developed, adequate light and air in the area will not change with this zone change. Future redevelopment of the area with CBD zoning may reduce the light and open space areas. CBD zoning allows buildings to cover the entire lot and there are no requirements for landscaping. With CBD zoning allowances, development may reduce light and open space in this area.

6. *Will the new zoning prevent overcrowding of land?*

CBD zoning allows for the entire lot to be covered by a structure, and there are no height restrictions. This zoning is intended for very high density. With the right developments the area can be developed to not cause overcrowding of land.

7. *Will the new zoning avoid undue concentration of population?*

The proposed zoning is generally for commercial uses. It does allow for residential uses but these are generally over the commercial uses in multi-story buildings. Existing single family residential uses in the proposed CBD zoning are there because they were built before current zoning.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

*Transportation:* Traffic patterns are already established in this neighborhood. Any future large development would be expected to submit a TAS.

*Water and Sewer:* All water and sewer services are currently in place in this neighborhood and in some areas most likely need to be updated.

*Schools and Parks:* The proposed CBD zoning is not required to contribute park land and will have minimum to no effect on the school system.

*Fire and Police:* The subject property is currently served by the City of Billings fire and police departments.

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

The proposed zoning will be alike in character with the current adjacent zoning as it is used now. With time and redevelopment the character could change with more dense development of the neighborhood within the area of this zone change.

*10. Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district. The area of the proposed zone change is an area where redevelopment could be encouraged along a principle arterial street. The Northpark neighborhood plan visualizes this area as a commercial corridor along 6<sup>th</sup> Avenue North which is a principle arterial.

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

The proposed zoning will conserve the value of existing buildings and in some instances increase the value because some lots currently have nonconforming uses on them. With the possibility of future redevelopment value of buildings may increase.

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

The proposed zoning will permit redevelopment of the area with a minimal amount of restrictions to the developments compared to other commercial and industrial zoning districts. It will also provide tax revenue to the City of Billings and add to the overall economic vitality of the neighborhood.

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

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

### **STAKEHOLDERS**

Gordon Tryan, representing the Billings Industrial Revitalization District (BIRD), spoke in opposition to the zone change. The BIRD organization is currently getting funding together to be able to get matching grant funds to have the entire East End Tax Increment Finance District (TIFD) master planned. He stated that he felt the master plan should be done first before any zone changes. Doing zone changes without a master plan or a plan would be a “hodge podge” approach to development and could end up with the same mixed results in the area that currently exists. Also, if this zone change were granted Mr. Tryan asked what precedent could it set and what company would be the next one to ask for a re-zoning to CBD and where would it stop?

Mr. Tryan stated that he felt this was a zone change for the advantage of one organization, The Salvation Army. Mr. Tryan stated that although the proposed youth center to be built by the Salvation Army is commendable, this zone change takes in quite a few properties and there is no way to know what the others will do with the CBD zoning.

After the public hearing was closed, Commission Members discussed what had been presented and what Mr. Tryan had said. Commission Member Ed Workman stated that he had attended some meetings with the BIRD organization and that they are trying very hard to get the entire East End TIFD master planned to have direction with this area. The master plan will give them direction with the redevelopment of this area and provide guidance for doing it in the best way possible. Mr. Workman said he felt that granting this zone change would work to undermine what they are trying to do. Commission Member Michael Larson also stated that he felt it was in the cities best interest to have the master plan done first before re-zoning areas in the East End TIFD. He also re-iterated what Commission Member Ed Workman had stated.

### **RECOMMENDATION**

The Zoning Commission forwards a recommendation of denial to the City Council for Zone Change #831 with a vote of 5-0.

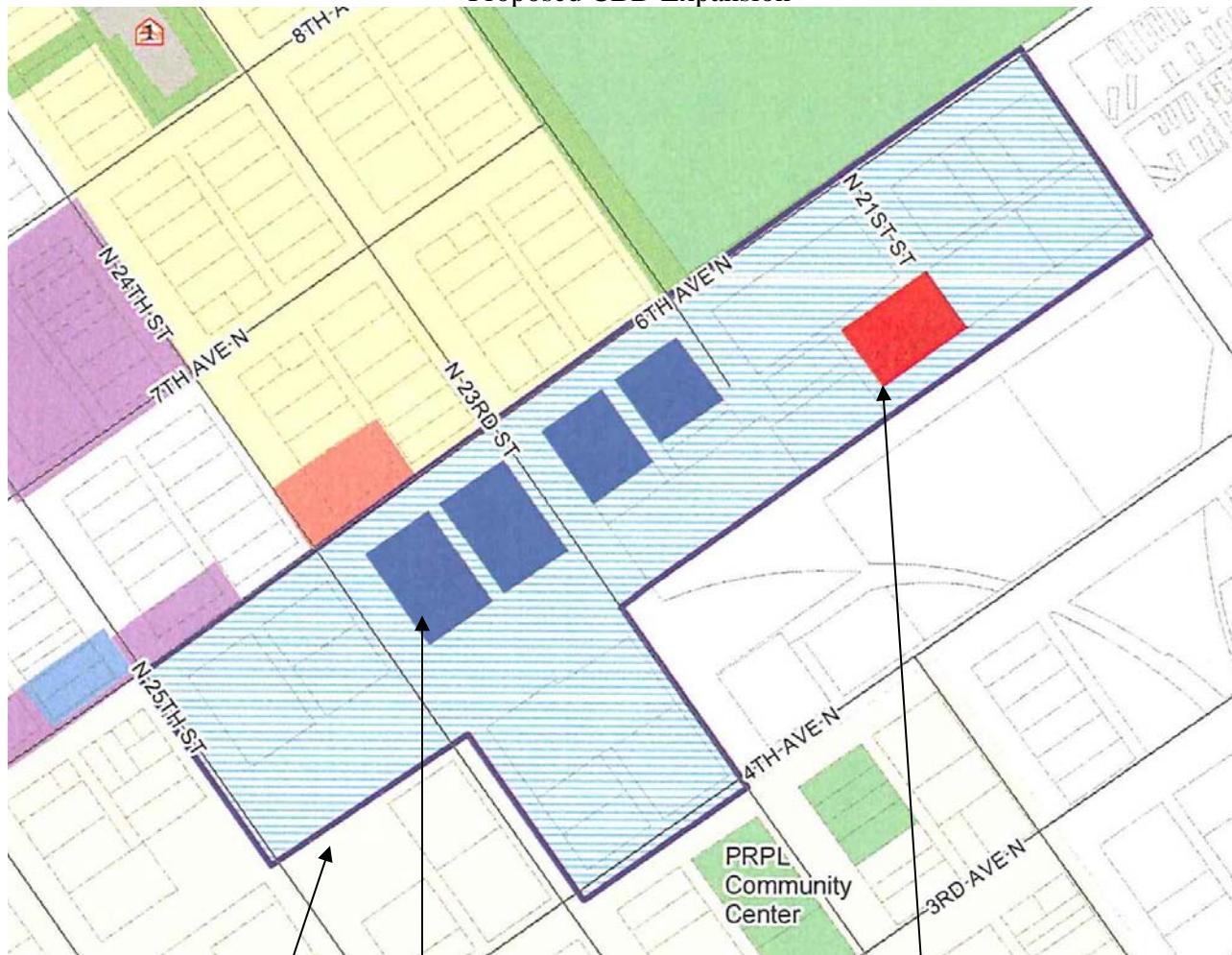
### **ATTACHMENTS:**

- A: Surrounding zoning map
- B: Proposed CBD Expansion
- C: Site Photographs
- D: Ordinance

**ATTACHMENT A**



**ATTACHMENT B**  
Proposed CBD Expansion



Proposed boundary expansion of the Central Business District Zoning

Properties that are currently non-conforming that will become conforming with CBD zoning.

Property that will become non-conforming with CBD zoning.

**ATTACHMENT C**  
Site Photographs



Looking south from Salvation Army parking lot on 6<sup>th</sup> Avenue North.



Looking south from 22<sup>nd</sup> Street and 6<sup>th</sup> Avenue North.



Looking west on 21<sup>st</sup> Street at residential property along 6<sup>th</sup> Avenue North.



Looking west along 6<sup>th</sup> Avenue North towards 25<sup>th</sup> Street from apartment building.



Looking south from 22<sup>nd</sup> Street at existing structure.

**ATTACHMENT D**

Ordinance

**ORDINANCE NO. 08-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Lots 5 - 20, Block 266, Lots 5 – 20, Block 265, Lots 5 & 6; 19 & 20, W45' of Lots 13-18; W50' of E95' of Lots 13-18; E45' of Lots 3-18; Lot 1A of Amended Lots 1-4, 21-24 + ADJ VAC STS + Alley; W40' Lot 8 to 12 + W40' of N5' of Lot 7; Center 50' of Lot 7 to 12 + N5' of Center 50' of Lot 7; E50' of Lot 8 + 12 E50' of N5' of Lot 7; S20' of Lot 7 (Alley); Lot 22A of Amended Lots 22-24 + ADJ VAC STS, Block 264; Lots 7-18; 19 + 20; Lots 5 + 6 + VAC ADJ 21<sup>st</sup> Street; Lot 3 + VAC ADJ 21<sup>st</sup> Street, Block 263; Lots 2-18; Lots 19-23 + VAC ADJ 21<sup>st</sup> Street, Block 262; Lots 1-6, 13-21; Lots 22A-24A, Block 12, Billings Original Townsite Subdivision, Section 13, T.1N, R.26E, containing Approximately 17.3 acres.

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

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

2. **DESCRIPTION.** A tract of land known as Lots 5 - 20, Block 266, Lots 5 – 20, Block 265, Lots 5 & 6; 19 & 20, W45' of Lots 13-18; W50' of E95' of Lots 13-18; E45' of Lots 3-18; Lot 1A of Amended Lots 1-4, 21-24 + ADJ VAC STS + Alley; W40' Lot 8 to 12 + W40' of N5' of Lot 7; Center 50' of Lot 7 to 12 + N5' of Center 50' of Lot 7; E50' of Lot 8 + 12 E50' of N5' of Lot 7; S20' of Lot 7 (Alley); Lot 22A of Amended Lots 22-24 + ADJ VAC STS, Block 264; Lots 7-18; 19 + 20; Lots 5 + 6 + VAC ADJ 21<sup>st</sup> Street; Lot 3 + VAC ADJ 21<sup>st</sup> Street, Block 263; Lots 2-18; Lots 19-23 + VAC ADJ 21<sup>st</sup> Street, Block 262; Lots 1-6, 13-21; Lots 22A-24A, Block 12, Billings Original Townsite Subdivision, Section 13, T.1N, R.26E, containing approximately 17.3 acres and is presently zoned Controlled Industrial and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Controlled Industrial to Central Business District** and from the effective date of this ordinance,

shall be subject to all the rules and regulations pertaining to **Central Business District** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading January 28, 2008.

PASSED, ADOPTED AND APPROVED on second reading February 11, 2008.

CITY OF BILLINGS:

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

ATTEST:

BY: Cari Martin, City Clerk

ZC #831

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 28, 2008**

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**TITLE:** Beartooth R C & D Memorandum of Understanding

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Asst. City Administrator

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**PROBLEM/ISSUE STATEMENT:** The City of Billings annually approves a Memorandum of Understanding (MOU) with the Beartooth RC&D Economic Development District (District). The 2007 agreement was approved by Council on February 12, 2007. The District is presenting the 2008 MOU for Council's consideration. The District also plans to report on its 5-year Economic Development Strategy.

The MOU and the funding provided by the City (\$8,380) ensures the City's participation in and access to economic development/grant writing services of the District. For example, the District 1) assisted the City with the grant that allowed the relocation of the Edwards Street Center, which permitted Sysco's expansion and creation of the new Operations Center; 2) planning and financing for the Trans Tech Center; 3) grant and planning for Grains of Montana; and 4) the Billings BEAR program. The City appoints one member to the District, and that position is presently occupied by Councilmember Veis.

**ALTERNATIVES ANALYZED:** The City Council may:

- Approve the MOU (and funding)
- Disapprove the MOU

**FINANCIAL IMPACT:** The FY 2008 assessment is \$8,380. Adequate funds are budgeted for this expenditure.

**RECOMMENDATION**

Staff recommends that Council approve the Beartooth RC&D Economic Development District Memorandum of Understanding.

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

**ATTACHMENT:**

A:      Memorandum of Understanding

<sup>a</sup>  
**MEMORANDUM OF UNDERSTANDING**

**Between**

**Yellowstone County Commissioners  
and  
the Beartooth RC&D Economic Development District**

**THIS MEMORANDUM OF UNDERSTANDING** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between the **Beartooth RC&D Economic Development District**, whose principal business address is P.O. Box 180, Joliet, Montana 59041, hereinafter referred to as "The District" and **Yellowstone County Commissioners (in cooperation with City of Billings, City of Laurel, and Big Sky EDA)**, hereinafter referred to as "County".

**WHEREAS**, The **Beartooth RC&D** has been formally recognized by the U.S. Department of Commerce, Economic Development Administration as a designated Economic Development District, and As a District, the **RC&D** has been awarded funding to carry out its Comprehensive Economic Development Strategy. This funding will provide a staff person, administrative support and operating costs. This is a continual grant, renewable based on successful program operation and availability of federal funds. Local match is required.

**WHEREAS**, Each entity participating in the District will designate a representative and an alternate to the regional Economic Development Committee. This individual will convey the needs and development goals of the local entity to the committee. Regular meetings will be held every two months to assess project status, assign workload and evaluate progress.

**NOW THEREFORE IT IS UNDERSTOOD AS FOLLOWS:**

**ARTICLE 1: SCOPE OF WORK:**

The District employs an Economic Development Coordinator to assist in Economic Development efforts in the region. The Coordinator's time will be allocated consistent with the goals in the Comprehensive Economic Development Strategy by the regional Economic Development Committee. The Committee is composed of one representative and an alternate from Big Horn, Carbon, Stillwater, Sweet Grass and Yellowstone Counties, Crow Tribe and Big Sky Economic Development Authority. Input to this Committee by local entities is essential for obtaining the services of the Coordinator.

Higher priority will be assigned projects of regional scope or projects with strong local leadership. Grant funding for this position is from EDA, therefore, emphasis will be on regional economic development planning and projects which have a correlation to job creation. Matching funds are from participating entities and emphasis will be placed on their specified projects. Specific items of work for this project year are detailed in the attached "Annual Report and Update". It is understood that this Annual Report will be updated each June.

**Annual Evaluation:**

The performance of the Economic Development Coordinator will be evaluated annually by local entities participating on the regional Economic Development Committee. Progress and/or accomplishments on each program/project will be evaluated to ensure resources are being utilized in the most effective and efficient manner possible.

**ARTICLE 2: PERIOD OF PERFORMANCE:**

The term of this Memorandum of Understanding shall be from the date it is signed through December 31, 2008, unless extended by mutual agreement by both parties. Such extension must be in writing, signed by authorized representatives of both parties, and made a part of the original Memorandum of Understanding by modification reference. This Memorandum of Understanding supercedes the prior Memorandum for participation in the Economic Development District.

**ARTICLE 3: PAYMENT:**

The County's annual contribution will be \$3,500 as a "Membership" fee plus a per capita assessment of .1537 cents per person. These funds will provide the necessary match to obtain the \$52,000 in federal funds. Entities who do not participate financially in the match requirement will not receive services from the Economic Development Coordinator. The calculated fee for Yellowstone County is \$ \$23,381.00. This figure is based from the \$3,500 county fee plus \$19,881 based on a per capita formula whereby a population of 129,352 was used from the 2000 Census population estimate. Yellowstone County's full payment of \$23,381.00 will be separated into a 4-way payment system. Each entity within the county will pay a percentage similar to the previous year. Big Sky EDA- 34% or **\$8,000.00**, City of Billings- 36% or **\$8,380.00**, City of Laurel- 6% or **\$1,400.00**, and Yellowstone County- 24% or **\$5,601.00**.

Each year in May, the Beartooth RC&D/EDD staff will provide a comprehensive report of the year's activity. A new Memorandum of Understanding will be prepared and a request for the following year's match submitted. Entities will be billed for match funds on or about November 1st.

Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment, and incidentals necessary to complete the work.

**ARTICLE 4: EXAMINATION OF RC&D RECORDS:**

The **County** or its representatives shall have the right to examine any books, records, or other documents of the **RC&D** directly relating to costs when such costs are the basis of compensation hereunder.

#### **ARTICLE 5: OWNERSHIP AND USE OF DOCUMENTS:**

Reproducible copies of all documents and other materials produced by the **RC&D** in connection with the services rendered under this memorandum of understanding shall be provided to the **County** for the **County**'s use whether the project for which they are made is executed or not. The **RC&D** shall be permitted to retain originals, including reproducible originals, of drawings and specifications for information, reference and use in connection with **RC&D** endeavors.

#### **ARTICLE 6: WARRANTY:**

The **RC&D** warrants that all services performed herein shall be performed using that degree of skill and care ordinarily exercised in and consistent with generally accepted practices for the nature of the services and shall conform to all requirements of this Memorandum of Understanding.

#### **ARTICLE 7: SAFETY:**

The **RC&D** agrees to fully comply with the Occupational Safety and Health Act of 1970, all regulations issued thereunder and all state laws and regulations enacted and adopted pursuant thereto. The **RC&D** shall take all necessary precautions in performing the services hereunder to prevent injury to persons or damage to property.

#### **ARTICLE 8: APPLICABLE LAW:**

This Memorandum of Understanding shall be governed in all respects by the laws of the State of Montana. No changes, amendments or modifications of any of the terms and conditions hereof shall be valid unless agreed to in writing. Venue of any proceeding arising hereunder shall be the Thirteenth Judith District.

#### **ARTICLE 9: COMPLIANCE WITH LAWS:**

The **RC&D** shall in performing the services contemplated by this Memorandum of Understanding, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this Memorandum of Understanding.

#### **ARTICLE 10: CHANGES:**

The parties, by mutual agreement, may, at any time during the term of this Memorandum of Understanding and without invalidating the Memorandum of Understanding, make changes within the general scope of the Memorandum of Understanding. The **RC&D** agrees to perform such changed services. The **County**'s priority list for project work within their county can be changed at any time. In such case, the District will be informed of this change at the **County**'s earliest convenience.

#### **ARTICLE 11: TERMINATION:**

This Memorandum of Understanding may be terminated in whole or in part, in writing, by either party in the event of substantial failure by the other party to fulfill its obligations under this Memorandum of Understanding through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

Upon such termination the **County** shall pay the **RC&D** amounts due and unpaid for services rendered as of the effective date of termination, and the **RC&D** shall provide to the **County** all materials, surveys, reports, data, and other information performed or prepared as of such date.

#### **ARTICLE 12: INDEMNIFICATION:**

The **RC&D** agrees to and does hereby indemnify and save **County**, its officers, officials and employees, harmless against and from:

1. Any and all claims and liabilities, including but not limited to costs, expenses, and attorney fees arising from injury to, or death of, persons (including claims and liabilities for care or loss of services in connection with any bodily injury or death) and including injuries, sickness, disease, or death to **RC&D** employees occasioned by a negligent act, omission, or failure of the **RC&D**;
2. Any and all claims and liabilities, including costs and expenses, for loss or destruction of or damage to any property belonging to the **RC&D** or the **County** caused by a negligent act, omission, or failure of the **RC&D** and
3. Any fines, penalties, or other amounts assessed against the **County** by reason of the **RC&D** failure to comply with all health, safety, and environmental laws and regulations applicable to the services; resulting directly or indirectly from, or occurring in the course of the **RC&D** performance of the services. However, this indemnity shall not extend to claims and liabilities for (i) injury or death to persons or (ii) loss of or damage to property to the extent that these claims and liabilities result directly from the **County**'s negligence or willful misconduct.

#### **ARTICLE 13: INSURANCE:**

The **RC&D** shall maintain and demonstrate the following types of insurance:

1. The **RC&D** agrees that its employees and particularly the employees designated to work on this memorandum of understanding are covered by applicable Worker's Compensation provisions. The **RC&D** further agrees that if the **County** should legally incur any costs whatsoever under the Worker's Compensation laws by reason of the **RC&D** employees' injury or death while engaged in the contract work, the **RC&D** will indemnify and hold harmless **County** for such costs which **County** may be legally be required to pay to employees of the **RC&D**.

2. Comprehensive general liability insurance for bodily injury, death, or loss of or damage to property of third persons or other liability due to the negligent acts of the **RC&D** in the minimum amounts of \$500,000 per occurrence and \$1,000,000 aggregate for personal injury; and \$500,000 per occurrence/aggregate for property damage. Proof of coverage as required by this section shall be delivered to the **County** within fifteen (15) days of execution of this Agreement.

3. Professional liability errors and omissions insurance in a minimum amount of \$100,000.00.

**ARTICLE 14: NONDISCRIMINATION:**

The **RC&D** will not discriminate against any employee or applicant for employment relating to this project on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap or national origin. All hiring associated with any project shall be on the basis of merit and qualifications related to the requirements of the particular position being filled.

**ARTICLE 15: INDEPENDENT CONTRACTOR:**

The **RC&D** and the **County** agree that the **RC&D** is an independent contractor with respect to the services provided pursuant to this Memorandum of Understanding. Nothing in this Memorandum of Understanding shall be considered to create the relationship of employer and employee between the parties hereto. Neither the **RC&D** nor any employee of the **RC&D** shall be entitled to any benefits accorded **County** employees by virtue of the services provided under this Memorandum of Understanding. The **County** shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state Worker's Compensation program, nor shall the **County** be deemed in any way to assume the duties of an employer with respect to the **RC&D**, or any employee of the **RC&D**.

**ARTICLE 16: ASSIGNMENT:**

The **RC&D** shall not sublet or assign any of the services covered by this Memorandum of Understanding without the express written consent of the **County**.

**ARTICLE 17: NON-WAIVER:**

Waiver by the **County** of any provision of this memorandum of understanding or any time limitation provided for in this memorandum of understanding shall not constitute a waiver of any other provision.

**ARTICLE 18: NOTICES:**

Any Notice to be served hereunder may be served upon the parties personally or served by certified mail, return receipt. Notice served by mail shall be deemed complete upon deposit of said notice in any United States Post Office, postage prepaid, directed to the party to be served, at the following addresses:

<b>COUNTY:</b>	<u>Yellowstone County</u>	<b>RC&amp;D:</b>	Beartooth RC&D
	<u>P.O. Box 35003</u>		P.O. Box 180
	<u>Billings, MT 59107</u>		Joliet, MT 59041

**ARTICLE 19: INTEGRATED AGREEMENT:**

This Memorandum of Understanding together with attachments or addenda, represents the entire and integrated Agreement between the **County** and the **RC&D** and supersedes all prior negotiations, representations, or agreements, written or oral. This Memorandum of Understanding may be amended only by written instrument signed by both the **County** and the **RC&D**.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Memorandum of Understanding the day and year in this instrument first above written.

**YELLOWSTONE COUNTY COMMISSIONERS BEARTOOTH RC&D/EDD**

\_\_\_\_\_  
Jim Reno  
Chairman

\_\_\_\_\_  
Charles Egan, Chairman

\_\_\_\_\_  
Bill Kennedy

\_\_\_\_\_  
John Ostlund

ATTEST: \_\_\_\_\_ Date: \_\_\_\_\_

**ARTICLE 18: NOTICES:**

Any Notice to be served hereunder may be served upon the parties personally or served by certified mail, return receipt. Notice served by mail shall be deemed complete upon deposit of said notice in any United States Post Office, postage prepaid, directed to the party to be served, at the following addresses:

<b>Entity:</b>	<u>Big Sky EDA</u>	<b>RC&amp;D:</b>	Beartooth RC&D
	<u>222 N. 32 St Suite 200</u>		P.O. Box 180
	<u>Billings, MT 59101</u>		Joliet, MT 59041

**ARTICLE 19: INTEGRATED AGREEMENT:**

This Memorandum of Understanding together with attachments or addenda, represents the entire and integrated Agreement between the **Entity** and the **RC&D** and supersedes all prior negotiations, representations, or agreements, written or oral. This Memorandum of Understanding may be amended only by written instrument signed by both the **Entity** and the **RC&D**.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Memorandum of Understanding the day and year in this instrument first above written.

**Big Sky EDA**

**BEARTOOTH RC&D/EDD**

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Joe McClure  
Executive Director

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Charles Egan, Chairman

**ARTICLE 18: NOTICES:**

Any Notice to be served hereunder may be served upon the parties personally or served by certified mail, return receipt. Notice served by mail shall be deemed complete upon deposit of said notice in any United States Post Office, postage prepaid, directed to the party to be served, at the following addresses:

<b>Entity:</b>	<u><b>City of Billings</b></u>	<b>RC&amp;D:</b>	Beartooth RC&D
	<u><b>210 N. 27th Street</b></u>		P.O. Box 180
	<u><b>Billings, MT 59101</b></u>		Joliet, MT 59041

**ARTICLE 19: INTEGRATED AGREEMENT:**

This Memorandum of Understanding together with attachments or addenda, represents the entire and integrated Agreement between the **Entity** and the **RC&D** and supersedes all prior negotiations, representations, or agreements, written or oral. This Memorandum of Understanding may be amended only by written instrument signed by both the **Entity** and the **RC&D**.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Memorandum of Understanding the day and year in this instrument first above written.

**City of Billings**

**BEARTOOTH RC&D/EDD**

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Ron Tussing  
Mayor

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Charles Egan, Chairman

**ARTICLE 18: NOTICES:**

Any Notice to be served hereunder may be served upon the parties personally or served by certified mail, return receipt. Notice served by mail shall be deemed complete upon deposit of said notice in any United States Post Office, postage prepaid, directed to the party to be served, at the following addresses:

<b>Entity:</b>	<u><b>City of Laurel</b></u>	<b>RC&amp;D:</b>	Beartooth RC&D
	<u><b>115 W. 1st Street</b></u>		P.O. Box 180
	<u><b>Laurel, MT 59044</b></u>		Joliet, MT 59041

**ARTICLE 19: INTEGRATED AGREEMENT:**

This Memorandum of Understanding together with attachments or addenda, represents the entire and integrated Agreement between the **Entity** and the **RC&D** and supersedes all prior negotiations, representations, or agreements, written or oral. This Memorandum of Understanding may be amended only by written instrument signed by both the **Entity** and the **RC&D**.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Memorandum of Understanding the day and year in this instrument first above written.

**City of Laurel**

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Kenneth E. Olsen  
Mayor

**BEARTOOTH RC&D/EDD**

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Charles Egan, Chairman

(Back to Regular Agenda)